IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 4958 & 24137 of 2008
and
M.P. No.1 of 2008

W.P.No. 4958 of 2008
Om Sakthi Narayani Siddar Peedam,
Charitable Trust represented by
Trustee K.Soundararajan,
S/o.P.Kanniappan,
No.14, 5th Cross Street,
Rajiv Gandhi Nagar,
Vellore - 1. ... Petitioner

Vs

1. Sivakumar,
Deputy Commissioner (Commercial Taxes),
Vellore, Vellore District.

2. The Assistant Commissioner (CT) (Territorial),
Vellore District,
4, Bharathiar Road,
Vellore.

3. The Commercial Tax Officer,
Vellore (Rural),
4, Bharathiar Road,
Vellore.

4. The Administrator,
North Arcot District Co-operative
Spinning Mills,
Ariyur.

5. The Director of Handlooms and Textiles,
Kuralagam, II Floor,
Chennai - 600 108.

(R4 & R5 impleaded vide order of this Court
dated 09.09.2008 in M.P.Nos.2 & 3 of 2008
in W.P.No.4958 of 2008) ... Respondents

W.P.No.24137 of 2008

Om Sakthi Narayani Siddar Peedam,
Charitable Trust represented by
Trustee K.Soundararajan,
S/o.P.Kanniappan,
No.14, 5th Cross Street,
Rajiv Gandhi Nagar,
Vellore - 1. ...Petitioner

Vs

1. The Assistant Commissioner
(Commercial Taxes),
Vellore District,
4, Bharathiar Road,
Vellore.

2. The Commercial Tax Officer,
Vellore (Rural),
4, Bharathiar Road,
Vellore.

3. The Liquidator,
Vellore District Co-operative Spinning Mills,
Vellore.

(R3 impleaded vide order of this Court
dated 24.02.2020 in W.M.P.No.3007 of 2020
in W.P.No.24137 of 2008)

4. The Joint Commissioner,
The Commercial Tax,
Vellore District,
4, Bharathiar Road,
Vellore.

(R4 impleaded vide order of this Court
dated 23.03.2021 in W.M.P.No.7216 of 2021
in W.P.No.24137 of 2008) ... Respondents

Prayer in W.P.No. 4958 of 2008: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to confirm the highest bid of the petitioner in the auction conducted by the third respondent on 6.12.2006 as per the auction notice published in the Vellore District Gazette dated 5th November 2006 after receiving the balance bid amount.

Prayer in W.P.No. 24137 of 2008: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent dated 14.08.2008 RC A7/9770/2002, quash the same.

In W.P.No.4958 of 2008

For Petitioner	:	Mr.Muralikumar for McGan Law Firm
For R1 to R3	:	Ms.G.Dhanamadhri Government Advocate
For R4	:	Ms.A.Sri Jayanthi Special Government Pleader
For R5	:	Mr.L.P.Shanmuga Sundaram Special Government Pleader

In W.P.No.24137 of 2008

For Petitioner	:	Mr.Muralikumar for McGan Law Firm
For R1, R2 & R4	:	Ms.G.Dhanamadhri Government Advocate
For R3	:	Ms.A.Sri Jayanthi Special Government Pleader

COMMON ORDER

These writ petitions have been challenged to confirm the auction held on 06.12.2006, the cancellation of the said auction conducted.

2. The petitioner had participated in the auction of the land which was leased to the 3rd respondent/Vellore District Co-operative Society Mill by the Government of Tamil Nadu. The 3rd respondent is now under liquidation. The auction in question was initiated by the Commercial Tax Department namely the 2nd respondent herein, seeking to auction the land on which the 3rd respondent's factory/mill was situated to recover the arrears of tax for the period between 1989-1990 for a total sum of Rs.7.58 Crores.

3. The land in question measuring about 49.51 acres was given for use to the 3rd respondent/Spinning Mill by the Government of Tamil Nadu under a registered agreement vide Document No.92/1964 dated 05.06.1965. Important terms and conditions of the said Registered Agreement vide Doc.No.92/1964, is reproduced below:-

"3. The terms upon which the said land shall be held by the Mills are:

> a) that the land shall be used for construction of factory and building for a Spinning Mills to be run by it;
>
> b) that the Mills shall pay to the Government

annually the appropriate assessment or ground-rent as the case may be, on the lands which shall be liable to revision at any general revision of the land revenue settlement;

c) that in the event of the Mills being wound up or in the event of failure on the part of the Mills to carry out the terms of the agreement, that is to say, conditions (a) and (b) above the lands shall be liable to be resumed and taken back by the Government on repayment to the Mills of the amount of the award as finally settled less the 15% (per cent) awarded for compulsory acquisition or the estimated market value of the land at the time of resumption, whichever shall be less, and if there are any buildings on the land the Government may at their option either purchase the buildings on payment of their estimated value at the time or direct the Mills to remove the buildings at its own cost within such time as may be allowed by the Government;

d) that, in the event of the voluntary relinquishment of the land by the Mills as not required, the Government may resume the land, if it is required for a public purpose or if they consider that it should be returned to the original owner. If the Government decide not to exercise this power and inform the Mills accordingly, the latter may dispose of the land in any manner it liked. In the event of the resumption of the land under this condition, the compensation payable to the Mills shall be the value of the land at the time of acquisition (less the 15 per cent awarded for compulsory acquisition) or its estimated marked value at the time of resumption, whichever may be less, together with the value of the buildings and other improvements at the time of resumption. If there are buildings on the land which the Government do not require, the Mills shall remove them at its cost.

e) The Government shall have the right to resume the land if the Mills does not use the land for the purpose for which it was acquired within a period of one year or such further extended period as may be permitted by the Government to be reckoned from the date on which the Mills was placed in possession of the land."

