

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).No. 6238 of 2013 (D)

PETITIONER(S):

1. **P.A.SAINUDDIN**
NISARI MANZIL, CMC 25, CHERTHALA P.O.
2. **M.N. DAMODARAN**
LAKSHMI NARAYANA BHAVAN, CMC 29, CHERTHALA P.O.
3. **K.P. SAJEEV**
VELLIKKAKATHU, THIRUNELLOOR P.O., CHERTHALA.

BY ADV. SRI.ROY CHACKO

RESPONDENT(S):

1. **THE EXECUTIVE ENGINEER**
KERALA STATE HOUSING BOARD
DIVISION OFFICE ALAPPUZHA 686 001.
2. **KERALA STATE HOUSING BOARD**
REPRESENTED BY ITS SECRETARY
HOUSING BOARD THIRUVANANTHAPURAM - 695 001
- * **ADDL.R3 IMPEADED**
3. **THE CHAIRMAN, KERALA STATE HOUSING BOARD,**
THIRUVANANTHAPURAM-695001.

ADDL.R3 IMPEADED AS PER ORDER DATED 29/7/2013 IN IA.10217/2013

BY ADV. SRI.GEORGE BOBAN, SC, K.S.H.B.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 3/9/2015
THE COURT ON 11-09-2015, DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT-P1 – TRUE COPY OF THE TEMPORARY RECEIPT ISSUED TO THE 1ST PETITIONER

EXHIBIT-P2 – TRUE COPY OF THE COMMUNICATION ADDRESSED TO THE 2ND PETITIONER DATED 28-6-2006

EXHIBIT-P3 – TRUE COPY OF THE INTIMATION ISSUED TO THE 3RD PETITIONER FROM THE OFFICE OF THE 1ST RESPONDENT DATED 28-6-2006

EXHIBIT-P4 – TRUE COPY OF THE NEWS ITEM PUBLISHED IN THE MALAYALA MANORAMA DATED 2-3-2008

EXHIBIT-P5 – TRUE COPY OF THE NOTICE DATED 21-3-2007

EXHIBIT-P6 – TRUE COPY OF THE COMMUNICATION DATED 4-7-2007 ISSUED BY THE CHIEF ENGINEER, KERALA STATE HOUSING BOARD

EXHIBIT-P7 – TRUE COPY OF THE INTERIM ORDER PASSED BY THIS HON'BLE COURT ON 6-3-2008

EXHIBIT-P8 – TRUE COPY OF THE I.A.NO.3913/2008

EXHIBIT-P9 – TRUE COPY OF THE REPRESENTATION DATED 14-5-2012

EXHIBIT-P10 – TRUE COPY OF THE JUDGMENT DATED 11-9-2012

EXHIBIT-P11 – TRUE COPY OF THE STATEMENT GIVEN BY THE PETITIONERS AT THE TIME OF HEARING ON 15-11-2012

EXHIBIT-P12 – TRUE COPY OF THE ORDER DATED 19-1-2013.

EXHIBIT-P13- TRUE COPY OF THE REPRESENTATION DATED 23/7/13 SUBMITTED BY THE PETITIONERS TO THE CHAIRMAN K.S.H.B. THIRUVANANTHAPURAM

RESPONDENTS' EXHIBITS

EXHIBIT R1(A)- THE COPY OF THE AUCTION CONDITIONS SIGNED BY THE 1ST PETITIONER

EXHIBIT R1(B)- THE COPY OF THE REGISTERED NOTICE DATED 23/3/07 ISSUED TO THE 2ND PETITIONER

EXHIBIT R1(C)- THE COPY OF THE REGISTERED NOTICE DATED 23/3/07 ISSUED TO THE 3RD PETITIONER

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WP(C).No. 6238 of 2013 (D)

**EXHIBIT R1(D)-TRUE COPY OF THE DECISION OF BOARD MEETING OF THE KERALA
STATE HOUSING BOARD DATED 25/4/13**

**EXHIBIT R1(ED)- TRUE COPY OF THE COPY OF THE AUCTION NOTICE PUBLISHED IN
MATHRUBHOOMI DAILY DATED 26/5/13**

**EXHIBIT R1(F)- TRUE COPY OF THE COPY OF THE AUCTION NOTICE PUBLISHED IN
DESHABVHIMANI DAILY DATED 25/5/13.**

/ TRUE COPY /

P.S. TO JUDGE

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'CR'

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 6238 of 2013

Dated this the 11th day of September, 2015

J U D G M E N T

Under challenge in this writ petition is Ext.P12 order passed by the respondent Board rejecting Ext.P9 representation dated 14.05.2012 submitted by the petitioners.

2. The petitioners allege that they have successfully bid plot nos.15, 9 and 6 in the auction conducted by the Division Officer, Alappuzha of the Kerala State Housing Board and substantial amounts were also paid by them. The respondent Board, however, took steps to re-auction the plots for non-payment of the dues within the stipulated time and news of re-auction was published in the Malayala Manorama Daily. The petitioners thereupon challenged the proceedings for re-auction in WP(C) No.7773/2008. An interim order was passed by this Court; and during the pendency of the writ

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petition, representation was made to the Chairman of the Kerala State Housing Board. This Court, at the stage of final hearing, directed the Secretary, KSHB to consider the representation and pass appropriate orders within a stipulated time. The petitioners gave a statement before the Secretary, explaining the reasons for their non-payment within the stipulated time. The petitioners allege that without considering those reasons and the related circumstances borne out from the materials on record, the Secretary, KSHB rejected the representation by Ext.P12 impugned order. Hence, this writ petition.

