(2011) 09 MAD CK 0103

In the Madras High Court

Case No : W.A. No''s. 1526 and 1527 of 2010 and M.P. No. 1 of 2010

The Commissioner. HR and CE Department, Chennai and Another etc. — APPELLANT

Vs

S. Muthukrishnan and Another — RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 34

Citation : AIR 2012 Mad 43

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : T. Chandrasekaran, Spl. G.P, for the Appellant; B.S. Gnanadesigan for M/s. B.S.G. Firm and S. Kandasami, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—Both the writ appeals are directed against the order dated 19.4.2010 allowing the writ petition filed by the first respondent. The facts in these appeals have a history. An extent of 4.84 acres of land in S. Nos. 2750/1, 2750/2. 2751 in Block No. 75 ward No. 3 of Cuddalore O.T. belongs to Arulmigu Varadaraja Perumal Temple. Thirupathiripuliur, Cuddalore District. There was a proposal for sale of the property. One P. Arumugam submitted a proposal to purchase the property for a sum of Rs. 2,30,000/-. The said proposal was accepted and a sale deed was executed by the temple. One Thiru C.S. Dhandapani, challenged the said sale by filing an appeal 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 said Arumugam offered a sum of Rs. 3,00,000/- for the property, which resulted in enhancing the offer by the said Arumugam to Rs. 3,05,000/- and accordingly, the writ petition was disposed. That order was questioned in writ appeal and the same was disposed of with a direction to the Government to decide the appeal filed by the said Dhandapani before the Government. That appeal was disposed of setting aside the sale, which again gave a cause to the said Arumugam to file another writ petition, which was remitted to the Government to decide the appeal afresh in the light of the observation made in the said order. That order in the writ petition was again questioned in W.A. No. 35 of 1995 and the same was disposed of by the Division Bench in judgment dated 22.3.1995 whereby, the order in the writ petition was set aside and a direction was issued for a sale of the property in public auction. Subsequently, public auction was conducted on 18.9.1995 and again, the said P. Arumugam submitted his bid for a sum of Rs. 6,09,000/-. As the said amount was far below the guide lines rate of Rs. 6,96,960/-, the auction sale was cancelled. Accordingly, another public auction was held on 1.10.2003 wherein one Padham Jalani became the highest bidder for a sum of Rs. 27,01.111/-. The said auction was again challenged by the said Arumugam and the writ petition came to be dismissed. As against that order, W.A. No. 3861 of 2003 was filed and that writ appeal was disposed of with a direction to the H.R.& C.E. Board to call for a fresh tender. Accordingly. fresh tenders were called on 31.12.2007. The first respondent submitted a bid for a sum of Rs. 5,01,16,000/-. As per the conditions of sale notice, apart from earnest money deposit of Rs. 10,00,000/-, he has also deposited 10% of the balance offered amount in a period of three days. As the confirmation was not made for quite number of days, and for that matter for number of months, the first respondent herein withdrew his bid on 19.9.2009. After the bid was withdrawn, his bid was confirmed by an order dated 27.9.2009. In terms of the sale notice conditions, he should have deposited the balance amount in a period of 30 days from 27.9.2009. On the ground that he has already withdrawn his bid, he did not deposit the balance amount. Be that as it may, the appellants herein also did not forfeit the amount deposited by the first respondent. Hence, the first respondent/successful bidder came before this Court challenging the order of confirmation, which was made after the withdrawal and consequently prayed for a direction to refund the earnest money deposit amount of Rs. 10,00,000/- and 10% of the balance amount i.e. Rs. 50,11,600/- with interest at 24% p.a.

2. The learned single Judge having considered the grievance, after accepting the same, directed the appellants herein to refund a sum of Rs. 60,11,600/- after adjusting a sum of Rs. 1,50,000/-, which was spent for conducting the auction. The said order is questioned by both the State as well as the H.R. & C.E. Department.

3. We have heard Mr. S. Kandasami, Special Government Pleader for the Temple and Mr. T. Chandrasekaran, learned Special Government Pleader for H.R. & C.E. Department.

4. The common core contention of both the respective learned counsel is that in terms of clause 9 of the tender notification, the respondents would have deposited the balance bid amount in a period of 30 days from the date of confirmation. As the confirmation was made on 27.9.2009 and the first respondent had failed to deposit the said amount within that period, he is not

entitled to refund of that amount.