4. The auction in question was conducted on 06.12.2006 pursuant to an auction notice issued by the 2nd respondent/Assistant Commissioner (CT) on 20.12.2006. The 1st respondent/Deputy Commissioner, however, by the impugned order dated 20.12.2006, set aside the auction initiated by the 2nd respondent/Assistant Commissioner(CT) for not having followed the procedure. The 2nd respondent/Assistant Commissioner(CT) who conducted the auction was also reportedly suspended and an appropriate disciplinary proceedings were initiated against the 2nd respondent.

5. By a communication dated 18.02.2004, it is stated that the initial bid amount of the petitioner was sought refunded back with the petitioner in terms of Voucher No.222836 on 22.10.2006. However, by a communication dated 16.02.2021 which have been filed before this Court at the time of hearing, the order of the Liquidator, liquidating the said spinning Mill indicates that a sum of Rs.1,40,63,615/- vide Demand Draft No.989328 dated 16.02.2021 drawn at State Bank of India was disbursed and the Assistant Commissioner of Commercial Tax Department (ST) Vellore (Rural) was requested to acknowledge the same. It was stated by the Official Liquidator that the Commercial Tax Department, Vellore was requested to return the amount received from the petitioner during the quetus sale of land and building of the aforesaid Mill in the auction sale proceedings held in the year 2006 which was set aside later by the Territorial Assistant Commissioner (CT) (FAC), Vellore vide order RCA.No.07/9770/2002 dated 14.08.2008.

6. Though the impugned orders have been challenged primarily on the ground that the basis on which the auction has been cancelled was unsustainable, and the auction concludes the sale in favour of the petitioner. It is further stated that none of the grounds which were raised now at the time of hearing is based on the Agreement dated 05.06.1965 signed between the District Revenue Officer and the General Manager, North Arcot, Vellore District Co-operative Spinning Mills Limited. It is submitted the basis on which the auction was cancelled was illegal and therefore in terms of the decision of the Hon'ble Supreme Court in "Mahinder Singh Case, the impugned order cannot be sustained based on the reasons not given in the impugned order. The learned counsel for the petitioner therefore submits that the petitioner is entitled for the relief as prayed for.

7. Heard the learned counsel for the petitioner and the learned Government Advocate and the learned Special Government Pleaders for the respondents and the learned Standing Counsel for the Commercial Tax Department.

8. The land in question which was auctioned by the Commercial Tax Department. However, the said land did not

belong to the 3rd respondent/Spinning Mill which is under liquidation and therefore for the arrears of Commercial Taxes, The Commercial Tax Department could not have auctioned the immovable property of the Government of Tamil Nadu. The 3rd respondent/Spinning Mill was merely a permissive user of the land. Clause 3 of the Registered Agreement dated 05.06.1965 which has been extracted above clearly indicates that the land was neither assignment nor sold to the 3rd respondent/Spinning Mill, which is now under liquidation by the Government of Tamil Nadu.

9. Therefore, the entire exercise carried out by the Commercial Tax Department in respect of property belonging to the Government represented by the District Revenue Officer, Vellore District itself was without any basis. In any event, the auction that was conducted on 06.12.2006 has been cancelled by the territorial Assistant Commissioner of Commercial Tax Department. The amount that was paid by the petitioner was also sought to be refunded back. The petitioner however declined to receive the amounts hoping that the petitioner would succeed in the writ proceedings which have been initiated since 2007.

10. Since, the land in question could not have been auctioned by the Commercial Tax Department under the provisions of the TNGST Act, 1959, the claim of the petitioner in respect of a land which did not belong to the 3rd respondent/North Arcot District Co-operative Spinning Mill cannot be sustained even if the petitioner has other legal grounds to challenge the manner of cancellation of auction.

11. Since the amount of Rs.1,35,00,000/- at the time of bid from the petitioner has not been refunded back to the petitioner, the Commercial Tax Department is directed to refund the said amount together with interest accrued thereon at the prevailing bank rates from time to time. The petitioner shall forward the account details to which the amounts has to be refunded back within a period of 30 days from the date of receipt of a copy of this order.

12. On such account details being furnished by the petitioner, within such time, the Commercial Tax Department shall transfer the principle amount of Rs.1,35,00,000/- paid by the petitioner on 06.12.2006 together with interest accrued thereon at the prevailing bank rates in force from time to time till the date of actual payment. It is made clear that no interest will be payable if the petitioner continues to exhibit re-calcitrant attitude by refusing to give the account details within the stipulated time.

13. These Writ Petitions stand dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

arb

To

1. The Deputy Commissioner (Commercial Taxes),
   Vellore, Vellore District.

2. The Assistant Commissioner (CT) (Territorial),
   Vellore District,
   4, Bharathiar Road,
   Vellore.

3. The Commercial Tax Officer,
   Vellore (Rural),
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   Vellore District Co-operative Spinning Mills,
   Vellore.

7. The Joint Commissioner,
   The Commercial Tax,
   Vellore District,
   4, Bharathiar Road,
   Vellore.

+2cc to M/s.McGan Law Firm , Advocate SR.No.18663, 18664

+1cc to Ms.A.Sri Jayanthi, Advocate SR.No.18896

+1cc to Special Government Pleader (Taxes) SR.No.19234

+1cc to Special Government Pleader (Co-Op)SR.No.19115

W.P. Nos. 4958 & 24137 of 2008
and
M.P. No.1 of 2006

PCH(CO)
GMY(29/06/2021)