



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2022

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P. (MD) .No.2756 of 2022

and

W.M.P. (MD) .Nos.2433, 2434 and 2436 of 2022

Chinthamani

... Petitioner

Vs.

1.The President,
Thirukostiyur Panchayat,
Thiruppathur Taluk,
Sivagangai District - 630210.

2.The Manager,
Sivagangai Samasthanam Devasthanam,
Sivagangai District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned auction notification dated 08.02.2022 in C.k.e.f. vz;.3/21-22 issued by the first respondent and quash the same and consequentially forbear the first respondent from issuing any licence to any third party for collecting parking fees from the vehicles coming for Sri Sowmiyanarayana Perumal Temple festival at Thirukostiyur.

For Petitioner	:	Mr.J.Barathan
For R-1	:	Mr.K.Balasubramani, Special Government Pleader.
For R-2	:	Mr.S.Madhavan, Standing Counsel.

ORDER

This Writ Petition has been filed challenging an auction notification dated 08.02.2022 issued by the first respondent.

2. The following contentions have been raised by the petitioner:

A) The first respondent is not empowered to conduct the auction as the property belongs absolutely to the second respondent Devasthanam.



B) The procedure contemplated under the provisions of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001 has not been followed by the first respondent prior to issuing the impugned auction notification.

C) In respect of parking fees, the Devasthanam has already conducted the auction. But, under the impugned auction notification, the first respondent is planning to conduct the auction for the very same parking which is illegal and not in accordance with the powers given to the first respondent under the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001.

3. Learned counsel for the petitioner drew the attention of this Court to Rule 3(vi), Rule 10, Rule 14 and Rule 15(ii) of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001 and would submit that in violation of the aforementioned Rules, the impugned auction notification dated 08.02.2022 has been issued by the first respondent.

4. Mr.K.Balasubramani, learned Special Government Pleader, accepts notice on behalf of the first respondent. He would submit that the festival for which the auction for car parking space is going to be conducted is scheduled to take place tomorrow and end within seven (7) days thereafter and at this last hour, the petitioner has approached this Court and therefore, this Writ Petition should not be entertained.

5. As seen from the impugned auction notification, it has been issued by the first respondent only under the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001 and the same is not disputed.

6. Rule 3 of the said Rules deals with the properties over which the Panchayat is empowered to auction. As seen from Rule 3, car parking spaces and the right to collect entry fees for the same on a *prima facie* consideration does not find a place. Rule 3 (vi) empowers the Panchayat to collect fees in the public market, cart-stand, public landing or halting places, bus stand, slaughter houses, fish markets or ferry places under the control of the Panchayat. The collection of fees for car parking spaces does not find a place therein.

7. Further, the subject property must be under the control of the Panchayat. But, in the case on hand, the petitioner claims that the second respondent Devasthanam is the owner of the property. Learned counsel for the second respondent also submits that the property is owned by the second respondent and the first respondent does not have the power to issue the impugned auction notification in respect of the car parking space.



8. Rule 10 of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001 also makes it clear that any auction of lease shall be conducted sufficiently in advance of the period or date from which the lease period is due to commence. In the case on hand, the impugned auction notification is dated 08.02.2022, whereas, the period of the licence/lease commences from 07.02.2022 onwards, a day prior to the auction notification and ends on 17.02.2022.

9. Rule 10 of the Tamil Nadu Panchayats Procedure Rules, 2001 reads as follows:

"10. Time to conduct auction - (1) The auction of lease shall be conducted sufficiently in advance of period or date from which the lease period is due to commence, taking into consideration the extra period that may become necessary for conducting re - auction on account of any compelling circumstances, action may be taken to compete well in advance the preliminary steps like preparing auction notices, publication in proper manner, conducting of auction, getting approval of the Panchayat and execution of lease deed.

(2) So far as the sale of article in an outright manner is concerned, such article may be got condemned by the Panchayat well in advance wherever necessary and then sold out in public auction without undue delay thereby avoiding theft, pilferage, natural loss, damage or wearing out, rendering their sale difficult or in fructuous. In case, where technical opinion or advice is considered essential or have been prescribed by the Inspector for condemning any article by the Panchayat such as radio, television set, electric motor pumpset, electrical fittings, vehicles, etc., such technical advice or opinion in respect of that material shall also be obtained."

10. Rule 15 of the aforementioned Rules also prescribes certain procedures for publication of the auction notice. Rule 15 of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001 is extracted hereunder.

"15. Publication of auction notice - (1) The auction notice for the lease of property or right to collect fees or sale of articles shall

published in the manner specified below. Due



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publicity shall be given by publishing a notice containing full particulars of the property to be transferred or leased or sold and the fees to be collected, -

(i) in the notice board of the concerned Panchayat;

(ii) in the notice board of the Panchayat Union or the District Panchayat in which the Village Panchayat or Panchayat Union Council, as the case may be, is situated;

(iii) in the notice board of the adjacent Panchayat lying within five kilo metres radius of the Village Panchayat or the Panchayat Union Council, as the case may be, in which the property lies;

(iv) in important places in the Panchayat Village area or the Panchayat Union Council, as the case may be, like Chavadi, post Office, fair price shops, temples, etc;

(v) by beat of tom tom in the Panchayat Village or the Panchayat Union Council, as the case may be, where the property or place lies, on the day of auction, three hours before the time fixed for auction;

(vi) a record of publication of auction notice shall be prepared and kept in the relevant file;

(vii) by sending copy of notice to the prospective traders, dealers or agents in the District who are dealing with the property of the nature mentioned in the auction;

(viii) on the property to be leased out or place where the fees are to be collected;

(ix) any other method, the panchayat may consider necessary.

