

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.8805 of 2020
and
W.M.P.No.10690 of 2020

P.Rathinam,
S/o.Pachamuthu,
Nathakattur,
Erumaipatti Post,
Edappady Taluk,
Salem District.

...Petitioner

Vs.

1.The District Collector,
Salem.

2.Assistant Director of Panchayats,
Salem.

3.The Executive Officer,
Konganapuram Selection Grade,
Town Panchayat,
Konganapuram,
Edappady Taluk,
Salem District.

4.S.Raja,
S/o.Sengodan,
Therku Valavu,
Kovalangadu,
Kachapalli Village,
Edappady Taluk,
Salem District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, to declare that the lease granted in favour of the fourth respondent in respect of Collection of Toll in the Weekly Shandy situated within Konganapuram Selection Grade Panchayat granted by the third respondent for the period 2020-2021, based on the auction said to have been held on 13.03.2020, as illegal and null and void and consequentially direct the third respondent to grant the said lease to the petitioner for the current period by receiving the amount of 25% over and above the amount paid by the fourth respondent in respect of the said lease.

For Petitioner : Mr.R.Neelakandan
For R1 to R3 : Mr.A.Kumar
Additional Advocate General
Assist by
E.Balamurugan
Special Government Pleader
For R4 : Mr.Lakshmi Narayanan

O R D E R

This writ petition has been filed challenging the lease granted in favour of the fourth respondent in the auction that was conducted by the third respondent.

2. The case of the petitioner is that he was a lessee from the year 2017-2020 for Collection of Toll in the Weekly Shandy. The period came to an end in the year 2020 and the third respondent announced an auction. The auction was conducted twice in which the petitioner had participated. However, the same got canceled. During both occasions, the petitioner has quoted an amount of Rs.7,15,000/-.

3. In view of the cancellation of the earlier two auctions, the third respondent proceeded to conduct an auction on 13.03.2020 and in the said auction, the fourth respondent was declared as the highest bidder and the lease was awarded in his favour for the period 01.04.2020 to 31.03.2021. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that the third respondent had intentionally canceled the earlier two auctions and in the third auction, the petitioner was not allowed to participate since a false criminal case was registered against the petitioner and the petitioner was not able to be physically present during the time of auction. The fourth respondent had submitted a bid for a sum of Rs.9,06,300/- and the petitioner is willing to pay a sum of Rs.20,00,000/- in order to show his bonafied and in order to ensure that the Panchayat does not loose the revenue. The learned counsel submitted that the official respondents wanted to somehow prevent the petitioner from participating in the auction and thereby the lease is given in favour of the fourth respondent for a much lesser amount. Therefore, the learned counsel sought for cancellation of the bid granted in favour of the fourth respondent and consequently allow the petitioner to continue for a further period of one year after receiving a sum of Rs.20,00,000/- from the petitioner.

5. The third respondent has filed a counter affidavit. The relevant portions in the counter affidavit is extracted hereunder:

<https://hcservices.ecourts.gov.in/hcservices/>

9. It is further most humbly submitted that

based on the order passed by this Hon'ble Court dated 12.03.2020 in W.P.No.6630 of 2020 on 13.03.2020 the above said Auction was conducted in accordance with law with adequate police protection, in which there are 12 tenderers were participated and the fourth respondent quoted highest bid of Rs.9,06,300/- hence the fourth respondent was found successful bidder in the third and final tender. It is pertinent to state that the petitioner was participated in the third and final tender conducted by the third respondent panchayat. Furthermore the entire proceedings of the third and the final Auction conducted by the third respondent were video recorded.

S. No .	Name of the Participant	Bid Amount
1.	K.S.Senthilvasan, S/o.Kandhasamy, Mulapadhai, Kachipalli Post	904000, 906000
2.	S.Kumar, S/o.Subramani, Karatuur, K.Vadukapati Post, Konganapuram.	904700, 906200
3.	M.Selvakumar, S/o.Muthu, Karatuur, K.Vadukapati Post.	904100, 905700
4.	P.Rajamanikam, S/o.Palaniappan, Kollangadu Valavu, Erumaipatti Post, Konganapuram.	903500, 905900
5.	M.Perumal, S/o.Muthu, Alagampalayam, Kattukottai, Kachupalli, K.Vadukapati Post.	904600
6.	S.Raja, S/o.Sengodan, Theruku Valavu, Kovalangadu, Kachapalli Village, Edappady Taluk, Salem District.	903900, 904800, 905000, 905200, 905500, 906100, 906300

S. No.	Name of the Participant	Bid Amount
7.	Selvan @ Pachamuthu, S/o.Arumugam, Nathaikattur, Erumaipatti Post, Konganapuram.	903700, 905100
8.	M.Marimuthu, S/o.Arumugam, Periya Mariamman Koil Street, Konganapuram.	903800, 906100
9.	Rajagopal, S/o.Alagapan, Erumaipatti Post, Konganapuram.	905300
10.	D.Muthusamy, S/o.Thilak Gounder, Vadukapatti.	903600, 904900, 905600
11.	R.S.Pachamuthu, S/o.Ramasamy Gounder, Nathaikattur, Erumaipatti Post, Konganapura.	904800, 905400

10. It is further humbly submitted that the fourth respondent was deposited all the required amount of Rs.9,06,300/- + Rs.1,63,134/- (18% Service Tax), Total = Rs.10,69,434/- Vide Receipt No.761/2019-2020 to the panchayat and as per the Resolution passed by the third respondent Panchayat in Resolution No.37(6), dated 31.03.2020 the fourth respondent was awarded for the lease from 01.04.2020 to 31.03.2021 for one year.

