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Vishadra Charitable Trust Vs. .

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Court : Chennai

Decided On : Oct-23-2013

Judge : R.Sudhakar

Appellant : Vishadra Charitable Trust

Respondent : .

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

23. 10/2013 CORAM THE HON'BLE MR.JUSTICE R.SUDHAKAR O.P. No.209 of 2013 VISHADRA CHARITABLE TRUST REP BY ITS TRUSTEES VIJAYAKUMAR LOHIA, MANAGING TRUSTEE, PARASHAR LOHIA, TRUSTEE, NIRMALA DEVI LOHIA, TRUSTEE, VEDANT RAJ LOHIA, TRUSTEE

ORDER

This Original Petition is filed under Section 34 of the Indian Trust Act 1882 praying to grant permission to the petitioner to sell the petition schedule property to Mr.P.Rajasekar, by way of one or more sale deed/s for a total sale consideration of Rs.4,00,00,000/- (Rupees Four Crores only) as per the sale agreement dated 25.11.2012 and to deposit the sale proceeds in a nationalised bank, viz., M/s. Vijaya Bank, Anna Nagar Branch, Chennai-40 in A/c No.304401010001599 belonging to ".VISHADRA CHARITABLE TRUST"..

2. Pursuant to the Original Petition, several orders were passed from time to time in order to enable the trust to sell the property and receive the sale consideration for the benefit of the trust. Consequent to the various proceedings, various orders were passed from time to time and these orders are compiled as per the events for the purpose of passing this present orders. The orders are as follows.

3. After hearing the learned counsel appearing for the petitioner trust, for getting proper price to the trust properties, this Court appointed an advocate commissioner for sale of the properties. The relevant portion of the order dated 27.3.2013 reads as follows:- ".3. The property is 1 ground 1200 square feet having built up area of 3400 square feet and it is situated at Anna Nagar, Chennai. In view of getting proper price for the above property, this Court is inclined to appoint an advocate Commissioner for sale of the Trust Property. Accordingly, this court passed the following order:-

(1) Thiru P.N.Swaminathan, Advocate, Room No.6, First Floor, S.M.Plaza, No.93/45, Armenian Street, Chennai-600 001 (Phone No.044 25214894 and Mobile No.9444440796) is appointed as Advocate Commissioner.

(2) The Advocate Commissioner is directed to cause publication regarding sale of the schedule mentioned property in one issue of English Daily, namely, ".News Today". and one issue of Tamil Daily, namely, ".Makkal Kural". on 1.4.2013 calling for bids as per the Rules, clearly indicating that the matter would be taken up on 3.4.2013.

(3) It should be specified that all prospective buyers can submit their bids to Mr.P.N.Swaminathan, Advocate Commissioner.

(4) The Advocate Commissioner is at liberty to fix the earnest money deposit and call for the same from the bidders in the publication itself as per procedure.

(5) Thiru P.Rajasekar, the agreement holder herein is at liberty to file his bid before the Advocate Commissioner.

(6) The Advocate Commissioner shall submit the bids with sealed cover with his detailed report before this Court on 3.4.2013.

(7) The initial remuneration of the Advocate Commissioner is fixed at Rs.20,000/- (Rupees Twenty Thousand only). Petitioner is directed to pay the same directly to the Advocate Commissioner immediately. The Advocate Commissioner is at liberty to file memo for additional remuneration if any. List the matter on 3.4.2013 for passing further orders.".

4. Pursuant to the above order, in addition to Thiru P.Rajasekar, the agreement holder one M/s.Egberts India Private Limited, have offered to purchase the schedule property for a sum of Rs.5,02,00,000/-. Considering both offer, this Court by order dated 3.4.2013 passed the following order:- ".2. The Petitioner is a charitable trust having its trust office at No.1732, 21st Main Road, Anna Nagar, Chennai 600 040. Under the Registered Trust Deed dated 11.4.2000 bearing Document No.331 of 2000 at the office of the District Registrar, Madras South, Chennai, the Trust has started a school in the name of Vatsalya Matriculation Higher Secondary School in the year 2002 at 2A, Chelliamman Colony, Paper Mills Road, Peravallur, Chennai-600 082 to provide education to the needy and the poor which is one of the objects of the trust.

3. As per the objects of the Trust, from and out of the funds of the trust, the trust purchased land and building in Plot No.3093, Aringar Anna Nagar Scheme, Block No.1D, T.S.No.294, R.S.No.26(part), Naduvakkarai Village, Anna Nagar of an extent of 1 ground 1200 square feet or thereabouts together with the building thereon having a built up area of 3400 square feet and bearing Municipal Door No.AH151 3rd Street, Anna Nagar, Chennai-600 040. The said building was constructed based on Planning Permission Approval No.4977/1978 dated 16.11.1978 and Building Permit No.4250/1978 dated 28.11.1978 issued by MMDA and the Corporation of Chennai.

4. According to the trust for improving the activities of the trust to provide education and medical relief, they need substantial funds. The existing facility in the school needs to be revamped. According to the trust, the facilities in the school is to be upgraded and better educational facilities should be provided to the students. They also need to improve the sports and other recreation facilities to upgrade the school. For this purpose, they need additional funds. Para 11 of the

petition deals with insufficiency of funds and the need to sell the trust property. Para 11 of the petition reads as follows:- ".11.The above said trust is not properly functioning for want of sufficient funds, for the past few years, virtually, the building raised in the above land becoming weak, due to old age of the building the walls and roofs requires demolition and reconstruction thereof. Since, the Trust is a Private Trust. In spite of incurring expenses on security, maintenance, there is no appreciation in value, but the other hand there is a drain on scant resources. Moreover in the present situation it is very hard to safeguard the Trust Properties from the land gropers and antisocial elements trying to use the Trust Properties for their illegal purpose. Since, the trust is a private trust, the public are hesitating to contribute funds and the trustees withstand to provide the objects as contained in the Trust Deed.".

5. It is stated that the trust in his meeting convened on 20.11.2012, decided to mobilize more funds and unanimously welcomed the proposal to sell the trust property which is the schedule mentioned vacant property after obtaining the permission of this Court.

6. As per the resolution of the trust one purchaser by name Mr.P.Rajasekar, was identified and the trust agreed to sell the property to him for Rs.4 Crores in as is where is condition. According to the trust, the sale price offered by the said intending purchaser is higher than the guideline value and it is good price as per the open market rates. Based on this material this Original Petition was filed seeking permission of the court to sell the property to the said Mr.P.Rajasekar for Rs.4 crores.

7. When this Original Petition was listed before this Court, considering the location of the property and extent, and in order to get the best of offers to the benefit of the trust, this Court at the behest of the petitioner appointed Thiru P.N.Swaminathan, Advocate, as advocate-commissioner to make paper publication so as to get the best price for the property so as to benefit the trust. Accordingly, the advocate-commissioner caused paper publication in two local newspapers. After inspection he has brought to this court two offers given by two intending purchasers in sealed cover, which on opening reveals as follows: (a)

Mr.P.Rajasekar, the agreement holder, who had earlier offered a sum of Rs.4 crores has now offered a sum of Rs.4,10,00,000/- (Rupees Four Crores and Ten Lakhs only). (b) The other offerer is one M/s.Egberts India Private Limited, and they have offered to purchase the schedule property for a sum of Rs.5,02,00,000/- (Rupees Five Crores and Two Lakhs only) free from encumbrance and vacant possession.

8. The points that arise for consideration in this matter are as follows:- (1) Whether the petitioner may be permitted to sell the trust property?. (2) If so at what price and to which party the property can be sold?.

9. Heard Mr.R.Anand Kumar, leaned counsel appearing for the petitioner and Mr.P.N.Swaminathan, learned advocate-commissioner.

