

(2010) 12 MAD CK 0256

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 13308 of 2010 and Contempt Petition (MD) No. 701 of 2010 and M.P. No. 1 of 2010 and Sub Application (MD) No. 1 of 2010

D. Mohamed Ickra
Mulla

APPELLANT

Vs

The District Collector,
The District Forest
Officer, Sethu and Mr.
A.S. Marimuthu

RESPONDENT

Date of Decision: Dec. 23, 2010

Hon'ble Judges: N. Paul Vasanthakumar, J

Bench: Single Bench

Advocate: Veera Kathiravan, for the Appellant; S.C. Herold Singh, Government Advocate for Respondents 1 and 2 and J. John, for Respondent 3, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Paul Vasanthakumar, J.

The prayer in the Writ Petition is for issuing a Writ of Mandamus directing the first respondent to issue license for cutting Karuvela Trees in V. Karisalkulam Village under the first respondent by conducting fresh auction sale transparently and also permit the petitioner to participate in the said auction as per his eligibility.

2. The case of the petitioner is that the second respondent issued a notification by his proceedings dated 23.08.2010 stating that Karuvela Trees available in Sivagangai District are to be sold by public auction, which was scheduled to be conducted on 15.10.2010. The petitioner participated in the said sale by participating in auction for grant of license to cut Karuvela Trees in V. Karisalkulam Village Panchayat, which is notified as serial No. 33 in the said notification. Totally, three persons participated for the said auction insofar as Serial No. 33 is concerned. The offer made by the petitioner was the second highest bid. According to the petitioner, the local villagers

and other traders created noisy scene and demanded fresh auction sale for their participation also. According to the petitioner's version, the second respondent, on considering commotion, informed that the auction for V. Karisalkulam Village Panchayat, Sivagangai District, was postponed. However, the second respondent chose to confirm the auction in favour of the third respondent, who offered a sum of Rs. 3,41,055/- as bid amount.

3. As per the auction notification issued by the second respondent dated 23.08.2010, persons giving objections for the conduct of auction can submit their objection along with their offer amount by enclosing cheque for the said sum and the objection received without enclosure of the cheque will not be considered. The petitioner, before confirming the offer made by the third respondent, submitted his objection by enclosing a cheque for a sum of Rs. 7,00,000/- on 28.10.2010 and it is his case that auction was not confirmed till 28.10.2010. The objection of the petitioner was submitted before the first respondent and a copy of the same was also submitted before the second respondent. The said objection, having not been considered, the petitioner has filed this Writ Petition on 01.11.2010. This Court, having noticed the higher offer made by the petitioner for a sum of Rs. 7,00,000/- and the earlier offer made by the third respondent being Rs. 3,41,000/- ordered notice and passed an order of interim injunction on 02.11.2010 till 15.11.2010, if no confirmation had been made in favour of the third respondent till the said date. According to the petitioner, having got knowledge about the interim order passed by this Court, on 02.11.2010, the second respondent has hastily confirmed and handed over the confirmation order to the third respondent by ante dating the same, as if it was confirmed on 01.11.2010, though normally the same has to be sent by post. The petitioner has filed Contempt Petition (MD). No. 701 of 2010 for the alleged violation of the interim order passed by this Court dated 02.11.2010.

4. Since the issue involved in the Writ Petition and the Contempt Petition is same, by consent of the learned Counsel appearing for the petitioner, learned Government Advocate appearing for respondents 1 and 2 and the learned Counsel appearing for the third respondent, the main Writ Petition is taken up for final disposal.

5. The learned Counsel appearing for the petitioner submitted that the petitioner having submitted his objection in writing by quoting a sum of Rs. 7,00,000/- as his offer before confirming the offer made by the third respondent, the second respondent is bound to consider the said objection, as the Government is getting about 100% increase of the amount, which will be beneficial to the Government. The stand of the second respondent in not considering the said offer made by the petitioner and confirming the offer made by the third respondent, who quoted only a sum of Rs. 3,41,055/- as sale price, is motivated and a huge loss is caused to the Government. Therefore, a fresh auction is to be ordered, if the offer made by the petitioner for a sum of Rs. 7,00,000/- is not found acceptable for any reason.

