



W.P.No.15075 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.2.2023

CORAM

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

W.P.No.15075 of 2010
and M.P.No.1 of 2010

Alliance Orchid Mall Pvt. Ltd. ... Petitioner

Vs.

- 1 The Industries Commissioner
and Director of Industries and Commerce,
Chepauk, Chennai-5.
- 2 The Deputy Director (Industrial Co-operatives),
Offical Liquidator, CTAL Building,
Guindy, Chennai-32
- 3 The Additional Secretary,
Department of Micro, Tiny and Medium Industries,
Secretariat, Govt. of Tamil Nadu, Chennai-9. ... Respondents

(Respondent No.3 impleaded vide order dated 3.9.2010
in M.P.No.2 of 10 in W.P.No.15075 of 2010)

Prayer : The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records pertaining to the letter dated 4.6.2010 in R.C.No.GL.31/IC3/96 on the file of 2nd respondent and quash the same.

For Petitioner : Mr.R.Viduthalai, Sr. Counsel for
Mr.S.Sethuraman
For Respondents 1 & 3 : Mr.V.Arun, Additional Advocate General
Asst. by Mr.P.Ganesan, A.G.P.
For Respondent No.2 : Mr.V.R.Kamalanathan



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ORDER

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Challenge has been made against cancellation of tender, after auction sale conducted by the second respondent, which is impugned in the present writ petition.

2. The case of the petitioner is that subject matter of the tender cum auction notice for sale was issued by the respondent in the year 2008. The land was originally owned by the Automobile Workshop Owners Service Industrial Co-operative Society Ltd. The Society was wound up by the orders of the Registrar of Industrial Co-operative Societies, Chennai and Official Liquidator was also appointed. Pursuant to the same, tender cum auction notice for sale for an extent of 1.11½ acres of land belonging to the liquidated Society was issued by the second respondent. The petitioner participated in the tender and has become a successful bidder in the auction took place on 4.8.2008 by depositing EMD of Rs.32,03,700/-. After successful bid, the petitioner has paid a sum of Rs.60,00,000/- being 15% of the bid amount and in all, 25% of the bid amount has been paid by the petitioner on the date of auction as per the terms and conditions of the tender. Petitioner was awaiting for intimation from the respondent for payment of the balance bid amount and constantly following it up with the respondents. In fact, letter dated 20.4.2009, the second respondent informed that she is awaiting confirmation from the first respondent and as soon as the



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confirmation is received, she would communicate to the petitioner. When the matter stood thus, the impugned letter dated 4.6.2010 came to be passed by the second respondent cancelling the auction took place on 4.8.2008 without assigning any reason. Hence, the same has been challenged on the ground that the impugned order has been passed without assigning valid reason for cancelling the auction and the same has been passed after a lapse of two years from the date of auction. The respondent not only bound by principle of promissory estoppel but also by the doctrine of legitimate expectation. Therefore, the impugned notice is liable to be set aside.

3 The first respondent filed counter affidavit admitting that the property originally belongs to the Automobile Workshop Owners Service Industrial Co-operative Society and the Society was ordered to have been wound up under Sec.137(2) (b) of Tamil Nadu Co-operative Societies Act, 1983 vide proceedings No.21410/ICM1/95 dated 15.3.1996 of the Additional Commissioner and Registrar of Industrial Cooperatives Societies, Chennai - 5. During the process of liquidation, the second respondent decided to dispose of the landed property measuring 1.11 acres of land for realisation of assets so as to discharge the pending liabilities. The first respondent accorded permission to the second respondent in letter No.933/ICA/96 dated 17.7.2008 to dispose off 1.11½ acres of land belong to the liquidated society through tender cum open auction sale with an upset value of