10. Point No.1:- The property in question is land and building and the same is not occupied. It is not fetching any income or profits to the trust. As per the petitioner trust, the building is old, the walls and roofs require demolition and reconstruction. The property in question will serve no purpose to the trust and it is not fetching income. Therefore, as per the resolution of the trust, they have decided to sell the property at the best market price so as to enable the trust to develop its activities for the betterment of the trust and its objects.

11. Considering the above fact, this Court is inclined to accept the petitioner's plea for sale of the trust property and utilise the amount for the benefit of the trust. Accordingly, the point No.1 is answered in favour of the petitioner.

12. Point No.2:- Insofar as the value is concerned, it is stated that an agreement has been entered with one Mr.P.Rajasekar for sale of the trust property for a sum of Rs.4 crores. Pursuant to the order of this Court, he made an offer for Rs.4,10,00,000/-. The other person by name M/s.Egberts India Private Limited for the very same property offered for a sum of Rs.5,02,00,000/-. Both parties have tendered earnest money deposit of Rs.20,50,000/- each. The trust has filed valuation report as document No.7 which shows the value of the property at Rs.4,00,56,282/-. The offer made by M/s.Egberts India Private Limited for Rs.5,02,00,000/- is far higher than the offer made by the agreement holder as well

as the valuers report filed. The representative of the highest bidder by name M/s.Egberts India Private Limited is present in Court. However, Mr.P.Rajasekar though intimated and having submitted his further bid had not chosen to be present in Court today as per the notice to improve the offer any further. There is no request on his behalf by any person when called out. The price offered by M/s.Egberts India Private Limited is far higher than the value for which the petitioner agreed to sell to the private party. Hence, this court is inclined to accept the offer made by M/s.Egberts India Private Limited for Rs.5,02,00,000/-. The counsel for the petitioner trust on instruction states that the higher price offered by M/s.Egberts India Private Limited is to the benefit of trust and can be accepted. Accordingly, the second point is answered.

13. Considering the above, the Original Petition is ordered as follows:- (1) Petitioner is permitted to sell the trust property mentioned in para 3 of this order and described in the petition schedule. (2) This Court accepts the offer made by M/s.Egberts India Private Limited at Rs.5,02,00,000/- (Rupees Five Crores and Two Lakhs only) (3) The petitioner is permitted to sell the property to M/s.Egberts India Private Limited for Rs.5,02,00,000/- (Rupees Five Crores and Two Lakhs only) less the Earnest Money Deposit of Rs.20,05,000/- (Rupees Twenty Lakhs and Five Thousand only) submitted. (4) The Trust shall furnish all original title documents for verification to M/s.Egberts India Private Limited. It shall also provide photocopies of all the documents of title of the property to the purchaser M/s.Egberts India Private Limited on or before 8.4.2013 (5) The trust shall facilitate the survey of the property if required by the purchaser M/s.Egberts India Private Limited. (6) Thereafter on completion of verification M/s.Egberts India Private Limited is directed to pay the entire sale consideration less the earnest money deposit of Rs.20,50,000/- (Rupees Twenty Lakhs and Fifty Thousand only) within one month. (7) The trust is directed to execute the sale deed in favour of M/s.Egberts India Private Limited immediately, hand over the original title deeds together with vacant possession at the time of receipt of the sale consideration. (8) The sale proceeds received by the petitioner trust shall be deposited in M/s.Indian Bank, Madras High Court Branch for a period of six months in the name of the Trust by way of fixed deposit and the trust is entitled to use the interest component for the benefit of the trust. (9) The Assistant Registrar, Original Side-I shall receive

the EMD Rs.20,50,000/- given by M/s.Egberts India Private Limited, keep the same in a sealed cover in safe custody and produce the same before this Court on 9.4.2013 for further instruction. (10) The counsel for the petitioner trust shall collect the Earnest Money Deposit submitted by Mr.P.Rajasekar and return it to the said person on proper acknowledgment.

14. The Advocate Commissioner filed a memo praying additional remuneration.

15. In view of the work executed by the Advocate-Commissioner, a sum of Rs.50,000/- (Rupees Fifty Thousand only) is fixed as additional remuneration to the Advocate-Commissioner. The petitioner trust is directed to pay the same to the Advocate-Commissioner directly forthwith. List the matter on 9.4.2013 for passing further orders.".

5. Thereafter an Application A.No.1703 of 2013 was filed praying to set aside the order dated 3.4.2013. This Court by order dated 9.4.2013 passed the following order:- ".This Application is filed under Order XIV Rue 8 of Original Side Rules read with Section 151 of Civil Procedure Code, praying to grant set aside the order passed on 3.4.2013 by permitting the sale of the Trust property at the price offered by M/s.Egberts India Private Limited.

2. The learned counsel appearing for the successful bidder, namely, M/s.Egberts India Private Limited states that when a request was made to furnish the documents as per the order of this Court dated 3.4.2013, the Trust refused. Therefore, he sent the request through a registered post and courier.

3. The learned counsel appearing for the trust, however, states that he has no instruction in this matter.

4. The counsel appearing for the successful bidder is directed to furnish a copy of the notice sent to the Trust, with a memo tomorrow (10.4.2013). The counsel for the Trust is directed to get instruction and report before this court tomorrow (10.4.2013). List this matter on 10.4.2013.".

6. Thereafter on 10.4.2013, this Court passed the following order in A.No.1703 of 2013 in O.P.No.209 of 2013:- ".Mr.Anandkumar, learned counsel for the petitioner-

Trust has handed over copies of two sale deeds dated 25.1.2001 and 27.2.2001 executed in favour of the Trust to the learned counsel for the highest bidder M/s.Egberts India Private Limited in response to the request made by them vide letter dated 7.4.2013. Shri. Anandkumar, counsel, further undertakes to submit the rest of documents namely parent documents, Patta, property tax receipts, CMWSSB Card, TNEB Card, Planning Permit/Approved plan for the building etc., without fail to the learned counsel for the highest bidder/M/s.Egberts India Private Limited on or before the next hearing date. Post the matter on 16.4.2013. Counter by Trust if any, by then.".

7. Thereafter, the matter was listed on 17.4.2013, 18.4.2013, 23.4.2013 and 26.4.2013. After hearing the learned counsel on both sides, the Application No.1703 of 2013 was dismissed on 30.4.2013. The order dated 30.4.2013 in A.No.1703 of 2013 reads as follows:- ".This application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure to set aside the order passed on 3.4.2013 in O.P.No.209 of 2013 permitting the sale of the trust property mentioned in the schedule to the application at the price offered by M/s.Egberts India Private Limited.

2. The facts of the case in a nutshell are as under: The first respondent is a charitable Trust. The trust was substantially in need of funds for improving the activities of the trust, namely to provide education and medical relief. They also wanted to revamp the existing facilities in the school run by the Trust. The Trust in its meeting convened on 20.11.2012 decided to mobilize funds and unanimously resolved to sell the trust property after obtaining permission of this Court. The Trust identified the applicant herein as a purchaser and agreed to sell the property to him at Rs.4 Crores in as is where is condition and a sale agreement was entered into on 25.11.2012 for a sum as above.

3. With this backdrop, the first respondent herein/Trust filed the Original Petition under Section 34 of the Indian Trust Act, 1882 to grant permission to sell the petition schedule property to the applicant herein, by way of one or more sale deed(s) for a total sale consideration of Rs.4 Crores as per the sale agreement dated 25.11.2012 and to deposit the sale proceeds in a nationalized bank, namely

M/s.Vijaya Bank, Anna Nagar Branch, Chennai 600 040 in A/c.No.304401010001599 belonging to VISHADRA CHARITABLE TRUST.

