



HIGH COURT OF ANDHRA PRADESH
MONDAY ,THE THIRTY FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

WRIT PETITION NO: 21649 OF 2021

Between:

1. PRAHALADA ENTERPRISES Represented by It's Proprietress,
Smt. Yerrakula Punnamma,
W/o. Pothuraju,
Aged about 57 years,
It's Registered Office at. Door No. 3-297,
Shivalayam Street, Mangalagiri,
Guntur District.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh, Rep. by its Principal Secretary,
Endowments Department, Secretariat Buildings,
Velagapudi, Amaravathi,
Andhrapradesh.
2. The Commissioner, Endowments Department, Vijayawada.
3. The Deputy Commissioner, Endowments Department, Guntur,
Guntur District.
4. The Assistant Commissioner, Endowments Department, Guntur,
Guntur District.
5. The Executive Officer, Sri Lakshmi Narasimha Swami Temple,
Mangalagiri,
Guntur District.

...RESPONDENTS

Counsel for the Petitioner(s): GORLE GOPALAKRISHNA

Counsel for the Respondents: GP FOR ENDOWMENTS

The Court made the following: ORDER

**HON'BLE SRI JUSTICE B. KRISHNA MOHAN****WRIT PETITION No.21649 OF 2021****ORDER:**

Heard the learned senior counsel for the petitioner; the learned government pleader for endowments for the respondent Nos.1 to 4; and the learned standing counsel for the respondent No.5.

2. This writ petition is filed questioning the action of the respondent No.5 in forfeiting a sum of Rs.35,00,000/- deposited by the petitioner on the ground that the condition No.9 of the auction notice dated 05.08.2021 is violated.

3. The learned senior counsel for the petitioner submitted that the respondent No.5 issued e-tender, sealed tender and public auction notice dated 05.08.2021 for the sale of offerings to the deity of Sri Lakshmi Panakala Narasimha Swamy presided on the uphill of Mangalagiri as shown in the list of item in the table given in the auction notice for the period from 27.08.2021 to 26.08.2022. The said auction notice was issued and affixed on the notice board. As per the tender conditions, the 13 items specified in the notice can be sold by the highest bidder at the prescribed rates for a period of one year commencing from 27.08.2021 to 26.08.2022. The interested person shall deposit the EMD of Rs.5,00,000/- to participate in the public auction. The petitioner being a regular visitor and strong devotee of Sri Lakshmi Panakala Narasimha Swamy participated in the auction and offered Rs.1,35,00,000/- towards bid amount and the same was accepted by the respondent No.5 on the auction dated 13.08.2021. The petitioner deposited Rs.5,00,000/- towards earnest money



deposit. Then the respondent No.5 informed the petitioner to deposit the balance amount within a reasonable time and it was allowed to rise necessary infrastructure and procure the items immediately to conduct the sales of the items as mentioned in the above said public auction notice to cater the needs of the devotees. Then the petitioner incurred an expenditure of Rs.7,00,000/- for erection of the shop and spent about Rs.8,00,000/- to purchase the items. Also paid a sum of Rs.18,00,000/- through RTGS to the account of the respondent No.5 on 26.08.2021 and Rs.2,00,000/- on the same day for which the respondent No.5 issued receipt Nos.3682 and 3683 dated 26.08.2021 towards the part of bid amount. Thus the respondent No.5 received a sum of Rs.25 lakhs in total as on 26.08.2021 which is about 20% of the bid amount. The petitioner was permitted to sell the items with effect from 27.08.2021 as per the schedule fixed in the above said public auction notice. Then the respondent No.5 issued a letter-cum-notice in Rc.No.A1/219/2013 dated 27.08.2021 to the petitioner to pay the balance bid amount of Rs.1,10,00,000/- within five days from the date of receipt of this notice failing which the tender would be cancelled by forfeiting the amount already deposited and fresh public auction would be conducted. Consequently the petitioner paid a sum of Rs.5,00,000/- on 27.08.2021, Rs.2,50,000/- on 01.09.2021 and Rs.2,50,000/- on 07.09.2021 towards the part of bid amount. With these payments it came to a total sum of Rs.35,00,000/- out of Rs.1,35,00,000/- that was deposited by the petitioner towards part of the bid amount. Then the petitioner submitted an explanation/request letter dated 07.09.2021 to the respondent No.5 seeking



extension of time for payment of the balance amount. But the respondent No.5 did not consider the representation of the petitioner. Under those circumstances, the petitioner filed W.P.No.19877 of 2021 before this Hon'ble court and the same was disposed of by its order dated 14.09.2021 observing that it is open to the petitioner to place any such proposal for payment of the balance amount before the respondent No.5 and thereafter the respondent No.5 has to take a decision on the matter keeping in view of the possible hardship to the devotees if the said bid is cancelled. In view of the same, the petitioner made another representation dated 14.09.2021 expressing its willingness and preparedness to pay a sum of Rs.15,00,000/- by 20.09.2021, another sum of Rs.15,00,000/- by 30.09.2021 and the remaining balance by the end of October, 2021. But to the utter surprise of the petitioner, the respondent No.5 rejected the request of the petitioner and passed the impugned proceedings dated 17.09.2021 forfeiting the amount of Rs.35,00,000/- deposited by the petitioner on the ground that the condition No.9 of the public auction notice dated 05.08.2021 was violated. Aggrieved by the same, this writ petition is filed.

