



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) Nos.4821 and 4855 of 2019

and

W.M.P. (MD) Nos.3829, 3830, 3868 and 3869 of 2019

W.P. (MD) No.4821 of 2019

R.Saminathan

... Petitioner

Vs

1.The Competent Authority,
District Revenue Officer,
Karur District,
Karur.

2.The Deputy Superintendent of Police,
Economic offence Wing-II,
Karur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the respondent vide impugned Auction Notice dated 07.02.2019 vide proceedings in Na.Ka.E4/5251/2011 in respect of the property situated in S.F.No.74/67 known as Master Marriage Hall at Krishnarayapuram Village and Taluk, Karur District and quash the same and consequently direct the first respondent to issue fresh notification by mentioning the valuation and upset price of the property by giving wide publication.

For Petitioner

: Mr.M.Karunanithi

For Respondents

: Mr.Rajarajan

Government Advocate

W.P. (MD) No.4855 of 2019

The Tamil Nadu Elementary School
Teachers Federation Chennai,
represented by its General Secretary,
No.78, JSR Maligai,
Bells Salai, Triplicane,
Chennai-600 005.

... Petitioner

Vs



The Competent Authority /
District Revenue Officer,
Karur District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned auction notice of the respondent in Na.Ka.No.E4/5251/2011 dated 07.02.2019 and quash the same.

For Petitioner	: Mr.H.Arumugam
For Respondent	: Mr.K.Mu.Muthu Additional Government Pleader

COMMON ORDER

Heard the learned counsel on either side.

2.The competent authority under TNPID Act, Karur has issued the impugned notification dated 07.02.2019 proposing to auction the property comprised in S.F.No.74/67, Krishnarayapuram village and Taluk, Karur District and covered by document No.792/1996, on 04.03.2019. The said auction notice is challenged in these writ petitions.

3.The petitioner in W.P.(MD)No.4821 of 2019 is one of the accused in C.C.No.69 of 2008 on the file of the Sub Court for TANPID Act cases, Madurai. The petitioner in the other writ petition is a federation which is also staking a claim over the said property. It is relevant to note here that the petitioner in W.P.(MD)No.4855 of 2019 is a party to the order dated 08.12.2017 in C.M.A(MD)No.1083 and 719 of 2017.

4.The members of the said Federation are belonging to the Krishnarayapuram Village. They had collected money from various persons with a promise to refund at a high interest rate. With the moneys so collected, the marriage hall that is sought to be auctioned by the impugned notification was constructed. Since the deposits were not refunded, Crime No.2 of 2004 was registered on the file of the Inspector of Police, Economic Offences Wing-II, Karur. The Government issued G.O.Ms.No.1224, Home (Courts-IIA) Department dated 27.10.2004 attaching the said property among others.

5.The said attachment was raised at the instance of the said Federation in I.A.No.10 of 2012 in O.A.No.5 of 2011, by the Special Judge, TANPID Act cases, Madurai. The said order was challenged before me in C.M.A.Nos.1083 and 719 of 2017. I allowed the C.M.As., by order dated 08.12.2017 and set aside the order whereby the attachment was raised. A direction was given to the learned Special Judge, to dispose of O.A.No.5 of 2011 on or before 30.08.2018. It is heartening to note that the learned Special



Judge disposed of the O.A., well before the said date.

6. By judgment dated 28.08.2018, the learned Single Judge made absolute the interim attachment made in respect of the marriage hall. It was also made clear that the accused will have to make the good loss to the depositors through the sale proceeds of the said marriage hall. It is beyond dispute that the impugned auction is being conducted only pursuant to the directions given by the learned Single Judge.

7. Section 7(6) of the TANPID Act, 1987 states that the learned Single Judge is empowered to direct the competent authority to sell the attached property by public auction and realise the sale proceeds. Section 10 of the Act confers the power of administration on the attached property on the Special Court. In this case, the petitioners herein have not questioned the order dated 28.08.2018 passed by the learned Single Judge in O.S.No.5 of 2011 in C.C.No.69 of 2008. The petitioners are challenging the auction notification principally on the ground that proper publication has not been made and that relevant particulars have not been mentioned.

8. Mr. H. Arumugam, learned counsel expressed his apprehension that the authorities are acting in a manner as to favour a section of the depositors to grab the property on his hand.

9. I am of the view that the petitioners can very well move the Special Court, questioning the auction sale. The learned counsel appearing for the Federation pointed out that there is no specific provision which would enable them to move the Special Court.

10. I am of the view that the answer can be found in Section 7 (5) of the said Act. The said provisions states that the Special Judge shall follow the procedure and exercise the powers of the Court in hearing a suit under the Code of Civil Procedure, 1908. That apart, when the Act confers the power on the Special court to direct the sale of the attached property by public auction, the said power would include all the incidental powers also.

11. It is relevant to refer to the legal maxim "***Quando aliquis aliquid concedit, concedere videtur et id sine quo res uti non potest.***" (When a person grants a thing, he is supposed to grant that also without which the thing cannot be used.)" Obviously, the competent authority cannot have unbridled or arbitrary powers in the matter of auction sale. The proceedings conducted by the competent authority are always subject to the overall control and superintendence of the Special Court.

12. Therefore, after conducting the auction sale of the marriage hall on 04.03.2019, the competent authority will have to move the Special Court for confirmation. The petitioners herein can independently file applications before the Special Court, questioning the entire process. The rights of the writ petitioners



are left open.

13. It is made clear that the dismissal of these writ petitions will not mean that this Court has negated the contentions of the writ petitioners. It is always open to the petitioners herein to bring to the notice of the Special Judge, the illegalities which according to them have been committed in respect of the impugned auction sale. If the Special Court is convinced by the submissions of the writ petitioners, the Special Court can always direct the competent authority to hold a fresh auction sale.

14. With this direction and observation, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Competent Authority,
District Revenue Officer,
Karur District,
Karur.

2. The Deputy Superintendent of Police,
Economic offence Wing-II,
Karur.

+1CC TO MR.H.ARUMUGAM, Advocate Sr. No.51289

+1CC TO MR.M.KARUNANITHI, Advocate Sr. No. 50985

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 51754 & 51562

W.P. (MD) Nos. 4821 and 4855 of 2019

01.03.2019

TR (05.04.2019) 4P 6C