

S.Vasantha Vs. the Commissioner

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SooperKanoon Citation : sooperkanoon.com/922825

Court : Chennai

Decided On : Nov-01-2011

Judge : K.Chandru, J.

Acts : Religious Institutions (Lease of Immovable Property) Rules 1963; HR & CCE Act - Sections 34, 114; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition (MD)No.14134 of 2010 and Writ Petition (MD)No.14135 of 2010 and W.P.(MD)No.128 of 2011

Appellant : S.Vasantha

Respondent : The Commissioner

Judgement :

1. The two writ petitioners in W.P.(MD)Nos.14134 and 14135 of 2010 have challenged the order passed by the Commissioner of the HR & CE, dated 18.10.2010. By the impugned order, the Commissioner informed that the Arulmigu Sankara Rameshwarar Temple, Tuticorin situated in Tuticorin Corporation area in respect of S.No.4796/1 to the extent of 28.60 cents and 31.60 cents vacant land was given for auction on 27.07.2010 and the two petitioners are the highest bidders in the said auction. For the purpose of calling for tenderers, an advertisement was given the daily newspaper, 'Dinapumi'. But consequent upon auction, there were number of complaints received by the Department and there were others who were willing to bid for higher amount in respect of the said

properties and if public auction is once again ordered, there were a possibility of the temple getting higher income and therefore, these factors were brought to the Commissioner's notice by the Joint Commissioner vide his communication dated 12.10.2010. The report sent by the Joint Commissioner as well as the complaints received from various quarters was examined by the Commissioner and the Commissioner found that the auction was not properly advertised in Dinapumi, and there seems to be some syndicate formed for bidding the lease. Therefore, the Commissioner informed that the earlier auction has to be cancelled. Challenging the same, two writ petitions viz., W.P.(MD)Nos.14134 and 14135 of 2010 came to be filed.

2.Both the writ petitions were admitted on 2.12.2010. Pending the writ petitions, this Court by an order dated 02.12.2010 granted interim injunction restraining the respondents from allotting the property in S.No.4796/1 belonging to the temple to any third party. Aggrieved by the order passed by this Court, the Commissioner, HR & CE has filed two applications in M.P.(MD)Nos.1 and 1 of 2011 for vacating the interim injunction together with the supporting counter affidavit, dated 29.03.2011. In the counter affidavit, it was stated by the Commissioner that the land in question was bifurcated into three parts fixing the bid at Rs.1 lakh and when the approval was sought for by the Executive Officer the resolution of the Board of Trustees was not enclosed by the time, the term of Board of Trustees had come to an end and fresh Board of Trustees have to be formed. A reference was also made to the statutory rules framed under the Religious Institutions (Lease of Immovable Property) Rules 1963. More particularly, Rules 6(1)(a) provides that the auction shall be conducted by the Executive Officer and has to be made by the Joint Commissioner or Deputy Commissioner and no transfer of lease of any property or right belonging to a religious institutions shall be approved by the Executive Officer without the prior sanction by the Commissioner.

3.The auction which was conducted after following procedure also specifically stated that it is subject to the approval of the Commissioner, HR & CE and the power has been retained by the Board for cancelling or postponing the auction. It is only accepting the conditions of such auction which is purely contractual in nature, the petitioners have participated in the auction. Therefore, it is not open to

them to contend that the cancellation of the auction was illegal and the auction should be held in favour of the petitioners. It is also stated that in auction held only three person have taken part and the alleged auction was not held in a fair manner and there was a collusion between the parties not to increase the bid amount which clearly shows that the syndicate was formed among the persons who are bidding in the auction.

4.It is not clear as to how the writ petitions are maintainable especially when the order of the Commissioner was in terms of the Rules and he has exercised the power based upon the report by the Joint Commissioner as well as the complaints received from the public. It must be noted that under Section 34 of the HR & CCE Act, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, shall be null and void unless it is sanctioned by the Commissioner and before said sanction, the Commissioner has to be satisfied, he should also call for objections and suggestions from the trustee or other persons which will be considered by the Commissioner. Even in such cases, the Commissioner is precluded from according sanction without the prior approval of the Government.

5.Though the learned counsel for the petitioner contended that the present lease is not for a period of three years but the auction notification published in the Dinapumi does not show the period of auction and the land is described as Punjai land. All these details throw a suspicion on the conduct of the auction by the temple authorities. Even otherwise, if the Commissioner order was erroneous, it is not as if the petitioners have no remedy, under Section 114 of the HR & CE Act, the State Government has power to call for any record of the Commissioner or all the trustees or his own subordinates themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and in case, it appears to the Government that any such decision or order should be passed or reversed or remitted for reconsideration, they may pass orders accordingly.

6.In the present case, since the Commissioner has passed orders in public interest, the question of reviewing the said order by this Court in a writ petition

under Article 226 of the Constitution will not arise. As rightly contended in the counter affidavit that the matter is entirely contractual in character and mere participation of auction proceedings will not give any vested right for the petitioners to challenge the same. Hence, the two writ petitions are liable to be rejected.

7.The writ petition filed by one T.Rajasekaran, in W.P.(MD)No.128 of 2011, challenging the order passed by the Joint Commissioner, HR & CE Department, Tirunelveli. In the impugned order, the Joint Commissioner, had stated that the auction held on 30.08.2010 was kept in abeyance due to administrative reasons and further decision will be taken only after reconstitution of the Trustees Board. The Executive Officer was informed accordingly.

8.In the writ petition, notice of motion was ordered on 05.01.2011 and pending the writ petition, no interim order was granted.

9.The contention of the petitioner in the affidavit filed in support of this writ petition was that it is a non speaking order and in respect of any lease, it is only the Commissioner who alone can pass orders and further in paragraph 10, it is stated that the petitioner has no efficacious remedy except to file this writ petition.

10.In the present case, the decision has been taken by the Joint Commissioner who is a supervising authority under the relevant rules and there is nothing illegal in his direction to the Executive Officer to postpone the auction since the Trustee Board term has come to an end and to await the constitution of the new Trust Board. Even otherwise, as against the order passed by the Joint Commissioner, the Commissioner has power to question the same in an appropriate application failing which under Section 114 of the HR & CE Act, a petition will lie to the State Government.

11.As already noted above, the transactions that are impugned in the writ petition are purely contractual and there being no vested right on the side of the petitioner, the writ petition will not lie.

12.In the result, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