6. The learned Counsel appearing for the third respondent, in answer to the said contentions, submitted that the petitioner having participated in the auction and quoted the second highest bid amount cannot make objection and objections can be made by persons, who failed to participate in the auction already conducted and not a person, who participated in the auction conducted on 15.10.2010. The same is the stand taken by the learned Government Advocate, who is appearing for respondents 1 and 2.

7. The learned Counsel for the third respondent also produced a representation dated 14.12.2010 addressed to the second respondent stating that the third respondent is willing to increase his offer amount to Rs. 7,30,000/-from the original amount of Rs. 3,41,055/-quoted by him and a copy of the same is also produced before this Court and the same is also taken on file.

8. In answer to the said submission, the learned Counsel for the petitioner submitted that the petitioner has filed an affidavit stating that even though the petitioner made offer of Rs. 7,00,000/-before respondents 1 and 2 before filing the Writ Petition, now the petitioner is ready and willing to get the license for a sum of Rs. 8,00,000/-, if the second respondent is agreeing to issue license in favour of the petitioner and the same may be accepted as his final offer. The learned Counsel also submitted that to show his bona fides, the petitioner will take a Demand Draft for a sum of Rs. 8,00,000/-in the name of the District Forest Officer, Sivagangai District and in case the said amount is not acceptable, the same may be treated as an upset price for conducting fresh auction for issuance of license to cut Karuvela Trees in V. Karisalkulam Village Panchayat and a fresh auction may be ordered to be conducted.

9. The petitioner, who appeared as party-in-person on 22.12.2010, produced the original Demand Draft drawn in favour of the District Forest Officer, Sivagangai, for a sum of Rs. 8,00,000/-, from Indian Bank, Sivagangai bearing No. 777736 and reiterated the contentions raised by the learned Counsel for the petitioner on 21.12.2010. This Court, after perusing the original Demand Draft, returned the same to the petitioner and accepted a xerox copy to keep it on record.

10. I have considered the above rival submissions in the light of the pleadings and the documents filed.

11. The issue to be resolved in this Writ Petition and the Contempt Petition is as to whether the second respondent can ignore the offer made by the petitioner, which is more than double the amount offered by the third respondent for issuance of license to cut Karuvela Trees in V. Karisalkulam Village Panchayat, Sivagangai District.

12. The second respondent issued notification on 23.08.2010 for granting license to cut Karuvela Trees in V. Karisalkulam Village Panchayat, which is found in serial No. 33 in the said notification and in terms of the said notification, public auction was

conducted on 15.10.2010. The petitioner, third respondent and one other person participated in the said auction. The highest offer made was for a sum of Rs. 3,41,055/- by the third respondent. However, before confirming the offer in favour of the third respondent by the second respondent, as contemplated in the auction notification, the petitioner submitted his objection and offered a sum of Rs. 7,00,000/- by enclosing a cheque of Rs. 7,00,000/- to show his bona fides. The said objection was submitted by the petitioner on 27.10.2010. Even according to the second respondent, the auction was confirmed in favour of the third respondent only on 01.11.2010. In the sale notification, the proceedings of the District Collector, Sivagangai dated 10.02.2009, is mentioned and the relevant portion of the notification reads as follows:

Persons, who submit objections against the auction already conducted, can submit their objections, along with their highest offer amount by duly enclosing cheque in favour of the auctioneer concerned, for the said sum, which will be considered as objection petitions and the objections received without enclosure of the cheque will not be considered.

13. The above quoted clause found in the sale notification clearly establishes a fact that any person can give objection with higher amount with a cheque for such amount. There is no prohibition that person participated already cannot submit objection and increase the offer.