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Rs.320.37 lakhs. Accordingly, auction was conducted on 4.8.2008. The petitioner has become a successful bidder for a sum of Rs.4 Crores. The petitioner also remitted a sum of Rs.60,00,000/- being the deposit amount. The second respondent being the District Registrar of Industrial Co-operative Societies, sought permission from the first respondent to confirm the sale by letter No.GL.No.31/IC3/96 dated 5.8.2008. As the value of the property was huge, the first respondent sought clearance from the Government by letter dated 14.11.2008 requesting permission to dispose off the property to the highest bidder. As the Government devised a scheme establishing a mini Industrial estate through SIDCO and thereby generate new employment opportunities, the Government in letter No.9000/A/2008-2 MS & ME Department, dated 16.11.2009 directed the first respondent to transfer the land to Tamil Nadu Small Industries Development Corporation (SIDCO). The above decision was taken by the Government considering the involvement of social cause of establishing Industrial estates. Accordingly, said decision was communicated to SIDCO by the first respondent and sought their willingness to take over the property at the rate mutually agreed upon between the Government and the Corporation. SIDCO expressed its willingness to take over the property at the cost of Rs.370 lakh per acre for developing flatted estate in the said land for the welfare of Micro & Small Entrepreneurs. Accordingly, the first respondent, advised the second respondent in the letter No.933/ICA/96 dated 3.5.2010 requesting him to cancel the tender cum auction sale conducted on



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4.8.2008 and refund the EMD and deposit amount to the highest bidder as per the terms and conditions of Tender cum auction notice. Accordingly, the second respondent revoking the condition No.12 of the terms and conditions, cancelled the tender cum auction sale conducted on 4.8.2008. Hence, opposed the writ petition.

4 The second respondent filed counter affidavit wherein it is stated that pursuant to the winding up of the Automobile Workshop Owners Service Industrial Co-operative Society, the property was brought for auction sale and the petitioner has become a successful bidder and deposited a sum of Rs.60 lakhs on the date of auction besides E.M.D. It is contended that since the second respondent being the District Registrar of Industrial Co-operative Societies has to approve the confirmation of sale to the highest bidder. The second respondent addressed to the first respondent, by letter dated 5.8.2008 seeking approval for confirmation the sale of property. The first respondent addressed a letter to the Government seeking permission. The Government has conveyed its decision to transfer the subject land to SIDCO. Accordingly, tender has been cancelled and the amount also has been refunded.

5 Heard the learned Senior counsel appearing for the petitioner, learned Additional Advocate General appearing for the respondents 1 and 3, learned counsel appearing for the second respondent and perused the materials available on record.



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6 The learned Senior counsel challenged the impugned order mainly

on four grounds;

- (i) Cancellation of tender is not decided as per tender conditions;
- (ii) The impugned order is violation of Tamil Nadu Co-operative Societies Act;
- (iii) No reason whatsoever assigned for cancellation of tender;
- (iv) Impugned order is against the decision of the Division Bench of this Court.

7. According to the learned Senior Counsel, in tender conditions, nowhere it is stipulated that permission of the Government is required in this regard. What is required in the tender conditions is that liquidator will decide either to confirm the sale or reject the tender and nowhere it is stipulated that Government nod is required in this matter. In fact, the second respondent has sought for approval from the first respondent for confirmation of sale. When the petitioner has become successful bidder, the first respondent instead of taking decision independently, sought advise from the Government. Based on the advise of the Government, tender appears to have been cancelled, however, no reason whatsoever assigned in the cancellation order. Secondly, it is submitted that cancellation of tender is violation of Tamil Nadu Cooperative Societies Act. When the assets of the Society is under liquidation, it is a duty of the Liquidator to take action to realise the assets of the Society. In such process, the property can be brought for auction sale. Therefore, the contention of the learned Senior counsel



