

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.07.2022

PRONOUNCED ON : 11.10.2022

C O R A M

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(Md) No.12625 of 2022
and W.M.P.(Md)No.8940 of 2022

Athinarayanan K.N.

... Petitioner

vs.

- 1.The President-cum-Secretary
T.834 Shanmuganagar Co-operative Building
Society Ltd., Kannan Nagar,
Thanjavur – 613 001.
- 2.The Tamil Nadu Co-operative Housing Society
Ltd., No.48, Ritherdon Road, Vepery
Chennai 600 007.
- 3.The Deputy Registrar (Housing)
No.7, Daniel Thomas Nagar, Thanjavur
(R3 is suo motu impleaded vide Court
Order dated 11.07.2022 in W.P.(Md)
No.12625/2022 by GRSJ)

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned paper publication of the tender notification by 1st respondent in Dina Thanthi Daily Newspaper dated 18.05.2022 and to quash the same and

consequently direct the 1st respondent to rectify the encumbrance over the above said properties having an extent of 57,499 Sq.ft in T.S.No.158 (Old T.S.No.11/3) situated at Kannan Nagar, Block No.75, Ward No.4, Thanjavur Town, Taluk and District and to convey the encumbrance free properties to the petitioner after receiving the balance amount payable to them as per the earlier tender process.

For Petitioners	: Mr.Venkatesan S.
For Respondent	: Mr.P.Thilak Kumar Government Pleader – for RR 1 and 3 Mr.Kanmani Annamalai – for R2

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was one of the bidders for the petition mentioned property when the first respondent Society proposed to sell the same and issued tender notification on 07.01.2021. The petitioner was declared as the successful bidder. The total sale amount was fixed at Rs.5,46,15,800/-. The petitioner was directed to pay 1% of the sale amount for confirmation. The petitioner complied with the same. The petitioner came to know from the entries in the Encumbrance Register that the property had been mortgaged in

favour of the 2nd respondent for a sum of Rs.6,19,79,000/- on 13.07.2015. The petitioner called upon the 1st respondent to clear the encumbrances. The first respondent is said to have called upon the petitioner to pay a further sum of Rs.11,00,000/-. The petitioner complied with the same. Thus, in all the petitioner had remitted a sum of Rs.16,71,158/- to the first respondent for purchasing the subject property. The petitioner had expressed his readiness to pay the balance amount the moment the encumbrances are cleared. His grievance is that without doing so a fresh tender notification has been published in the newspaper on 18.05.2022. That led to the filing of this writ petition.

3. The first respondent had filed a detailed counter affidavit. The learned Government Pleader took me through its contents.

4. After hearing the contentions on either side, I am satisfied that the impugned tender notification cannot be quashed. It is true that the petitioner had paid a sum of Rs.5,46,158/- immediately after the declaration that he was the successful bidder. It is stated in the counter affidavit that on 09.02.2021, the petitioner gave cheques for balance amount of 25% of the sale price amount totalling Rs.1,34,63,982/-. But the first cheque itself bounced when it was presented for collection. Except paying Rs.11,00,000/- more the

petitioner had kept silent. In these circumstances, the first respondent had to necessarily go for a fresh tender. It is further stated that the impugned tender notification had attracted the highest bid amount of Rs.5,60,88,052/-. The e-tender was opened on 20.06.2022 and confirmation was also made on 21.06.2022. The highest bidder had also paid 25% of the sale price amount. The writ petition was listed for hearing on 21.06.2022. From the sequence of events, I conclude that the writ petition became infructuous by the time it was listed for admission. Be that as it may, the petitioner is not entitled to any relief in this proceeding. The property is very valuable. It is a commercial transaction. The petitioner ought to have verified the encumbrance register before making his bid. After participating in the tender process and after paying 1% of the sale amount, the petitioner cannot raise queries. In any event, the petitioner can avail the other remedies that may be open to him. A person whose cheques issued towards payment of the balance amount got dishonoured cannot maintain this writ petition. The reasons assigned in this writ petition will not come in the way of the writ petitioner claiming refund of the amount already paid by him. In any such proceeding that may be instituted by the petitioner, it is open to the Society to plead forfeiture. If the petitioner files any such petition or suit or any other appropriate legal proceeding within a period of four weeks from the date of receipt of a copy of this order, the same will be entertained without reference to limitation.

Leaving open the respective contentions of the parties as regards refund of the amount already paid by the petitioner, the writ petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.

11.10.2022

Index:Yes/No
Internet:Yes/No
KST

To

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W.P (MD) No.12625 of 2022

G.R.SWAMINATHAN, J.

KST

Pre-delivery Order made in
W.P.(Md) No.12625 of 2022

Dated : 11.10.2022