14. From the facts narrated above, it is beyond doubt that there was a better offer made by the petitioner for the very same subject matter of auction for Rs. 7,00,000/-, compared to the offer made by the third respondent for Rs. 3,41,055/-. The paramount consideration in conducting public auction is to get highest amount so that the Government will get more revenue. The bona fides of the petitioner is further proved by way of affidavit filed on 21.12.2010 quoting a sum of Rs. 8,00,000/- as his final offer. The petitioner has also taken Demand Draft for a sum of Rs. 8,00,000/- on 22.12.2010 and the original Demand Draft was produced before this Court for perusal. The third respondent also increased the bid amount to Rs. 7,30,000/- on 14.12.2010. Thus, it is crystal clear that the valuation quoted by the third respondent in the auction sale held on 15.10.2010 is not reflecting the actual value of the trees. It is not the case of respondents 1 and 2 or third respondent that nobody can increase the offer after the auction sale is held and before it is confirmed. As there is a provision in the auction notification, which itself permits to submit objection by quoting better offer along with cheque for the amount quoted, respondents 1 and 2 are bound to consider the said offer made by the petitioner taking note of the public interest, viz., to augment the income of the Government.

15. An identical issue was considered by a Division Bench of this Court in an unreported Judgment in A. Ramasamy v. P. Ramasamy @ Poochi and ors, dated 04.04.2007 made in W.A.(MD). Nos. 97 and 98 of 2007, wherein in Paragraph No. 9, it is held as follows:

9. In any case, when the appellant pointed out to the official respondents in his representation dated 31.03.2006 that he was prepared to bid a higher sum and that due publication was not made, the authorities concerned, in the interest of generating more revenue for the panchayat, ought to have exercised their due diligence and conducted re-auction by giving due publicity in order to enable all the contestants to bid in the auction. The rejection of the appellant's representation by simply stating that the appellant did not deposit one and half times of the highest bid amount, in the light of the above referred to factors, only leads us to the conclusion that the official respondents were under some pretext or the other wanted to confirm the auction in favour of the 1st respondent. The purchase of a demand draft by the appellant for the value of Rs. 3,50,000/-, as suggested by this Court, further goes to show that the value of the tress would be much more than what was really quoted by the 1st respondent in the closed auction held on 17.03.2006.

16. In the decision in Agarwal and Modi Enterprises Pvt. Ltd and Anr. v. New Delhi Municipal Council reported in 2007 (10) Scale 549, the Supreme Court held as follows:

Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e., it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach.

17. Applying the said Judgments to the facts of the present case, and taking note of the lesser amount quoted during the auction sale conducted on 15.10.2010 and the petitioner is in a position to offer a sum of Rs. 8,00,000/-by Demand Draft, I am of the view that interest of justice would be met by directing the first respondent to conduct re-auction for the sale of Karuvella Trees in V. Karisalkulam Village Panchayat, Sivagangai District, by fixing Rs. 8,00,000/-as upset price, which is the amount offered by the petitioner.

18. Accordingly, the Writ Petition is allowed in the following terms:

◆ The petitioner shall deposit the Demand Draft of Rs. 8,00,000/-(Rupees Eight Lakhs) before the second respondent, which was shown before this Court by the petitioner, who appeared in person, on or before 31.12.2010.

◆ The 2nd respondent is directed to conduct re-auction for the sale of Karuvella Trees in V. Karisalkulam Village Panchayat, Sivagangai District, by fixing Rs. 8,00,000/-(Rupees Eight Laksh Only) as upset price, which is the amount offered by the petitioner and conduct fresh auction giving opportunity to all the persons including villagers of V. Karisalkulam Village Panchayat to participate in the fresh auction so that the Government will be in a position to fetch more revenue.

◆ The second respondent is directed to conduct fresh auction after following the procedures within a period of six weeks from the date of such deposit being made by the petitioner.

◆ It is made clear that if no one is offering more than Rs. 8,00,000/-, the sale can be confirmed in favour of the petitioner by the competent authority.

◆ It is also made clear that if the petitioner is not depositing the said Demand Draft of Rs. 8,00,000/-before the second respondent by 31.12.2010, the third respondent may be given license to cut Karuveta Trees in V. Karisalkulam Village Panchayat, Sivagangai District, as he was the highest bidder in the auction conducted on 15.10.2010, now increased to Rs. 7,30,000/-by the third respondent himself by representation dated 14.12.2010 addressed to the second respondent.

◆ Since the main Writ Petition is disposed of, no further adjudication is necessary in the Contempt Petition, which was filed for alleged violation of the interim order passed by this Court and the same is closed.

No costs. Consequently, connected Miscellaneous Petitions are closed.