



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition No.6911 of 2022
and W.M.P.No.6949 of 2022

M.Sakthivel

... Petitioner

Vs.

1.The District Collector
Salem District
Salem.

2.The Block Development Officer
Thalaivasal Panchayat Union
Thalaivasal Taluk, Salem District.

3.The President
Thalaivasal Panchayat
Thalaivasal Panchayat Union
Salem District, Pin Code-636 112.

4.Devendran

5.Ramar

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 1st respondent to consider the representation of the petitioner dated 14.03.2022 and 16.03.2022 in accordance with law by cancelling the auction of daily market at Thalaivasal Panchayat, Salem District in favour of Devendran, the 4th respondent herein unreasonable manner by ordering to conduct re-auction in a fair manner of the daily market, Thalaivasal Panchayat, to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For R1 : Mr.U.Baranidharan
Additional Government Pleader
For R2 and R3 : Mr.A.Selvendran
Special Government Pleader
For R4 : Mr.V.P.Raju
for Mr.R.Sagadevan



O R D E R

The petitioner has come out with the present Writ Petition for a direction to the 1st respondent to consider his representations dated 14.03.2022 and 16.03.2022 by canceling the auction of the daily market at Thalaivasal Panchayat, Salem District, granted in favour of Devendran, the 4th respondent herein and by ordering re-auction.

2. According to the petitioner, he was a licensee for collection of toll in the daily market from 01.04.2018 to 31.03.2019 for Rs.95,00,000/-. Subsequently, for the period from 01.04.2019 to 31.03.2020 and 01.04.2020 to 31.03.2021, the petitioner continued the licence on enhancement of 15% of earlier licence fee i.e., Rs.1 Crore 10 lakhs and Rs.1 Crore 25 lakhs respectively. For six months i.e., for the period from 01.04.2019 to 31.03.2020, the petitioner could not collect the toll as daily market was not functioning. The 2nd respondent published auction notice for various items including licence for collection of fees for the daily market for the period from 01.04.2022 to 31.03.2023. Even though the petitioner offered to pay 15% more than earlier licence fee of Rs.1 Crore 25 lakhs i.e., Rs.1 Crore 40 lakhs, without considering the request of the petitioner, the 2nd respondent conducted public auction on 09.03.2022. Except the respondents 4 and 5, others were not allowed to enter the auction hall and licence was granted to the 4th respondent accepting his bid of Rs.75,25,000/-, which is very low and granted beyond the time fixed by the 2nd respondent. Therefore, the petitioner sent representations dated 14.03.2022 and 16.03.2022 to the 1st respondent to cancel the auction of daily market at Thalaivasal Panchayat, Salem District, granted in favour of the 4th respondent herein and to conduct re-auction. Since no order was passed on the said representations, the petitioner has come out with the present Writ Petition for the above stated relief.

3. When the Writ Petition was taken up for admission on 24.03.2022, the learned counsel appearing for the petitioner submitted that the petitioner is willing to pay Rs.1 Crore 40 lakhs for the period from 01.04.2022 to 31.03.2023 and will pay Rs.70 lakhs within a period of one week and another sum of Rs.70 lakhs within a period of two weeks thereafter. Mr.U.Baranidharan, the learned Additional Government Pleader appearing for the 2nd respondent, on instructions, submitted that if the petitioner pays a sum of Rs.1 Crore 40 lakhs, his bid will be accepted and lease will be granted to him. Considering the above submissions of the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the 2nd respondent, this Court granted interim injunction



restraining the 3rd respondent, permitting the 4th respondent to collect toll fee and directing the petitioner to pay Rs.70 lakhs (50% of the amount of Rs.1 Crore 40 lakhs) within a period of one week and posted the Writ Petition to 31.03.2022.

3(i) On 31.03.2022, the learned counsel appearing for the petitioner requested further time for payment till 11.04.2022. This Court granted time to the petitioner till 11.04.2022 and made it clear that, if the petitioner fails to pay the said amount, interim injunction granted on 24.03.2022 will stand automatically vacated and posted the Writ Petition on 12.04.2022.

3(ii) On 12.04.2022, the learned counsel appearing for the petitioner admitted that the petitioner has not paid the amount. At request of the learned counsel for the petitioner, the Writ Petition was adjourned to 19.04.2022.

3(iii) On 19.04.2022, the petitioner has not paid the amount and the interim injunction granted on 24.03.2022 was automatically vacated. Again on the request of the learned counsel for the petitioner, the Writ Petition is posted today for hearing.

4.The contention of the learned counsel for the petitioner is that for the previous year for collection of toll, the amount was Rs.1 Crore 25 lakhs, whereas for the present year 2022 - 2023, lease was granted to the 4th respondent only for Rs.75 lakhs and except the respondents 4 and 5, others were not allowed to participate in the auction and prayed for allowing the Writ Petition.

