**(2007) 02 MAD CK 0204**

**In the Madras High Court**

**Case No :** Writ Appeal No. 1311 of 2003

S. Sekar @ Om Sakthi Sekar — APPELLANT

Vs

M. Krishnamurthy and Others — RESPONDENT

**Date of Decision :** 06-02-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226
State Financial Corporations Act, 1951 — Section 29

**Citation :** (2007) 2 MLJ 729

**Hon'ble Judges :** P. Sathasivam, J;N. Paul Vasanthakumar, J

**Bench :** Division Bench

**Advocate :** V.K. Muthusamy for V. Kathiravan, for the Appellant; Bhavani Subbarayan, Government Advocate for Respondent 1 to 4 and T.R. Rajagopalan for T.R.K. Kumarasingh, for R5, for the Respondent

**Final Decision :** Dismissed

## Judgement

P. Sathasivam, J.—The above writ appeal is directed against the order of the learned single Judge dated 13.01.2003 made in Memo Nos. 95 to 100 in W.P. No. 514 of 1999, in and by which the learned Judge rejected the confirmation sought for in Memo Nos. 95 to 100 by the Official Receiver of Kalaimaghal Sabha. In this appeal we are concerned with the order made in Memo No. 100, relating to the auction in which the appellant herein is said to be the highest bidder.

2. Heard the learned senior counsel for the appellant as well as learned senior counsel for Official Receiver/5th respondent Sabha and the learned Government Advocate for respondents 1 to 4.

3. The appellant is a third party, who participated in the public auction held in respect of land measuring an extent of 4.18.5 hectares (10.35 acres) comprised in Survey Nos. 32 and 179/3 of Thiruchitrambalam Village, Vanur Taluk, Villupuram District. According to the appellant, after wide publicity, the sale had taken place, and he was one of the participants and his offer of Rs. 6,89,000/- per acre was accepted by the Official Receiver. It is also his claim that after his

 

offer was accepted, he complied with the terms and conditions by depositing 10% of the offer amount, and hence, the learned single Judge is not justified in rejecting the Memo of the Joint Receivers merely on the ground that there was no wide publicity in respect of sale of the land in question.

4. It is seen that pursuant to the direction of this Court, the land mentioned above was brought for sale through tender cum auction on 14.12.2002 along with other items of land as notified. The memo filed by the Joint Receivers shows that the sale notification was published in two Tamil dailies, viz., "Dhina Thanthi" on 25.11.2002 and 29.11.2002 and in "Dhinamalar" on 26.11.2002 and 29.11.2002, inviting sealed tenders in prescribed form. Though the offer of the appellant, viz., Rs. 6,89,000/- per acre made through open bid was declared as the highest offer, as per the direction of this Court, the Joint Receivers have to get sanction/ approval from this Court, which necessitated them to file a Memo dated 18.12.2002.

5. While considering the said memo, the learned Judge, after finding that the Receivers had published the notification inviting tenders only in Tamil dailies viz., "Dhinathanthi" and "Dhinamalar" and they did not publish the same in any one of English newspapers, directed the Receivers to re-notify the auction sale of the land in the above mentioned Tamil dailies as well as in an English daily, i.e., "The Indian Express". The said order is challenged by the appellant in this appeal.

6. The learned senior counsel appearing for the appellant vehemently contended that usual procedure alone was followed by the Joint Receivers as in the case of sale of other lands, but the learned Judge refused to accept the offer of the appellant. It is true that the Memo filed by the Joint Receivers shows that the appellant herein was the highest offerer and his offer was accepted by the Joint Receivers and filed the Memo seeking approval of the Court. It is not in dispute that the land sought to be sold by way of public auction is an extent of 10.35 acres and the same is situated in Thiruchitrambalam Village, which is nearer to Pondicherry. Taking note of the fact that large extent of land is involved, it is but proper to give wide publicity in order to fetch highest offer. The Memo filed by the Receivers shows that based on the notification published in two Tamil dailies, only nine valid tenders were received within the prescribed time.

7. In this regard, it is useful to refer the consistent view of the Hon''ble Supreme Court in bringing property by way of public auction. The earliest judgment is reported in Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, The following conclusion in para 12 is relevant.

12. In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and

 

generally secures the best price.

... In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price.

6. In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the Hon''ble Supreme Court reiterated the very same principle. The following conclusion in paragraphs 13 and 14 is relevant.

13. The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. As was observed by the Court in U.P. Financial Corporation v. Naini Oxygen & Acetylene Gas Ltd. In commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in Karnataka State Financial Corporation v. Micro Cast Rubber & Allied Products (P) Ltd. In the matter of action by the Corporation in exercise of the powers conferred on it u/s 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on the part of State Financial Corporation, or (b) where State Financial Corporation Acts unfairly i.e. Unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short "the Constitution"), the High Court does not sit as an Appellate Authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action u/s 29 of the Act unless the aforesaid two situations exist.

14. As was observed in Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd. In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But, many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at a public auction. In that event, any other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is

 

essential that every endeavour should be made to give wide publicity so as to get the maximum price. These are aspects which the Corporations have to keep in view while dealing with disposal of seized units.

8. In S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, , while considering Section 29 of the State Financial Corporations Act, 1951, the Hon''ble Supreme Court, after referring various earlier decisions, held that the State Financial Corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. Their Lordships further held that if they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the bet price for the property to be sold. The following conclusion is relevant.

17. ...This can be achieved only when there is a maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price.

18. Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale.

8. The above decisions of the Hon''ble Supreme Court make it clear that it is desirable to give wide publicity in order to secure more offers/tenders. Accordingly, considering the extent of land which we have already adverted to, we are of the view that the conclusion of the learned Judge directing the Joint Receivers to publish the notification of the sale also in an English daily, viz., "The Indian Express" cannot be faulted with. On the other hand, we are in agreement with the said conclusion. It is brought to our notice that the appellant herein expressed certain difficulties in complying with the terms and conditions prescribed in the auction notice, and the entire deposited amount had been returned to him at the earliest point of time. In view of the same, we are of the view that the appellant cannot have any further grievance. If he is really interested in securing the very same property, he is free to participate in the ensuing auction.

In the light of the above discussion, we do not find any merit in the appeal; and on the other hand, we are in agreement with the conclusion arrived at by the learned single Judge. Consequently, the writ appeal fails and the same is dismissed. No costs.