4. Considering the extent of the property, its location and the guideline value and in order to ensure that there is a transparency in the sale, so as to get the best possible price for the benefit of the Trust, the Court thought it fit to invite offers from public. In such view of the matter, the Court appointed an Advocate Commissioner to effect paper publication and to invite offers from intending purchasers. The applicant was also permitted to participate in the bid, despite the agreement referred to above.

5. Pursuant to the paper publication, two offers were received. One was from the applicant herein. His offer was enhanced from Rs.4,00,00,000/- to Rs.4,10,00,000/- (Rupees Four Crores and Ten Lakhs only) and such offer was made in a sealed cover to the Advocate Commissioner. The other offerer M/s.Egberts India Private Limited offered Rs.5,02,00,000/- (Rupees Five Crores and Two Lakhs only).

6. Since the offer made by M/s.Egberts India Private Limited at Rs.5,02,00,000/- is far higher than the offer made by the applicant/ agreement-holder, in excess of Rs.92,00,000/, and in the absence of any other offer, the Court was of the view that its endeavour to get the best possible price by way of open bid had the benefit of substantial increase of the price for the property that is to be sold. Therefore, the Court accepted the highest price offered by M/s.Egberts India Private Limited. As a result, by an order dated 3.4.2013, the offer of M/s.Egberts India Private Limited for Rs.5,02,00,000/- (Rupees Five Crores and Two Lakhs only) was accepted.

7. Being aggrieved by the said order, dated 3.4.2013, the unsuccessful offerer has preferred this application for the relief stated above. 8.1. The main plea raised by the applicant herein is that he has entered into a sale agreement dated 25.11.2012 with the Managing Trustee of the first respondent/Trust for purchase of the trust property and paid a sum of Rs.10,00,000/- as advance and as a prior agreement holder, he was under the bona fide belief that the property would be sold to him. 8.2. It is pleaded that the only condition stipulated in the trust deed is to obtain

prior approval of the Director of Income Tax, Chennai and there is no necessity to obtain permission from the Court. It is also pleaded that the Trust had obtained income tax clearance from the Director of Income Tax for sale of the trust property to him. 8.3. It is the further contention of the applicant that M/s.Egberts India Private Limited was aware of the agreement for Rs.4,00,00,000/-and, therefore, they made a higher offer and the applicant was in a disadvantageous position. 8.4. He further claimed that to mobilize funds he has sold his properties at Karaikudi and Trichy, however he was not given opportunity to improve his offer. 8.5. Based on the above pleadings, it was submitted that the applicant should be given an opportunity to buy the trust property at the rate quoted by M/s.Egberts India Private Limited or even at a little higher price.

9. In the counter affidavit filed by the first respondent/Trust, it is stated that the applicant wants an opportunity to improve on the offer made by him and if the same is permitted, it will be in the benefit of the Trust. However, Mr.R.Anand Kumar, learned counsel for the first respondent/Trust, at the time of argument, left it to the Court to decide the best course of action. No other plea or objection is taken by the first respondent/Trust. The sale is not challenged by the first respondent/Trust. The learned counsel for the Trust fairly accepted that there is an error in describing the name of the Trust in the Original Petition and the same is reflected in the paper advertisement. This caused the highest bidder to furnish the demand draft in the incorrect name, which he pleaded should be corrected for encashment of the earnest money deposit. 10.1. Mr.Abdul Hameed, learned counsel appearing for M/s.Egberts India Private Limited contended that the plea of the applicant that higher offer was made after getting to know the price offered by the applicant is totally misconceived and untenable. Such contention is made only to gloss over the conduct of the applicant in not quoting the best possible price when the applicant was given an opportunity to bid along with the general public. The bid was by way of a sealer tender and there is no question of advantage to anybody. 10.2. He further contended that the present offer made by the applicant to match the offer made by M/s.Egberts India Private Limited clearly reveals the applicant's intention to buy the property at a lesser price and only when accosted by higher bids by public sale, the applicant comes forward to match the price and therefore, the applicant lacks bona fides. He has not come to Court with good

intention to offer the best possible price to the property and such a person should not be shown indulgence, to better the offer. He further pleaded that the difference in this case is Rs.92,00,000/- (Rupees Ninety Two Lakhs only) and it is a substantial amount. The Court should take note of the conduct of the applicant and the lack of genuineness in the offer now made. This offer he could have made at the first instance, which he failed to do for reasons best known to the applicant. Nothing prevented the applicant from quoting higher amount that he is willing to give now. Hence, the application deserves to be dismissed. 10.3. It is further contended that the moment the applicant has participated in the sealed tender bid pursuant to the paper publication, he would lose his right as an agreement holder and, therefore, he cannot take a plea that the sale should be conducted in terms of the agreement, which is for a value less by Rs.92,00,000/-, and such a sale would be not in the interest of the Trust. 10.4. It is also pleaded that if the applicant's plea to make a higher bid is accepted, it will amount to reopening the sale and then no sale by Court will attain finality. He submitted that there cannot be any vagueness in such proceedings, particularly at the whims and fancies of a person like the applicant who failed to offer the best possible price either at the time of entering into agreement or at the time of submitting sealed tender bid. It is contended that equity also does not support the case of the applicant and, therefore, the application should be dismissed. 10.5. He submitted that, on the contrary, M/s.Egberts India Private Limited is ready and willing to deposit the balance sale amount immediately.

11. The issue that arises for consideration in this case is whether the application seeking cancellation of the sale is valid or not.

12. At the outset, it is to be noted that the application is filed under Section 151 of the Code of Civil Procedure. Therefore, any order that can be passed is at the discretion of this Court. The plea of the applicant that he is a prior agreement holder and therefore based on the clearance given by the Director of Income Tax, which document has been produced by the applicant and not by the Trust, he should be allowed to purchase the property cannot be countenanced, as the clearance given by the Director of Income Tax is only for the purpose of ensuring that the Department is aware of the sale. If the Department comes to know about

any violation of that law in the sale, it is for them to take action as may be advised. It, however, does not sanctify the so-called agreement between the Trust and the private individual. The Trust, which has sought the permission of this Court to sell the property, has to satisfy the Court that the price that is being offered for the purchase of the property is the best possible price, more so in the case of a public charitable trust.

13. In this case, the endeavour made by the Court to get the best possible price has reaped rich reward and a sum of Rs.92,00,000/- in excess of the sale agreement has been offered by M/s.Egberts India Private Limited and the sale has been confirmed in their favour. It is for the Income Tax Department to take note of this vast difference and proceed further as per law, if required. However, the Court taking note of the offer made by M/s.Egberts India Private Limited, which has fetched an additional sum of Rs.92,00,000/- to the Trust, does not find any justification to set aside the sale as sought for by the applicant.

14. The plea of the applicant to better his offer to match that of M/s.Egberts India Private Limited or to make higher offer cannot be accepted at this stage because the applicant has not shown fairness or openness in making a bid when he was given an opportunity to participate along with the general public. Having accepted to make a sealed tender bid, the applicant should have in all fairness offered the best price. After opening the sealed tenders, the applicant cannot become wiser and state that he will match the price of the highest bidder. If such a plea of the applicant is accepted, then in every sale through Court there is a possibility of some person coming before the Court and make a marginally better offer. The Court cannot be treated as a playground for such persons to make offers as they wish and like. If a procedure is defined and adopted, the Court will restrict itself to such procedure and confirm the sale if all parameters are satisfied. It will not, at the whims and fancies of one or other party, cancel the sale. The applicant in this case has failed to make a proper offer when he was given an opportunity to make a bid in sealed cover. He, therefore, loses his right at the time when he has made an offer, which is Rs.92,00,000/- less than the highest bid. The offer made by the applicant lacks bona fides.

15. Further, it does not lie in the mouth of the applicant to state that no Court permission is required for sale of trust property. It is for the Trust to decide as to how it should proceed in the matter. The applicant's statement that he has sold the properties to buy the trust property is of no consequence and irrelevant. That is not a ground for setting aside the present sale.