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for the petitioner is that when the tender has been called for, to realise the assets of the liquidated Society and the Liquidator acting under special law, the question of seeking permission from the Government does not arise at all. Thirdly, it is also submitted that no reason whatsoever given by the second respondent in the impugned order for cancellation of tender. Fourthly, it is submitted that the cancellation is against the decision of the Division bench of this Court. In similar circumstances, the Division Bench of this Court has held that cancellation of tender in the absence of any explanation to justify the order of cancellation is violation in the eye of law. It is further submitted that in the counter statement, new reason has been assigned stating that as the subject land is required for industrial development, the Government decided to allot it to the SIDCO. Whereas, SIDCO is in fact is not agreed for the purchase of the subject land since no industrial development could be done in the said land as the same has been classified as primary residential zone by the Corporation. The learned Senior counsel also placed reliance on the judgment reported in **CDJ 2010 MHC 3465 [A.R.SAFIULLAH & ANOTHER VS. THE MANAGING DIRECTOR, TAMIL NADU HOUSING BOARD, NANDANAM, CHENNAI AND ANOTHER]**.

8 Whereas the learned Additional Advocate General appearing for the respondents would submit that as long as tender has not been confirmed, the petitioner has no right whatsoever, to claim right over the property. The tender



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conditions shows that confirmation could be made only by the first respondent.

When the right of rejection reserved in the tender conditions, the petitioner cannot question the cancellation of tender. According to him, the subject land was identified by the Government for industrial purpose. Therefore, tender has been cancelled by the second respondent. When the right to cancel tender explicit in the tender conditions, merely because the petitioner has become successful bidder, it will not create any right or interest over the property. Hence, according to the learned Additional Advocate General, cancellation of tender cannot be challenged. In support of his submission, he relied upon the following decisions:

- (i) **(2016) 26 SCC 818 [AFCONS INFRASTRUCTURE LTD. VS. NAGPUR METRO RAIL CORPORATION LTD. AND ANOTHER]**
- (ii) **2020 SCC Online SC 1035 [GALAXY TRANSPORT AGENCIES, CONTRACTORS, TRADERS, TRANSPORTS AND SUPPLIERS VS. NEW J.K.ROADWAYS, FLEET OWNERS AND TRANSPORT CONTRACTORS AND OTHERS]**
- (iii) **(2007) 1 SCC 477 [RAJASTHAN HOUSING BOARD AND ANOTHER VS. G.S. INVESTMENTS AND ANOTHER]**

9 Mr.Kamalanathan, learned counsel appearing for the second respondent also adopted submission made by the learned Additional Advocate General. In addition, he also submitted that once tender conditions stipulates and gives power to the authority to cancel the tender, the petitioner cannot challenge the same. In support of his submission, he also placed reliance on the following judgments:

- (i) **(2016)14 SCC 172 [STATE OF JHARKHAND AND OTHER VS. CWE-SOMA]**



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CONSORTIUM]

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(ii) (2007)1 SCC 477 [RAJASTHAN HOUSING BOARD AND ANOTHER VS. G.S.INVESTMENTS AND ANOTHER].

10 In the light of submissions made by the counsel appearing for the parties and the materials produced before this Court, it is not disputed by the respondents that property belongs to Industrial Cooperative Society was brought for sale through public auction held on 4.8.2008, pursuant to the winding up proceedings. The petitioner has become successful bidder, he quoted a sum of Rs.4 Crores for 1.11 acres of land and 15% of the bid amount has been deposited as per the tender conditions. Tender conditions makes it clear that Clause 7 of the tender condition gives power to the authority viz., liquidator, the second respondent herein to confirm the value of the property and in the event of coming to the conclusion that the value of the bid amount is less than the original value of the property, he can cancel the auction and conduct re-auction. Clause 9, 11 stipulates that the tender will be confirmed with the permission of the first respondent.

11 After confirmation, the remaining amount shall be paid within a period of 30 days. In the event of failure to deposit the balance amount within a period of 30 days after confirmation, without any notice auction will be cancelled. Clause 12 empowers the second respondent either to cancel or postpone the



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auction. A combined reading of Clause 7, 11, 12, this Court is of the view that

power to cancel the tender is retained by the authority only on limited grounds.

