(2015) 01 MAD CK 0218

In the Madras High Court

Case No : Writ Appeal No. 531 of 2013

Mathurambal APPELLANT

Vs

The District Collector Perambalur and Others RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0218

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;M.M. Sundresh, J.

Bench : Division Bench

Advocate : R. Selvakumar, for the Appellant; S.T.S. Murthi, Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—The appellant is the President of the Mettupalayam Panchayat, Veppanthattai Taluk, Perambalur District. In the Panchayat area, there is stated to be several acres of land with plantations and these areas come under ''social forestry''. Thus, the control of these areas is stated to lie with the District Forest Officer (DFO)/third respondent.

2. On 13.08.2012, the third respondent issued a communication to different Panchayats seeking their willingness to take the social forest gardens and participate on the basis of a fair price fixed by the Government. Such willingness was to be accompanied by the approval of the Panchayat Council, as also a certificate of the Assistant Director, Panchayat Union regarding the financial viability of the Panchayat. The cut-off date for responding to the same was specified as 15.09.2012 and the public auction was stated to be held on 25.10.2012. It was made clear that "if the financial viability certificate is not received within 15.9.2012, it is presumed that the Panchayat Unions are not interested to participate in the auction and the sale of garden will be auctioned".

3. The appellant gave a representation on 28.08.2012 to the third respondent stating that for obtaining financial viability certificate, the files have to be

submitted through the Rural Development Officer, Veppanthattai and for getting Panchayat Board Resolution, the details of the amount have to be indicated for the purpose of convening a special meeting. Since no amount had been mentioned to be deposited for the trees in the Mettupalayam Lake by the Panchayat, the appellant was handicapped to submit the necessary documents and requested for one month''s time.

4. The aforesaid was replied to by the third respondent vide a communication dated 30.08.2012, stating that the fair price could not be disclosed at this juncture, but, would be communicated as soon as the receipt of fair price from the Conservator of Forests, who was the competent authority to fix the fair price in respect of plantations put up for auction. The appellant, however, denies the receipt of this letter.

5. The appellant filed Writ Petition No. 29084 of 2012 on 19.10.2012, alleging that the auction proposed to be held should not be permitted to go ahead, as the auction notice was invalid. It was alleged that there is lack of publicity to the auction notice on account of absence of compliance of provisions of the Tamil Nadu Transparency in Tenders Act, 1988. It was also alleged that no price having been quoted, the Panchayat could not submit the financial viability certificate.

6. We may add here that along with the writ petition, in the typed- set, G.O.Ms.No. 260, Forests and Fisheries Department, dated 09.03.1984, was filed. However, in the writ petition, neither the Government Order was analysed nor its impact on the case of the petitioner enunciated. Despite this position, the Government Order was relied upon during the course of the hearing of the writ petition before the learned single Judge. The operative portion of the Government Order reads as under:

"ORDER:-

In the letter read above, the Chief Conservator of Forests has reported that the Project Officer, Palm Project, Mathur, Dharmapuri District has applied for the allotment of the Farm Forestry Plantation of Krishnagiri Rural Fuel Wood Divisions to meet their fuel requirements under section 130- A of Tamil Nadu Forest Department Code. He has recommended that the 1972 Karagapatty Farm Forestry Plantation may be allotted to the Mathur Palm Project at the fair price fixed by the Department without 10% price concession as section 130-A of the Forest Department Code will not be applicable to the Farm Forestry Plantations. This has been examined not only as this individual case, but as a general policy.

2. The Government after careful consideration direct as follows:-

i. That the SIDA and Farm Forestry Plantations which are raised with the help of local people be offered to local cooperatives (provided that the cooperatives is really functioning well) / Panchayat falling under the technical supervision of the Forest Department at the fair price fixed by the Department without any concession in price as section 130-A of the Tamil Nadu Forest Department Code will not be applicable to the Farm Forestry Plantations.

ii. That only if they do not come forward to take up the offer, the plantations be allotted to contractors in public auctions.

iii. That if there is request from the Village Panchayat to cut and remove the trunk and other parts of the tree which can be used as a sort of secondary timber, the Forest Department will extend assistance to panchayats to help them auction the bigger pieces.

and

iv. That there will be no extra commitment government by way of rendering assistance to the Panchayat at the time of auction of the bigger pieces of the tree, i.e. no extra department staff will be provided nor any centage levied.

