



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.08.2020
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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W.P. (MD)No.2847 of 2020
and
W.M.P. (MD)Nos.2412, 2413 and 4815 of 2020

N.Udayakumar

... Petitioner

Vs.

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Assistant Director (Panchayat),
Thoothukudi District, Thoothukudi.
- 3.Block Development Officer (Village Panchayat)
Vilathikulam Panchayat Union,
Vilathikulam, Thoothukudi District.
- 4.Umasankar,
Assistant Director (Panchayat),
Thoothukudi District, Thoothukudi.
- 5.R.Muthukumar,
Block Development Officer (Village Panchayat)
Vilathikulam Panchayat Union,
Vilathikulam, Thoothukudi District.
- 6.Ayyansengal Padai Panchayat,
by its President,
Ayyansengal Padai, Vilathikulam Union,
Thoothukudi District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent in connection with the impugned order of rejection passed in his proceedings in Na.Ka.No.Thi.2/423/2017 dated 28.01.2020 (dispatched on 07.02.2020 and recived on 08.02.2020) and quash the same and consequently direct the third respondent to allow the petitioner to execute the work order issued in Thi.2/423/2017 dated 28.08.2019.

For Petitioner

: Mr.Thalaimutharasu,
for Mr.K.Gurunathan.



For R1 and R2 : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by Mr.S.Angappan,
Government Advocate.

For R3 : Mr.M.Jayakumar

For R4 to R6 : No Appearance

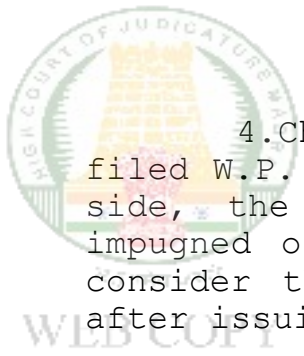
O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General appearing for the R1.

2.The 3rdRespondent/Block Development Officer, Village Panchayat, Vilathikulam issued auction notice dated 23.10.2017, inviting tenders for removal of Seemai karuvelam trees in the tanks mentioned in the said notice. The notice pertained to as many as four tanks. This writ petition is concerned with tank No.1, namely, Ayansengalpada Kanmai. The auction was to be held on 09.11.2017. In the said auction, the petitioner's father was declared as a successful bidder. It is stated that the petitioner's father deposited the bid amount immediately. But no Work Order was issued; instead the tender process was cancelled and a fresh auction notice came to be issued on 29.05.2019 by the third respondent. In the auction held on 10.06.2019, the petitioner's father, the petitioner and few others took part. The petitioner's bid amount of Rs.1,20,000/- was found to be the highest. The petitioner approached the respondents on 13.06.2019 as well as 14.06.2019 for execution of agreement and for issuance of Work Order. Since there was no response from the authorities, the petitioner filed W.P.(MD)No.17560 of 2019. The said writ petition was closed, since it was stated that following the filing of writ petition, Work Order dated 28.08.2019 was issued by the Block Development Officer, Vilathikulam. The work order dated 28.08.2019, was received by the petitioner only on 12.09.2019.

3.Interestingly, the Work Order dated 28.08.2019 reads that the entire work should be completed within 30 days from the date of receipt of

copy of the same. The petitioner represented to the Block Development Officer, Vilathikulam that right from the said date, there was incessant rainfall and as a result, the entire tank was filled with water. Therefore, the petitioner sought extension of time. Without considering the petitioner's request for extension of time, the third respondent herein chose to pass the order dated 05.11.2019, cancelling the Work Order itself.



4.Challenging the order dated 05.11.2019, the petitioner filed W.P.(MD)No.24982 of 2019. After hearing the counsel on either side, the writ petition was disposed of by setting aside the impugned order dated 05.11.2019. The respondents were directed to consider the petitioner's request for extension of time and only after issuing notice, appropriate steps were directed to be taken.

5.Enclosing the said order, the petitioner herein submitted one more representation dated 02.01.2020, seeking extension of time. While so, the third respondent herein issued notice dated 08.01.2020, calling upon the petitioner to respond as to why action should not be taken for non complying with the auction conditions. The petitioner submitted a detailed explanation dated 16.01.2020. Since no further action was taken, the petitioner also caused to issue contempt notice dated 04.02.2020.