As per Clause 7, re-auction can be made only when the authority decides that the bid amount is less than the market value. Clause 11 only seeks an approval from the first respondent for confirmation of sale and it does not give power to the first respondent either to cancel or confirm the sale. Clause 12 empowers the second respondent either to cancel or postpone the tender. There is no absolute power retained by them to cancel the tender without any reason whatsoever. It is relevant to note that the second respondent in fact has sought permission from the first respondent for confirmation of sale. As per tender conditions, there is no right reserved by the first respondent about the tender and the bid amount offered by the petitioner. The second respondent by letter No.G.L.31/IC3/96 dated 5.8.2008 in fact forwarded a letter seeking approval from the first respondent for confirmation of sale. The first respondent by letter No.LF.933/ICA/96 dated 14.11.2008. sought permission from the Government to dispose of the land to the highest bidder. The first respondent instead of taking independent decision either to accept the proposal sent by the second respondent or reject the tender, sought permission from the Government by letter dated 14.11.2008. However, Government by letter dated 16.11.2009 directed the first respondent to transfer the land to Tamil Nadu Small Industries Development Corporation (SIDCO) for industrial development. The letter dated 29.7.2008, addressed by the Ministry



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of Rural Industries and Veterinary Department to the first respondent indicate that

any property belongs to Cooperative Society, value of the property is more than Rs.50 lakhs, brought for sale after winding up proceedings, approval of the Ministry is required. Thereafter, it appears that Government addressed a letter dated 16.11.2009 seeking remarks from the first respondent as to whether the said property of the Cooperative Society could be handed over to SIDCO. Pursuant to the said communication, the first respondent by letter dated 3.5.2010 requested the second respondent to cancel the tender and consequently, tender has been cancelled.

12 It is relevant to note that auction was conducted on 4.8.2008 and substantial amount also deposited by the petitioner as per tender conditions on the same day, remaining amount could not be paid as the petitioner was awaiting confirmation from the respondents. Keeping silent for more than two years, final order came to be passed by the second respondent that too on the instruction of the first respondent. It is also relevant to note that once the property of the Cooperative Society is vest with Liquidator after winding up, Liquidator appointed under the Tamil Nadu Cooperative Society Act shall deal with the property under Sec.139 of the Tamil Nadu Cooperative Societies Act. Sec.139 of the Act deals with the power of the Liquidator. Once the Liquidator has been appointed pursuant to the winding up proceedings, Sec.137 of the Act the assets of the liquidated society



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vest with Liquidator to deal with the property from the date of winding up order.

Therefore, statutory power conferred under Sec.139 of the Tamil Nadu Cooperative Societies Act to the Liquidator to sell the liquidated property. When the second respondent himself not raised any reservation regarding tender in the tender conditions, in fact he has requested the first respondent for confirmation of sale. The first respondent instead of taking decision, sought permission from the Government to dispose of the land to highest bidder which is nowhere contemplated in the tender conditions. Be that as it may.

13 Though it is well settled that as long as the bid has not been accepted, the highest bidder acquires no vested right to have the auction concluded in his favour, as held by the Hon'ble Supreme Court in **CWE-SOMA CONSORTIUM** case (supra). But in this case, bid has been accepted. The fact remains that there is no dispute with regard to tender and 15% of the bid amount has been paid as required under tender conditions. The matter has been prolonged only for an approval from the first respondent. The first respondent being the District Registrar of Industries, without taking decision on his own, has sought for permission from the Government that was the reason why, there was a delay of more than two years and finally, the Government instructed the first respondent to send remark as to whether this type of property can be handed over to SIDCO. Pursuant to the said letter from the Government, the first respondent requested



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the second respondent to cancel the tender. There is no dispute in this regard.

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14 The learned Additional Advocate General relied upon the judgment **Rajasthan Housing Board case** (supra), to contend that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation had been issued to him. There is no dispute in this regard. Similarly, The learned Additional Advocate General relied upon the judgment reported in **Silppi Constructions Contractors Vs. Union of India** [2019 SCC Online SC 1133 wherein the Hon'ble Supreme Court has held that, *'The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible, then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. In Afcon Infrastructure Ltd. case* (supra), *it is held that tender documents cannot be ignored or treated as redundant or superfluous.* There is no dispute in this regard.

