



O.S.A.No.130 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

O.S.A.No.130 of 2024

and

C.M.P.No.16727 of 2024

P.Abhishek

... Appellant

Vs.

1.The Administrator General
and Official Trustee of Tamil Nadu,
High Court Campus, Chennai – 600 104.

2.Everwin Educational and Charitable Trust,
Represented by its Managing Trustee,
B.Purushothaman,
At No.12 A, Red Hills Road,
Kolathur, Chennai – 600 009.

... Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules against the order dated 01.07.2024 in O.A.No.225 of 2023 on the file of this Court.



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For Appellant : Mr.V.P.Sengottuvel
Senior Counsel
for Mr.R.Sivaraman

For R1 : Mr.M.R.Jothimanian
for AG & OT

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Original Side Appeal is directed against the order of the learned Single Judge, dated 01.07.2024, by which O.A.No.645 of 2022 along with A.Nos.4422 and 4423 of 2022 and O.A.No.225 of 2023 have been disposed of.

2.This appeal is in relation to an extent of about 51.87 Acres of land in Ayanambakkam Village, which is under the control and management of learned Administrator General and Official Trustee of Tamil Nadu ("AG & OT" for brevity). The learned AG & OT floated a tender by effecting publication on 17.07.2022 in Dinamalar Daily, fixing the upset price as Rs.20,00,000/- per annum, for letting out the land to an extent of 51.87



Acres by way of lease. It is admitted that the 2nd respondent quoted a sum of Rs.4.40 Crores per year, pursuant to the auction. The 2nd respondent was also declared as successful bidder. However, when the 2nd respondent was demanded a sum of Rs.13.20 Crores towards rental advance representing rent for 3 years rent as per the tender condition, the 2nd respondent failed to pay the same within the time. Therefore, re-auction was conducted by order of Court after forfeiture of Earnest Money Deposit by the successful bidder pursuant to the first auction.

3. Thereafter, the second auction was conducted by the learned AG & OT and the appellant was the highest bidder by quoting a sum of Rs.1.75 Crores as annual lease amount for the entire extent. It is not in dispute that the auction was not confirmed in favour of the appellant. This Court has also not passed any order approving the auction.

4. But in the meantime, the 2nd respondent filed the following three applications :

- i. O.A. No.645 of 2022 seeking interim injunction restraining the learned AG & OT from demanding the 3 years annual rent of



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Rs.13.20 crores as advance and also from forfeiting the EMD amount, till the disposal of the main application;

- ii. A.No.4422 of 2022 seeking a direction to the learned AG & OT to enter into lease agreement with the applicant trust with respect to the land by receiving 3 months rent as advance and 7 months rent as security deposit, as per clause 19 of the terms and conditions; and
- iii. A.No.4423 of 2022 seeking a direction to the respondent to enter into lease agreement with the applicant Trust with respect to the land for a period of 20 years as per clause 21 of the terms and conditions.

5. Thereafter, the learned AG & OT brought the land for open tender, fixing the date of opening the tender on 27.03.2023. The 2nd respondent filed another application in A.No.225 of 2023 praying for an order of injunction restraining the learned AG & OT from opening the tender on 27.03.2023 and for granting lease to any other bidder, pending disposal of the applications filed earlier by them in A.Nos.4422 and 4423 of 2022.



6.The appellant participated in the second auction conducted by the learned AG & OT on 20.07.2023. Since he was the highest bidder, he was also impleaded as the 2nd respondent in O.A.No.225 of 2023. All the applications were heard together and the learned Single Judge of this Court, by order dated 01.07.2024, disposed of all the applications in the following lines :

“5.The learned Senior Counsel for the applicant and the learned Senior Counsel for the impleaded respondent have not raised serious objection for a fresh auction to be conducted in respect of the subject land. They have also submitted that they agree to abide by the upset price to be fixed by this Court.

6.Considering the facts and circumstances of the case as well as the submissions made on either side, the learned A.G. & O.T. is directed to conduct a fresh auction by following all the procedures mandated for letting the land measuring an extent of 51.87 acres situated at Ayanambakkam, on lease by fixing the upset price as Rs.4 crores, for a period of thirty years with a provision to enhance the rent by 15% once in five years, and the applicant and the impleaded respondent are at liberty to partake in the



said fresh auction, along with others by remitting the Earnest Money Deposit, so fixed. After expiry of the lease period, it is open to the AG & OT either to renew the lease for further period or resort to fresh auction. Once the successful bidder is declared and the auction is completed, the Earnest Money Deposit made by the other participants shall be refunded. The AG & OT is permitted to meet out the expenses for the fresh auction, from and out of the estate of M/s.C.K.Naidu Trust.