12. It is further humbly submits that without filing Amend the Prayer and Additional affidavit in W.P.No.6630 of 2020 this writ petitioner filed this writ petition with the prayer:-

"for Writ of Declaration declaring that the lease granted in favour of the fourth respondent in respect of collection of Toll in the Weekly Shandy situated within Konganapuram Selection Grade Panchayat granted by the third respondent for the period 2020-21, based on the auction said to have been held on 13.03.2020 as illegal and null and void and consequently direct the third respondent to grant the said lease to the

petitioner for the current period by receiving the amount of 25% over and above the amount paid by the fourth respondent in respect of the said lease"

Which clearly shows the Monopoly intention of the writ petitioner to hold the right to collect Toll on the Weekly Shanday on his own.

13. It is further humbly submits that the petitioner in his affidavit states that he may quote Rupees Twenty Five Lakhs to Twenty Seven Lakhs towards the bid is nothing but an afterthought.

14. It is further humbly state that the petitioner was the successful bidder for the last three years and he quoted the following price:

For the year 2017-18 (General auction)	-
Rs.7,40,000/-	
For the year 2018-19 (5% renewal)	-
Rs.7,77,000/-	
For the year 2019-20 (5% renewal)	-
Rs.8,15,850/-	

15. It is further humbly submitted that the first auction for the year 2020-2021 dated 17.02.2020 and second auction for the year 2020-2021 dated 27.02.2020 the petitioner quoted Rs.7,15,000/- only and the petitioner did not participated in the third and final auction conducted by the third respondent. In this situation, the plea for petitioner that he may quote Rs.25 lakhs to Rs.27 Lakhs for he auction for the year 2020-2021 is utterly false statement.

16. It is pertinent to submit that the third respondent panchayat is not responsible for the petitioner to not participating in the third and final auction conducted by the third respondent for the year 2020-2021. Further the third respondent had not filed any complaint against the petitioner before the Police authority, hence the third respondent is not aware of the reason behind the petitioner for non-participating in the Tender."

6. Mr.A.Kumar, learned Additional Advocate General appearing on behalf of the third respondent submitted that no one prevented the petitioner from participating in the auction. The learned counsel further submitted that the third respondent has nothing to do with the criminal case filed against the petitioner and the petitioner cannot show a

pending criminal case as a ground to seek for extension of lease even without participating in the auction. The learned Additional Advocate General further submitted that the present offer made by the petitioner is a clear after thought since what was offered by the petitioner in the earlier two auctions, which were canceled was only a sum of Rs.7,15,000/- and now the petitioner is quoting an exorbitant amount and that is not a ground to cancel the bid that has already been given in favour of the fourth respondent for the period from 01.04.2020 to 31.03.2021. The learned Additional Advocate General further submitted that the fourth respondent had quoted a bid of Rs.9,06,300/- which is higher than what the petitioner quoted in the earlier two auctions, which were subsequently canceled. Therefore, the learned Additional Advocate General sought for dismissal of the writ petition.

7. Mr.Lakshmi Narayanan, learned counsel appearing on behalf of the fourth respondent submitted that the ground that has been raised by the petitioner is totally unsustainable more particularly since the petitioner has not even participated in the auction. The learned counsel further submitted that this Court while exercising its jurisdiction under Article 226 of the Constitution of India has a very limited jurisdiction to interfere with a tender process. The learned counsel further submitted that the petitioner cannot question the earlier two auctions that was canceled, since it was not confirmed and therefore no right had accrued in favour of the petitioner. The learned counsel concluded his arguments by submitting that the fourth respondent has already taken charge as a lessee in the Month of April itself and there is absolutely no ground to interfere with the same at this point of time.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. It is now a settled law that scope of interfere with the tender process is very limited and the law has been well settled by the Hon'ble Supreme Court in the case of Tata Cellular vs. Union of India reported in (1994) 6 SCC 651. This Court must remind itself of the fact that the judicial review in the case of this nature is very limited. The petitioner is a lessee for the period of 2017 - 2020 and the period came to an end on 31.03.2020. It is true that two auctions were conducted earlier and the petitioner had participated and offered a bid for a sum of Rs.7,15,000/- Both these auctions were canceled. The petitioner has not chosen to question the cancellation of the earlier auctions and in any event the third respondent was not bound to accept the highest tender or bid and the bidder also does not have the right to have the auction concluded in his favour. It is also equally well settled that once the auction has been canceled before confirmation, no right will accrue to anyone.

10. In case of a public auction, once a bid is confirmed by an authority, certain rights accrue in favour of the successful bidder and those rights cannot be extinguished except in an exceptional case of fraud.

11. In the present case, the only ground raised by the petitioner is that the petitioner was prevented from participating in the auction, since a false criminal case was registered against him and on threat of arrest, the petitioner was not able to participate in the auction. The petitioner has now made an offer to pay an amount to the tune of Rs.25,00,000/-.

12. This Court cannot go into the issue as to whether a criminal case was registered against the petitioner only to prevent him from participating in the auction, that would be a part fledged enquiry. The fact remains that the petitioner did not participated in the auction and therefore any offer made by him now cannot be a ground to interfere with the bid that has already been confirmed in favour of the fourth respondent, who has been granted the lease for the period of 01.04.2020 to 31.03.2021.

13. In view of the above discussion, this Court is not inclined to interfere with the lease granted in favour of the fourth respondent. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Rst

To:

- 1.The District Collector, Salem.
- 2.Assistant Director of Panchayats, Salem.
- 3.The Executive Officer,
Konganapuram Selection Grade,
Town Panchayat,
Konganapuram,
Edappady Taluk, Salem District.

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