



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A(MD)NOs.500 and 501 OF 2019
and
C.M.P(MD)Nos.4276 and 4277 of 2019

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Nagercoil Municipality,
represented by its Commissioner,
Municipal Office,
166, Balamore Road,
Nagercoil - 629 001,
Kanyakumari District.

:Appellants/Respondents
in both Writ Appeals

.vs.

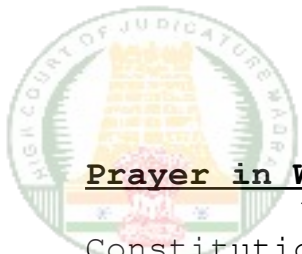
1.P.Arjun : Respondent/Writ Petitioner
in W.A(MD)No.500 of 2019

2.P.Udayanand :Respondent/Writ Petitioner
in W.A(MD)No.501 of 2019

COMMON PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent praying this Court to set aside the common order passed by this Court in W.P(MD)Nos.15577 and 15578 of 2018, dated 14.02.2019.

Prayer in WP(MD). 15577/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the second respondent Municipality to refund the earnest money deposit of Rs,2 lakhs together with the advance rental amount of Rs.24,00,000/- received from petitioner (as the highest bidder in the public auction sale conducted on 12/01/2018) in respect of Sho.No.9 / 5-88B, Cape Road, Nagercoil (belonging to the second respondent Municipality) with reasonable interest within a timeframe to be fixed by this Court.



Prayer in WP(MD). 15578/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the second respondent Municipality to refund the earnest money deposit of Rs,2 lakhs together with the additional earnest money deposit of Rs.8 lakhs and the advance rental amount of Rs.28,80,000/- received from petitioner (as the highest bidder in the public auction sale conducted on 12/01/2018) in respect of Shop No.9 / 5-88A, Cape Road, Nagercoil (belonging to the second respondent Municipality) with reasonable interest within a timeframe to be fixed by this Court.

For Appellant
in both W.As'

:Mr.VR.Shanmuganathan
Special Govt.Pleader

For Respondent
in both W.As'

:Mr.N.Dilipkumar

COMMON JUDGMENT

[Judgment of the Court was made by K.RAVICHANDRABAABU,J.]

These two Writ Appeals are filed by the Nagercoil Municipality challenging the common order of the Writ Court made in W.P(MD) Nos.15577 and 15578 of 2018, dated 14.02.2019.

2.The second appellant/Municipality is the second respondent before the Writ Court in both the Writ Petitions. The Writ Petitioners in each Writ Petition sought for issuing a Writ of Mandamus directing the Municipality to refund the Earnest Money Deposit together with advance rental amount received from each Petitioner in respect of the subject-matter shop in each case, with reasonable interest.

3.The crux of the contentions of the Writ Petitioners before the Writ Court seeking for the above relief was that even though they participated in the tender and offered the highest bid in respect of each shop in an auction conducted on 12.1.2018, they were not individually informed about the confirmation of the auction and thus they did not take possession of the shop. Consequently, it is contended by the Writ Petitioners, that the amount paid by them by way of Earnest Money Deposit and rent for one year have to be refunded.

4.The Writ Court, after hearing both sides, found that the confirmation of the auction made by the Municipality was not communicated to the Writ Petitioners and therefore, in the absence of such communication, there is no concluded contract between the parties and consequently the Municipality is not justified in retaining the money paid by the Petitioners. Therefore, the Writ



Court, directed the refund of the money received from the Writ Petitioners with interest at 6% p.a.

5.Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the appellants submitted that though an individual communication was not issued to the Writ Petitioners about the confirmation of the auction, in view of a bond executed by the Writ Petitioners individually on an undertaking to comply with all the terms and conditions of the contract, it is to be construed that the Writ Petitioners were aware of the confirmation of the auction and thus, mere non-communication of the confirmation specifically cannot be treated as fatal in respect of the contract entered between the parties. He further submitted that a paper publication was specifically issued on 31.3.2018 calling upon all the successful bidders to come and take the license from the Municipality and in spite of such invitation, the Petitioners have not come forward to take the license from the Municipality, even though other persons in respect of 98 shops have approached the Municipality and received the license. Therefore, he contended that the said paper publication issued on 31.3.2018 itself has to be construed as a communication indicating the acceptance of the contract and therefore, the Writ Petitioners cannot seek for refund of the amount.

