

Neutral Citation No. - 2023:AHC-LKO:73181-DB
Reserved

Case :- WRIT - C No. - 2643 of 2007

Petitioner :- Mohd. Rehan

Respondent :- Lucknow Development Authority Thru V.C. And 2 Ors.

Counsel for Petitioner :- Karunanidhi Yadav

Counsel for Respondent :- K. Chandra, N C Mehrotra, Ratnesh Chandra, Shailendra Singh Chauhan

Hon'ble Vivek Chaudhary, J.

Hon'ble Manish Kumar, J.

1. Heard Sri Prashant Chandra, learned Senior Advocate assisted by Ms. Richa Mishra, appearing for petitioner and Sri Ratnesh Chandra, learned counsel for respondents.

2. This petition is filed seeking quashing of the order dated 13.04.2007 passed by Vice Chairman, Lucknow Development Authority whereby allotment of the plot in favour of the petitioner is cancelled and the token money deposited by the petitioner for the said allotment has been forfeited.

3. Brief facts of the case are that the Lucknow Development Authority (for brevity hereinafter referred to as 'LDA') published a notice dated 14.06.2005 for auction of certain plots in Gomti Nagar area for housing and commercial projects. Only builders/firms with prior real estate experience were qualified to participate in the bidding. The auction was held on 17.11.2006, petitioner's bid of Rs. 10860/- per sqm. for Group Housing plot No. 1/26, Gomti Nagar measuring 6307 sqm. was declared successful. Petitioner deposited Rs. 27,24,000/- towards the earnest/token money. The aforesaid auction was confirmed by the Vice Chairman, LDA on 22.11.2006 and the same day a demand for Rs. 1,42,94,190/- towards the remaining dues of the instalment was raised against the petitioner. Meanwhile a Public Interest

Litigation bearing PIL No. 7438 of 2006 was filed before this Court challenging the said auction on the grounds that LDA favoured politically connected persons and sold plots to persons unqualified to participate in the bid at throwaway prices. Citing pendency of the PIL, petitioner refused to deposit rest of the instalments. On 13.04.2007 vide the impugned order petitioner's allotment was cancelled. It is an admitted fact that no interim order was ever granted in the PIL No. 7438 of 2006 and it was dismissed on 15.05.2007 as the LDA had cancelled the whole auction.

4. Sri Prashant Chandra, learned senior advocate appearing for the petitioner challenges the impugned order on the ground that his allotment is cancelled without providing him any opportunity of hearing in violation of the principles of natural justice. He further submits that since by the impugned order, amount already deposited by the petitioner was forfeited, therefore, it was required of the LDA to afford petitioner an opportunity before passing the impugned order. In support of his submission, counsel for the petitioner places reliance upon the judgment of the Supreme Court in the case of ***Ramchandra Narayan Nayak vs Karnataka Neeravari Nigam Limited and Others (2013) 15 SCC 140***. Furthermore, PIL No. 7438 of 2006 was already pending before this Court and if it would have been allowed, the allotment would have been cancelled therefore the petitioner was exercising caution and at the time it was a right move on behalf of the petitioner to wait for the outcome of the PIL before paying any further instalments. Learned Senior Advocate further questions the validity of the impugned order on the ground that the terms of the auction did not contain any clause providing for forfeiture of deposited amount and therefore forfeiture of his deposit is in violation of the terms of auction contract between petitioner and

the LDA. Impugned order dated 13.04.2007 refers to clause 11 of the terms and conditions of the auction but it does not provide for forfeiting the token money but only provides for cancellation of the auction by the Vice Chairman. He further submits that unless there is a specific condition laid down in the terms and conditions of the auction, the earnest money/deposits cannot be forfeited. In support of his submissions learned Senior Advocate relies upon the following judgments of the Supreme Court in the cases of: ***Suresh Kumar Wadhwa vs State of Madhya Pradesh and Others (2017) 16 SCC 757*** and ***Union of India vs Vertex Broadcasting Company Private Limited and others (2015) 16 SCC 198***.

