

(1993) 03 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No's. 12943 and 12944 of 1990

R. Ramu

APPELLANT

Vs

Government of Tamilnadu and two others

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Citation : (1993) 03 MAD CK 0063

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : K. Chandramouli, for the Appellant; G. Veerabadran, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Raju, J.—These two writ petitions have been filed by the very same petitioner though relating to different arrack shops. Writ Petition No.

12943 of 1990 relates to arrack shop No. 12, at Alangudi Village in Valangaiman Taluk, Thanjavur District. Writ petition No. 12944 of 1990

relates to arrack shop No. 11 at Alangudi village, Valangaiman Taluk, Thanjavur District. The petitioner participated in the auction held on

29.5.1981 and made an offer for Rs. 46,000/- in respect of arrack shop No. 12 and Rs. 38,100/- in respect of arrack shop No. 11. The

petitioner would claim that the bid was offered by him as above on the view that the rental offered was for the whole excise year as against the

assumption of the sale officer that it was a monthly rental. The moment he realized the stand taken by the sale officer immediately after the auction

was over he withdrew his offer at the closure of the auction for the day and before acceptance by the Sale Officer". In view of the said

development and course of action, the petitioner has not even remitted the half month's rental as contemplated under Rule 15 of the Tamil Nadu

Toddy and Arrack Shops (Disposal in Auction) Rules, 1981.

2. The respondents thereafter appears to have obtained the orders of the District Collector for re-auction at the risk of the petitioner and both the

shops were said to have been re-sold. In the re-sale held, arrack shop No. 12 appears to have fetched only a monthly rental of Rs. 26,700/- and

arrack shop No. 11 fetched only Rs. 15,500/-. In the above circumstances, the difference between the bid offered by the petitioner and the one,

the shops fetched at re-sale is said to be recovered as the national loss said to have been suffered by the state in terms of Rule 21 of the Rules

referred to above.

3. The respondents have filed a counter affidavit. Heard learned counsel appearing on either side. Learned senior counsel appearing for the

petitioner contended that having regard to the fact that the petitioner withdrew his offer even before the closure of the day sale and did not remit

even the half month's rental, there was no provisional acceptance even of the bids and consequently there is no scope for invoking the provisions

of Rule 21 of the Rules. It is the further contention of the learned senior counsel that the only course open to the respondents to forfeit the earnest

money deposit made in Rule 8 in terms of the specific provisions contained in Rule 15 of the Rules and the petitioner cannot be made liable for any

national loss. Learned Government Advocate, per contra contended that the reason assigned by the petitioner about the mistaken impression is

purely an afterthought and cannot be justified in the light of the clear stipulation contained in the terms and conditions of auction itself that the rental

expected is for each month in the Licensing year (monthly rental).

4. I have carefully considered the submissions of the learned counsel appearing on either side. In my view, it is not the reason which weighed with

the petitioner who made the offer to go back on the same that really matters for the adjudication of the issue in question. On the other hand, it is the

governing rules and the rights of parties secured under the Rules pursuant to which the auction has been conducted. Rule 15 of the Rules states that

an auction purchaser shall immediately after the announcement and in any case before the close of the day's sale, deposit half month's rental with

the sale officer and, if he does not do so, the earnest money deposit made by him under Rule 8 shall be forfeited to the State Government. It is only

when the half month rental is remitted the question of even provisional acceptance comes in attracting Rule 16 and in case of such provisional

acceptance only there is any scope for invoking the provisions contained in Rule 21.

5. Having regard to the stage at which the petitioner withdrew from the process of auction, the only course open to the respondents would be to

forfeit the earnest money deposit in terms of Rule 15 and nothing more. As a matter of fact this court has taken a similar view in W.P. No. 4146 of

1985 dated 4.1.93 (V.S. Ganesan v. The. State of Tamil Nadu rep. by Commissioner, Prohibition & Excise and others) on the construction of the

relevant rules in identical circumstance. The view taken to the contrary by the respondents in the impugned orders therefore cannot be sustained in

law. The impugned orders are hereby quashed. The write petitions are allowed and the petitioner cannot be made liable for the national loss, but

the quashing of the impugned order or the allowing of the right petitions as above shall not affect the right of the respondents to forfeit the earnest

money deposit in respect of two shops and the petitioner would not be entitled to the refund of the said amount. No costs.