



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 16.08.2019

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THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

Writ Appeal(MD)No.628 of 2019

in

WP(MD)No.17617 of 2018

S.Paulraj

.. Appellant/Petitioner

Vs.

1.The Commissioner cum
Executive Officer,
Kovilpatti Municipality,
Tuticorin District.

2.M.T.Ravindraranjan
President,
Kovilpatti Vattara Viyaparigal Matrum Kaaikani
Urpathiyalargal Nala Sangam,
Door No.227B, Ettayapuram Road,
Kovilpatti - 628 501,
Tuticorin District.

.. Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 23.04.2019 in W.P(MD)No.17617 of 2018.

Prayer in WP(MD). 17617 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for records relating to the impugned notification dated 01.08.2018 in so far as it relates to the auctioning of the right to collect Vehicle Entry Fee at the Municipality Market, Kovilpatti is concerned issued by the Respondent and quash the same as illegal and consequently direct the respondent to permit the petitioner to collect the vehicle entry fee in the Municipality Daily Market, Kovilpatti to the petitioner by executing the agreement for the same within the time that may be stipulated by this court.



For Appellant : Mr.G.Prabhu Rajadurai
For Respondents : Mr.P.Srinivas (for R1)
Mr.J.Barathan (for R2)

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JUDGMENT

(Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**)

This writ appeal is directed against order passed in W.P(MD) No.17617 of 2018, dated 23.04.2019.

2.The appellant is the writ petitioner. He filed writ petition challenging the auction notification dated 01.08.2018 insofar as it relates to the auctioning of the right to collect vehicle entry fee at the Municipality Market, Kovilpatti with consequential direction to the respondent Municipality to permit the petitioner to collect the vehicle entry fee in the Municipality Daily Market, Kovilpatti, by executing the agreement for the same.

3.The case of the writ petitioner before the Writ Court is as follows:-

The respondent Municipality issued tender-cum-auction notification, dated 16.07.2018, for conferring the right to collect the entry fee in the Daily Market belonging to the Municipality. The tender-cum-auction took place on 31.07.2018 and the writ petitioner was found to be the highest bidder with his offer of a sum of Rs.36,36,000/-. The Municipality also passed a resolution confirming his bid. While so, the second respondent approached the Municipality and offered higher bid to the tune of Rs.45,45,000/- on the very next day. Therefore, the Municipality issued once again a fresh auction notification on 01.08.2018 which is put to challenge in the above writ petition. The Writ Court after taking note of the clause 15 of the original notification, dated 16.07.2018, entitling a person seeking re-auction by offering higher bid to the tune of 25% over and above the highest bid, dismissed the writ petition by finding that the second respondent had offered bid for Rs.45,45,000/- by fulfilling the requirements set out in Clause 15 of the auction notification.

4.This writ appeal was filed mainly by contending that once auction is confirmed in favour of the writ petitioner, the Municipality is not justified in going for fresh auction based on the request made by the second respondent. It is further submitted before us that the second respondent has not offered bid over and above the writ petitioner at the time of auction and therefore, his offer made on the subsequent day is only to prevent the writ petitioner from getting license.



5. After saying so, the learned counsel appearing for the appellant submitted that the appellant/writ petitioner himself is ready and willing to deposit the said sum of Rs.45,45,000/- offered by the second respondent to prove his *bona fide* so that fresh auction may be ordered to find out the highest bidder over and above the said sum of Rs.45,45,000/- by fixing it as upset price.

6. When such an offer was made by the learned counsel for the appellant/writ petitioner and in order to test the *bona fide* of the appellant, we passed an interim order on 02.08.2019 as follows:-

"Today, an affidavit dated 30.07.2019 is filed by the appellant stating that in the event of the respondent Municipality conducting a fresh public auction, he will participate in the said auction and that to show his *bona fide*, he undertakes to deposit with the respondent Municipality a sum of Rs.45,46,000/- on or before 13.08.2019 and that the said amount so deposited can be adjusted against the sum which he will have to pay to the respondent Municipality in the event of his success in the proposed public auction.

2. The said undertaking is recorded.

3. Post the matter for further hearing on 14.08.2019. In the meantime, if any such deposit is made by the appellant, the same shall be accepted by the Municipality without prejudice to the contention of either parties."

7. Thereafter, the matter was listed today for further hearing. The learned counsel for the appellant submitted that though the demand draft was taken within the time stipulated by this Court for the said sum of Rs.45,45,000/-, however, the same was not accepted by the Municipality, since there was some error in the name shown in the demand draft and therefore, after correcting such error the said sum of Rs.45,45,000/- is being paid today by way of five demand drafts. He has also produced those demand drafts before this Court, which in turn were handed over to the learned counsel for the respondent Municipality, who has accepted the same. Therefore, it is seen that the appellant has shown his *bona fide* by making the deposit of Rs.45,45,000/- before the respondent Municipality. Since both the parties, namely, the writ petitioner and the second respondent are intending to take part in the auction by quoting higher price than the other, we are of the view that in order to augment more income to the respondent Municipality, it is better a fresh auction notice is issued inviting all the interested persons to take part in public tender-cum-auction proceedings including the writ petitioner as well as the second respondent, by fixing the upset price as Rs.45,45,000/-. Of course, it is open to the respondent Municipality to stipulate all the terms and conditions for conducting such auction.

8. Accordingly, this Writ Appeal is disposed of as follows:-

(a) The order passed by the Writ Court is set



aside and the matter is remitted back to the respondent Municipality for conducting fresh auction by keeping the upset price as Rs.45,45,000/-.

(b) The fresh auction proceedings shall be conducted and completed within a period of four weeks from the date of receipt of a copy of this order.

(c) It is open to the writ petitioner as well as the second respondent to take part in the auction provided they satisfy the qualification criteria fixed by the respondent Municipality.

(d) In the event of failure on the part of the writ petitioner to become the successful bidder or if he is not satisfying the qualification criteria as per the fresh tender notification, the amount already paid by the writ petitioner as stated supra namely, a sum of Rs.45,45,000/- shall be refunded to the writ petitioner in accordance with the terms and conditions of the fresh auction notification.

(e) Till such time, the second respondent, who is said to have been issued with license by the respondent Municipality, shall continue the collection of the entry fee.

No costs.

Sd/-

Assistant Registrar()

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Sub Assistant Registrar(CS)

skn

+1CC TO MR.T.R.JEYAPALAM, Advocate Sr. No.82353

+1CC TO MR.P.SRINIVAS, Advocate Sr. No.82535

+1CC TO MR.G.PRABHURAJADURAI, Advocate Sr. No. 82159

Judgment made in
W.A(MD)No.628 of 2019
16.08.2019

KM(CO)

TR (22.08.2019) 4P 4C