5. Sri Ratnesh Chandra, learned counsel for the LDA opposes the contentions of the counsel for the petitioner and supports the impugned order cancelling the allotment. He submits that the petitioner was regularly sent reminders/demand letters for deposit of the due amounts but he refused to pay the rest of the amounts citing pendency of the PIL No. 7438 of 2006 before this Court. No stay or interim order was ever granted in the said PIL, still petitioner refused to pay the due amount. He violated the terms and conditions of the auction regarding payment of the auction amount and therefore cancellation of his allotment is justified. Counsel for the respondent LDA further submits that it is a matter arising out of a contract and parties are bound by the terms and conditions of the auction agreement and since terms and conditions do not contain any clause requiring parties to provide any opportunity of hearing therefore there is no need to provide any opportunity of hearing, more so, when the allotment is cancelled for non-performance of the terms and conditions of the auction. Learned counsel for the respondent in his opposition to the second ground of challenge to the impugned order submits that Clause 11 referred in the impugned order, empowers the Vice-

Chairman, LDA to cancel the auction and allotment and the said clause is referred only in this context. Power to forfeit the deposit flows from sub-clause '(द)' contained in the clause (8) titled "Payment Procedure". The said sub-clause provides for charging of 15% p.a. interest on delayed payment and in case of default in payment of two installments the same empowers the LDA to cancel as well as forfeit the deposits. Therefore it can not be said that the agreement does not provide for forfeiture of deposits and hence the order dated 13.04.2007 is just, legal and proper and does not suffer from any illegality or infirmity.

6. A perusal of the record shows that admittedly petitioner was repeatedly given notices by the Development Authority to deposit the required amount. The petitioner, however, took a ground that in view of the pending PIL, he is not depositing the same. It was also informed that there is no stay order in PIL and, hence, petitioner is bound to deposit the amount as per the contract. Even the judgment in the case of **Ramchandra Narayan Nayak** (supra) is not applicable to the present case. In the said judgment clause 3(d) of the agreement between the parties provided for issuance of show cause notice before terminating the contract whereas in the present case, there is no similar clause requiring the LDA to provide any opportunity of hearing to bidders before terminating their bid or cancelling their allotment.

In the given circumstances, stand of petitioner that any further opportunity was required to be given to the petitioner does not hold good. Moreover, petitioner was given sufficient opportunity to pay the amount, which he did not pay on a ground, which is not tenable under law. Therefore, a case of violation of opportunity of hearing is not made out.

7. The second ground of challenge that there is no clause in the tender agreement that empowers the LDA to forfeit petitioner's

deposit is also misconceived. A perusal of the Tender Notice contained in the writ petition itself as “Annexure No. 2” shows that, sub-clause ‘(द्वे)’ contained in the clause (8) titled “Payment Procedure” empowers the LDA to cancel the allotment and forfeit the deposits in case of failure to deposit two instalments. Additionally sub-clause (बि) of the clause (8) requires the successful bidders to deposit the second instalment i.e., 20 percent of the auction amount within one month of the confirmation of the auction failing which the allotment will be cancelled and the already deposited earnest money will be forfeited. Law settled by the Supreme Court in the cases of *Suresh Kumar Wadhwa* (supra) and *Vertex Broadcasting Company Private Limited* (supra) as relied upon by the senior advocate appearing for the petitioner, also does not help the petitioner. Both these judgments are distinguishable from the facts of the present case, as in the aforesaid two judgments the issue was, when the original terms do not contain any provisions of forfeiture, the parties are not bound by a unilateral subsequent variation in the terms introducing forfeiture. Both the aforesaid judgments have settled that unless there is specific condition laid down in the terms and conditions of the auction, the authority can not forfeit the amount deposited upon cancellation of the auction. Since the terms of the tender in the present case empowers the LDA to cancel the allotment as well as forfeit the deposits upon default, therefore, the impugned order cancelling the allotment and forfeiting the amount deposited by the petitioner is legal and valid. It is worth noting that the petitioner himself has admitted in his various communications with the LDA (filed alongwith the writ petition) that he has not deposited the rest of the installments and would not deposit unless the PIL No. 7438 of 2006 is decided. Pendency of the PIL No. 7438 of 2006, is not a sufficient cause to defer payments, more so,

when there was no stay order in the same. Petitioner was wrong in adopting a ‘wait and watch’ policy and should have instead complied with the terms and conditions of the tender and paid his instalments within time.

8. The writ petition is *dismissed*.

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[Manish Kumar,J.] [Vivek Chaudhary,J.]

Dated: November 06, 2023
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