

(2007) 04 MAD CK 0092

In the Madras High Court

Case No : Writ Appeal (MD) No's. 97 and 98 of 2007

A. Ramasamy

APPELLANT

Vs

P. Ramasamy @ Poochi and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001 — Rule 15(2), 18

Citation : (2007) 04 MAD CK 0092

Hon'ble Judges : K. Veeraraghavan, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : V. Kannan, for the Appellant; M. Ajmalkhan and N. Madhavagovindan for Respondent No. 1 and V. Chellammal, Spl. Govt. Pleader for Respondents 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—These two writ appeals arise out of the common order of the learned Single Judge dated 07.02.2007 passed in W.P.(MD) Nos. 4359 and 6689 of 2006. W.P. No. 4389 of 2006 was filed by the appellant while W.P. No. 6689 of 2006 was filed by the 1st respondent herein.

2. The issue relates to the auction of "Veli Karuvel Trees" in Sadagopannendal Kanmoi, Thirumana Kanmoi, Thirumalai Oorani, Chokkappan Oorani and Nari Aathu Poramboke, situated in Survey No. 7 of A. Melaiyur Group, Thiruppathur Union, Sivagangai District. The auction in respect of the above referred trees was held on 17.03.2006 and the 1st respondent was declared as the successful bidder and his bid was confirmed for a sum of Rs. 1,17,500/-.

3. The grievance of the appellant is that auction notice was initially issued in the District Gazette on 29.09.2005, by which the date of auction was notified as 04.11.2005 at 11.00 a.m. It is stated that the auction was postponed and subsequently scheduled to be held on 24.01.2006, as per the notice dated 23.01.2006 and the paper publication dated 24.01.2006. Again, the auction was

postponed and subsequently, according to the appellant, the auction was held on 17.03.2006 surreptitiously, without making proper publication as per the Rules and in that auction the 1st respondent was declared as the successful bidder for a meager sum of Rs. 1,17,500/-. It is the case of the appellant that "Veli Karuvel Trees" in the above referred kanmois would otherwise fetch a substantial sum far more than the total bid amount offered by the 1st respondent and that the holding of the auction on 17.03.2006, in such a secretive manner, was carried out with a view to favour the 1st respondent.

4. When these writ appeals were taken up for consideration, it was suggested to the appellant as to whether he would be prepared to make a deposit of Rs. 3,50,000/- to show his bonafides. The appellant readily agreed and he also purchased a demand draft in favour of the Registrar of this Court for a sum of Rs. 3,50,000/- and deposited the same on 03.04.2007.

5. When we took up the appeals for hearing, Mr. M. Ajmalkhan, learned Counsel appearing for the 1st respondent, by drawing our attention to Rule 18 of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchyats) Rules, 2001 (in short "the Rules"), contended that if really the appellant wanted to bid for a higher amount as per the said Rule, such offer of higher amount by one and half time more than the bid amount should have been deposited by him within a week of the conduct of auction. The learned Counsel, therefore, contended that the attempt of the appellant in having preferred the writ petition was only to cause prejudice to the 1st respondent and there was no bonafides in his stand.

6. On the other hand, Mr. V. Kannan, learned Counsel appearing for the appellant, pointed out that apart from the fact that due notice was not issued before holding the auction on 17.03.2006, the appellant made a representation on 31.03.2006 when he came to know about the holding of the auction and the deposit of the bid amount by the 1st respondent on 30.03.2006, pursuant to the confirmation of the auction in his favour. It was therefore contended that the appellant exhibited due diligence and anxiety in the surreptitious manner in which the auction was held by the authorities with a view to enable the 1st respondent to make unlawful gains. Learned Counsel therefore contended that even going by the auction notice published in the District Gazette, when for various grounds of lapses one can seek for re-auction, the rejection of the appellant's representation on 20.04.2006 on the simple ground that the appellant failed to deposit one and half times of the higher bid amount was not justified and therefore the same called for interference. The learned Counsel therefore contended that the learned Single Judge ought to have set aside the auction and allowed the writ petition filed by the appellant.

7. We heard the learned Special Government Pleader for the other respondents.

8. On a perusal of Rule 15(2)(ii) of the Rules, it is specifically provided that a brief advertisement in a Tamil Daily Newspaper, having wide daily circulation in

the panchayat area, atleast three days ahead of the date of auction in case the lease is expected to exceed ten thousand rupees, should be made in order to ensure that there is wide publicity about the holding of the auction. Admittedly, in the case on hand, for the auction held on 17.03.2006, except a "Tom Tom" and display of the notice in the panchayat union notice board, the compliance of Rule 15(2)(ii) of the Rules was not made. It is not as if the official respondents were not aware of the above referred to requirement prescribed under the Rules. We say so because, when the auction was earlier sought to be held on 24.01.2006, a publication was made in the "DAILY THANTHI" Tamil Daily dated 24.01.2006. In fact, even the said publication cannot be held to be a legally valid publication, since the requirement of three days notice was not complied with even on that occasion. But the fact that the official respondents effected publication on the earlier occasion would show that they were well aware of such requirement for holding an auction. In such circumstances, the non-publication of the notice with clear three days interval itself was sufficient to demonstrate that the statutory requirement procedure was not complied with by the official respondents in holding the auction.

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.

10. The reliance placed upon Rule 18 of the Rules by the learned Counsel for the 1st respondent will not apply to the case on hand, since the said rule will have application only where the auction is held in compliance of the Rules and yet the unsuccessful contestants wish to seek for re-auction and then alone the stipulation contained in the said rule will have an application. As far as the case on hand is concerned, since the challenge is on the ground that proper procedure was not followed in holding the auction, the relevant rule applicable is Rule 15(2) (ii) of the Rules and since we have found that the said Rule was not duly complied, the auction held on 17.03.2006 is liable to be set aside.

11. Accordingly, we set aside the common order of the learned Single Judge, allow both the writ appeals and set aside the auction held by the second and third respondents on 17.03.2006 and direct them to hold fresh auction to lease

out the rights to cut the "Veli Karuvel Trees" in Sadagopannendal Kanmoi, Thirumana Kanmoi, Thirumalai Oorani, Chokkappan Oorani and Nari Aathu Poramboke, situated in Survey No. 7 of A. Melaiyur Group, Thiruppathur Union, Sivagangai District duly complying with the requirement of the Rules, in particular Rule 15(2)(ii). It is open to the appellant as well as the 1st respondent to participate in such a fresh auction. Since the appellant had purchased a DD for the sum of Rs. 3,50,000/- in favour of the Registrar of this Court and deposited the same, subject to the outcome of the fresh auction to be held by respondents 2 and 3 and the participation of the appellant in the said auction, the return of the said deposit of demand draft will be made. If the appellant chooses not to participate in the fresh auction to be held as directed in this order, the same would be transferred in favour of the 5th respondent panchayat to be appropriated by it towards its funds. In the event of the appellant coming out successful or unsuccessful in the auction, the demand draft shall be returned by the Registry to him on production of appropriate communication about the appellant's participation in the auction. The 2nd and 3rd respondents shall hold the fresh auction within a period of eight weeks from the date of receipt of a copy of this order. If the auction is not held within the eight weeks, then also the appellant shall be entitled for the return of the demand draft.

12. Both the writ appeals are allowed on the above terms. No costs. Connected M.P.(MD) Nos. 1 of 2007 in both the writ appeals are closed.