(2) The auction notice shall be caused to be published, -

(i) in the District Gazette at least seven days in advance of the date of auction, in case the lease amount is expected not to exceed Rs.10,000 (Rupees ten thousand only);

(ii) by inserting brief advertisement, in a Tamil daily newspapers having wide daily circulation in the panchayat area, atleast three days ahead of the date of auction, in case the lease is expected to exceed Rs.10,000 (Rupees ten thousand only).



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(3) The Executive Authority or the Commissioner or the Secretary, as the case may be, shall estimate and decide whether a lease or sale of article would fetch an amount below or above Rs.2,000 (Rupees two thousand only), as the case may be and record his decision in the relevant file quoting reasons therefore.

(4) The Panchayat may dispense with the publication of auction notice in the District Gazette or in the newspapers, in the case of reaction, during the middle of the lease period arising out of termination of the lease for non-fulfilment of lease conditions."

11. As seen from Rule 15, one of the requirements is that the auction notification has to be published in the notice board of the Panchayat Union or the District Panchayat in which the Village Panchayat or the Panchayat Union Council, as the case may be is situated. In the case on hand, the above mentioned procedure has not been complied with by the first respondent.

12. Rule 14 of the aforementioned Rules also requires notice of auction of lease or sale must be issued not less than ten (10) days and not more than twenty one (21) days prior to the date of auction or sale.

13. Rule 14 of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001 is extracted hereunder.

"14. Issue of auction notice - (1) The notice of auction of lease or sale may be issued not less than ten days and not more than twenty one days prior to the date of auction or sale. The Panchayat shall approve the terms and conditions and for each kind or type of lease, before they are included in the auction notice. If new conditions or terms are to be included or existing conditions or terms to be amended, the prior approval of the Panchayat shall be necessary. The notice may contain, inter alia terms and conditions on the following matters, subject to which the lease shall be granted:-

(i) place of auction or sale, date and time of auction;

(ii) period of lease;

(iii) details of property to be sold or rights to be auctioned. In the case of avenue trees,

details of reach of the road and in other



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cases, the location of the property may be specified clearly;

(iv) security deposit payable for each item;
(v) number of instalments of lease amount permitted for each item;

(vi) initial amount payable at the time of auction or sale by the successful bidder;

(vii) details of solvency certificate to be produced where it is considered necessary;

(viii) prohibition of defaulters in the payment of past leases from participating in the auction or sale;

(ix) confirmation of auction or sale being subject to the approval of the Panchayat;

(x) rate of interest chargeable for belated payment of instalment;

(xi) need for and mode of execution of lease or sale deed;

(xii) details of payment of assessment, ground-rent, peshkabs or quit - rent fixed by the Inspector, from time to time, which will be in addition to the lease amount;

(xiii) schedule of payment of the lease or sale amount;

(xiv) in case where the rent of own lands, Poramboke lands and own building of the panchayats, proposed to be leased out, the rent, lease amount, may be reckoned in terms of monthly rent for the entire lease period. This information may be specified in the auction notice also for the information of the intending bidders; and

(xv) power of the administration, to reserve any right either to postpone the sale or auction of any lease and also to cancel any lease in public interest with or without showing any reasons therefore, in the middle of the lease period for which the lessee

has no right to claim any compensation."

The above procedure has also not been followed by the first respondent.

14. The second respondent Devasthanam had earlier conducted an auction and the petitioner participated in the same and he was a successful bidder. The said auction notification is also enclosed in the typed set of papers filed along with the Writ Petition. The first respondent also did not object to the auction conducted by the second respondent earlier. But, all of a sudden, the present



impugned auction notification has been issued by the first respondent.

15.From the above, it is clear that the procedure contemplated under the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001 has not been followed by the first respondent while issuing the impugned auction notification dated 08.02.2022. Further, there is also a dispute with regard to the ownership of the property. According to the second respondent Devasthanam, they are the owner. In fact, the second respondent had also conducted an auction earlier and the petitioner was a successful bidder in the said auction.

16.All the aforementioned factors will clearly indicate that the impugned auction notification dated 08.02.2022 is not in accordance with law and the same will have to be set aside by this Court. Further, it is also to be examined whether the first respondent has violated the provisions of the Tamil Nadu Transparency in Tenders Act, 1998. Since, it is clearly established that the first respondent has violated the procedure contemplated under the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001, there is no necessity for this Court, at this stage, to examine the violations, if any committed by the first respondent under the provisions of the Tamil Nadu Transparency in Tenders Act, 1998.

17.For the foregoing reasons, the impugned auction notification dated 08.02.2022 passed by the first respondent is hereby quashed and the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T AND P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Lm

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

The President,
Thirukostiyur Panchayat,
Thiruppathur Taluk,
Sivagangai District-630210.

1CC TO MR.T.R.JEYAPALAM.ADVOCATE SR:5606
1CC TO MR.K.BALASUBRAMANI, ADVOCATE SR:6014
1CC THE SPL GOVT PLEADER SR:5690

DP
26/02/2022
8P/5C

**W.P. (MD) .No.2756 of 2022
10.02.2022**