



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

**W.A(MD)Nos.408 and 536 of 2019
and
C.M.P(MD)Nos.3522 and 4532 of 2019**

W.A(MD)No.408 of 2019

Amaranathan

...Appellant/6th respondent

.Vs.

1.K.Baskaran

...First Respondent/Petitioner

2.The Registrar of Cooperative Societies(Housing),
Tamil Nadu Housing Board Building Complex,
Nandanam,
Chennai-35.

3.The Deputy Registrar(Housing),
Daniel Thomas Nagar,
Thanjavur.

4.The President,
T.834, Shanmuga Nagar,
Cooperative Building Society Limited,
Kannan Nagar,
Thanjavur.

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5.The Secretary
T.834, Shanmuga Nagar,
Cooperative Building Society Limited,
Kannan Nagar,
Thanjavur.

6.M.Ravi,
Secretary,
T..834, Shanmuga Nagar,
Cooperative Building Society Limited,
Kannan Nagar,
Thanjavur.

... Respondents/Respondents

W.A(MD)No.536 of 2019

The Secretary,
T.834, Shanmuga Nagar Cooperative
Building Society Limited,
Kannan Nagar,
Thanjavur

...Appellant/4th respondent

.Vs.

1.K.Baskaran

...First Respondent/Petitioner

2.The Registrar of Cooperative Societies(Housing),
Tamil Nadu Housing Board Building Complex,
Nandanam,
Chennai-35.

3.The Deputy Registrar(Housing),
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4.The President,
T.834, Shanmuga Nagar,
Cooperative Building Society Limited,
Kannan Nagar,
Thanjavur.

5.M.Ravi,
Secretary,
T..834, Shanmuga Nagar,
Cooperative Building Society Limited,
Kannan Nagar,
Thanjavur.

6.Amaranathan

... Respondents 2-5/
Respondents 1,2,3,5 and 6

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent Act praying this Court to set aside the orderS of this Court made in W.P(MD)No.2155 of 2018 and W.P(MD)No.2155 of 2018, dated 25.3.2019.

W.P(MD)No.408 of 2019

For Appellant	: Mr.M.P.Senthil
For Respondent-1	: Mr.P.Ganapathi Subramanian
For Respondents 2 and 3	: Mr.D.Sachikumar Addl.Govt.Pleader
For Respondent-5	:Mr.Saravanan



WEB C **W.P(MD)No.408 of 2019**

For Appellant : Mr.M.Saravanan
For Respondent-1 : Mr.P.Ganapathi Subramanian
For Respondents : Mr.D.Sachikumar
2 and 3 Addl.Govt.Pleader
For Respondent-6 :Mr.M.P.Senthil

JUDGMENT

(Order of the Court was made by **P.VELMURUGAN.,J**)

The Writ Appeal filed by the private respondent is W.A(MD)No.408 of 2019 and the Writ Appeal filed by the Society is W.A(MD)No.536 of 2019.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The private respondent/first respondent herein filed the Writ Petition and the Writ Court considered the fact and held that call for tender has not been done property and therefore disposed of the Writ Petition with certain directions,



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which reads as follows:

‘10.....

(i)The second respondent is directed to hold fresh auction on 29.3.2018 at 3.00 p.m. in his office. On the said date, the Petitioner and the sixth respondent/Amaranathan alone will be the participants.The sixth respondent can be called upon to match the offer made by the Writ Petitioner.

(ii)If the sixth respondent is not willing to match the Writ Petitioner’s offer, the second respondent is directed to issue proceedings for cancelling the impugned tender process that culminated in favour of the sixth respondent.The amount of Rs.14,50,000/- offered by the Writ Petitioner shall be accepted by the respondent/society and a deed of sale shall be executed in favour of the Writ Petitioner.

(iii)The jurisdictional Sub Registrar shall make an entry regarding the cancellation of the sale transaction in favour of the sixth respondent. Out of the consideration remitted by the Writ Petitioner, the society will refund the sixth respondent the sale consideration in full together with the expenses incurred by him inclusive of interest at the rate of 6% per annum.

(iv)If the sixth respondent is willing to match the Petitioner’s offer, then



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there will be a bid between the two and whoever is the highest bidder will be declared as the purchaser.

(v) If the sixth respondent is the highest bidder, the sixth respondent will be called upon to pay the difference amount and there is no need to execute any fresh deed of sale.

(vi) If as a result of the bid in between the sixth respondent and the Writ Petitioner, a higher amount is realized, the course of auction indicated above shall be followed.

11. I am convinced that even though the case of the Writ Petitioner is accepted, the sixth respondent would not suffer actual loss. The society would have also gained substantially. The Writ Petition is disposed of accordingly No costs. Consequently, connected Miscellaneous Petitions are closed.”

Challenging the said order of the Writ Court, now the auction purchaser has filed W.A(MD)No.408 of 2019 and the society has filed W.A(MD)No.536 of 2019.

4. The main contention of the learned counsel for the appellant in W.A(MD)No.408 of 2019 is that the tender in question was called for wherein, the appellant is the only bidder in the said tender and he has immediately



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deposited the bid amount and the particulars with regard to tender process reads as under:

1	Tender Reference Number	2/MCNHS/3243/2018
2	Tender ID	2018-RCSH-84564-1
3	Tender Fee	Rs.3,000/-
4	Tender Value	Rs.10,80,000/-
5	EMD 10%	Rs.1,08,000/-
6	Document downloaded sale start date	12.1.2018 at 5.00 p.m.
7	Bid Submission start date	12.1.2018 at 6.00 p.m.
8	Bid Submission end sale	27.01.2018 at 5.00 p.m.
9	Bid Opening date	29.01.2018 at 1.00 p.m.

