BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)Nos.1859 and 2366 of 2010
and M.P.(MD)Nos.1 and 2 of 2010 and 1 of 2011

W.P.(MD)No.1859 of 2010

A.Raju ... Petitioner

versus

1. Tamil Nadu Industrial Investment
Corporation Ltd.,
through its Managing Director,
Arulmanai,
No.27, Whites Road,
Madras – 14.

2. The Regional Manager,
The Tamil Nadu Industrial Investment
Corporation Ltd.,
Special Recovery Branch,
Plot No.3, Vaigai Colony,
Anna Nagar, Madurai – 625 020.

3. Dinakaran

4. Vanitha Devi ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Auction Notice in வெ.ஆ.எண். 242/செமதொஅ/மதுரை dated 26.09.2009 on the file of the Respondent No.2 in Serial No.5 in Advertisement No.MDU/RO/2009-2010/07 dated 01.10.2009 published in daily newspaper Dinathanthi and quash the same as illegal and consequently forbearing the Respondent No.2 to execute the Sale Deed in favour of the Respondent No.4 pertaining to the property described in Serial No. 5 of the impugned notice in R.S.No.89/6, Vilacherry Village Door No. 5/318, in Chinnakannu Nagar, Nagamalai Pudukkottai Village in an extent of 2973 Square Feet of land along with the buildings and the house site.

For Petitioner	:	Mr.S.Vasanth, for M/s.T.Lajapathi Roy
For R1 and R2	:	Mr.A.Suresh for M/s.Aiyar & Dolia
For R3	:	Tapal returned
For R4	:	No appearance

W.P.(MD)No.2366 of 2010

R.Ilango ... Petitioner

versus

1. Tamil Nadu Industrial Investment Corporation Ltd.,
   through its Managing Director,

Nandanam, Chennai – 35.

2. The Regional Manager,
The Tamil Nadu Industrial Investment
Corporation Ltd.,
Special Recovery Branch,
Plot No.3, Vaigai Colony,
Anna Nagar, Madurai – 625 020.

3. Dinakaran

4. Vanitha Mani ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records pertaining to the impugned Sale Deed No.242/2010 dated 22.01.2010 registered at Sub Registrar Office, Thirupparankundram, Madurai executed by the Respondent No.2 in favour of the Respondent No.4 pertaining to the property situated in R.S.No.89/6, Vilacherry Village Door No.5/318, in Chinnakannu Nagar, Nagamalai Pudukkottai in an extent of 2375 Square Feet of Land along with the R.C.C.Building in an extent of 506 Square Feet and the house site and quash the impugned Sale Deed.

For Petitioner	:	Mr.S.Vasanth, for M/s.T.Lajapathi Roy
For R1 and R2	:	Mr.A.Suresh for M/s.Aiyar & Dolia
For R3	:	Tapal returned
For R4	:	No appearance

COMMON ORDER

Since both these writ petitions are arising out of the sale of a property in R.S.No.89/6, Vilacherry Village, Door No.5/318, in Chinnakannu Nagar, Nagamalai Pudukkottai Village, both the writ petitions are taken up together and disposed of by way of a common order.

2. The writ petition in W.P.(MD)No.1859 of 2010 was filed by one Raju, S/o. Arjunan as against the auction notice issued by the second respondent/the Regional Manager, Tamil Nadu Industrial Investment Corporation Limited, Madurai, for public auction of the property above mentioned through daily newspaper Dinathanthi dated 01.10.2009.

3. The case of the petitioner in W.P.(MD)No.1859 of 2010 is that his father, one Arjunan, was the owner of the property and he conducted a business in the name of "Kavitha Hosieries" in the said

property by availing loan from the second respondent. His father died in the year 2008. Prior to that, his father executed a Will in the year 2002, bequeathing the property in favour of him. In the year 2009, a notice was issued by the second respondent for public auction of the property above mentioned through daily newspaper Dinathanthi dated 01.10.2009. According to him, he was not aware of the public auction Notification dated 01.10.2009, since the communication was sent only to the name of his father Arjunan.

4. The fourth respondent, one Vanithamani, participated in the auction conducted on 01.10.2009 and took the property for the bid amount of Rs.3.5 lakhs. Thereafter, a sale deed was executed in favour of the fourth respondent in No.242 of 2010 dated 22.01.2010 registered on the file of the Sub Registrar Office, Thirupparankundram, Madurai. On knowing the same, one Ilango, son of Raju, the petitioner in W.P.(MD)No.1859 of 2010, made a request on 10.02.2010 claiming that it is their family property and the value of the property is more than the bid amount and he has also offered to pay the highest bid amount of Rs.

3.5 lakhs for the said property. But, the said request was not considered. Therefore, the said Ilango filed W.P.(MD)No.2366 of 2010 as against the sale deed No.242/2010 dated 21.10.2010.

5. The learned counsel appearing for the petitioners, by relying on the Judgment of the Hon'ble Apex Court, reported in ***1993 AIR 935***, in the case of ***Mahesh Chandra*** vs. ***Regional Manager, U.P. Finance Corporation and others***, submits that when the Industrial Corporation is intending to put the property under auction, in all fairness, they have to provide an opportunity to the unit holder and if the unit holder is inclined to take up the property for the highest bid amount, the unit should be transferred to the unit holder. However, the guidelines laid down by the Hon'ble Apex Court has not been followed in this case. Therefore, the impugned sale deed is liable to be set aside. The learned counsel has also relied on the relevant portion from the Judgment of the Hon'ble Apex Court, which is extracted as follows:

> "Keeping these various factors giving rise to conflicting interest the following directions are necessary

to be issued to be observed by the Corporation while exercising power under S.29:

Every endeavour should be made, to make the unit viable and be put on working condition. If it becomes unworkable:

(1) Sale of a unit should always be made by public auction.

