



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.09.2020
CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.502 of 2020
and
C.M.P.(MD)No.3560 of 2020

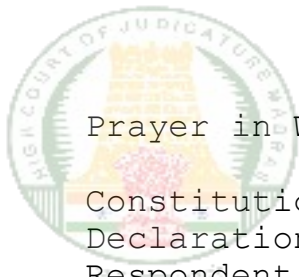
T.Sathish ... Appellant / Respondent No.6

-Vs-

- 1.A.3081 Agriculture Engineering Service
Co-Operative Society Limited,
Represented by its President,
M.Udayakumar,
Madurai Road, Panchayat Union Office Campus,
Bathalagundu, Dindigul District. ..1st Respondent / Petitioner
- 2.The Director / Registrar,
Agricultural Engineering Service,
Chennai.
- 3.The Registrar,
Co-Operative Societies,
Kizhpakkam, Chennai.
- 4.The Deputy Registrar of Co-Operative Societies,
Collectorate Complex, Dindigul.
- 5.The Dindigul Central Co-Operative Bank Limited,
Represented by its Branch Manager,
Kooturavu Nagar, Trichy Road,
Dindigul-624 005.
- 6.The Senior Inspector / Sale Officer,
Dindigul Central Co-Operative Bank Limited,
Dindigul.
- 7.Vasudevan
- 8.Periyakaruppan ... Respondents 2 to 8 / Respondents Nos.2
to 5, 7 and 8

Prayer: Writ Appeal - filed under Clause 15 of the Letters Patent
Act, against the order dated 08.01.2020 made in W.P.(MD)No.4786 of
2015 of this Court.

<https://hcservices.courts.tn.nic/hcservices/>



Prayer in WP(MD). 4786/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Declaration, declaring the Impugned auction conducted by the 3rd Respondent and 5th respondent on 25.03.2015, in respect of vacant lands in S. No. 1103/3A2 situated in Sevugampatti Village, Nilakottai Taluk, Dindigul District, belong to petitioner society pursuant to the auction notice dated 18.02.2015 issued by the 3rd respondent vide Ni. Ma.. No. 631/04, Ni.Ve & Ka in dispute No. 460/3/Ni.Ve & Ke as illegal and void and consequently direct the respondents to go for fresh auction in an open and transparent manner and in accordance with law.

For Appellant	: Mr.Veerakathiravan, Senior Counsel, For Mr.M.Jegadeesh Pandian
For R1	: Mr.N.S.Karthikeyan
For R2 and R3	: Mr.M.Muthugeethaiyan, Special Government Pleader.
For R4 to R6	: Mr.D.Shanmugaraja Sethupathy
For R7 and R8	: No Appearance

JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.,**]

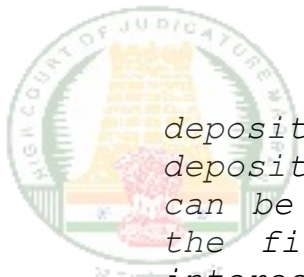
By consent, this Writ Appeal is taken up for final disposal. Though notice has been served on the respondents 7 and 8 and their names are printed in the cause list, there is no representation on behalf of them.

2.The 6th respondent in W.P.(MD)No.4786 of 2015 is the appellant herein.

3.The first respondent Society filed the said Writ Petition praying for Writ of Declaration, declaring the auction conducted by the 3rd and 5th respondents in the Writ Petition, who are arrayed as respondents 4 and 6 in this Writ Appeal, on 25.03.2015 in respect of vacant lands in S.No.1103/3A2 situated in Sevugampatti Village, Nilakkottai Taluk, Dindigul District, belonging to the society, pursuant to the auction notice dated 18.02.2015 issued by the third respondent as illegal with the consequential direction.

4.The Writ Petition came to be allowed with direction and it is relevant to extract Paragraph No.9 herein:-

"The respondents 3 and 5 are directed to go for fresh auction after public notice as per the Rules within a period of two months from the date of receipt of a copy of this order. It is made clear that the sixth respondent is entitled to interest at the rate of 12% from the date of



depositing a sum of Rs.2 lakhs along with the amount deposited by him. The fresh auction will be at a cost which can be estimated. Hence, the upset price may be fixed by the fifth respondent keeping in mind the amount towards interest payable to the sixth respondent and the expenses or the cost of re-auction, so that there will not be any loss to the petitioner's society on account of such re-auction. While fixing the upset price, the fifth respondent may also consider the amount accrued towards interest after the first auction. In case there is no bidder to match the upset price, it is open to the respondents for modification of this order to protect the interest of all parties concerned."