In fine, O.A. No.645 of 2022, A. Nos.4422 and 4423 of 2022 and O.A.No.225 of 2023 stand disposed of on the above terms.”

7.Challenging the above order, the appellant, who was impleaded as the 2nd respondent in the applications, has preferred the above Original Side Appeal.

8.Though this Court has recorded a specific finding that the learned counsel appearing for the appellant before the learned Single Judge had not raised any serious objection for a fresh auction to be conducted in respect of the subject land, the appellant has preferred the above appeal. Normally,



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when a finding is recorded reflecting as to what has happened before the learned Single Judge, the appellant ought to have challenged the same only by way of review, but not by way of appeal. However, the appellant has filed the above appeal on the ground that the learned Single Judge ordered fresh auction without considering the interim order dated 29.03.2023 in O.A.No.225 of 2023 in A.Nos.943 and 944 of 2023. Learned counsel appearing for the appellant relied upon not only the order dated 29.03.2023 but also the order dated 06.04.2023 in O.A.No.225 of 2023.

9.In the first order dated 29.03.2023, a learned Single Judge of this Court has observed as follows :

“2.Learned counsel for the Applicant has submitted that though the Applicant had paid EMD deposit amount of Rs.60,00,000/- by way of demand draft and was waiting for confirmation of bid in its favour, to the shock and surprise, the Applicant was directed to pay a sum of Rs.13,20,00,000/- being the rental advance of three years rent for execution of tenancy agreement on or before 28.09.2022, with a condition that in the event of non payment of the amount within the stipulated time, the deposit amount of Rs.60,00,000/- would be



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forfeited. He has further submitted that as per the earlier terms and conditions, more particularly in Clause No.19, the advance amount of 3 months rent and security deposit amount of 7 months rent had to be paid for finalization of lease and the subsequent demand of three years lease amount as advance is highly illegal and contrary to the advertisement. He has also submitted that the Applicant is trying to start an international school and that the Applicant is now willing to deposit the amount of Rs.13,20,00,000/- as required by the learned AG&OT.

...

6.Now, much water has flown under the bridge, as the auction has been finalized on 27.03.2023 and a successful bidder is waiting for the order of this Court to remit the amount. It is pertinent to mention here that since the order dated 26.08.2022 is in force, in the absence of challenge to it, this Court cannot extend its helping hand to the applicant, as the applicant has not deposited the amount demanded by the learned AG & OT in terms of the order dated 26.08.2022 and the consequential demand dated 15.09.2022. Of course, I find prima facie case in favour of the applicant, but, however, in view of the order dated 26.08.2022, no further orders can be passed in this application, except ordering return of the EMD



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amount. The fact remains that the Tender in respect of the subject property has already been opened on 27.03.2023 and that the tender has been awarded to a successful bidder. At this stage, this Court cannot pass any order in the present application for cancellation of the bid awarded to the subsequent successful bidder. In my view, the successful bidder may be made as a party respondent in this application in order to ascertain whether the successful bidder is willing to comply with the terms and conditions of the tender or not, but certainly not for cancellation of the bid in the present application. Learned AG & OT shall forthwith furnish the details of the successful bidder to the applicant so as to enable the applicant to implead the successful bidder as party respondent to this application only to determine whether the successful bidder is going to remit the amount in compliance with the terms and conditions of the award of tender.”

The learned Single Judge, in the order dated 29.03.2023, has referred to the order dated 26.08.2022, holding that the 2nd respondent herein is liable to pay 3 months of Security Deposit and 7 months of Caution Deposit apart from three times the annual lease amount as rental advance within 15 days from the date of the order. Therefore, while considering the application of the 2nd respondent herein whether to extend time and to permit him to pay 3



months rent in instead of 3 years rent as advance, since the request of the successful bidder pursuant to the first auction was contrary to the terms of auction and directions of this Court earlier in the order dated 26.08.2022, the learned Single Judge of this Court, by order dated 29.03.2023, dismissed the application filed by the first auction purchaser.