16. The next contention of the applicant that the highest bidder had the knowledge of the price as per the agreement and, therefore, he was at an advantageous position is no plea at all, as the applicant knowing fully well that his agreement is for Rs.4,00,00,000/-, has in the sealed tender bid offered a sum of Rs.4,10,00,000/-, whereas the highest bidder offered Rs.92,00,000/- more than the applicant at Rs.5,02,00,000/-. This only goes to show that the highest bid offered by M/s.Egberts India Private Limited is a bona fide offer and the applicant's increase in bid amount by Rs.10 Lakhs, namely from Rs.4,00,00,000/- to Rs.4,10,00,000/-, shows his lack of bona fides and intention to knock off the property for a far less amount.

17. If the sale had been confirmed in favour of the applicant for Rs.4 Crores without effecting publication for sale, the loss to the Trust would be in the order of Rs.1,02,00,000/- (Rupees One Crore and Two Lakhs only). It is, therefore, evident that the loss of Rs.1,02,00,000/- to the Trust is a gain to someone and it needs no inference to state the obvious. This Court is not inclined to sanctify such a transaction between the Trust and a private individual which is not in the interest of the Trust.

18. The Court cannot be a party to a private, negotiated deal which results in loss to a public charitable trust. If the Court's seal of approval is granted to such a deal at any stage, it would amount to sanctifying an illegality. This Court will not give its seal of approval for abuse of process of Court. For the foregoing reasons, the Court is constrained to hold that the application is devoid of merits and not maintainable. The issue raised is answered against the applicant and the application is accordingly dismissed.".

8. Pursuant to the dismissal of A.No.1703 of 2013, this Court passed the following order in O.P.No.209 of 2013 on 30.4.2013:- ".It is pointed out by the agreement

holder/unsuccessful bidder that the demand draft for the earnest money deposit taken by the highest bidder did not contain the correct name of the Trust. That issue is irrelevant insofar as the unsuccessful bidder is concerned. In this regard, the learned counsel for the petitioner/Trust fairly conceded that though the name of the trust is VISHARDA CHARITABLE TRUST, in the main Original Petition, they have wrongly typed the cause title as VISHADRA CHARITABLE TRUST. Consequently, the demand draft for the earnest money deposit was submitted by the highest bidder showing the name of the Trust as stated in the Original Petition. He, therefore, submitted that the highest bidder can be asked to supplement the earnest money deposit amount showing the correct name, so that it can be presented to the Bank. Such a plea is accepted, as the error in the name has occasioned due to the error in the showing the name of the Trust by the petitioner/Trust in the Original Petition. Hence, accepting the said statement, permission is granted.

2. Accordingly, M/s.Egberts India Private Limited is directed to supplement the earnest money deposit in the name of VISHARDA CHARITABLE TRUST forthwith.

3. In view of the dismissal of Application No.1703 of 2013 filed by the so-called agreement holder, M/s.Egberts India Private Limited, the successful bidder is directed to pay the balance amount on or before 6.5.2013 and the petitioner/Trust is directed to execute the sale deed forthwith on receipt of the said amount and hand over all title documents. List the matter on 7.6.2013 for reporting compliance.".

9. In the meanwhile one Vasantha Surana has filed Application No.2240 of 2013 praying to permit re-auction of the property and stated that they are willing to purchase the property for Rs.6 crores. The A.No.2240 of 2013 was listed on 6.6.2013 and at request of the respondent counsel sufficient time was granted to file counter. The case was listed on 8.7.2013, 10.7.2013 and 11.7.2013. On 11.7.2013, on the undertaking given by Mr.Jayesh Dolia, learned counsel appearing for the applicant in A.No.2240 of 2013, this court recorded the following:- Mr.Jayesh Dolia learned counsel for applicant undertakes to furnish

EMD for Rs.20 lakhs to show his bona fide for purchase by 12.7.2013. His undertaking is recorded. List on 12.7.2013 at the top of list after motion. 10. On 12.7.2013, this Court set aside the sale order dated 3.4.2013 in favour of M/s.Egberts India Private Limited and the applicant in A.No.2240 of 2013 was permitted to purchase the property for a sum of Rs.6,00,00,000/-. The order dated 12.7.2013 passed in A.No.2240 of 2013 reads as follows:- ".This application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure to permit re-auction of the property, namely Plot No.3093, Aringnar Anna Nagar Scheme, RS No.26 (Part), reassigned T.S.No.294 in Block No.1D, Naduvukkarai Village, bearing municipal door No.151, AH Block, 3rd Street, Anna Nagar, Chennai 600 040, measuring about 1 Ground and 1200 Sq.Ft. with a building thereon.

2. This application has been filed by a third party seeking indulgence of the Court to set aside the earlier sale and accept their offer to purchase the property of the first respondent/Trust at Rs.6,00,00,000/- (Rupees Six Crores only).

3. When the application was served on all the respondents, including the second respondent/successful bidder M/s.Egberts India Private Limited, Mr.Abdul Hameed, learned counsel appearing for the second respondent requested the Court to permit him to withdraw their claim in respect of the property and conceded that the earlier sale can be set aside and appropriate orders may be passed for refund of the earnest money deposit.

4. The learned counsel appearing for the first respondent/Trust also sought indulgence of this Court to refund the earnest money deposit made by P.Rajasekar, the earlier agreement holder, whose offer was rejected by the Court.

5. The Court, at the first instance, ordered sale of the property by public auction and was able to garner a sum of Rs.92 Lakhs over and above the offer made by the agreement holder P.Rajasekar. Thereafter, the present application has been filed by third party making a bid for Rs.6,00,00,000/-, which is approximately Rs.One Crore over and above the bid amount earlier accepted by this Court. To substantiate her bona fide, the applicant has produced a banker's cheque drawn on Vijaya Bank, Chennai bearing No.121423, dated 12.7.2013 for Rs.20,00,000/-

towards earnest money deposit.

6. Taking note of the stand taken by the respondents, more particularly the second respondent/successful bidder, who has offered to withdraw from the Court auction, and the substantial increase in the price offered by the present applicant (Ms.Vasantha Surana), which is almost Rs.One Crore over and above the price for which the property was sold by this Court, this Court deems it fit to set aside the earlier sale made in favour of the second respondent and accept the offer made by the applicant (Ms.Vasantha Surana) to purchase the property for a sum of Rs.6,00,00,000/-. This will enure to the benefit of the first respondent/Trust and it is only at the behest of the Court that the first respondent/Trust is able to mobilize a further sum of Rs.Two Crores on the property, for which an agreement was entered into for Rs.4,00,00,000/- by the first respondent/Trust. When the Court expressed its concern on the manner in which the sale of the trust property was sought to be made by the first respondent/Trust, the learned counsel for the first respondent/Trust stated that they were under the bona fide impression that the price as per the agreement with P.Rajasekar was the market price. He, however, stated that if the Court has any apprehension on the manner in which the first respondent/Trust is working, suitable direction may be given to allay the apprehension of misutilization of the trust funds. The said statement of the learned counsel for the first respondent/Trust is recorded and keeping in view the best interest of the first respondent/Trust and to avoid any loss to the Trust knowingly or unknowingly, the Court feels it just and appropriate to issue further direction in addition to granting permission for sale of the trust property. This further direction will be in the best interest of the Trust and will also ensure transparency.

