

Court No. - 51

Case :- WRIT - C No. - 22848 of 2023

Petitioner :- Deepak Gupta

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Prashant Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. Prashant Mishra, learned counsel for the petitioner and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2.The instant writ petition has been filed for the following relief:

"(I) Issue a writ, order, or direction in the nature of certiorari quashing the impugned order and letter no. 628/Ra.Ka./Fisheries/2022 dated 14.09.2022 passed by respondent No.3 (as contained Annexure No.2 to this writ petition).

(II) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to provide the petitioner with a fair opportunity to fulfill the remaining payment obligations within a reasonable time frame in accordance with the rules and regulations."

3. Learned counsel for the petitioner submitted that petitioner has filed an application for amendment which has been allowed vide order dated 13.10.2023. He further submitted that petitioner has not incorporated the amendment in the writ petition as auction has already been finalized. He further submitted that petitioner on the date of earlier auction i.e.21.06.2021 deposited 1/4th of the bid amount i.e. Rs. 75000/- and receipt of the same has been annexed as annexure No.5 to this writ petition. He further submitted that petitioner could not deposit the remaining 3/4th of the bid amount within

time due to COVID-19 pandemic, as such authorities be directed to refund 25% of the bid amount (Rs.75000/-) to the petitioner . He further placed reliance upon Apex Court judgment in case of ***Alisha Khan vs. Indian Bank (Allahabad Bank and others Civil Appeal Nos.7680 of 2021 and Slp (C) Nos.15959-15960 of 2021***, in which Hon'ble Apex Court has passed the order to refund/return 25% of the amount of auction considering the hardship during COVID-19 pandemic. Learned counsel for the petitioner submitted that petitioner is entitled for the refund of the bid amount, which has been deposited by the petitioner on the date of auction.

4. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents submitted that petitioner can apply for the refund the amount which will be considered by the authorities in accordance with law.

5. I have considered the arguments advanced by the counsel for the parties and perused the record.

6. There is no dispute about the fact that petitioner has already deposited 25% of the bid amount (Rs.75000/-) on the date of auction i.e. 21.06.2021 but due to COVID-19 pandemic he could not deposit the remaining 3/4th amount. There is also no dispute about the fact that aforementioned auction dated 21.06.2021 has been cancelled and subsequent proceeding for auction is under process.

7. The perusal of the order of Hon'ble Apex Court passed in ***Alisha Khan (Supra)*** will be relevant for perusal in order to appreciate the controversy regarding refund of bid amount of auction which is as under:

***Alisha Khan vs Indian Bank (Allahabad Bank) on 13
December, 2021***

SUPREME COURT OF INDIA

Before: M.R. Shah and B.V. Nagarathna, JJ.

CIVIL APPEAL Nos.7680 of 2021 @ SLP (C)

Nos.15959-15960/2021 D/d13.12.2021

ALISHA KHAN-APPELLANT

VERSUS

***INDIAN BANK (ALLAHABAD BANK) & ORS. -
RESPONDENTS***

***For the petitioner: Mr. Mithan Lal Gupta, Mr. Vipin
Gupta, Mr. Mohan Lal Sharma, Advocates***

For the Respondents: Mr. Ashish Rana, Advocate

O R D E R

Leave granted.

1. Learned counsel appearing on behalf of the appellant was arguing from the Car and there was poor connectivity. When we asked him from where he is arguing, he told that he is on the road. We refuse to hear the counsel, who is arguing from the Car. Even otherwise, due to poor connectivity we are not able to hear him. However, in the interest of justice, we have considered the matter on merits and heard learned counsel appearing on behalf of the respondents.

2. Having gone through the impugned judgment and orders passed by the High Court, we are of the opinion that the High Court ought to have allowed the refund of the amount deposited being 25% of the auction sale consideration. Considering the fact that though initially the appellant deposited 25% of the Signature Not Verified auction sale consideration, however, subsequently she could not deposit balance 75% due to COVID-19 pandemic. It is contd required to be noted that subsequently the fresh auction has taken place and the property has been sold. It is not the case of the respondents that in the subsequent sale, lesser amount is received. Thus, as such, there is no loss caused to the respondents.

3. Considering the aforesaid facts and circumstances, we allow these appeals and set aside the order of forfeiture of 25% of the amount of auction sale

consideration and direct the respondent Bank to refund/return the amount earlier deposited by the appellant, deposited as the part auction sale consideration (minus 50,000/- towards the expenditure which were required to be incurred by the respondent Bank for conducting the fresh auction) within a period of four weeks from today.

4. The appeals are accordingly allowed. No cost"

8. Considering the facts and circumstances of the case as well as ratio of law laid down by Hon'ble Apex Court in case of **Alisha Khan (Supra)** respondent No.3/Sub Divisional Magistrate, Chandauli, District-Chandauli is directed to refund the bid amount of Rs.75000/- deposited by petitioner in pursuance of the auction of pond in question. Petitioner is also directed to appear before respondent No.3 within two weeks along with an application for refund of amount as well as certified copy of this order, who shall refund Rs. 75000/- to the petitioner forthwith.

9. With the above observation the writ petition is finally disposed of

Order Date :- 7.11.2023

PS*