3. This order issues with the concurrence of the Finance Department vide its U.O.No. 150296/DP/83-1 dated 27.01.84."

7. The petition was opposed by the respondents and the successful auctioneer, who was impleaded as the fourth respondent in the writ petition. The counter affidavit filed by the third respondent states that karuvel plantation auctions are conducted every year as per the Standing Orders and amendments, from the matured plantation (ten years old) raised earlier by the forest department in the tanks with the consent of the Panchayats concerned. The lease period starts from first January to the end of August every year and accordingly, for 2012-2013, nine matured tank plantations were offered for auction. That information was being sent to the respective Village Panchayats. Among these was the Mettupalayam eri babul plantation over an extent of 24.10 Ha, for which auction was proposed on 25.10.2012. It is in view thereof, vide a communication dated 13.08.2012, consent of the Panchayat was sought. It has been specifically averred that the fair price was made to be known only to the District Forest Officer and could not be informed in advance to the appellant, as advance disclosure would cause prejudice, especially in auctions to be held, if the plantation was not taken over for the relevant year by the Panchayat. The financial soundness certificate and concurrence of the Village Panchayat could have been produced by the Panchayat and for any grievance, the Conservator of Forests could have been approached, being the superior officer. The appellant did neither. The auction was conducted on 25.10.2012, where forty nine registered department contractors participated and the auction was completed in favour of the fourth respondent as the highest bidder with a bid of Rs. 34,46,300/- and one third of the sale amount was collected towards the token amount and remitted to the forest account as per norms. The counter affidavit also states that the amount to be fetched by way of sale of plantation was to be shared by the Department and the Panchayat at the ratio of 35 : 65 respectively after the confirmation of the auction and in turn, collection of the pending two thirds of the sale amount from the highest bidder.

8. Learned single Judge, by the impugned order dated 19.02.2013, dismissed the writ petition on the ground that no serious interest had been shown by the Panchayat for the purchase of the trees in question. The Panchayat had failed to obtain the financial viability certificate. It was observed that the Panchayat could not claim a vested right to purchase the trees in question, even though it did not possess the financial viability for doing so. The Panchayat was required to show its financial viability and indicate the price at which it was willing to purchase the same, but since no offer was made, the plantation was rightly auctioned. It is this order, which is assailed by the appellant before us.

9. It is in the appeal that a specific plea has been raised about the impugned order being contrary to the substratum of the Government Order dated 09.03.1984, pursuant to which the impugned auction notice has been issued. The first option was only with the Panchayat and only if the offer made by the Forest Department was not accepted by the Panchayat, the Forest Department would go in for a public auction. The Forest Department was required to fix the fair price and then communicate the offer to the Panchayat and only the Panchayat or the Cooperatives'' failure to come forward could have resulted in a public auction.

10. We have heard the learned counsel for the parties and perused the records.

11. The first aspect which we have to analyse is the Government Order dated 09.03.1984. Clause 2 of this order makes it clear that farm forestry plantations, which are raised with the help of the local people, be offered to the local cooperatives/Panchayat falling under the technical supervision of the Forest Department at the fair price to be fixed by the Department without any concession in the price. Sub clause (ii) of Clause 2 provides that only if the Panchayat does not come forward to take up the offer, the plantations would be allotted to the contractors in public auctions.

12. A plain reading of the Circular, thus, seeks to suggest quite apparently, that there is a first preference with the Panchayat. There is also strength in the plea of the appellant as to how an offer could be made without first knowing the fair price, as that was required to be paid by the Panchayat. If the consent of the Panchayat had to be obtained, that consent in turn was required to be given only on the basis of the participation of the Panchayat and whether it would like to take up the forest area for cutting the plantation and in the absence of a fair price being communicated, it would amount to consent in vacuum. Thus, knowledge of the fair price appears to be a prior requirement before a Panchayat can be asked to give its proposal for purchase at the fair price. This is so far a plain reading of the Circular is concerned.

13. It appears that the procedure followed by the third respondent has been slightly different, though the broader objective remains the same. This procedure is predicated on a rationale that if the Panchayat does not accept the task at the fair price, it would have to be put to auction and communicate, and disclosure in

advance of the fair price would prejudice the auction, as participating parties may not bid much more than that price.

