



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.4786 of 2015

and

M.P.(MD).Nos.1 & 2 of 2015

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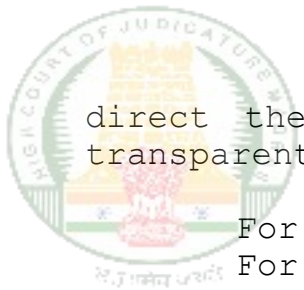
A.3081 Agriculture Engineering Service Co-Operative Society Ltd.,
Rep. by its President, Mr.Udayakumar, Madurai Road, Panchayat Union
Office Campus, Vathalagundu, Dindigul District. .. Petitioner
(Amended vide order dated 08/01/2020
made in WMP(MD)No.14181 of 2019)

Vs.

- 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 Dindigul Central Co-operative Bank Limited,
Rep. by its Branch Manager,
Kooturavu Nagar, Trichy Road,
Dindigul - 624 005.
- 5.The Senior Inspector/Sale Officer,
Dindigul Central Co-operative Bank Limited,
Dindigul.
- 6.Sathish
- 7.Vasudevan
- 8.Pariyakaruppan .. Respondents

(Cause title amended as per order in W.M.P.(MD).No.14181 of 2019,
dated 08.01.2020)

Prayer: Writ Petition filed under Article 226 of the Constitution of
India, for the issuance of 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, Nilakkottai Taluk, Dindigul District,
belong to petitioner society pursuant to the auction notice, dated
18.02.2015 issued by 3rd respondent vide Ni.Ma.No.631/04, Ni.Ve & Ka
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 Petitioner : Mr.AL.Kannan

For Respondents : Mr.M.Murugan, for R1, R2 and R5

Government Advocate

Mr.R.Karthikeyan for R3

Mr.D.Shanmugaraja Sethupathy for R4

Mr.A.C. Asaithambi for R5 and R6

No Appearance for R7 & R8

R.Ramachandran for Petitioner

(Amendment petition in WMP(MD)

No.14181 of 2019 - 08/01/2020

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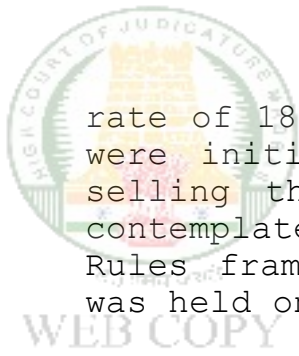
ORDER

This writ petition has been filed by the petitioner to declare 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, Nilakkottai Taluk, Dindigul District, belong to petitioner society pursuant to the auction notice, dated 18.02.2015 issued by 3rd respondent vide Ni.Ma.No.631/04, Ni.Ve & Ka in dispute No.460/3/Ni.Ve & Ka 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.

2.The petitioner is a Co-operative Society which was established in the year 1972 for the welfare of Agriculturists in and around Vathalagundu Village.

3.It appears that the Society approached the fourth respondent, Central Co-operative Society, Dindigul, for a loan to the tune of Rs.3 lakhs, for putting up a construction for the petitioner's society. The construction work was completed in the year 2001 with the loan borrowed from the fourth respondent. Since the petitioner's society was not in a position to repay the loan, the fifth respondent issued a demand notice for a sum of Rs.3,68,464/- on 02.08.2011.

4.The loan borrowed by the petitioner was treated as a Non Agriculture Medium Term Loan (NAMT Loan) and the petitioner society mortgaged its land in S.No.1103/3A2 to an extent of 16 cents in Sevugampatti Village, Nilakkottai Taluk, Dindigul District. Thereafter, for non payment of the loan, the fourth respondent bank initiated Arbitration proceedings before the Deputy Registrar, Co-operative Societies, Dindigul, under Section 93 of the Tamilnadu Co-operative Societies Act. An award was passed in A.R.C.No.460 of 2003, dated 04.08.2003, holding that the petitioner's society is liable to pay a sum of Rs.3,68,464/- along with the interest at the



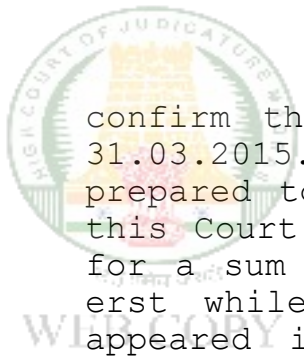
rate of 18%. Since the society did not pay the amount, proceedings were initiated for executing the award in E.P.No.631 of 2004 by selling the properties mortgaged. After following procedure as contemplated under Rule 126 of Tamilnadu Co-operative Societies Rules framed under the Co-operative Societies Act, public auction was held on 25.03.2015.

