(2007) 11 MAD CK 0126

In the Madras High Court

Case No : W.A. No. 3861 of 2003, W.P. No. 36958 of 2005, W.A.M.P. No''s. 6295 to 6297 of 2003 and W.P.M.P. No''s. 39600 and 39601 of 2005

P. Arumugham APPELLANT

Vs

The State of Tamil Nadu and Others RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 116(2), 34

Citation : (2008) 1 CTC 279 : (2008) 1 MLJ 264

Hon'ble Judges : P.K. Misra, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : ARL. Sundaresan for Gandhimathi, for the Appellant; T. Chandrasekaran, Spl. G.P. for Respondents 1 and 2, Kannan, for Respondent No. 3, D. Geetha, AGP for Respondents 4 to 6 in W.A. and Respondents 5 and 6 in W.P., M. Vaidyanathan and D. Rajagopal, for the Respondent

Judgement

K.K. Sasidharan, J.—This writ appeal is directed against the order passed by the learned Single Judge dated 9.10.2003 in W.P. No.

28025 of 2003 whereby the learned Single Judge dismissed the writ petition preferred by the appellant to declare the auction held on 1.10.2003 in

respect of the property of the third respondent in T.S. Nos. 2750/1, 2750/2 and 2751 at Cuddalore as null and void.

2. The writ petition is preferred against the order dated 11.6.2003 on the file of District Registrar, Cuddalore in Appeal No. 1 of 2002 confirming

the order of the Sub Registrar II, Cuddalore dated 6.9.2002 whereby the sale deed in respect of the property in T.S.Nos. 2750/1, 2750/2 and

2751, which was kept pending for registration was returned to the petitioner.

3. The brief facts giving rise to the filing of the writ appeal and the writ petition

are as follows:

The immovable property having an extent of 4.84 acres in T.S.Nos.2750/1, 2750/2 and 2751 in Cuddalore Taluk in the District of Cuddalore was

taken on lease by the appellant as per document dated 11.6.1986 for the period from 1.7.1986 to 30.6.1989 on an yearly lease amount of Rs.

2,500/- for the sole purpose of drying yarn.

4. The appellant later made a proposal to purchase the property and the second respondent as per proceedings dated 6.5.1987 permitted the sale

in favour of the appellant on payment of consideration at Rs. 2,30,000/- with a further stipulation to deposit the said amount in accordance with

Section 116(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act (hereinafter referred to as H.R. & C.E. Act). The sale deed

duly executed by the third respondent, on receipt of sale consideration was presented for registration before the sixth respondent.

5. In the meantime one C.S. Dhandapani challenged the sale in favour of the appellant, before the Government u/s 34(iv) of the H.R.& C.E. Act

besides filing a writ petition in W.P. No. 6423 of 1987 to set aside the sale. In the course of the said writ petition, the petitioner offered a sum of

Rs. 3 lakhs for the property, which resulted in enhancing the offer by the appellant at Rs. 3,05,000/- and accordingly the writ petition was

disposed of as per order dated 27.1.1988.

6. The order in W.P. No. 6423 of 1987 was challenged by the writ petitioner in Writ Appeal and a Division Bench of this Court having found that

the sale by private negotiation was not in the interest of the institution and the sale consideration of Rs. 3,05,000/- was not commensurate with the

value of the property, disposed of the writ appeal by setting aside the order of the learned Single Judge and directed the Government to decide the

appeal u/s 34(iv) of the Act on merits.

7. The statutory appeal came to be disposed of by the Government as per order dated 28.1.1993 whereby the sale in favour of the appellant was

set aside and directed sale of the property by public auction by fixing the upset price at Rs. 3,05,000/-. The said order was challenged by the

appellant in W.P. No. 5243 of 1993 and the learned Single Judge as per order dated 11.10.1994 remitted the matter to the Government to decide

the appeal afresh in the light of the observations made in the order.

8. The order in W.P. No. 5243 of 1993 was challenged by the third respondent in Writ Appeal No. 35 of 1995 and the said appeal was disposed

of by a Division bench as per judgment dated 22.3.1995 whereby the order in W.P. No. 5243 of 1993 was set aside and directed sale of the

property in public auction. The Division Bench had given a further direction that in the event, the sale fetches an amount higher than the amount

deposited by the appellant with interest that was accrued up to the date of the auction plus Rs. 75,000/-, the sale may be confirmed in favour of

the highest bidder and the amount deposited by the appellant be refunded to him with interest. But in the event, the auction fetches less than the

said sum, the sale deed must be registered in the name of the appellant provided the appellant pays a further sum of Rs. 75,000/- and the lease

amount due from him.