5.Mr.Veera Kathiravan, learned Senior Counsel appearing for the appellant would submit that on account of sustainment of huge loss, the 5th respondent issued demand notice, claiming a sum of Rs.3,68,464/-. Since it has not been paid, the 5th respondent has forwarded necessary proceedings to the fourth respondent for taking necessary action under Rule 126 of the Tamil Nadu Co-Operative Societies Rules, 1988. Based upon which, auction proceedings were initiated and on 25.03.2015, auction was conducted in the office of the 6th respondent. It is also submitted that though no upset price as well as liable amount payable to the tune of Rs.11,33,337/- has not been fixed as a price, taking into consideration the fact that market value of the property is more than Rs.30,00,000/-, there was a fair auction and 14 persons have been participated and thereafter, the appellant / 6th respondent was declared as a successful bidder.

6.The primordial submission made by the learned counsel appearing for the appellant is that in the absence of any substantial allegation as to the mala-fide or otherwise in respect of the auction proceedings, it is not liable to challenge and though the learned single Judge in Paragraph No.8 of the impugned order has referred the fact that despite service of private notice, the respondents 7 and 8 did not appear before the Court, taking into consideration of other aspects, which have not been pleaded or not placed, has allowed the Writ Petition on certain directions and hence, prayed for interference.

7.Per contra, the learned counsel appearing for the first respondent would submit that the learned single Judge by taking into consideration over all interest, has rightly interfered with the said auction sale and issued directions in Paragraph No.9, thereby giving chance to both parties and it may not be faulted with.

8.In response to the said submission, the learned counsel appearing for the appellant submits that assuming for the sake of arguments, auction proceedings have not been effected in force and not consonance with the rules, still the first respondent / writ petitioner could have invoked the Rules 126 and 127 of the Tamil



Nadu Co-Operative Societies Rules, 1988 and the same has not been done and further points urged by the first respondent / writ petitioner also involve adjudication and dispute the question of fact, for which the appellate remedy should have been a proper and appropriate remedy and prays for allowing the Writ Appeal.

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9.This Court has carefully considered the submissions and perused the materials available on record.

10.Though the learned single Judge in Paragraph No.8 of the order has recorded the fact that in the order dated 31.03.2015, an offer was made by the respondents 7 and 8 to pay more than Rs.20 lakhs to show their bona fide and further recorded that they did not appear while the Writ Petition was heard, however, proceeded with further on public interest. If at all the respondents 7 and 8 had accepted any bona fide, they would have appeared in the Writ Petition and substantiated the plea and however, they have not done so. In this Writ Appeal also, they are arrayed as respondents 7 and 8 and though they have been served and names appear in the cause list, they have not chosen to enter appearance.

11.There must be some sanctity attached to open public auction and assuming for the sake of arguments that they are very infractions as to the non-compliance of the terms and conditions or otherwise of the auction, still it was open to the appellant / writ petitioner to invoke alternative remedy provided under Rules 126 and 127 of the Rules and it was not done so. It is also to be noted at this juncture that the Writ Petition is in the nature of adversary litigation, therefore, the principles of pleadings as applicable to the original proceedings is also come into play and it also appears that the impugned order proceeded on equitable ground.

12.In the result, this Writ Appeal is allowed and the impugned order dated 08.01.2020 passed in W.P.(MD)No.4786 of 2015 is set aside and consequently, the Writ Petition is dismissed.

13.The learned Senior Counsel would submit that in the light of allowing of the Writ Appeal, the appellant / 6th respondent has to make the balance 85 % payment and he may be granted outer time limit of four weeks to comply with the said order.

14.Accordingly, the appellant / 6th respondent is granted four weeks time to comply with the order to make balance payment to the fourth respondent. On receipt of the same, the fourth respondent is directed to proceed with further and complete the process as expeditiously as possible, within a period of three weeks thereafter. It is also made clear that in the event of failure on the part of the appellant / 6th respondent to make balance payment of 85%, it is open to the fourth respondent to go further action, after complying with the formalities contemplated under law. No costs.



Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSI)

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// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Myr

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 Director / Registrar,
Agricultural Engineering Service,
Chennai.

2.The Registrar,
Co-Operative Societies,
Kizhpakkam, Chennai.

3.The Deputy Registrar of Co-Operative Societies,
Collectorate Complex, Dindigul.

4.The Senior Inspector / Sale Officer,
Dindigul Central Co-Operative Bank Limited,
Dindigul.

+1 CC to M/s.D. SHANMUGARAJA SETHUPATHI, Advocate (SR-18037[F]
dated 25/09/2020)

+2 CC to M/s.M. JEGADEESH PANDIAN, Advocate (SR-18135[F] dated
25/09/2020)

+1 CC to M/s.SPL GP (SR-18150[F] dated 25/09/2020)

W.A(MD) No.502 of 2020
24.09.2020

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