5.From the above table, it is seen that the bid was opened on 29.1.2018 and the appellant is the only bidder and he deposited 25% of the bid amount immediately and subsequently he deposited the balance amount on 30.1.2018.The sale was confirmed and property was enjoyed by the appellant and now he has executed a settlement deed in favour of his son and his son is enjoying the property. He would further submit that the Writ Petitioner/first respondent never participated in the tender process and he has no locus standi to challenge the



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tender. The Writ Court failed to consider the fact that the Writ Petitioner even not participated in the tender and he never get any application for tender. Therefore in these circumstances, the order passed by the Writ Court is liable to be quashed.

6. The learned counsel for the appellant in the Writ Appeal filed by the Society would submit that they call for the tender in Dhina Boomi and also called for tender through the mode of e-tender and that nobody had applied for tender, except the appellant in W.A(MD)No.408 of 2019. Even prior to that, upset price was fixed and all the procedures have been followed and that there is no procedural violations and the appellant in W.A(MD)No.408 of 2019 only participated in the tender process and he deposited 25% of the bid amount and he has offered the bid amount more than that of the upset price fixed by the authorities. On 30.1.2018, the sale was confirmed and the appellant in W.A(MD)No.408 of 2019 is in possession of the property. There is no procedural violation at any point of time in processing the bid. Therefore the order passed by the Writ Court is to be set aside.

7. The learned counsel for the private respondent/Writ Petitioner would



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submit that the appellant in W.A(MD)No.408 of 2019 had bad antecedents in the society and has committed certain irregularities and with the connivance of the office bearers of the society and they have not published the tender in the prominent newspapers and they published the tender in Dhina Boomi paper. He would further submit that when particulars were sought for through Right to Information Act, they stated that the said Act is not applicable to the society. Further the sale was confirmed at the lowest upset price. He would further submit that in order to benefit the society further price of Rs.450/- which is higher upset price has to be fixed by the society. He would further submit that the society with the connivance of the appellant in W.A(MD)No.408 of 2019, has acted against the interest of the society. Therefore he offered higher upset price and the learned Single Judge had considered all the facts and also the interest of justice and passed an order, which does not call for any interference by this Court.

8.This Court heard the submissions of both side and perused the records available on record.

9.Admittedly, since the borrower has not paid the amount, property was



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brought to auction for sale and though the upset price was fixed at Rs.300/- per square feet since the property is a vacant site, admittedly, the bid was called for and the same was published in Dhina Boomi newspaper, in which, the appellant in W.A(MD)No.408 of 2019 participated and the bid was opened on 29.1.2018 and the appellant in W.A(MD)No.408 of 2019 is the only person participated and his offer was accepted by the authorities and he paid 25% of the bid amount and the remaining portion ie., 75% was paid within the period stipulated and the sale was confirmed on 30.1.2018. Though the Writ Petitioner not participated in the tender process, the only reason cited is that he was not aware of the tender and even in the earlier occasion, he made an enquiry and he was not properly responded by the authorities and only after the tender sale process over, he came to know about the same. Further the tender was published only in Dhina Boomi and not in prominent daily newspaper. In this regard, a reading of Section 9(3) of the Tamil Nadu Transparency in Tenders Act, 1998 is very clear which reads as follows:

‘9.Function of the Tender Inviting Authority:--(1).....

(2).....

(3)The Tender Inviting Authority shall also publish the notice inviting tenders in Indian Trade Journal and in daily newspapers having wide



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circulation depending upon the value of the procurement prescribed.”

Even the amendment (3-A) was brought in only on 26.6.2018 ie., much later to the tender period and subject-matter of this case. Therefore as per Section 9(3), the society ought to have given publication calling for tender in daily newspapers having wide circulation in that locality. A perusal of the records would show that the publication was made in Dhina Boomi and it goes without saying that Dhina Boomi is not having wide circulation and the said fact was also not deined by the appellant in W.A(MD)No.408 of 2019 in the counter filed before the Writ Court. Therefore in these circumstances, the process followed by the society is against the provisions of the Tamil Nadu Transparency in Tenders Act, 1998 and therefore, we find that the society has not acted in terms of Section 9(3) orf the above Act and hence the same is liable to be quashed.

10. Therefore, for the reasons stated above, the Writ Appeals are partly allowed setting aside the order of the Writ Court and as far as the directions of the Writ Court, the sale and payment in favour of the appellant is set aside. The Society in question/the appellant in W.A(MD)No.536 of 2019 is directed to issue fresh tender and publish the same in the prominent daily Tamily News paper



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namely “Dhinamalar” and follow all the formalities as per the Act. The Writ Petitioner is permitted to participate in the tender proceedings. The tender process has to be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

[P.V.,J.] [K.K.R.K.,J.]
03.09.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

- 1.The Registrar of Cooperative Societies(Housing),
Tamil Nadu Housing Board Building Complex,
Nandanam,
Chennai-35.
- 2.The Deputy Registrar(Housing),
Daniel Thomas Nagar,
Thanjavur.



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P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN, J.

vsn

COMMON JUDGMENT MADE IN

W.A(MD)Nos.408 and 536 of 2019
and
C.M.P(MD)Nos.3522 and 4532 of 2019

03.09.2024