5.The 2nd respondent filed counter affidavit. The learned Additional Government Pleader appearing for the 1st respondent and the learned Special Government Pleader appearing for the respondents 2 and 3 submitted that the petitioner did not pay entire lease amount for the previous two years and he is a defaulter. On the date of auction, the respondents 4 and 5 alone participated in the public auction and it is not correct to say that petitioner and others were not allowed to enter the auction hall. The 4th respondent offered Rs.75,25,000/- and 5th respondent offered Rs.75,20,000/-. Hence, offer of the 4th respondent was accepted. For the period from 01.04.2019 to 31.03.2020, the petitioner has to pay Rs.1 Crore 10 lakhs + G.S.T. But the petitioner has paid only a sum of Rs.85,88,345/-. Subsequently, for the period from 01.04.2020 to 31.03.2021, the petitioner has to pay Rs.1 Crore 25 lakhs + GST. But he has paid only Rs.90,76,570/-. Hence, he is defaulter and not entitled to participate in public auction. Subsequently, for the period from 01.04.2021 to 31.03.2022, due to COVID pandemic situation, the 2nd respondent did not conduct any public auction. The 2nd



respondent himself collected toll from the daily market and collection was Rs.43,39,539/-. In view of the same, Rs.75,25,000/- offered by the 4th respondent was accepted by the 2nd respondent. The learned Additional Government Pleader further submitted that even though this Court granted time to the petitioner to pay the licence fee, he failed to pay the same and prayed for dismissal of the Writ Petition.

6.The learned counsel appearing for the 4th respondent submitted that 4th respondent participated in the public auction, his bid was Rs.75,25,000/- and his bid of Rs.75,25,000/- was the highest amount and therefore, the 2nd respondent accepted the same. The amount offered by the 4th respondent is not meagre.

7.This Court asked the counsel for the 4th respondent that whether the 4th respondent is willing to enhance the bid amount. On instruction of the 4th respondent, the learned counsel appearing for the 4th respondent submitted that 4th respondent is willing to enhance the amount to Rs.10,00,000/- more than the bid amount.

8.Today, when the matter is taken up for hearing, this Court directed the 4th respondent to pay a sum of Rs.20 lakhs more than the bid amount + GST. The learned counsel for the 4th respondent, on instructions from the 4th respondent, submitted that 4th respondent is ready to enhance Rs.20 lakhs more than the bid amount of Rs.75,25,000/- and pay Rs.95,25,000/- + GST and prayed for dismissal of the Writ Petition.

9.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader and Special Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

10.From the materials on record, it is seen that issue involved is for collection of toll for daily market at Thalaivasal Panchayat, Salem District. For the period from 2018 - 2019, highest bid was Rs.95 lakhs. The petitioner was the successful bidder for the period from 01.04.2018 - 31.03.2019. For the subsequent two years, the petitioner has to pay enhanced 15% amount more than the original licence fee. According to the petitioner, he paid entire amount. But the learned Additional Government Pleader submitted that the petitioner has defaulted in payment of amount and he is defaulter. In the counter affidavit filed by the 2nd respondent, the 2nd respondent has stated that for the period from 2019 - 2020, petitioner has paid only a sum of Rs.85,88,345/- out of Rs.1 Crore 10 lakhs, which was not denied by the petitioner. It is not in dispute that for the period from 2020 - 2021, lease



amount was Rs.1 Crore 25 lakhs. The learned counsel appearing for the petitioner contended that the petitioner paid entire amount. The case of the learned Additional Government Pleader is that the petitioner defaulted in payment of entire lease amount. Due to pandemic situation during the period from 01.04.2021 to 31.03.2022, no auction was conducted. The 2nd respondent collected toll and the total toll collected was Rs.43,39,539/-. This submission of the learned Additional Government Pleader is not disputed by the learned counsel for the petitioner.

11.Considering all the above submissions and taking into consideration that even after granting time to the petitioner, he has not paid the first instalment of Rs.70 lakhs itself, as agreed upon and his intention is only to drag on the proceedings. Today, the learned counsel for the petitioner has offered Rs.70 lakhs and the same is rejected. In addition to that, the 2nd respondent has collected only Rs.43,39,539/- for the period from 01.04.2021 to 31.03.2022 due to pandemic situation. The 4th respondent has already deposited a sum of Rs.45 lakhs. The 4th respondent is directed to deposit Rs.20 lakhs more as offered before this Court, in addition to balance amount of Rs.30,25,000/- of his bid amount of Rs.75,25,000/- together with GST, within a period of two weeks from the date of receipt of a copy of this order. On receipt of said amount, the 2nd respondent is directed to permit the 4th respondent to collect the toll in the daily market.

12.With the above direction, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Salem District,
Salem.



2.The Block Development Officer,
Thalaivasal Panchayat Union,
Thalaivasal Taluk, Salem District.

3.The President,
Thalaivasal Panchayat,
Thalaivasal Panchayat Union,
Salem District, Pin Code-636 112.

+2cc to Mr.R.Sankarasubbu, Advocate Sr.28607, 29166

+2cc to Mr.R.Sagadevan, Advocate Sr.29655

+1cc to the Government Pleader Sr.29385

W.P.No.6911 of 2022
and W.M.P.No.6949 of 2022

sv[co]
srg 09/05/2022