(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be or such nature that by normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account.

In the light of the above guidelines it becomes clear that though tenders were invited the 3rd respondent alone had given the tender for a sum of Rs. 2 lacs. On negotiation it was said to have been raised to Rs. 2,55,000. But deferred payments, on initial deposit of 25% and balance payment within four years of half yearly instalments, were given. This solicitous attitude, at the expense of the appellant, appear to be unjust and unfair and no reasonable prudent owner would accept such an offer. The appellant himself, long prior to sale, offered to pay Rs. 5 lacs and odd in full quids. Section 29 does not exclude the application of the principles of natural justice. It is not a straight jacket formula. It depends on facts in each case. Nothing prevented the Corporation to have given the appellant a chance for payment thereof at reasonable instalments with interest thereon. Nothing prevented them to release the open site, the subject of mortgage on condition that the entire sale price of the plots should be paid to discharge the liability and it be a condition in the sale deed itself. Before accepting the tender of the third respondent, an opportunity should have been given to the appellant as to why such an offer of the third respondent be not accepted. The appellant would have come forward to give his own offer or brought third parties with higher offers. No such bona fide actions have been taken or attempted by the Corporation. Thus the acts smacked of bona fides or responsibility or reasonableness as an ordinary prudent businessman/trustee/owner acting in or dealing with such trust. Thus the sale of the property is vitiated by unjust and unreasonable act on the part of the Corporation or its officers or employees and is liable to be set aside."

6. Mr.Suresh, learned counsel representing M/s.Aiyar & Dolio for respondent Nos.1 and 2 submits that Section 29 of the State Financial Corporation Act 1951 does not specifically stipulate any condition that such an offer has to be made to the unit holder. However, in this case, the respondents have duly communicated about the proposed auction to the unit holder Arjunan, by letter dated 04.11.2008, by registered post and a copy of the letter was also marked to one R.Indira, w/o. Raju, R.Kavitha, Partner of M/s. Kavitha Hosieires, R.Ilango, the writ petitioner in W.P.(MD)No.2366 of 2010 and R.Bharathi, S/o.Raju. Despite the letter dated 04.11.2008, none appeared in the auction conducted on 03.11.2009. Thereafter, the property was taken in auction by the fourth respondent M.Vanithamani. Further, the property was not sold for Rs.3.5 lakhs as projected by the petitioner in W.P.(MD)No.2366 of 2010 and the auction was finalized as Rs.4 lakhs after negotiation. According to the learned counsel for the respondent Nos.1 and 2, the guidelines laid down by the Hon'ble Apex Court in the Judgment as cited supra has also been complied with. However, the offer was made by the said Ilango only on

10.02.2010, i.e. after three months from the date of auction. Therefore, the writ petitions are liable to be dismissed.

7. This Court paid its anxious consideration to the rival submissions made and also perused the materials available on record.

8. One Arjunan, the father of the petitioner in W.P.(MD)No. 1859 of 2010 and grandfather of the petitioner in W.P.(MD)No.2366 of 2010 borrowed a sum of Rs.5.70 lakhs from the Tamil Nadu Industrial Investment Corporation on 10.08.1993 and he also obtained a second term loan of Rs.4.70 lakhs on 16.08.1994. According to the respondent Nos.1 and 2, the unit holder failed to repay the loan amount. After issuing a foreclosure notice to the unit holder, the assets belonging to the unit, which were mortgaged as primary security, were taken possession by the Corporation under Section 29 of the State Financial Corporation Act 1951 and also put into auction by the respondent/the Tamil Nadu Industrial Investment Corporation.

9. The auction was conducted on 03.11.2009 and the proposed public auction was also communicated to the unit holder Arjunan as well as the other Partners of the Company by letter dated 04.11.2008, enclosing a set of terms and conditions for sale, list of assets and enter form etc., enabling the unit holder and others to participate in the Tender-cum-Public auction. However, there was no participation from the side of the unit holder, whereas, after three months, by letter dated 10.02.2010, a request was made by one Ilango, the petitioner in W.P. (MD)No.2366 of 2010, as if the property was auctioned for a sum of Rs.3.5 lakhs and he is ready to pay the auction amount of Rs.3.5 lakhs as per the condition stipulated by the Hon'ble Supreme Court.

10. According to the learned counsel for the respondents, though the fourth respondent has taken the property in auction for a sum of Rs. 3.5 lakhs after negotiation, it has been finalized as Rs.4 lakhs and after the payment of Rs.4 lakhs, the sale deed was also executed by the Corporation on 22.01.2010. After execution of the sale deed, the said Ilango has come forward with this proposal on 10.02.2010 that too by

way of a registered post. Therefore, the petitioners are not entitled to avail the benefit, which was provided to the unit holders in the Judgment of the Hon'ble Apex Court, in the case of ***Mahesh Chandra*** vs. ***Regional Manager, U.P. Finance Corporation and others***, reported in ***1993 AIR 935.***

11. Accordingly, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

18.04.2022

ogy
Index : Yes / No.
Internet: Yes / No.

To

1. The Managing Director,
   Tamil Nadu Industrial Investment
   Corporation Ltd.,
   Arulmanai,
   No.27, Whites Road,
   Madras – 14.

B.PUGALENDHI, J.

ogy

2. The Regional Manager,
   The Tamil Nadu Industrial Investment
   Corporation Ltd.,
   Special Recovery Branch,
   Plot No.3, Vaigai Colony,
   Anna Nagar,
   Madurai – 625 020.

W.P.(MD)Nos.1859 and 2366 of 2010

18.04.2022