14. We may note that this is a universal practice, as determination of fair price is for the purpose of the Department to indicate a base amount, so that if the highest bid is below the fair price, then negotiation takes place to achieve the fair price and cartelisation can be prevented by non-disclosure of such price. The complication arises on account of the first preference to the Village Panchayat. Thus, how it works is that if the financial viability certificate and consent is given by the Panchayat, the first preference is given to the Panchayat and whether it is financially viable or not, is apparent from the financial means of the Panchayat, which are to be disclosed in material support of the financial viability. For example, if the Panchayat is not possessed of adequate funds, the question of accepting the offer at fair price would not arise. However, if the position is to the contrary, then the first option would be with the Panchayat and even at that stage, the Panchayat may or may not accept it. If it does not accept it, public auction will follow.

15. We must express our concern at the fact that apparently the Government Order dated 09.03.1984 has not been amended, despite the experience of the authorities concerned in such auction and if the manner in which the third respondent proceeds was the best possible methodology, then possibly the Government Order dated 09.03.1984 should have been modified. However, the practice, which has been adopted by the third respondent, is not for the first time, but, a consistent practice and even the Panchayat in question has been a beneficiary of it at the earlier tenders. Thus, it is not a case where the Panchayat did not know of the methodology to be adopted.

16. Insofar as the crucial letter sent by the third respondent in response to the representation of the appellant is concerned, the appellant seems to have denied it. The appellant did not take any further steps even after it was not receiving the response for taking the matter to the higher authorities. The auction date was known to the appellant.

17. In view of the conspectus of the submissions, we had called upon the official respondents to produce before us the Government Circular in No. 38254/VI(10) 96-1, Forest Environment Department, dated 28.09.1999, which would throw light on the circumstances in which the Panchayat had to be given a preference. The said order has been produced before us. A perusal of this Office Order shows that it is in reference to the earlier Government Order dated 09.03.1984 clarifying that the first option remains with the Panchayat subject to the terms and conditions of the Government Order dated 09.03.1984. It was clarified that the consent of the Panchayats concerned has to be obtained before an auction for social forest.

18. We may also note that as per another Government Order No. 29, Environment and Forest Department, dated 29.03.2012, from 2007-2008

onwards, the social forestry receipts are to be shared between Panchayats and Forest Department in the ratio of 75 : 25 of the net collection with a cap on wages at 35% of the gross collection. Thus, the proceeds realised in any case have to be shared with the Panchayat.

19. We had also called upon the appellant to file an affidavit stating the funds available with them on the date of auction, i.e. 25.10.2012 and the third respondent to disclose the fair price determined by them as per their records prior to the auction with an object of satisfying ourselves about the financial feasibility of the appellant to be able to accept the assignment. On such disclosure, a discrepancy was found, as the appellant filed an affidavit stating that on 25.10.2012, funds of Rs. 35,64,845/- were available, while the report of the Block Development Officer states that only Rs.12,17,689.75 was available. This aspect was called upon to be examined once again by the Officer concerned, as the learned counsel for the appellant pleaded that some of the accounts of the appellant had not been taken into consideration. A communication dated 20.01.2015 of the District Collector has been placed before us, which shows different heads of account as under:

20. It has, thus, been categorically stated in that letter that only the amount available in Account No. I or General Fund Account or Panchayat Administration Account could have been utilised to obtain auction of the trees, where only Rs.12,17,689.75 was available and the amount available in all other accounts of the Village Panchayat could not have been utilised for this purpose. The records before us also show that the fair price determined is at Rs. 33,79,182/-.

21. Learned counsel for the appellant, faced with this position, sought to contend that since 75% of the amount has to come to the Panchayat in any case and one third of the amount has to be deposited, the appellant was really required to deposit only one third of the 25% amount and that is why the sum of Rs. 12,17,689.75 would be adequate -- a completely new plea. Be that as it may, the fact remains that the procedure does not stipulate any such reduction for the Panchayat and the amounts have to be deposited as per the norms and thereafter, remitted to the relevant department and finally, the proceeds are to be shared. We are, thus, of the view that in any case the appellant did not have the requisite financial means at the relevant stage to make a bid and thus, the auction would have been the natural sequitur, even if the appellant was willing to accept the offer.

22. We are, thus, of the view that the appeal is devoid of merit, though for the reasons recorded aforesaid and accordingly, dismissed, leaving the parties to bear their own costs. Interim orders stand vacated.

23. The respondents authorities are called upon to examine the matter from the point of view of obtaining clarity for the future, so that such confusion may not arise and proper advance intimation after such consideration is sent to all Panchayats. This exercise be undertaken within a maximum period of two

months from today.