15 However, the fact remains that the second respondent has not raised any dispute over the tender document or the amount paid, he sought ratification of sale by confirmation from the first respondent. Such being the position, the impugned cancellation order has been passed by the second respondent even without giving any reason to justify the cancellation, but merely



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on the basis of the approval not given by the first respondent, tender has been cancelled. On the other hand, the first respondent acted on the advise of the Government, he has not taken independent decision in this regard. _Therefore, when the order taking away the rights though no obligation is created and the order is passed without assigning any reason, such order is nothing but lifeless could not be sustained in the eye of law.

16 In **A.R.Safiullah case** (supra), the Division bench of this Court has held as under:

"7. The law as culled out from the above judgment of the Apex Court would show that if the State acts in any arbitrary manner even in a matter of contract, any aggrieved person can approach the Court for redressal of his grievance invoking Article 226 of the Constitution of India and the Court, depending upon the facts of the said case, is empowered to grant leave. In this context, we may also refer to the judgment of the Apex Court in ABL International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd. [(2004) 3 SCC 553] The arbitrary action may be either failure to person public function or doing any act in an unfair manner. In such event, the only remedy available to such aggrieved person is to approach this Court invoking Article 226 of the Constitution of India. The principle of judicial review cannot be denied even in exercise of powers of the Government bodies, if such exercise is without any acceptable reason or unreasonable resulting in arbitrariness. This law is also reiterated in Tata Cellular Vs.



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to take necessary steps to dispose of the land. When the very purpose for which the land was allotted to SIDCO by the respondent and the same was dropped by the SIDCO, there was no dispute with regard to auction that has been conducted by the second respondent, that apart, the value of the bid amount is also more than the amount offered by SIDCO at the relevant point of time, this Court is of the view that cancellation of tender will not be sustained in the eye of law. It is also stated at the bar that now, the property has been classified as primary residential Zone, it is not disputed by the Additional Advocate General that no industrial development could be made in the subject land.

19 Such view of the matter, when the auction has been conducted as per the procedure contemplated under the law, substantial amount has been already paid, impugned order came to be passed after a lapse of two years, cancelling the tender without assigning any reason, cannot be sustained in the eye of law. As the said land has not been used for any useful purpose, this Court is of the view that same could be allotted to the petitioner, provided the petitioner pays the entire bid amount of Rs.4,00,00,000/- along with interest at the rate of 9% p.a. from the date of auction till deposit, within a period of two months from the date of receipt of copy of the order.



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20. Learned Senior counsel appearing for the petitioner submits that

including EMD the petitioner has paid a sum of Rs.92,03,700/- and the said amount is still with the respondents. Whereas the learned Additional Advocate General submitted that the said amount has been refunded by way of cheque dated 19.7.2010. Learned Senior counsel for the petitioner submits that though cheque has been sent to the petitioner, the same has been sent back to the respondents and the petitioner has not realised the cheque. It is for the respondents to see whether the EMD i.e. 15% of the sale consideration has been paid by way of cheque has been returned to the petitioner and the same was realised by the petitioner or still lying with the respondents. The respondents after receipt of the entire amount within a stipulated period, shall execute necessary document confirming the sale.

With the above directions, the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

13.02.2023

Neutral Citation: Yes/No

Speaking/Non Speaking order

Index: Yes/No

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1 The Industries Commissioner
and Director of Industries and Commerce, Chepauk, Chennai-5.

2 The Deputy Director (Industrial Co-operatives),
Offical Liquidator, CTAL Building, Guindy, Chennai-32



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- 3 The Additional Secretary, Govt. of Tamil Nadu,
Department of Micro tiny and Medium Industries, Secretariat, Chennai-9.

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