4. The learned senior counsel further submitted that the petitioner actually did its business pursuant to the above said public auction notice dated 05.08.2021 only for the period between 27.08.2021 to 17.09.2021. In view of the cancellation of petitioner's lease and issuance of the second public auction notice dated 18.09.2021 the petitioner was not allowed to do business thereafter and the third party was given for the fresh lease period under the 2nd notification



dated 18.09.2021. Hence the petitioner could not continue with its original lease period upto 26.08.2022. Therefore it is not fair and reasonable for the respondent No.5 to forfeit the total amount of Rs.35,00,000/- for the business rendered by the petitioner for a period of 20 days only.

5. Per contra, the respondent Nos.3 and 5 filed counter affidavits. Basing upon the same the learned government pleader and the learned standing counsel submitted their arguments respectively. The respondent No.5 temple was published under Section 6a of the Endowments Act 30 of 1987 and it has been under the supervision and administrative control of the respondent No.1. The petitioner participated in the e-tender-cum-public auction conducted by the respondent No.5 temple as per the notice dated 05.08.2021 for the licence to prepare and sell panakam (jaggery water), coconuts, pooja samagri, devotional books, pancha Kajjayam for offering to deity and deeparadhana samagri etc to the devotees at the uphill of Sri Lakshmi Narasimha Swamy temple, Mangalagiri and became the highest bidder on a licence fee of Rs.1,35,00,000/- for a period of one year from 27.08.2021 to 26.08.2022. Since it has failed to comply with the auction conditions by not paying the licence fee amount in advance after knocking down the auction, its licence right was cancelled as per the auction conditions and the amount paid already was forfeited as per the auction condition. It was also provided in the above said tender form the auction condition No.11 (condition No.9 in the auction conditions of the pamphlet) that the highest bidder has to pay the entire bid amount immediately after knocking down the auction in his favour including the caution deposit and



if he failed to pay, the bid will be cancelled without any notice and the amounts paid by him will be forfeited and the auction will be reconducted again. The petitioner made its bid by way of written declaration dated 13.08.2021 and became the highest bidder for a sum of Rs.1,35,00,000/- and paid Rs.5,00,000/- towards caution deposit by way of DD drawn on Central Bank of India, Mangalagiri dated 13.08.2021 and undertook that it will abide by the decision taken by the respondent No.5 as per the auction conditions. As per the Rule 3 of the Andhra Pradesh Charitable and Hindu Religious Institution and Endowments, Immovable Properties and Other Rights (Other Than Agricultural Lands), Leases and Licences Rules, 2003 substituted through G.O.M.No.426, Revenue (Endowments-1) Department, dated 09.11.2015, all leases or licences shall be made by way of tender-cum-public auction on annual advance rental basis. Rule 4(2) sub-clauses (e), (f), and (g) of the above said rules are not applicable to the present facts of the case since they are only for plantation crops, orchids, aqua culture etc. As per Rule 6 of the above said Rules, the auction notice shall among others specify the period of licence or lease, the earnest money to be deposited and the terms and conditions governing the lease or licence and Rule 6(v) of the above said Rules contemplates regarding the liability of the lessee or licensee on account of the cancellation of the auction or re-auction and rule 6(v)(b) and (c) of the above said rules deal with the default clause in payment of rent/licence fee and when the terms and conditions of the lease/licence are contravened. In view of the same, all the necessary conditions were incorporated in the e-tender,



sealed tender and public auction notice and as such the petitioner cannot take a 'U' turn and question the cancellation of lease and forfeiture of the money deposited even after issuance of the notice dated 27.08.2021 when ample time was given upto 17.09.2021 for the payment of balance amount. As the petitioner did not deposit the balance amount of the bid, its representation for extension of time was rejected and the amount deposited Rs.35 lakhs was forfeited as per the auction/tender conditions. Accordingly the impugned action of the 5th respondent is defended.

6. In view of the above said rival contentions and averments, it is to be seen that pursuant to the impugned proceedings of the respondent No.5, dated 17.09.2021, a re-auction by way of e-tender cum public auction notice dated 18.09.2021 was conducted for the above said sales of the items in the respondent No.5-temple for the period from 05.10.2021 to 04.10.2022 and the lease was held in favour of the third party who was the successful bidder and as such the petitioner cannot be considered for any extension of lease period and the only issue that can be considered now at this stage is

“Whether the petitioner is entitled for refund of any amount out of the deposited amount of Rs.35 lakhs by it under the e-tender cum public auction notice dated 05.08.2021?”