6.The petitioner would submit that thereafter, the impugned order dated 28.01.2020 was issued informing the petitioner that his request for extension of time cannot be granted and that the authorities proposed to issue a fresh auction notice, after ascertaining the value of the tress from the District Forest Officer. Questioning the denial of his request for extension of time, this Writ Petition came to be filed.

7.The petitioner's request has been strongly opposed by the respondents 1 to 3. They have filed a detailed counter affidavit.

8.In the counter affidavit, it is stated that the tank in question belongs to the local panchayat. It is spread over an extent of 96.6 Hectares of land. The District Forest Officer, Tuticorin had assessed the value of the trees that is grown in the Kanmai of Rs.31,11,985/-. In fact when a public auction was conducted, one Madasamy, turned out to be the highest bidder and he remitted a sum of Rs.32,43,760/-. The stand of the respondent is that though the auction held in 2011 fetched such a handsome amount, in the auction held in November 2017, the amount that the auction fetched was only Rs.68,500/-. The respondent would point out that the bidder was none other than the petitioner's father, namely, Thiru.Needhirajan. Since the villagers raised objections and offered to take the license by paying an amount of Rs.5,00,000/-, the tender process was cancelled and Needhirajan was not issued with any Work Order.

9.The respondents would further point out that one Radhakrishnan, a villager had filed a Public Interest Litigation in this regard and the Honourable Division Bench by order dated 08.01.2018 had directed the Block Development Officer to conduct a fresh auction in a fair and transparent manner.

10.The stand of the authorities is that even though a fresh auction was conducted, again it did not fetch reasonable amount. It



is true that the petitioner herein was the highest bidder. But, they would take the stand that since the petitioner did not comply with the auction conditions, his Work Order came to be cancelled. The respondents also pleaded helplessness and stated that the extension of time cannot be granted because, the value of the trees that have now grown in the Kanmai is much higher. The petitioner who had offered only a sum of Rs.1,20,000/- in auction held in June 2019 cannot be allowed to walk away with excess profit.

11. According to the official respondents, this would amount to unjust enrichment. They would also point out that public interest would eventually suffer.

12. The learned Additional Advocate General appearing for the respondent reiterated all the contentions set out in the counter affidavit filed by the respondents 1 and 2 and wanted this Court to dismiss the writ petition.

13. The pointed contention of the learned Additional Advocate General is that in matters such as this, there can be only one consideration that can be paramount, namely, the interest of revenue. The petitioner is not engaged in any charitable activity. It is a commercial enterprise. If the authorities of the view that the highest amount has not been fetched, it is always open to the authorities to cancel the auction process earlier conducted and go for a fresh auction. No Court will interfere with such an approach.

14. I find that this argument of the learned Additional Advocate General has some substance. This Court will have to be mindful of the revenue interests of the local body. But then the antecedent conduct of the official respondents cannot be lost sight of.

15. In the counter affidavit filed by the first respondent as well as in the submissions of the learned Additional Advocate General great emphasis was placed on the fact that while the auction held in the year 2011, has fetched a sum of Rs.32,53,760/-, the petitioner has only offered a sum of Rs.1,20,000/- in the auction held in June 2019.

16. Though this discrepancy and difference in figures is rather stark, as rightly pointed out by the learned counsel for the petitioner, in the auction notice itself, the upset price has been fixed only at Rs.61,562/-. If really the value of the trees that have grown in the tank in question was worth several lakhs of rupees, I fail to understand as to how the authority concerned fixed the upset price at Rs.61,562/-. If the first respondent is now of the view that this is a low fixation, then it is definitely a case for ordering vigilance enquiry. I trust the first respondent will take note of this observation made by this Court.



17. The first respondent in his counter affidavit states that one Radhakrishnan filed Public Interest Litigation before this Court, in respect of very same subject matter and that the Honourable Division Bench had directed that an auction should be conducted in fair and transparent manner. But, interestingly the very same Radhakrishnan, who had offered a sum of Rs.5,00,000/-, before the Honourable Division Bench chose to offer only a sum of Rs.1,18,000/- in the auction held on 10.06.2019. The petitioner herein had offered a higher amount compared to the said Radhakrishnan.