5. The only question to be decided is as to whether clauses 9 and 10 of the tender condition could be read in the manner in which it has been submitted by both the respective counsel appearing for the appellants that the said clauses are giving power for the authorities to confirm the bid after a period of more than 1 year of the date of auction.

6. It is a settled law that both the temple as well as the bidder shall abide the terms and conditions of the tender notification. As per clause 2 of the tender conditions, the tenderers shall tender a bank draft for a sum of Rs. 10,00,000/- at the time of submitting the tender. The first respondent has complied with the said condition and there is no dispute. Accordingly, his tender was considered and he was declared as highest bidder for a sum of Rs. 5.01,16.000/-. In terms of clause 9 of the tender notification, the successful tenderer should pay 10% of the bid amount within three days of acceptance of the tender. This condition has also been complied with by the tenderer viz., the first respondent and there is no dispute.

7. In terms of the second portion of clause 9 of the tender condition, the successful tenderer shall pay the balance amount within 30 days of the order of approval by the Commissioner HR & CE and thereafter, he shall get the sale deed executed and registered at his own cost. The appellants heavily relied upon this portion of the condition to contend that the confirmation was made on 27.9.2009 and the first respondent had failed to deposit the said amount and in that event, in terms of clause 8 the tender is liable for cancellation.

8. It is the contention of the learned counsel for the appellants that in terms of clause 10 of the tender conditions, if the highest bidder fails to pay the balance amount within 30 days, the auction will be cancelled and the deposit amount and other amounts paid by him will be forfeited and there will be a fresh auction. In that view of the matter, as the first respondent has failed to deposit the balance amount within a period of 30 days from the date of confirmation, according to the learned counsel for the appellants, the learned single Judge has erred in directing the respondents therein to refund the amount of Rs. 60,11.600/- is contrary to clause 10 of the tender conditions.

9. It is true that in terms of clause 10, a power is vested with the temple authorities to cancel the tender in the event, the bidder fails to deposit the balance amount in a period of 30 days from the date of confirmation. In the absence of any prescribed period for the authorities to confirm the bid if the respondents are allowed to take their own time for confirmation of sale, the delay may frustrate the very purpose for which the bidder participated in the tender. The fact reveals that on coming to know that though the auction was conducted on 4.2.2008 and the confirmation was not made till 19.8.2009 for almost more than 1 year, the first respondent had withdrawn the tender, which is not in dispute. Nevertheless, the contention on behalf of the appellants is that

the delay has occurred due to certain litigations and that the Government issued G.O. authorising the Commissioner, HR & CE to confirm the bid on 15.7.2009. Only after coming to know about the decision of the Government, the first respondent had withdrawn the bid. He is not a bona fide person, who is entitled for refund under the above said conditions. Therefore, the appellants are justified in issuing the confirmation on the basis of the G.O. dated 15.7.2009, which was done accordingly by the order of the Executive Officer dated 27.9.2009. In our opinion, the said contention has been rightly rejected by the learned single Judge. Clause 9 of the tender-notification cannot be read to give a power to the appellants to decide on confirmation without a definite or a reasonable period. A definite or reasonable period cannot be such a long period as has happened in these cases for more than 1 years. Though the first respondent has specifically raised the contention that the delay had created undue hardship apart from financial burden in the affidavit filed in support of the petition, the appellants herein has sought to be explained the delay only by stating that confirmation could not be made in time due to various writ petitions filed. The said averments are vague without any supporting materials or details as to the number of writ petitions nor issues raised therein. In fact, in the order of the Government dated 15.7.2009. the delay has sought to be explained only by referring to a writ petition No. 5447 of 2008. which was also dismissed long back on 7.3.2008. From 7.3.2008 to 27.9.2009, there has been no explanation whatsoever. Such an enormous delay cannot be accepted and for the mistake or the delay caused at the appellants'' side, the first respondent cannot be penalised.

10. In that view of the matter, we are not inclined to interfere with the order of the learned single Judge. Further, the learned single Judge also safeguarded the interest of the temple in directing for adjustment of Rs. 1,50,000/- towards the expenses incurred for advertisement. Insofar as the interest portion is concerned, the learned single Judge has directed the appellants to pay the accrued interest on the amount deposited in the bank after deducting a sum of Rs. 1,50,000/-. Hence, for all the above reasons, both the writ petitions are failed and accordingly, they are dismissed. The appellants are directed to refund the amount as directed by the learned single Judge in a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are dismissed. No costs.