

(2003) 11 AP CK 0014

Andhra Pradesh High Court

Case No: Writ Petition No. 4321 of 2003

D.V.V. Narasimham Naidu

APPELLANT

Vs

Commissioner for Endowments,
Government of A.P. and Another

RESPONDENT

Date of Decision: Nov. 28, 2003

Acts Referred:

- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 - Section 6
- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Lands (Other than Agricultural Lands) Leases and Licenses Rules, 2003 - Rule 10, 12, 4, 6, 7
- Constitution of India, 1950 - Article 226

Citation: (2004) 3 ALD 53 : (2004) 1 ALT 794

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: G.V. Shivaji, for the Appellant; G.P. for the Respondent No. 1 and M. Adinarayana Raju, for the Respondents No. 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.

Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, (hereinafter called, the Temple), issued a public auction notice, dt. 27-2-2003 proposing inter alia to auction right to collect fee from pilgrims for coconuts at Bhairavavaka, down-hills of Simhachalam Temple. The petitioner, who was successful bidder in the auction conducted on 8-1-2003 for leasing out right to collect fee for coconuts, assailed the action of the Temple in re-auctioning the right as illegal and arbitrary.

2. The facts in brief leading to filing of the Writ Petition are as follows. The Temple conducted auction on 8-1-2003 for grant of licence to collect fee for coconut. The petitioner became successful bidder for one year. On the day of the auction he paid an amount of Rs. 40,000/- (Rupees forty thousand only). He was also required to pay the balance of amount of Rs. 76,000/- (Rupees seventy six thousand only) within fifteen days, as the bid was for Rs. 1,16,000/- (Rupees one lakh sixteen thousand only). In the meanwhile, petitioner's mother died on 20-1-2003. Therefore, the petitioner could not pay the amount on 23-1-2003, which is last date for paying the auction amount. He alleges that he could not come out of his house before 26-1-2003, and on 26-1-2003 when he approached the Temple authorities and prepared to pay the amount of Rs. 76,000/- (Rupees seventy six thousand only), the second respondent refused to receive the same and also refused to give audience. The petitioner sent a representation on 15-2-2003 to the second respondent, but no action was taken. The Temple issued the impugned auction notice on 27-2-2003 proposing to hold auction on 12-3-2003. It is contended that the action of the second respondent Temple in re-auctioning the right to collect fee on coconuts is illegal and arbitrary.

3. The Temple has filed a counter affidavit stating that the Temple issued auction notice on 24-12-2002 to auction the right to collect fee for coconuts and ancillaries at Bhairavavaka, down-hills of the Temple. The petitioner along with others participated in the auction depositing an amount of Rs. 25,000/- (Rupees twenty five thousand only) towards Earnest Money Deposit (EMD) as per condition No. 1 of the auction conditions. The petitioner became higher bidder for an amount of Rs. 1,16,000/- (Rupees one lakh sixteen thousand only) and his bid was accepted. The petitioner immediately paid an amount of Rs. 15,000/- (Rupees fifteen thousand only) towards 1/3rd of bid amount (Rs. 25,000/- + Rs. 15,000/-) as required under condition No. 2. As per condition No. 3 highest bidder has to pay balance of 2/3rd amount within fifteen days from the date of auction. Though the petitioner is aware of the said condition, which is mandatory, he did not pay the amount and in view of the same the auction in his favour stood cancelled automatically. The second respondent is not aware of death of mother of petitioner. But the fact remains that he failed to pay the amount of Rs. 76,000/- (Rupees seventy six thousand only) on or before last date. He made a representation only on 27-2-2003 requesting the Temple to receive the balance amount. In the meanwhile, on 27-2-2003 the impugned auction notice was issued for licensing twenty-seven items, including collection of fee for coconuts at Bhairavavaka, down-hills of Simhachalam Temple.

4. The auction was to be held on 12-3-2003, but the same was postponed and ultimately auction was held on 9-7-2003. One Sri P. Appala Raju became highest bidder for Rs. 1,28,000/- (Rupees one lakh twenty-eight thousand only). He paid the entire amount subject to orders of this court in this Writ Petition, as this court permitted the respondents to conduct auction, but directed not to finalise the tenders. As the petitioner failed to pay the balance of 2/3rd amount within due date,

he has no right to challenge the auction notification.

