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WP.No.17448/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

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Desigan

... Petitioner

Vs.

1.The Government of India
rep.by its Secretary to Government
Department of Economic Affairs
Finance Ministry, North Block
New Delhi 110 001.

2.Punjab National Bank
rep.by its Managing Director
Plot No.4, Sector 10, Dwarka
New Delhi 110 075.

3.The Authorised Officer
Punjab National Bank
Circle Shashtra Centre
Circle Office, Trichy PNB House
Trichy Tanjore Road, Kailasapuram
Trichy 620 014.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of mandamus directing the 3rd respondent to return the EMD amount of Rs.3,46,000/- to the petitioner.

For Petitioner : Mr.J.Antony Jesus

For Respondents : Dr.D.Simon, CGSC for R1

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1)The present writ petition has been filed by the petitioner for issuance of a writ of mandamus directing the 3rd respondent to refund the EMD amount of Rs.3,46,000/- to the petitioner.
- (2)The case of the petitioner in the affidavit is that he participated in an auction conducted by the 3rd respondent and quoted a sum of Rs.47.60 lakhs. In the auction, he was declared as a highest bidder and an automated sale confirmation E-mail was also sent to the petitioner on 27.12.2023. The petitioner was required to pay 25% of the bid amount



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which comes around Rs.11.90 lakhs including 10% of the reserved price as EMD amount. The petitioner was also directed to deposit the balance amount of Rs.35.70 lakhs being 75% of the bid amount within fifteen days, i.e., on or before 11.01.2024. The petitioner though transferred a sum of Rs.7.60 lakhs on 28.12.2023 apart from the EMD amount of Rs.3.46 lakhs to make a sum of Rs.11.06 lakhs, there is a shortage of Rs.84,000/-, even according to the petitioner. The remaining amount was paid on the next day, i.e., 29.12.2023.

(3) It is the further case of the petitioner that he met the Authorised Officer of the Bank by name Thiru.S.S.Palanimurugan on 30.12.2023 and requested him to condone the delay of one day and to allow him to deposit the remaining amount of Rs.35.70 lakhs being 75% of the entire bid amount. It is also the case of the petitioner that the said Palanimurugan called the petitioner and informed that he would not get the property as he had not deposited the balance amount within time and that the entire amount deposited by the petitioner will be forfeited. It is also stated in the affidavit that the said Palanimurugan wanted some money as bribe in order that the petitioner get the amount of EMD.



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Stating that the Authorised Officer by name S.S.Palanimurugan, refused

to refund EMD amount of Rs.3.46 lakhs, the petitioner has filed the present writ petition for refund of EMD.

(4)The petitioner has admitted before this Court that he has not deposited the balance amount as required. Therefore, forfeiture of EMD is automatic. The petitioner who also states that he had made further payment apart from EMD amount of Rs.3.46 lakhs, has not stated anything about the return or refund of the said amount. The remaining amount to make 25% had been duly returned to the petitioner.

(5)Be that as it may, the petitioner does not dispute the specific conditions of the auction. Petitioner was informed by the Authorised Officer while confirming the sale that in case the petitioner fail to pay balance on or before 11.01.2024, the amount deposited by him shall be forfeited. The petitioner who participated in the auction and was declared as highest bidder, has failed to fulfill his obligations after being declared as successful bidder. Therefore, in terms of conditions of auction, he is not entitled to get EMD amount. The forfeiture clause enables the



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respondent/Bank to appropriate the entire amount. If for special reasons, the petitioner establishes his right to seek refund of EMD, he may approach the Civil Court or the Tribunal as this Court may not consider his request in view of specific condition while confirming the sale. This Court cannot issue mandamus in a case of this nature.

(6)With liberty preserved to the petitioner to approach Civil Court or the Tribunal to establish his right to get refund of EMD, this writ petition stands **dismissed**. No costs.

[S.S.S.R., J.] [N.S., J.]
23.07.2024

AP

Internet : Yes

To

- 1.The Secretary to Government
Government of India
Department of Economic Affairs
Finance Ministry, North Block
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- 2.The Managing Director
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