9. Subsequently, a public auction was conducted on 18.9.1995 and the bid submitted by the appellant for a sum of Rs. 6,09,000/- was found to

be the highest bid. However since the highest bid was below the guideline rate of Rs. 6,96,960/- the second respondent cancelled the auction and

directed fresh auction after giving wide publicity.

10. The appellant filed contempt petition No. 15 of 1996 against the second respondent alleging violation of the order dated 22.3.1995 in Writ

Appeal No. 35 of 1995. In the very same matter W.P. No. 13124 of 1995 was preferred for a writ of declaration to declare the auction

conducted in respect of the property which culminated in the sale in favour of the appellant as illegal. Both contempt petition and the writ petition

were heard together and disposed of by a common order dated 15.3.1996 whereby the Division Bench declared the auction held on 18.9.1995 as

bad in law and directed conduct of fresh auction. The Division Bench further observed that it would be open to the parties to the writ appeal to

seek review of the order in Writ Appeal No. 35 of 1995.

11. In the public auction held on 1.10.2003, the ninth respondent became the highest bidder for a sum of Rs. 27,01,111/-. The appellant

challenged the auction held on 1.10.2003 on various grounds in W.P. No. 28025 of 2003 and the said writ petition was dismissed as per order

dated 9.10.2003, against which, the present writ appeal has been preferred by the appellant.

12. In the above factual background, we heard the learned Senior Counsel for the appellant; learned Counsel for H.R.& C.E. department; learned

Counsel for the third respondent/temple and learned Counsel for ninth respondent.

13. Learned Senior Counsel for the appellant contended that inasmuch as the earlier order of the Division Bench in W.A. No. 35 of 1995 still

remains as the same was not reviewed, though liberty was given by the Division Bench in the order dated 15.3.1996 in Contempt Petition No. 1`5

of 1996 and W.P. No. 13124 of 1995, the appellant should be allowed to complete the transaction by matching the offer made by the ninth

respondent.

14. Per contra, learned Counsel appearing for the third respondent temple strenuously contended that the auction was set aside in the earlier round

of litigation and since public auction was conducted in a transparent manner, there is nothing to interfere with the subsequent auction.

15. Learned Counsel for the ninth respondent submitted that as per the conditions indicated in the auction notice he is required to complete the

transaction after the approval from the Commissioner is obtained. However for a long period, no such approval having been communicated to the

ninth respondent, he has lost interest in the transaction and he is no longer willing to complete the transaction.

16. Learned Counsel for the second respondent as well as the learned Counsel for the third respondent-temple on instructions stated that the

present guideline value of the property is Rs. 2,68,00,000/- (Rupees two crores and sixty eight lakhs), the property being temple property situated

at Cuddalore Town.

17. The only question is, whether the present appellant should be permitted to complete the transaction by matching the offer given by the ninth

respondent?

18. The earlier auction lost its significance in view of the passage of time and the land value had also been increased in the meantime, as evident by

the valuation certificate produced by the learned Counsel for H.R.& C.E. Department.

19. It is quite clear from the provisions contained in Section 34 of the H.R. & C.E. Act that while permitting the temple authority to alienate any

property, the best interest of the temple has to be kept in mind. In fact, the previous decision of the Division Bench also clearly reflects such a

sentiment. As has been observed earlier, the auction had not been held properly and therefore, such auction had been set aside and there was a

direction for holding a fresh auction. It is no doubt true that the temple authority had no grievance against the last auction and only the appellant has

challenged the said auction.

20. Therefore keeping in view of the overriding factor relating to the protection of the deity and keeping in view the long passage of time, we do

not think it fit, in the interest of justice, to accept the submission of the appellant to complete the transaction by matching the offer given by the ninth

respondent.

21. The proper course which could be resorted to for receiving best price for public property would be conducting public auction in a fair and

transparent manner after giving wide publicity

22. In Aggarwal and Modi Enterprises Pvt. Ltd. and Another Vs. New Delhi Municipal Council, , the Supreme Court observed 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.

23. In the above circumstances, we are inclined to direct the conduct of fresh auction to sell the property in T.S. Nos. 2750/1, 2750/2 and 2751 in

Cuddalore O.T, belonging to the third respondent through tender-cum-auction by fixing the upset price at Rs. 2 crores.

24. Fresh tender-cum-auction notice should be issued by the third respondent within a period of thirty days from the date of receipt of a copy of

this order. Such notice should be published in leading newspapers in English and Tamil. The auction should be conducted in a fair and transparent

manner.

25. The amount which had been deposited by the present appellant as well as the ninth respondent shall be refunded along with the accrued

interest within thirty days from the date of receipt of a copy of this order.

26. In view of the order in the writ appeal directing fresh auction the prayer in the writ petition no longer subsist. The writ appeal and the writ

petition are disposed of accordingly. No costs. The connected Miscellaneous Petitions are closed.