7. In view of the above, the following order is passed: (i)the sale in favour of the second respondent ordered by this Court on 3.4.2013 in O.P.No.209 of 2013 is set aside; (ii)the applicant is permitted to purchase the property for a sum of Rs.6,00,00,000/- (Rupees Six Crores only); (iii)the applicant is directed to make the balance payment of Rs.5,80,00,000/- (Rupees Five Crores and Eighty Lakhs only) on or before 31.7.2013 in the name of the first respondent/Trust, less the earnest money deposit of Rs.20,00,000/- (Rupees Twenty Lakhs only) now tendered by the applicant, as referred to above, which has been handed over to

the learned counsel for the first respondent/Trust (iv)the first respondent/Trust is directed to execute the sale deed in favour of the applicant immediately on receipt of the balance sale consideration and hand over all the original title deeds together with vacant possession; (v)the entire sale proceeds that will be received by the first respondent/Trust, including the earnest money deposit paid today, shall be deposited by the first respondent/Trust in M/s.Indian Bank, High Court Branch, Madras 600 104 in a separate account for a period of one year with renewal clause, until further orders of Court; (vi)M/s.The Indian Bank, High Court Branch shall keep the amount of the first respondent/Trust by way of fixed deposit and the first respondent/trust is entitled to use the interest component for the benefit of the trust; (vii)If the first respondent/Trust needs to expend funds in excess of Rs.1,00,000/- for its activity either from its existing funds or from out of the funds in M/s.Indian Bank, High Court Branch, it shall be by way of an application before this Court. (viii)The earnest money deposit amount of P.Rajasekar (agreement holder) and the second respondent herein M/s.Egberts India Private Limited are directed to be refunded on proper acknowledgment forthwith. This application is ordered in the above terms.".

11. Thereafter, on 31.7.2013, this Court passed the following order in O.P.No.209 of 2013:- ".Mr.Anand Kumar, learned counsel appearing for the Trust states that he has filed an application for extension of time. However, learned counsel for the purchaser states that he is yet to pay the balance amount as per the order of this Court. The auction purchaser is directed to deposit the money on or before the end of the day, i.e., 31st July, 2013, failing which the amount already in deposit will be forfeited. Learned counsel for the auction purchaser undertakes to make the deposit today and report before this Court on 2.8.2013. Call on 2.8.2013.".

12. Since the purchaser has failed to deposit the amount, on 2.8.2013, this court recorded as follows: - ".It is stated that the purchaser has failed to deposit the amount as per the order of court. For passing further orders call on 5.8.2013.".

13. Thereafter, the purchaser has filed A.No.3419 of 2013 praying to extend the time for execution of the sale deed on receipt of the balance sale consideration by a period of six weeks as per the order dated 12.7.2013 passed in A.No.2240 of

2013. The said application was listed on 5.8.2013, 14.8.2013 and 16.8.2013. On 16.8.2013, on the submission made by Mr.Jayesh Dolia, learned counsel for the successful bidder Mrs.Vasantha Surana, the court recorded the following in A.No.3419 of 2013 in O.P.No.209 of 2013:- ".Mr.Jayesh Dolia, learned counsel for the respondent/successful bidder states that the respondent Mrs.Vasantha Surana has not complied with the direction of this Court dated 5.8.2013 and deposit has not been made.

2. Taking strong exception to the conduct of his client, Mr.Jayesh Dolia, learned counsel submitted that he has informed the respondent Mrs.Vasantha Surana that he will not be appearing in the matter any longer and he will issue a letter to that effect requesting her to appear either in person or through any other counsel and that he is withdrawing his vakalat. Mr.Jayesh Dolia, learned counsel is directed to file a memo as above.

3. The Registry is directed to print the name of the new counsel for the respondent, if any vakalat is filed on behalf of the respondent Mrs.Vasantha Surana. If not, the name of the respondent Mrs.Vasantha Surana should be printed in the cause list. Post the matter on 19.8.2013.".

14. On 19.8.2013, one Mr.P.Krishnan, learned advocate seeks permission of this Court to file change of vakalat for Mrs.Vasantha Surana. On the submission made by the counsel, this court recorded the following in A.No.3419 of 2013:- ".Mr.P.Krishnan, counsel seeks indulgence to file change of vakalat for Mrs.Vasantha Surana, who is the successful bidder by change of vakalat from earlier counsel Mr.Jayesh Doili. Call on 23.8.2013.".

15. Thereafter, this matter was listed on 23.8.2013 and 26.8.2013. This Court by order dated 26.8.2013 passed the following order in A.No.3419 of 2013:- ".Ms.Vasantha Surana, who is the successful bidder wants to file an affidavit setting out the stand with regard to her offer for purchase of the property. The said Ms.Vasantha Surana is directed to be present in Court on 27.8.2013 so as to enable the Court to verify whether the entire exercise undertaken by her is bona fide or based on some mis-informed instructions. Call on 27.8.2013. ".

16. Pursuant to the order dated 26.8.2013 passed in A.No.3419 of 2013, Ms.Vasantha Surana appeared before this court on 27.8.2013. On hearing the submission made by the said Ms.Vasantha Surana, this Court passed the following order on 27.8.2013 in A.No.3419 of 2013:- ".Ms.Vasantha Surana, W/o Dinesh Surana, is present in Court as per the direction of this Court and states before this Court that she has not given the draft for Rs.20 Lakhs on 12.7.2013 to Mr.Jayeesh Dolia, her former counsel. At the time of her statement before this Court, her husband is also present and they undertake to file an affidavit and state that they have not paid any money or handed over any draft to Mr.Jayeesh Dolia for the purpose of purchase of the trust property.

2. In view of the above, the said Vasantha Surana is further directed to file an affidavit through her new counsel, Mr.P.Krishnan, as to whether she filed the affidavit in the third-party application, A.No.2240/2013 and as to whether the vakkalat was signed by her and for what purpose the said application was filed. She is also to state as to whether the money belongs to her or not.

3. A detailed affidavit explaining the facts and circumstances which led to the filing of the application and withdrawing her offer presently has to be filed. She is directed to be present in Court on 30.8.2013. The affidavit to be filed by Ms.Vasantha Surana should explain the reason for letters that the said Ms.Vasantha Surana addressed to the Trust for purchase of the property and the purpose for which it was sent.

4. Mr.Jayeesh Dolia, the former counsel for Ms.Vasantha Surana is directed to be present in Court on 30.8.2013.

5. Mr.Anand Kumar, learned counsel for the Trust states that the sum of Rs.20 lakhs is with the trust and await further orders as to how the money should be dealt with. He is willing to abide by direction of the court on the issue. He seeks the indulgence of this Court for his absence on the next date of hearing (i.e.) on 30.8.2013 and further states that the Trustee will be present in Court. Accordingly, the prayer of Mr.Anand Kumar, learned counsel is accepted and the Trustee is directed to be present in Court on the next date of hearing on 30.8.2013 with Bank statement, trust documents, property details, etc., and proof of encashment of the

