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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

REV.APLC.W(MD)No.85 of 2022
in
W.P.(MD)No.15304 of 2021
and
W.P.(MD)No.15304 of 2021
and
W.M.P.(MD)No.18690 of 2022

Rev.Aplc.W(MD)No.85 of 2022:-

1.The District Collector
Kanyakumari District, Kanyakumari.

2.The Assistant Director of Town Panchayats,
Nagercol Region, Kanyakumari District.

3.The Executive Officer,
Thingal Nagar Selection Grade Town Panchayat,
Kanyakumari District.

... Petitioners

vs.

C.Deva Harrin Sam

... Respondent

PRAYER: Review Application is filed under Order 47 Rule 1 & 2 r/w
Section 114 of CPC to review the order passed in W.P.(MD)No.15304 of
2021, dated 22.12.2021.



For Petitioners :Mr.J.Ashok
Additional Government Pleader
For Respondent :No appearance

W.P.(MD)No.15304 of 2021:-

C.Deva Harrin Sam

... Petitioner

vs.

1.The District Collector
Kanyakumari District, Kanyakumari.

2.The Assistant Director of Town Panchayats,
Nagercol Region, Kanyakumari District.

3.The Executive Officer,
Thingal Nagar Selection Grade Town Panchayat,
Kanyakumari District.

... Respondents

For Petitioner :No appearance

For Respondents :Mr.J.Ashok
Additional Government Pleader

COMMON ORDER

Rev.Aplc.W(MD)No.85 of 2022:-

This Review Application has been filed by the first respondent in
W.P.(MD)No.15304 of 2021, seeking revisitation of an order, dated



22.12.2021, which had been passed in the said Writ Petition and in W.P.
(MD)No.14419 of 2021.

2.In W.P.(MD)No.15304 of 2021, which related to Shop No.56, the petitioner therein, had stated that they had paid earnest money deposit and also one year rental lease amount. At that point of time, notice had been issued that the respondents therein intended to auction the said shop.

3.When the Writ Petition was heard along with W.P.(MD)No. 14419 of 2021, the then learned Special Government Pleader had stated that the respondents therein had taken a decision to accept the bid offered by the Writ Petitioner and to retain the amount of earnest money deposit, which had been paid. Accordingly, the Writ Petition was disposed of recording that particular statement.

4.In the present petition filed by the District Collector, it had, however, been stated that such instructions would actually cause loss to the Selection Grade Panchayat, since it had been stated that eight other



shops were let out on auction on direction of the Division Bench on Writ Appeals and the amounts fetched were substantially higher and that the Writ Petitioner had therefore unlawfully gained as the shop was not brought to auction. Correspondingly, it was stated that Panchayat would loose substantial amount.

5. Notice was directed to the Writ Petitioner, but though notice was served, the Writ Petitioner had not come forward before this Court. The name has been printed in the cause list.

6. I am presented with a letter given by the Writ Petitioner, wherein, he had stated that he is prepared to get back the earnest money deposited of Rs.3,00,000/- and that he would not press any further relief sought.

7. Even though it might not be a judicious method to rely on such letter, the order of the Division Bench is now binding on this Court, namely, that it would be only appropriate that the shops are re-auctioned. The fact that the learned Special Government Pleader had granted a concession had worked out to the disadvantage to the respondents



therein, leading to monetary loss and therefore, it would only be appropriate that the order in the Writ Petition is reviewed by this Court.

Accordingly, I would allow this Review Application.

W.P.(MD)No.15304 of 2021:-

8.In W.P.(MD)No.15304 of 2021, the petitioner therein had filed the said Writ Petition in the nature of Certiorari seeking records of the tender notice for shop No.56. As stated, the Writ Petition was not decided on merits, but on a consent given by the learned Special Government Pleader to further lease out the shop to the Writ Petitioner. Now, the Writ Petitioner had apparently taken a decision to get back the earned money deposit and which would necessarily mean that the shop could be auctioned by the respondent. A letter had been presented that the Writ Petitioner is willing to get back the earned money deposit and naturally, if that be the case, nothing further survives for adjudication.

9.I am deeply conscious that the flow of the Writ Petition has been a little strange in the sense that when the Writ Petition was heard, the



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then learned Special Government Pleader had conceded to a particular point and now when the Review Application is heard, the Writ Petitioner has now conceded to receive back the earnest money deposit. In effect, neither of the parties are prepared to argue the matter on merits, but still the order of the Division Bench of this Court in ***W.A.(MD)Nos.235-244 of 2022, dated 12.07.2022 [District Collector, Kanyakumari District vs V.Pradeesh and others]*** is binding on this Court, wherein, with respect to the very same group of shops, re-auction has been directed. Therefore, the reasons for absence of the Writ Petitioner is only obvious, since if he is to contest the matter, then he will have to justify as to how this Court can go around the judgment in the Writ Appeal. He has taken a decision to get back the earnest money deposit and I am confident that the letter presented by the learned Additional Government Pleader had been obtained with free consent from the Writ Petitioner. The Court can only issue notice, but the Court cannot force anybody to come to Court.

10.In view of all these reasons,

(i)the order dated 22.02.2021 in W.P.(MD)No.15304 of 2021,



which had been passed along with W.P.(MD)No.14419 of 2021 is set aside;

(ii)Writ Petition in W.P.(MD)No.15304 of 2021 is dismissed.

(iii)The Review Application Stands allowed.

(iv)The amount of Rs.3,00,000/- to be returned back to the petitioner within a period of ten working days from the date of receipt of a copy of this order.

(v)No costs.

(vi)Consequently, connected miscellaneous petition is closed.

Index :Yes / No
Internet :Yes
NCC : Yes/No

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C.V.KARTHIKEYAN, J.

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Order made in
REV.APLCW(MD)No.85 of 2022
and
W.P.(MD)No.15304 of 2021

13.04.2023
(1/2)