5. Learned counsel for the petitioner submits that unless and until the auction conducted in favour of petitioner in January, 2003 is either confirmed or rejected by Commissioner of Endowments, first respondent, in accordance with Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other rights (Other than Agricultural lands) Leases and Licenses Rules, 2003 (for short, the Rules), it cannot be said that the auction in petitioner's favour stood cancelled. He therefore contends that having regard to the peculiar facts and circumstances of the case, second respondent ought to have considered the representation of the petitioner and allowed him to pay the amount. Learned counsel, however, does not deny that as per conditions of auction petitioner did not deposit the 2/3rd of balance amount within fifteen days from the date of auction.

6. Learned Standing Counsel for second respondent Temple, Sri M. Adinarayana Raju, opposed the Writ Petition. He contends that requirement to submit the result of the auction for confirmation of the Commissioner would arise only when the highest bidder fulfils all the conditions. As the petitioner failed to fulfil the conditions, the Temple proceeded with and conducted fresh auction. The petitioner has not fulfilled the conditions of auction and therefore he has no right to maintain Writ Petition.

7. The only question that arises for consideration is whether the action of the Temple in re-auctioning the right/licence to collect fee for coconuts is valid or not?

8. A copy of the public auction notice dt. 5-1-2003 containing conditions of auction is placed before me. Condition Nos. 1 to 5 are relevant and they read as under:

1. The participants in the auction should pay an amount of Rs. 25,000/- by way of D.D. towards advance deposit.

2. Except the deposit amount of the highest bidder, the deposit amount paid by the rest of the participants will be returned immediately after the auction is completed.

3. The highest bidder should pay the 1/3rd bid amount immediately and the balance amount within 15 days.

4. The highest bidder should collect through his men from the respective place the coconut pieces, offerings, Amruthakalاسas etc., offered by devotees.

5. If there is any delay in payment of amount payable by the highest bidder to the temple, the amount paid towards advance deposit shall be forfeited to the temple.

9. A reading of these conditions would show that highest bidder is required to deposit 1/3rd bid amount immediately and balance amount within fifteen days. In the event the highest bidder fails to deposit/pay 2/3rd of the auction bid amount, the amount paid towards advance deposit shall be forfeited to the Temple. This indicates that when once the amount stands forfeited, the highest bidder, who does

not comply with the conditions of auction, stands to lose the right to get licence. The auction cannot be allowed to see its logical end. In this background, we have to consider the effect of the Rules.

10. Rule 4 of the Rules is to the effect that in the case of immovable properties to be given for residential purpose only the religious institution has to grant lease. In the case of other immovable properties, such as shops and buildings to be given or used for the purpose of running business, a licence has to be granted. In the case of other rights of usufruct, fishery, collection of coconut prices, human hair also the religious institution has to grant a licence. In the case of other leases or licences, auction has to be held in accordance with Rules 6, 7 and 8. Rule 9 of the Rules lays down that if auction notice specifies payment of EMD unless and until the participants deposit EMD as security, they shall not be permitted to bid at the auction. Rule 10 of the Rules stipulates that licence shall be given to the highest bidder, and all leases and licences according to Rule 12 have to be confirmed by competent authority. If the value of the licence exceeds Rs. 1,00,000/- (Rupees one lakh only) the competent authority to confirm licences in respect of institutions and endowments falling u/s 6(a) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987, shall be the Commissioner.

11. A reading of the Rules would show that after the Temple decides highest bidder, a proposal has to be submitted to the Commissioner for confirmation under Rule 12 of the Rules. A person can be declared as highest bidder only if he fulfils the conditions of auction issued in the notice or separately. If the conditions of auction are not complied with, a preliminary decision in favour of a person cannot be taken by the Temple before submitting proposal for confirmation. As the petitioner failed to deposit 2/3rd of the bid amount within fifteen days, he cannot be considered as highest bidder and therefore there was no necessity to submit proposal to the Commissioner for confirmation.

12. Insofar as the contention that licence granted in favour of Sri P. Appala Raju has not been confirmed by the Commissioner and therefore, the petitioner's case can be considered, the same is devoid of any merit. By order dt. 12-3-2003 this court directed that the auction shall not be finalized until further orders. It is for this reason that the Temple has not submitted proposals to the Commissioner. The learned Standing Counsel for the Temple also submits that the proposals will be submitted to the Commissioner as and when appropriate orders are passed by this court.

13. The petitioner admittedly did not pay the amount as stipulated in auction condition No. 3 and therefore he cannot enforce any right in these proceedings under Article 226 of the Constitution of India. No direction can be granted to Temple to allow the petitioner to collect fee for coconuts.

14. For the above reasons, the Writ Petition fails and is accordingly dismissed. There shall be no order as to costs.