sum of Rs.20 lakhs. List the matter on 30.8.2013 for orders.". (emphasis supplied) 17. Pursuant to the order dated 27.8.2013, Ms.Vasantha Surana appeared before this Court on 30.8.2013 and filed an affidavit and it reads as follows:- ".I, Vasantha Surana, W/o Mr.Dinesh Surana, Hindu aged about 43 years, residing at No.49, Old No.34, A Block, 6th Street, Anna Nagar East, Chennai 600 102, do hereby solemnly affirm and sincerely state as follows:- 1.I am the applicant herein and as such I am well acquainted with the facts and circumstances of the case set out hereunder. 2.I humbly submit that during the last week of May, 2013, one Mr.Omprakash Agarwal had approached me and informed that the property admeasuring 1 ground and 1200 square feet, situated at No.151, AH Block, 3rd Street, Anna Nagar, Chennai-600 040, belonging to the 1st respondent is to be sold through Court and that I can purchase the same for a reasonable price. He further stated that I needed to file an application before this Hon'ble Court for conducting an auction and participating in the same and on 31.05.2013 sought for my signature in an affidavit and a Vakalat form in favour of M/s.Aiyar and Dolia, Advocates. As I was informed that I could confirm the purchase of the property at a later point of time after visiting the site, I had signed in the aforesaid papers. 3.I further submit that after obtaining my signatures in the aforesaid papers, I was not informed of the further proceedings on the said issue. In this scenario, my earlier counsel, M/s.Aiyar and Dolia, Advocates, had sent me a notice dated 16.08.2013 stating that I need to appear before this Hon'ble Court on 19.08.2013, failing which arrest warrant would be issued. I was shocked on receiving such a notice and only thereafter, I had come to know that this Hon'ble Court had required me to deposit earnest money amounting to Rs.20,00,000/- on or before 12.07.2013 and the same amount has been deposited on the said date without my knowledge, as if the same was done by me. I have further come to know that this Hon'ble Court was pleased to allow my application and permitted me to purchase the said property for a Sale consideration of Rs.6,00,00,000/- (Rupees six crores only), payable on or before 31.07.2013. I have accordingly given a suitable reply to my earlier counsel making it clear that I was not aware of the above events. 4.I humbly submit that even though I was initially eager to purchase the said property, I am not willing to proceed with the same now owing to the aforesaid unfortunate events. I am obliged by the orders of this Hon'ble Court and I have no intention to disobey the orders passed by this Hon'ble Court. The aforesaid events had taken place without my knowledge and I tender my sincere apologies for the same.". (emphasis supplied) Based on the affidavit dated 30.8.2013 filed by Ms.Vasantha Surana, the sale is not confirmed and the permission granted in her favour to purchase the property by order dated 12.7.2013 in A.No.2240 of 2013 was withdrawn.

18. Further, based on the affidavit filed by Ms.Vasantha Surana, this Court by order dated 30.8.2013 passed the following order in A.No.3419 of 2013 in O.P.No.2013:- ".Pursuant to the order dated 27.8.2013, passed by this Court, Ms.Vasantha Surana, W/o Dinesh Surana, is present in Court and has filed an affidavit as per the direction of this Court. The said affidavit filed by Ms.Vasantha Surana is taken on record, wherein she has stated as follows :- ".3. I further submit that after obtaining my signatures in the aforesaid papers, I was not informed of the further proceedings on the said issue. In this scenario, my earlier counsel, M/s.Aiyar and Dolia, Advocates, had sent me a notice dated 16.8.2013 stating that I need to appear before this Hon'ble Court on 19.8.2013, failing which arrest warrant would be issued. I was shocked on receiving such a notice and only thereafter, I had come to know that this Hon'ble Court had required me to deposit earnest money amounting to Rs.20,00,000/- on or before 12.07.2013 and the same amount has been deposited on the said date without my knowledge, as if the same was done by me. I have further come to know that this Hon'ble Court was pleased to allow my application and permitted me to purchase the said property for a sale consideration of Rs.6,00,00,000/= (Rupees Six Crores only), payable on or before 31.7.2013. I have accordingly given a suitable reply to my earlier counsel making it clear that I was not aware of the above events.".

2. In view of the stand taken by Ms.Vasantha Surana, who was declared as the successful bidder, that the deposit of Rs.20 Lakhs was made without her knowledge and that she has not deposited the said amount, which statement she stated before this Court in the presence of her counsel. The trustee, Mr.Vijaya Kumar Lohia, who is present in Court is directed to take a draft for the said amount of Rs.20 Lakhs in the name of the Registrar General, High Court, Madras, to the credit of O.P. No.209 of 2013 and furnish the same before this Court on 3.9.2013.

The appearance of Ms.Vasantha Surana is dispensed with for the present. The trustee, Mr.Vijaya Kumar Lohia is directed to be present in Court on 3.9.2013 along with the demand draft for Rs.20 Lakhs as directed above.

3. Call the matter on 3.9.2013.". (emphasis supplied) 19. Pursuant to the order dated 30.8.2013 passed in A.No.3419 of 2013, the petitioner trustee Mr.Vijay Kumar Lohia, has produced a demand draft bearing No.289494 dated 03.09.2013 drawn on Vijaya Bank, Anna Nagar Branch for a sum of Rs.20,00,000/= (Rupees Twenty Lakhs only) through his counsel Mr.Anandkumar in favour of the Registrar General, High Court, Madras in O.P. No.209 of 2013. This Court by order dated 3.9.2013, has issued the following direction in O.P.No.209 of 2013:- ".Pursuant to the order dated 30.08.2013, the Trustee, Mr.Vijay Kumar Lohia, has produced a demand draft bearing No.289494 dated 03.09.2013 drawn on Vijaya Bank, Anna Nagar Branch for a sum of Rs.20,00,000/= (Rupees Twenty Lakhs only) through his counsel Mr.Anandkumar in favour of the Registrar General, High Court, Madras in O.P. No.209 of 2013. The said demand draft is handed over to the Asst. Registrar, Original Side-II, FOR HANDING IT over to the Registrar General. the Registrar General is further directed to deposit the said amount in renewable fixed deposit to the credit of the original petition, in the Indian Bank, High Court Branch and report the same to this Court on the next date of hearing.

2. Further considering the plea made in the original petition and the request of the Trustee, who is present in Court seeking permission to sell the property, this Court is inclined to pass the following order :- (i) The Advocate Commissioner, appointed by this Court earlier, is directed to effect paper publication with regard to the sale of the schedule mentioned property in one issue of ".Anna Nagar Times". on 8.9.2013 and in one issue of ".New Indian Express". and ".Dina Tanthi". on 10.9.2013, calling for bids as per the rules, clearly indicating that the offer for sale would be taken up by this Court on 19th Sept., 2013. (ii) It should be clearly specified in the advertisement that the sealed tender and addressed to the Assistant Registrar (Original Side-II), High Court, Madras, delivered either in person or by Registered Post with acknowledgment due so as to reach him/her by 13.00 Hrs. on 18th Sept., 2013. The price should be quoted in Indian Rupees only. (iii) In view of the confirmed bid made earlier by one bidder, the upset price is fixed

at Rs.5,00,00,000/= (Rupees Five Crores only). (iv) All tenders received after the due date and time will be summarily rejected. (v) Telegraphic/Telex offers are not acceptable. (vi) Each tender should be accompanied by a demand draft payable at Chennai, drawn on any of the Nationalised/Scheduled Banks, in favour of the Registrar General, High Court, Madras for an amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) towards Earnest Money Deposit in a separate cover. (vii) No Bank Guarantees or cheques will be accepted. (viii) The tenders sent without Earnest Money Deposit as mentioned above will be rejected summarily. (ix) The tenders will be opened on 19th Sept., 2013 or on such adjourned date before the Honourable Judge sitting on the Original Side of the High Court at Madras at 15.00 Hrs., and the acceptance of any tender will be at the sole discretion of the Court to get the best possible price. (x) All the bidders or the duly authorized representative of the bidder should be present in the Court on the date when the bids are opened. (xi) The successful tenderer should pay 25% of the bid amount on or before the closing hours of 23rd Sept., 2013, by banker's cheque or demand draft to the Registrar General, High Court, Madras. (xii) The balance amount should be paid on or before 30th Sept., 2013 in the same manner as detailed in clause (xi). On payment of the full sale consideration by the successful bidder, the Registry will issue the sale certificate to the successful bidder. (xiii) In default of payment of the amounts referred to above within the time stipulated, unless otherwise extended, the sale will stand automatically revoked and the Earnest Money Deposit and the further deposit of 25% will be forfeited. Thereafter the other bidders will be given an opportunity to raise their bid amount to the highest bid already accepted, if they so desire. In the event several bidders come forward by raising their bid amount, the highest offer would be accepted. And in the event there is no such offer, the property will be sold to the next highest bidder at the risk of the tenderer whose tender was accepted, subject to order of the High Court. (xiv) The property may be inspected by the intending purchasers after informing the Advocate Commissioner between 10.00 .A.M. and 5.00 P.M., on all working days from 10th Sept., 2013 onwards. The inspection expenses shall be borne exclusively by the intending bidders. The intending purchasers shall leave a request in writing to the Advocate Commissioner appointed by this Court, one day in advance of the choice of the date for carrying out inspection. The inspection expenses shall be shared by the intending bidders. (xv) The Earnest Money Deposit made by the unsuccessful tenderer will be refunded by The Registrar General, High Court, Madras on the Court confirming the sale in favour of the successful tenderer after deducting Bank charges, if any. (xiv) The Assistant Registrar, Original Side, High Court, Madras, shall submit the bids received in the sealed cover before this Court at 15.00 Hrs., on 19th Sept., 2013.

