

**(2009) 08 MAD CK 0344**

**Madras High Court**

**Case No:** Writ Petition No. 5579 of 2008 and M.P. No. 1 of 2008

K. Vimal Raj

APPELLANT

Vs

The Executive Engineer and  
Administrative Officer and The  
Manager (Marketing and  
Services), K.K. Nagar Division,  
Tamil Nadu Housing Board

RESPONDENT

**Date of Decision:** Aug. 10, 2009

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

**Hon'ble Judges:** M.M. Sundresh, J

**Bench:** Single Bench

**Advocate:** M. Rajasekhar, for the Appellant; A. Vijayakumar, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

M.M. Sundresh, J.

The writ petition has been filed challenging the orders passed by the respondents wherein the auction conducted in favour of the petitioner has been cancelled.

2. The writ petitioner participated in the auction conducted by the respondents on 30.10.2007. The said auction was conducted in pursuance of an advertisement made by the respondents on 01.10.2007. The petitioner became the successful bidder and made the required payment in-person to the auction. Thereafter, the second respondent rejected the confirmation and returned the amount deposited by the petitioner and an order was passed on 10.01.2008 by the second respondent cancelling the auction on the ground that the bid amount is very low and that they have decided to go for re-auction.

3. The learned Counsel for the petitioner submitted that a perusal of the auction notice as well as the re-auction notice would indicate that the very same amount has been fixed both for auction and re-auction as upset price. The learned Counsel further submitted that in so far as the allotment of plots R32 to 37 are concerned, they have confirmed that re-auction in favour of one Sivaraj. The learned Counsel submitted that the reason assigned in the impugned order is not true and hence the same has to be set-aside. The learned Counsel also relied upon a judgment of the Apex Court reported in 2006 (8) Supreme 762 (Rajasthan Housing Board v. G.S. Investments and Anr.) in support of his contentions and submitted that the Court should always keep the larger public interest in mind and has to pass appropriate orders.

4. Per contra, the learned Counsel for the respondents submitted that as per the agreement between the parties, the petitioner has to abide by the terms and conditions mentioned in the application. The learned Counsel also relied upon Clauses 10 and 11 of the said terms and conditions in support of his contention and submitted that the bid amount is only to ensure earnestness on the part of the bidder and it will not confer any right to claim confirmation of the same and it is further stated that the respondents can reject the same even assigning without any reasons. The learned Counsel further submitted that no right is created for entertaining the above writ petition, since it is always open to the respondents to accept the offer made by the petitioner.

5. As submitted by the learned Counsel for the respondents, in the absence of any concluded contract between the parties, this Court sitting under Article 226 cannot exercise its jurisdiction. Admittedly, in the present case, the auction has not been confirmed. The sufficiency of the amount fetched in the auction has to be fixed by the respondents and this Court cannot interfere with the same. The petitioner does have any vested or legal right to challenge such an auction of the respondents. Further, as rightly contended by the learned Counsel for the petitioner, being the party to the terms and conditions and after accepting the same by participating in the auction, the petitioner cannot go against the same and say cancellation is bad in law.

6. Clause 11 of the terms and conditions of sale specifically provides for the cancellation of the sale before confirmation. The respondents have exercised the said power, in view of the said condition by taking into consideration of the decision made by the auction sale confirmation committee. Hence the contention of the learned Counsel for the petitioner cannot be accepted.

7. Further the judgment relied upon by the counsel for the petitioner reported in 2006 (8) Supreme 762 (referred to supra) also supports the case of the respondents. In the above said case, the Hon"ble Supreme Court was pleased to hold that unless the auction is confirmed the writ petitioner does not have any right to challenge the same. The Supreme Court further held that the public interest should always be

taken into consideration only from the point of view of the respondents and not from the petitioners. Therefore, taking into consideration of the above said aspects, this Court is of the opinion that the judgment relied by the learned Counsel for the petitioner does not apply to the present case on hand.

8. In so far as the contention that Plot No. R-22 and 79 alone are confirmed which rejecting the other bids, it is seen from the records that each plot is having definite location and extent. Therefore the potential value of the each plot cannot be ascertained by this Court. Further, the person in whose favour confirmation was made is also not before this Court. Moreover the established principle of Law under Article 14 of the Constitution of India is positive in nature. Even assuming that there is some irregularity committed by the respondents in favour of the third party, it cannot be taken advantage of by the petitioner, especially when re-auction is sought on the ground of insufficiency of the bid amount. Hence considering the above said facts and circumstances, this Court is of the opinion that the writ petition is liable to be dismissed. Accordingly, the same is dismissed. Consequently the connected MP is closed.