10. Similarly, the same learned Single Judge, in his order dated 06.04.2023, has recorded as follows :

“3. At this juncture, learned AG&OT / respondent herein has brought to the notice of this Court the communication dated 31.03.2023, addressed to the AG&OT by the subsequent successful bidder, namely, P.Abishek, S/o.S.Pawan Kumar, No.230, N.M.Road, Avadi, Chennai - 600 054 (Mobile No.95662-92592), who has expressed his willingness to abide by the conditions of the Tender and in order to show his bona fide and readiness, he has also taken a Demand Draft bearing No.504337 dated 30.03.2023 drawn on ICICI Bank for Rs.1,15,20,000/-. For the sake of convenience, the relevant passage of the communication is extracted below:

"2. It is pertinent to point out here that in the above said Tender, I have already paid an EMD of Rs.60,00,000/- vide DD No.504826 dated



24.03.2023 drawn on ICICI Bank and offered to pay a sum of Rs. 1, 75,20,000/- (One Crore Seventy Five Lakhs Twenty Thousand Only) and as a mark of acceptance; my signature was obtained in the relevant records. In this connection, I wish to know the exact balance amount to be paid by me under the said lease. I express my willingness and readiness to pay the balance amount and in order to prove the same, I am enclosing the extract of the Draft Bearing No.504337 dated 30.03.2023 drawn on ICICI Bank to Avadi for a sum of Rs.1,15,20,000/-."

4.Learned AG&OT has stated that he will file an application before this Court for approval of the tender awarded in favour of the subsequent successful bidder, viz., P.Abishek. It is made clear that if any such application is carved out by the learned AG & OT, the same shall be listed before the Bench, which is going to hear the present application after the orders of the Hon'ble Acting Chief Justice."

11.The second order dated 06.04.2023 would only indicate that the learned AG & OT can file an application before this Court whether to confirm the bid by the appellant. Merely because the appellant has paid a sum of Rs.60 Lakhs as Earnest Money Deposit and offered to pay further



sum of Rs.1,75,25,000/-, it cannot be presumed that there is a direction by this Court to the learned AG & OT to accept the highest bid pursuant to the second auction. In the application filed by the learned AG & OT, it was stated that the appellant was the highest bidder. It is only an intimation of the offer made by the appellant. No where, the decision of the learned AG & OT to confirm the bid in favour of the appellant, is found. In such circumstances, the appellant, merely because his request was pending consideration, has no indefeasible right to claim himself as successful bidder. It is by sheer mistake the appellant has been shown or referred to as successful bidder in the earlier orders and there was no decision either by the learned AG & OT or by this Court confirming the auction in favour of the appellant. Since the applications filed by the first auction purchaser were dismissed on merits, the erroneous observation made by the learned Single Judge of this Court by referring or showing the appellant as successful bidder does not help the appellant to agitate as if this Court has already declared the appellant as successful bidder.

12.From the facts, the first auction was rejected only because the



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successful bidder has not paid the amount as required under the terms and conditions of the auction as well as the directions of this Court. It is to be noted that the successful bidder pursuant to the first auction was prepared to pay a sum of Rs.4.4 Crores towards annual lease as against the appellant's offer of Rs.1.75 Crores as annual lease. When the applications filed by the successful bidder pursuant to the first auction who had offered Rs.4.4 Crores as annual lease rent, were not entertained strictly in terms of the earlier orders passed by this Court stating that the successful bidder cannot be shown any indulgence to give him time contrary to the terms and conditions of the offer, it is inappropriate for the appellant to expect this Court to accept his bid of Rs.1.75 Crores as annual lease amount for the same property. This Court finds no merit in the appeal. Therefore, this Original Side Appeal is dismissed, confirming the impugned order passed by the learned Single Judge, dated 01.07.2024.

13.On the admitted facts, it is clear that the appellant knows that he is making a request, which is contrary to the orders of this Court and also with a greedy intention to get the lease property for a very low premium. In view



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of the conscious attempt made by the appellant by claiming himself as a genuine and successful bidder, the appellant is liable to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as cost to the Tamil Nadu Legal Services Authority, High Court Campus, Chennai. Connected miscellaneous petition is closed.

(S.S.S.R., J.) (K.R.S., J.)
05.08.2024

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Note : Issue order copy on 08.08.2024.

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

The Administrator General &
Official Trustee of Tamil Nadu,
High Court, Chennai.



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S.S. SUNDAR, J.
and
K. RAJASEKAR, J.

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