3. In view of the statement made by Mr.Jayeesh Dolia, learned counsel that legal issues were handled by a person by name Mr.Om Prakash Agrawal, which is also stated by Ms.Vasantha Surana in her affidavit, Mr.Jayeesh Dolia is directed to request Mr.Om Prakash Agrawal to be present in Court on the next date of hearing.

4. List the matter at 3.00 p.m. on 19th Sept., 2013 for opening of the bids.".

20. Thereafter, on 19.9.2013 this court passed the following order in OP No.209 of 2013- ".Pursuant to the order dated 3.9.2013 directing the learned Advocate Commissioner appointed by this Court to effect publication for sale of the schedule mentioned property, two bids were received by the Registry within the time stipulated in the conditions of sale, i.e. on 18.9.2013 . Three more bids were received by the Registry after the time specified in the conditions of sale, i.e. on 18.9.2013.

2. Today, when the matter was taken up for conducting sale in the Court as per terms specified, the two parties, who made the bids in time, were present and along with them several other intending buyers were present. The two bidders were asked as to whether they have any objection in allowing the other parties, who are present in the Court, in submitting their bids and participating in the auction, so as to get the best price for the property. The two parties, who submitted the bids within the time stipulated, stated that they have no objection for the other parties to participate and bid. Thereafter, three more parties submitted their bids in the open Court. Therefore, in all eight bids are before this Court. The Court proceeded to open the bids and decide the further course of action.

3. After opening the eight bids in open Court, it is found that an amount of Rs.5,02,00,000/- (Rupees Five Crores and Two Lakhs only) was the highest and two bidders quoted the same price. Consequently, with consent of all parties present, open auction was conducted and after several rounds, one K.Arumugam, Old No.9, New No.10, Natham Methu Street, Chengalpattu 603 001 finally offered a sum of Rs.5,07,00,000/- (Rupees Five Crores and Seven Lakhs only) for the property. The said offer, being the highest offer made in the open auction is accepted. Mr.K.Arumugam is, therefore, declared as the highest bidder.

4. Accordingly, the sale of the schedule mentioned property is ordered in favour of Mr.K.Arumugam, Old No.9, New No.10, Natham Methu Street, Chengalpattu 603 001 for a sum of Rs.5,07,00,000/- (Rupees Five Crores and Seven Lakhs only). The earnest money deposit tendered by K.Arumugam, the highest bidder shall be encashed by the Registrar General and kept in a separate account. K.Arumugam, the highest bidder is directed to deposit 25% of the bid amount, as per the conditions of sale, before 4.30 P.M. on 23.9.2013. The successful bidder sought permission to get the sale in his favour or in the name of his nominee. He is permitted to file appropriate application or memo and the same will be considered thereafter.

5. The Assistant Registrar (Original Side), High Court, Madras is directed to return the earnest money deposit amounts received from the other bidders on proper acknowledgment.

6. Mr.Om Prakash Agarwal, who is stated to have handled the legal issues on behalf of Ms.Vasantha Surana, is directed to be present in the Court on 24.9.2013 at 3.30 P.M. Post the matter for orders on 24.9.2013 at 3.30 P.M.".

21. On 24.9.2013, this Court passed the following order:- ".By order dated 19.9.2013, this Court declared Mr.K.Arumugam, Old No.9, New No.10, Natham Methu Street, Chengalpattu 603 001, who has offered a sum of Rs.5,07,00,000/- (Rupees Five Crores and Seven Lakhs only) for the schedule mentioned property, as the successful bidder.

2. As per the conditions of sale, the successful bidder has to deposit 25% of the bid amount on or before the closing hours of 23.9.2013. The Assistant Registrar (Original Side), High Court, Madras, who is present in Court, informed that the successful bidder has furnished demand drafts for Rs.1,07,00,000/- (Rupees One Crore and Seven Lakhs only) as per the conditions of sale on 23.9.2013. In all, the successful bidder has furnished a sum of Rs.1,27,00,000/- (Rupees One Crore and Twenty Seven Lakhs only) i.e., Rs.20,00,000/- (on 19.9.2013) and a further sum of Rs.1,07,00,000/- (on 23.9.2013).

3. The Registry is directed to deposit the above said amount in M/s.Indian Bank, High Court Branch, Madras 600 104 to the credit of the Original Petition. Post the matter on 26.9.2013.".

22. On 26.9.2013 this court issued the following order:- ".List on 27.9.2013. The successful bidder is directed to furnish the details of the names by way of sworn affidavit and also the consent of the nominee.".

23. Pursuant to the order dated 26.9.2013, this matter was listed on 27.9.2013. From 27.9.2013, the matter was directed to be listed on 30.9.2013.

24. Thereafter Thiru R.Arumugam, the auction bidder has filed A.No.4524 of 2013 praying to grant two months time to settle the balance sale consideration of the auction. By order dated 30.9.2013 in A.No.4524 of 2013, this Court issued the following direction:- ".This application has been filed by the applicant praying this Court to grant the applicant two months time from 24.9.2013 to settle the balance sale consideration of the auction in the above original petition.

2. Heard the learned counsel appearing for the applicant.

3. The applicant, in his affidavit filed in support of the application, in paras 2, 3 and 4 of the said affidavit, has stated as follows:- 2. I state that I have participated in the auction conducted at Anna Nagar 3rd Main Road, Chennai 40 for purchasing property and I was a successful bidder in the above bid. The total sale consideration of the above said auction sale is Rs.5 Crores 7 Lakhs. On 19.9.2013, I have paid Rs.20 Lakhs in the mode of Demand Draft and an another

payment was made by me through Demand Draft for an amount of Rs.1,07,00,000/= on 23.09.2013, in totalling so far 25% of the amount has been paid by me.

3. I state that I am a business man and due to the festival season I am not in a position of paying the balance sale consideration and hence I am in need of settling the balance amount after two months.

4. I state that nominee may be permitted to execute the sale of the property. 4. This Court, vide order dated 3.9.2013 imposed certain conditions, while calling for bids and the conditions imposed by this Court at that time are very clear and precise and the relevant clauses are extracted hereunder :- (xi) The successful tenderer should pay 25% of the bid amount on or before the closing hours of 23rd Sept., 2013, by banker's cheque or demand draft to the Registrar General, High Court, Madras. (xii) The balance amount should be paid on or before 30th Sept., 2013 in the same manner as detailed in clause (xi). On payment of the full sale consideration by the successful bidder, the Registry will issue the sale certificate to the successful bidder. (xiii) In default of payment of the amounts referred to above within the time stipulated, unless otherwise extended, the sale will stand automatically revoked and the Earnest Money Deposit and the further deposit of 25% will be forfeited. Thereafter the other bidders will be given an opportunity to raise their bid amount to the highest bid already accepted, if they so desire. In the event several bidders come forward by raising their bid amount, the highest offer would be accepted. And in the event there is no such offer, the property will be sold to the next highest bidder at the risk of the tenderer whose tender was accepted, subject to order of the High Court. 5. The applicant has made his bid in the open Court along with other persons knowing fully well the conditions imposed by this Court. The applicant is praying for extension of time referring to Bank closure on 30th September. Post on 4.10.2013.".