6.Per contra, the learned counsel for the Writ Petitioners/respondents in each Writ Appeal submitted that the Municipality has not communicated to the Writ Petitioners about the confirmation of the auction at any point of time. Therefore they were reasonably prevented from taking possession of the shop to run the same. He further submitted that having paid a huge sum, Rs.2 lakhs by way of Earnest Money Deposit and Rs.28,80,000/- and Rs.24,00,000/- in each case towards one year rent, no prudent person will keep quiet without proceeding further to take possession of the shop. Consequently, the learned counsel for the respondents submitted that the Writ Court has rightly passed the order for refund of the amount with interest.

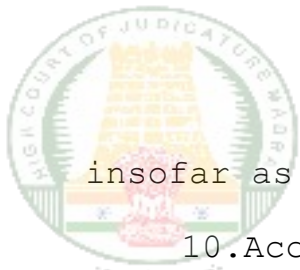
7.Heard both sides and perused the materials placed before this Court.

8.It is seen that the second appellant/Municipality issued a tender-cum-auction notice on 28.12.2017 for letting out the shops for auction for the period referred to therein. There is no dispute to the fact that the auction was held on 12.1.2018, on which day, these Writ Petitioners participated and quoted the highest bid in respect of the subject-matter shops. However, the fact remains that the confirmation of the auction was done by the second appellant/Municipality belatedly by passing a resolution only on 23.3.2018. There is no dispute to the fact that though these



resolutions were passed on 23.3.2018, individual communication of the same was not issued to the Writ Petitioners informing the confirmation of auction in their favour. No doubt, the learned Special Government Pleader sought to refer to the undertaking given by the Writ Petitioners on 12.1.2018 stating that they will abide by the terms and conditions of the contract. But, at the same time, it is to be noted that such undertaking was given much earlier to the confirmation of the auction i.e., on 23.3.2018. Even as per the terms and conditions of the contract, the bond sought to be executed by the successful bidders in 100 Rupees stamp paper is expected to be executed only after confirmation of the auction, as enumerated under Clause-IX of the terms and conditions of the auction. In this case, no such communication was issued to the Writ Petitioners confirming the auction though it was made by the Municipality by way of a resolution on 23.3.2018. Therefore, in effect, the Petitioners were not informed about the confirmation of the auction. It cannot be expected that the Petitioners know that their auction was confirmed by the Municipality, without there being any written communication issued to that effect. The learned Special Government Pleader heavily relied on the paper publication effected on 31.3.2018 calling upon the successful bidders to come and collect the license. We failed to understand as to why the Municipality has chosen to issue a paper publication to invite all the successful bidders to come and receive the license instead of issuing individual communication to the persons who became the successful bidders. One can understand the logic about issuing notification through newspapers for letting out the shops. However, once the bid has taken place and a person has become the successful bidder, the outcome of the auction and the consequential proceedings issuing license/lease to such person has to be addressed to the successful bidders individually and not by way of paper publication, as has been done in this case. Therefore, the paper publication issued on 31.3.2018, will not come to the rescue of the Municipality in any manner. Even otherwise, we find that it is the bounden duty of the Municipality to issue license and communicate the same to the individual successful bidders once they have chosen to confirm the auction on 23.3.2018. In this case, it has not been done so. Therefore, we find that in the absence of valid information of confirmation of the bid, there cannot be any justification on the part of the Municipality to retain the money. If it is permitted, it would only amount to unjust enrichment. Therefore, We find that the Writ Court has rightly taken a decision to order refund of the money received from the Petitioners.

9.However, insofar as the order of the Writ Court for awarding 6% interest per annum is concerned,we are of the view that it is not required in this case, since we also find that the Writ Petitioners have not taken any steps to seek for refund of the amount immediately by issuing any demand in writing, within a reasonable time. Therefore, we hold that the order of the Writ Court



insofar as the awarding of interest cannot be sustained.

10. Accordingly, the Writ Appeals are allowed in part only in respect of the interest portion alone. In other words, the order of the Writ Court is confirmed in all other respects. The second appellant/Municipality thus shall refund the money to the Writ Petitioners within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

+2 CC to M/s.N.DILIPKUMAR, Advocate (SR-81710[F] dated 14/08/2019)

+1 CC to M/s.SPL GP (SR-81917[F] dated 16/08/2019)

COMMON JUDGMENT MADE IN
W.A(MD)NOs.500 and 501 OF 2019
and
C.M.P(MD)Nos.4276 and 4277 of 2019
14.08.2019

vsn

JMN(09.09.2019) 5P : 4C