BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6314 of 2023 AND
W.M.P.(MD)No.5990 of 2023

J.Raja Mohammed ... Petitioner

Vs.

1. The Branch Manager,
   Tamil Nadu Industrial Investment Corporation Ltd.,
   Plot No.2, Ground Floor,
   Pandiyan Nagar 1st Street,
   Dindigul – 624 001.

2. S.Veera Raja

3. S.Senthilkumar ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned notice in TIIC/DGL/BO/LAO/2022 dated 30.01.2023 on the file of the first respondent and quash the same and further directing the respondents to settle the loan amount of the petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai

For R-1 : Mr.R.Saravanan

For R-2 : Mr.M.Ramachandran

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O R D E R

Heard the learned counsel on either side.

2. The writ petitioner borrowed a sum of Rs.10.5 Lakhs from TIIC way back in the year 1997. He committed default. Therefore, the establishment run by the petitioner was taken over by TIIC and sold in public auction for a sum of Rs.30 Lakhs. This happened in the year 2004. The petitioner's counsel would state that the petitioner had a made a further payment of Rs.19 Lakhs during the intervening period. The petition-mentioned property was brought for auction on several occasions. The auction process could not fructify. While so, a fresh auction was to be held on 23.02.2023. On the said date, the second respondent turned out to be the highest bidder. He offered to take the property for a sum of Rs.63,06,000/-. He paid 15% of the said amount on 24.02.2023 itself. At this stage, the present writ petition came to be filed.

3. On 23.03.2023, the following order was passed:-

" Issue notice to respondents 1 to 3 through Court and also privately, returnable by 12.04.2023. Additionally the

Standing Counsel for the first respondent may be served with the relevant records.

2. The learned counsel for the petitioner claims that the petitioner is also interested in purchasing the property which had been brought to e-auction on 23.02.2023 and by which, the third respondent had purchased the property.

3. Since the amount receivable by the first respondent is assured either by third respondent or by the petitioner herein, let further orders of this Court be awaited before final orders are passed by the first respondent confirming sale.

4. List the matter again on 12.04.2023."

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

5. The learned Standing counsel appearing for TIIC as well as the learned counsel appearing for the successful bidder submitted that this writ petition deserves summary dismissal. The learned counsel appearing for the second

respondent pointed out that the writ Court ought not to interfere in such matters as it would undermine the sanctity of the tender process. He also submitted that auctions were held on several occasions but the property could not be sold. The second respondent has come forward to take the property and he has also complied with the auction terms and conditions and his offer should be allowed to be confirmed.

6. I carefully considered the rival contentions and went through the materials on record.

7. No doubt, the contentions advanced by the learned Standing counsel as well as the learned counsel appearing for the successful bidder are persuasive and attractive. But equities obtaining in this case cannot be lost sight of. It is seen that TIIC has been following the policy of one time settlements. The petitioner had remitted a sum of Rs.5 Lakhs a day prior to the holding of the auction. Copy of the receipt issued by the Corporation has been enclosed at Page No.64 of the typed set of papers. In the receipt issued by the TIIC, it is mentioned that the payment of Rs.5 Lakhs made on

22.02.2023 was towards down payment for OTS. Therefore, having accepted the partial payment towards OTS offer, the Corporation could not have gone ahead with the auction. The Corporation could have even stipulated that the publication expenses and incidental expenses must be borne by the petitioner. Having accepted the amount paid by the petitioner towards offer for OTS, the auction could not have held. I am not laying down any proposition of law as such. I take note of the fact that one of the securities offered by the petitioner had already been sold for Rs.30,00,000/- way back in the year 2004. The petitioner is also said to have made a payment of Rs.19,00,000/- over the years. It is for this reason, I am showing indulgence to the petitioner. This is all the more so because, the petitioner wants to retain the property by matching the offer made by the second respondent. The offer of the second respondent has been raised to Rs.64.5 Lakhs. The petitioner states that he is ready to pay a sum of Rs.65 Lakhs to TIIC. He is also ready to pay the initial amount of Rs.15,79,000/- to the second respondent with bank interest. He is also willing to pay a further sum of Rs.2 Lakhs to the second respondent towards compensation. Of course the amount of Rs.2 Lakhs to be paid by the petitioner as compensation will not be counted. The amount of Rs.15,79,000/- alone can be deducted from OTS amount of Rs.65,00,000/- offered to be paid by the petitioner. It is stated that on 01.03.2023, the petitioner had made a further sum of Rs.28 Lakhs to TIIC. Taking into account all these circumstances, TIIC is restrained from confirming the bid made by the second respondent.

8. This writ petition stands disposed of in the following terms:-

a) The petitioner shall pay a sum of Rs.15,79,000/- with bank account interest @ 9% p.a. to the second respondent within two weeks from today.

b) The petitioner shall also pay a sum of Rs.2 Lakhs as compensation to the second respondent while making the aforesaid refund.

c) Once this is complied with, TIIC will formally cancel the earlier tender proceedings.

d) The petitioner can negotiate with TIIC as per the norms laid down in their OTS policy.

e) The petitioner's offer is that he will pay a sum of Rs.65 Lakhs towards full quit and settlement on his liabilities. Out of the said amount, the petitioner will be taken to have paid a sum of Rs.33 Lakhs + Rs.15,79,000/- when his OTS offer is considered by the Board. Subject to the petitioner complying with the aforesaid terms, OTS offer will be considered and appropriate order will be passed within a period of four weeks thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

20.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note : Issue order copy on 22.11.2023.

G.R.SWAMINATHAN,J.

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