25. Thereafter, on 4.10.2013, this court passed the following order:- This application is filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure to grant the applicant two months time from 24.9.2013 to settle the balance sale consideration of the auction as per the

direction in the Original Petition. He has filed an affidavit seeking permission of the Court to get the sale deed executed either in his name or his nominee. The affidavit of K.Arumugam dated 27.9.2013 is taken on file. The relevant portion reads as follows: ".3. I have been appointed as a Nominee one Mr.S.K.Jagathesh, son of Kadavul, residing at Flat A, II Floor, Block 5, Chettinad Rani Meyyammal Towers, MRC Nagar, Raja Annamalaipuram, Chennai 600 028.".

2. When the said application was taken up on 30.9.2013, this Court, after considering the conditions of sale and the fact that the successful bidder has paid the earnest money deposit and 25% of the sale consideration within the stipulated time, was not inclined to grant extension of time to pay the balance sale consideration. However, taking note of the fact that, as per the conditions of sale, the last date fixed by the Court for paying the balance sale consideration was 30.9.2013, which happens to be the half yearly closing date of the banks, adjourned the matter to 4.10.2013.

3. It is now stated by the learned Advocate Commissioner that the applicant has paid the balance amount of sale consideration to the tune of Rs.3,80,00,000/- (Rupees Three Crores and Eighty Lakhs only) on 1.10.2013 by way of 31 bankers' cheques as under: S.No.D.D.No.Date Bank Rs. 1 145204 01.10.2013 Axis Bank, Chennai-2 6,00,000/- 2 003185 01.10.2013 Axis Bank, Chennai-2 9,00,000/- 3 003184 01.10.2013 Axis Bank, Chennai-2 9,00,000/- 4 003186 01.10.2013 Axis Bank, Chennai-2 9,00,000/- 5 145206 01.10.2013 Axis Bank, Chennai-2 6,00,000/- 6 145205 01.10.2013 Axis Bank, Chennai-2 6,00,000/- 7 145207 01.10.2013 Axis Bank, Chennai-2 5,00,000/- 8 001963 01.10.2013 Axis Bank, Chennai-2 10,00,000/- 9 001962 01.10.2013 Axis Bank, Chennai-2 10,00,000/- 10 001964 01.10.2013 Axis Bank, Chennai-2 10,00,000/- 11 936902 01.10.2013 Indian Bank, Chennai 10,00,000/- 12 936901 01.10.2013 Indian Bank, Chennai 10,00,000/- 13 000086 01.10.2013 The Tamil Nadu State Apex Coop Bank Ltd. 9,00,000/- 14 000085 01.10.2013 The Tamil Nadu State Apex Coop Bank Ltd. 9,00,000/- 15 022358 01.10.2013 Axis Bank, Tiruvanmiyur 9,00,000/- 16 250545 01.10.2013 Bank of Baroda 9,00,000/- 17 771391 01.10.2013 C.C. Co-op Bank Ltd. 9,00,000/- 18 000950 01.10.2013 HDFC Bank 5,00,000/- 19 215051 01.10.2013 Allahabad Bank 9,99,000/- 20 215049 01.10.2013 Allahabad Bank

9,99,000/- 21 215052 01.10.2013 Allahabad Bank 4,000/- 22 215050 01.10.2013 Allahabad Bank 9,99,000/- 23 215048 01.10.2013 Allahabad Bank 9,99,000/- 24 387319 01.10.2013 TMB Ltd. 10,00,000/- 25 387320 01.10.2013 TMB Ltd. 5,00,000/- 26 387322 01.10.2013 TMB Ltd. 5,00,000/- 27 387321 01.10.2013 TMB Ltd. 10,00,000/- 28 737199 01.10.2013 The KVB Ltd. 25,00,000/- 29 093466 01.10.2013 Punjab National Bank 45,00,000/- 30 093467 01.10.2013 Punjab National Bank 45,00,000/- 31 093468 01.10.2013 Punjab National Bank 45,00,000/- 4. Taking note of the above factors, and taking note of full payment as per the conditions of sale, the Court, in exercise of discretion in terms of Clause (xiii) of the conditions of sale, is inclined to accept the further payment of Rs.3,80,00,000/- made by the applicant, by condoning the one day's delay as justified. The payment of the entire sale consideration is recorded and the sale of the property stands confirmed in favour of the applicant herein, namely K.Arumugam, No.9, Mettu Street, Periyakuppam, Chengalpattu, Kancheepuram District.

5. The Registrar General, High Court, Madras is directed to issue Sale Certificate in favour of the successful bidder or his nominee, namely S.K.Jagathesh, S/o.Kadavul, Flat A, II Floor, Block 5, Chettinad Rani Meyyammal Towers, MRC Nagar, Raja Annamalaipuram, Chennai 600 028 only and to no other person on or before 9.10.2013.

6. The petitioner/Trust is directed to execute the sale deed in favour of the successful bidder or his nominee, namely S.K.Jagathesh, S/o.Kadavul, Flat A, II Floor, Block 5, Chettinad Rani Meyyammal Towers, MRC Nagar, Raja Annamalaipuram, Chennai 600 028 only within two weeks from the date of issuance of the Sale Certificate. It is made clear that, in the meanwhile, the petitioner/Trust shall make all necessary arrangements to get the income tax clearance in this regard.

7. The Registry is directed to deposit the above said amount in M/s.Indian Bank, High Court Branch, Madras 600 104 to the credit of the Original Petition and report the same to this Court on the next hearing date. Post the matter on 25.10.2013 for further orders.".

26. The Registry in its report has stated that in the O.P.No.209 of 2013, the following amounts were deposited Mr.K.Arumugam:- On 19.09.2013 and Rs.24.9.2013 - Rs.1,27,00,000/- On 4.10.2013 - Rs.3,80,00,000/- ------------------- Total - Rs.5,07,00,000/- ------------------- Besides the above amounts of Rs.5,07,00,000/-, (Rupees Five Crores and Seven Lakhs) only, a further sum of Rs.20,00,000/- (Rupees Twenty Lakhs) only is in court deposit and there is no claim on this amount.

27. It is also stated that out of the sum of Rs.1,27,00,000/- deposited on 19.9.2013 and 24.9.2013 after deducting Government's Commission at 2% and Audit Fees at 0.2% (Rs.2,79,400/-) as per rule a sum of Rs.1,24,20,600/- has been invested in Fixed Deposit in Indian Bank, High Court Branch for a period of one year. The balance amount of Rs.3,80,00,000/- has been invested after deducting Government's Commission at 2% and Audit Fees at 0.2% (Rs.8,36,000/-) as per rule (i.e.) a sum of Rs.3,71,64,000/- in Indian Bank, High Court Branch, Chennai for a period of one year.

28. Considering the events as set out above, and also in view of the statement made in the affidavit filed by Mrs.Vasantha Surana, it is clear that the sum of Rs.20 lakhs has not been deposited by the said Mrs.Vasantha Surana in Court. There is none to claim the sum of Rs.20 lakhs so far, despite the matter being listed before Court for several occasions. In view of the fact that the sum of Rs.20 lakhs was tendered in the course of Original Petition proceedings and there is no claim for the said amount, the Court has no other option except to pass order for utilisation of the said amount. There is no necessity to make any further enquiry for the reasons already stated above. Accordingly, I direct the amount to be deposited in Chief Justice Relief Fund, Madras High Court.

29. In view of the above, the Registrar General, High Court, Madras, is directed to take steps to transfer the amount of Rs.20,00,000/- (Rupees Twenty Lakhs) only now lying in court deposit in O.P.No.209 of 2013 to the Madras High Court Chief Justice Relief Fund, immediately and report. List in Chamber for filing report. ts To The Registrar General, High Court, Madras

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