5.The third and fifth respondents conducted the public auction on 25.03.2015. It is stated by the fourth respondent that pursuant to the auction notice, dated 18.02.2015, 23 persons have participated in the auction. It is further stated that 14 persons including respondents 6 to 8 have deposited a sum of Rs.10,000/- towards earnest money deposit for participating in the public auction. The sixth respondent offered a sum of Rs.14 lakhs and he was the highest bidder. It is stated that the auction was confirmed in favour of sixth respondent. At this stage, the writ petition came to be filed, challenging the auction on the ground that the public auction was conducted violating the principles of natural justice and violating Article 14 of the Constitution of India.

6.It is the contention of the petitioner that the procedure prescribed under Rule 126 (2) (e) and (i), 126 (2) (e) (4) and 126 (2) (g) of Tamilnadu Co-operative Rules 1988 were not followed. It is one of the contention that no upset price was fixed. A specific allegation was made that the auction was stopped with an intention to facilitate the sixth respondent. The petitioner also stated in the affidavit filed in support of the petition that if the auction is conducted in a transparent manner, the property would fetch for a sum more than Rs.20 lakhs and that the respondents 7 and 8 had given assurance that they were ready to take the property for a sum of Rs.20 lakhs. Hence, the petitioner states that it would be the interest of the society to direct fresh auction after declaring the public auction held earlier as illegal. Though the petitioner contented that the respondents 7 and 8 are prepared to take the property for a sum of Rs.20 lakhs, they have not appeared before this Court by engaging a counsel.

7.The respondents 1, 3 and 5 have denied the factual averments made in the affidavit filed in support of the petition. The first respondent and third respondent filed independent counter affidavit *inter alia* pleading that there was no irregularity or non observance of rules while conducting public auction on 25.03.2015. Though the parties to this *lis* has raised several issues and the respondents questioned the maintainability of the writ petition itself, this Court is of the view that the interest of the society can be well directed if re-auction is directed for justifiable reasons.

8.This Court in M.P.(MD).No.1 of 2015 which was filed for an injunction restraining the respondents from confirming the auction conducted on 25.03.2015, directed the fourth respondent not to



confirm the auction, dated 25.03.2015. The order was passed on 31.03.2015. It is also recorded that respondents 7 and 8 prepared to pay more than Rs.20 lakhs. To show the bonafideness, this Court directed the seventh respondent to bring a Demand Draft for a sum of Rs.5 lakhs on 08.04.2015. It is represented by the erst while counsel for the first respondent Mr.Kannan, who had appeared in this matter earlier, that the Demand Draft, dated 22.04.2015, was produced before this Court to show the bonafideness of the seventh respondent. At that time, at the earnest request of the parties, the seventh respondent was directed to produce another Demand Draft for another sum of Rs.5 lakhs. It is further stated that at that stage, the counsel for the sixth respondent raised some objections for passing order without hearing him. Since the matter was adjourned thereafter, it is represented by the learned counsel for the petitioner that two Demand Drafts produced by the seventh respondent was not recorded by this Court at the relevant point of time. Though the respondents 7 and 8 have not appeared before this Court, thereafter through counsel, this Court is able to see that the interest of the petitioner if fresh auction is directed. The sixth respondent of-course has paid a sum of Rs.2 lakhs before confirmation of sale. Thereafter, no money was deposited by the sixth respondent. While ordering re-auction, this Court is also inclined to protect the interest of sixth respondent, who is entitled to get interest at the rate of 12% from the date of depositing a sum of Rs.2 lakhs till his money is repaid. The auction was originally conducted on 25.03.2015 and almost five years have gone. Though the auction is confirmed in favour of sixth respondent earlier, this Court is able to see much inconvenience and prejudice is likely to be caused to the petitioner's society on account of delay. If the property is sold for a better price corresponding to the market value as on date, it will be in the best interest of all the parties both the petitioner as well as the respondents 1, 3 and 5.

9.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.



10. With the above directions, this writ petition is allowed.
No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar ()

/ /2020

Sub Assistant Registrar(CS)

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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 Dindigul Central Co-operative Bank Limited,
Rep. by its Branch Manager,
Kooturavu Nagar, Trichy Road,
Dindigul - 624 005.
5. The Senior Inspector/Sale Officer,
Dindigul Central Co-operative Bank Limited,
Dindigul.

+1 CC to Mr.A.C.ASAITHAMBI, Advocate (SR-803[F] dated 08/01/2020)

+1 CC to Mr.R.RAMACHANDRAN, Advocate (SR-804[F] dated 08/01/2020)

+1 CC to Mr.D.SHANMUGARAJASETHUPATHI, Advocate (SR-814[F] dated 08/01/2020)

+1 CC to Mr.AL.KANNAN, Advocate (SR-1242[F] dated 09/01/2020)

W.P. (MD) .No.4786 of 2015
08.01.2020

VB(18.02.2020) 5P 10C

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