18. I am of the view that the said Radhakrishnan is a sore loser and his litigative endeavour cannot be cited as a reason for denying the rights of the petitioner. If only the third respondent had fixed a proper upset price after valuing correctly, all these issues could have been very easily avoided. Even in the auction in which the petitioner's father was the successful bidder, the upset price was only fixed at Rs.61,562/-. Therefore, neither the petitioner nor his father can be blamed for offering sum of Rs.68,000/- or Rs.1,20,000 respectively.

19. It is not the case of the authorities that the petitioner had used any muscle power and prevented others from participating. I could see from the sequence of events that the authorities after holding the auction were bent on frustrating the rights of the petitioner.

20. If the offer made by the petitioner was low and if the authorities were of the view that the revenue interest has been adversely affected, nothing stopped them from cancelling the entire auction process and issuing a fresh notice. That had not happened in this case. In fact when the writ petitioner filed W.P.(MD)No.17560 of 2019, instead of going for a full fledged adjudication, the writ petition was allowed to be closed by recording fact that work order was already issued on 28.08.2019. The issuance of the work order dated 28.08.2019 completely falsifies the present stand of the respondents.

21. If the authorities were sincere, they ought to have served the work order immediately. That did not happen. The work order was belatedly served on the petitioner only on 11.09.2019. The petitioner could not enjoy the fruits of the same because, of the intervening rainfall. That is why the petitioner applied for extension of time. When the petitioner applied for extension of time, the respondents chose to pass the order dated 05.11.2019 cancelling the same.

22. I already noted that the cancellation order was set aside in W.P.(MD)No.24982 of 2019 on 25.11.2019. This Court had directed the respondents to take call as regards extension of time. The



respondents have now taken the stand that since in view of the lapse of time, the valuation had to be done afresh and that a person, who had bid only for a sum of Rs.1,20,000/- cannot be allowed to walk away with excess profit. But, it was the respondents, who had driven the petitioner to the wall.

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23.The respondents have now stated that due to heavy rainfall, the tank is now full and that to remove the trees it will take more than six months. The valuation has to be done again. It is likely to be far more. Therefore, a fresh valuation is required to be called for from the District Forest Officer and only thereafter, the third respondent can take a decision in the matter.

24.I have to necessarily sustain this stand of the third respondent because, it involves consideration of public revenue. The tank in question belongs to the local body and the local body should get the best price. But that cannot be the end of the matter. I have clearly held that the petitioner has been given a short shrift. The petitioner cannot be blamed at all.

25. The third respondent by his willful conduct has made the petitioner to move this Court thrice. The third respondent had not returned the bid amount paid by the petitioner immediately.

26.Therefore, in the interest of justice, I issue the following directions:

(i) The official respondents are directed to return the bid amount paid by the petitioner to him at the rate of 12 % per annum.

(ii) Since I have held that the petitioner is blameless and that the conduct of the third respondent is willful and malicious, the third respondent is directed to pay a sum of Rs.50,000/- as costs to the petitioner.

(iii) Further, the Respondents 1 to 3 are directed to conclude the valuation exercise by January - 2021 and ensure that the entire tender process is concluded by 15.03.2021. The refund as well as the cost will be paid on or before 30.09.2020.

27.This Writ Petition is disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The District Collector,
Thoothukudi District,
Thoothukudi.
2. The Assistant Director (Panchayat),
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4. Umasankar,
Assistant Director (Panchayat),
Thoothukudi District, Thoothukudi.
5. R. Muthukumar,
Block Development Officer (Village Panchayat)
Vilathikulam Panchayat Union,
Vilathikulam, Thoothukudi District.
6. The President,
Ayyansengal Padai Panchayat,
Ayyansengal Padai, Vilathikulam Union,
Thoothukudi District.

+1 CC to M/s.K. GURUNATHAN, Advocate (SR-13792[F] dated
07/08/2020)

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and

W.M.P. (MD)Nos.2412, 2413 and 4815 of 2020
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