7. From the facts stated above, it can be culled out that the petitioner became the highest bidder under the e-tender-cum-public auction notice dated 05.08.2021 for a sum of Rs.1,35,00,000/- on 13.08.2021 and a sum of Rs.5,00,000/- was initially deposited as caution deposit/EMD and at the request of the petitioner the respondent No.5 accommodated deferred



instalments for the payment of balance bid amount and allowed the petitioner to conduct the sales as per the schedule from 27.08.2021 onwards. Thereafter, as stated above, another Rs.30,00,000/- was received by the respondent No.5 on different dates as paid by the petitioner. Though the petitioner made a representation dated 14.09.2021 for the payment of balance amount in a fixed time schedule, the same was abruptly rejected under the impugned proceedings of the respondent No.5 dated 17.09.2021 forfeiting the deposited amount of Rs.35 lakhs on the ground of violation of condition No.9 of the public auction notice. As per the condition No.9, of the above said auction notice dated 05.08.2021 the highest bidder/the successful bidder is required to pay the total bid amount immediately including the caution deposit on the same day of knocking down the auction and in default, without issuing any notice, the said public auction can be cancelled and the amount deposited by the said successful bidder can be forfeited and the said rights for lease will be re-auctioned.

8. In this case the auction was knocked down on 13.08.2021 and the caution deposit of Rs.5 lakhs was paid by the petitioner. Either the said condition or power of the respondents in inserting the said condition in the public auction notice dated 05.08.2021 is not under challenge. But the reading of the above said condition clearly discloses that the petitioner shall pay the total bid amount on the auction date itself and in default, the respondent No.5 shall act upon immediately on the very same day cancelling the said auction by forfeiting the EMD/CD amount with a step to proceed with the re-action. But the same was not happened in this case. When the petitioner did not pay the



total bid amount of Rs.1,35,00,000/- on 13.08.2021, the respondent No.5 ought to have invoked the said condition and forfeited the EMD/CD amount of Rs.5,00,000/- of the petitioner. Instead, the respondent No.5 on receipt of the caution deposit of Rs.5,00,000/- allowed the petitioner to conduct the sales with effect from 27.08.2021 onwards and accommodated further for payment of deferred instalments over a period as stated above. Accordingly the condition No.9 of the above said public auction notice dated 05.08.2021 was not implemented/acted upon. Having received a sum of Rs.35,00,000/- towards the part payment of bid amount, the respondent No.5 ought to have given reasonable time for the payment of balance of Rs.one crore, failing which an appropriate action should have been taken against the petitioner by following the due procedure at that stage. Without giving any such reasonable opportunity, the respondent No.5 suddenly and abruptly applied the above said condition No.9 of the public auction notice by taking a 'U' turn of its action and passed the impugned proceedings dated 17.09.2021 forfeiting the total amount of Rs.35 lakhs deposited by the petitioner including the caution deposit of Rs.5,00,000/- after conducting 20 days of actual business by the petitioner between 27.08.2021 to 17.09.2021. Had the respondents invoked the condition No.9 in its true letter and spirit on 13.08.2021 itself, they would have been entitled to forfeit the caution deposit amount of Rs.5,00,000/- only. But they have not done so as stated above.

9. For the lapses of the respondent No.5, the petitioner cannot be penalised disproportionately. If Rs.1,35,00,000/- is divided by 365 days, it would be



around a sum of Rs.36,986/- per day. For 20 days, the lease amount would be a sum of Rs.7,39,726/-. Towards costs for cancellation of the said lease and for re-auction another sum of Rs.2,60,274/- may be added to the lease amount which would come to a sum of Rs.10,00,000/-. Adding this amount to the caution deposit it would be a sum of Rs.15,00,000/-. To that extent the respondents can reasonably forfeit to the account of the respondent No.5 temple and the balance amount should be offered to the petitioner by way of refund. As arrived at, the respondents can forfeit a sum of Rs.15,00,000/- for the default committed by the petitioner. Hence, the respondents are liable to pay the balance amount of Rs.20,00,000/- towards refund to the petitioner in a just and proper manner.

10. Accordingly, the impugned order of the respondent No.5 dated 17.09.2021 is set aside to the extent as indicated above and the respondents are directed to refund a sum of Rs.20,00,000/- to the petitioner within a period of six weeks from the date of receipt of this order. In default the petitioner is entitled to the said amount with interest at 6% pa till its realisation.

11. Accordingly, the writ petition is disposed of. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE B. KRISHNA MOHAN

October 31, 2022
LMV



HON'BLE SRI JUSTICE B. KRISHNA MOHAN

WRIT PETITION No.21649 OF 2021

October 31, 2022

LMV