3. In the counter affidavit filed by respondents 1 and 2, it is contended as follows;

The participation of the petitioners in the auction sale of vacant plots of Cherthala Housing Accommodation Scheme after remitting the requisite EMD of ₹25,000/- is admitted. The details of the bid made by each petitioner are given as follows;

- | | | |
|-----|-----------------|---------------|
| (i) | Petitioner No.1 | |
| | Auction date | 15.02.2006 |
| | Plot No. | PWB 15 |
| | Bid Amount | Rs.6,28,000/- |

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- (ii) Petitioner No.2
Auction date 28.06.2006
Plot No. PWB 9
Bid Amount Rs.5,68,000/-
- (i) Petitioner No.3
Action date 28.06.2006
Plot No. PWB 6
Bid Amount Rs.6,42,000/-

The condition of remittance of the bid amount as per the auction condition published is given as follows;

- (i) 15% of the bid amount to be remitted within one week of the auction (Condition Nos.14 & 15 of the auction conditions). The copy of the auction conditions signed by the 1st petitioner is produced as Ext.R1(a).
- (ii) Balance amount of the bid amount is to be remitted within one month from the date of auction (Condition No.15 of the auction conditions).

The details of remittance made by the petitioners is given as follows;

Petitioner No.1 - Bid amount - ₹6,28,000/-

- (i) Paid ₹25,000/- as EMD on 15.02.2006
(ii) Paid ₹94,200/- on 06.03.2006, i.e., after 20 days of the auction
(iii) ₹2,00,000/- on 17.10.2006, i.e., after 8 months from the date of auction
(iv) Total remittance is ₹3,19,200/-

Petitioner No.2 - Bid amount - ₹5,68,000/-

- (i) Paid ₹25,000/- as EMD on 28.06.2006
(ii) Paid ₹85,200/- on 18.07.2006, i.e., after 20 days of the auction on 28.06.2006
(iii) ₹1,00,000/- on 02.08.2006, i.e., after one month from the date of auction
(iv) Total remittance is ₹2,10,200/-

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Petitioner No.3 - Bid amount - ₹6,42,000/-

- (i) Paid ₹25,000/- as EMD on 28.06.2006
- (ii) Paid ₹1,40,000/- on 04.07.2006, i.e., after 6 days of the auction on 28.06.2006
- (iii) ₹50,000/- on 28.07.2006, i.e., after one month from the date of auction
- (iv) Total remittance is ₹2,15,000/-

They contended that the terms and conditions of the auction were published at the auction hall; and further, the conditions were explained before the auction. Therefore, according to them, the allegation that the petitioners were not aware about the conditions of auction is not correct. They pointed out that even the directions in Ext.P3 intimation of acceptance of offer issued to the 3rd petitioner (and other similar intimations issued to the other petitioners) would detail the schedule of remittance in accordance with the auction conditions.

In the auction, a total number of eight units were sold out and all other bidders except the petitioners remitted the bid amount in accordance with the above mentioned auction conditions; according to them. They further contended that the petitioners are defaulters and did not comply with the conditions of auction. Despite the said default, the 1st respondent Board, on a request made by the petitioners, extended the time for payment by six months

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on a condition to remit the amount with 10% interest. However, the petitioners failed to remit the amount. Therefore, according to them, no binding contract has been formed in between the petitioners and the Board and in the said situation, the allotment of plots in favour of the petitioners made as mentioned were cancelled. On 12.04.2007, amounts remitted were forfeited to the Board and the same was intimated to the petitioners also. According to them, the possession of the plots were never handed over to the petitioners.

They admitted the issue of Ext.P5 notice of eviction to the 1st petitioner and the issue of similar notices to petitioners 2 & 3. Ext.R1(b) and Ext.R1(c) are the notices issued to petitioners 2 & 3 respectively. According to them, the notices were intended only to intimate the default made by the petitioners in remitting the bid amount. They have taken the stand that no eviction proceedings were necessary since the petitioners were never given the possession of the plots. They further contended that in spite of the issue of Exts.P5, R1(b) & R1 (c) notices, neither a reply nor any payment was received from the petitioners.

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4. The petitioners filed a reply affidavit to the counter.

5. Arguments have been heard.

6. The definite stand taken by the respondent Board is that the auction-cum-tender was conducted with wide publicity and the conditions of the auction were made known to all the bidders before commencement of the auction and the petitioners defaulted payment and did not discharge their obligation to the Board even after extension of time was granted to them. They have further taken the stand that the market value of the plots as on the date is much more than the amount quoted at the time of auction and by passage of time between the date of the bids and the date of the order, i.e., for a period of six years, many people would have come forward with higher bids.

7. According to the learned counsel for the petitioners, the aforesaid stand taken by the respondent Board is fallacious. It is pointed out that the petitioners

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specifically requested the Board to invoke Section 85(6) of the Kerala State Housing Board Act (hereinafter referred to as, “the Act”) though the impugned order is not strictly one coming within the purview of the Act. According to the learned counsel for the petitioners, the impugned order does not make provision for any rational and logical explanation to reject the representation. It was also pointed out that the reasons are not supported by the materials on record. In this connection, the learned counsel for the petitioners invited my attention to the decision of the apex court in **Noida Entrepreneurs Association v. Noida & Others** [2007 (10) SCC 385], which was followed in **State of Kerala v. Zoom Developers Ltd. & Others** [2009 (4) SCC 563].

8. It was argued that in Ext.P11 statement, the petitioners have given valid reasons for non-payment of the balance amount within the stipulated time. According to the learned counsel for the petitioners, the request ought to have been taken into consideration by the

Secretary at the time of passing the impugned order. It was pointed out that nothing is stated as to whether the statement is trustworthy or not. The petitioners have preferred Ext.P13 representation dated 23.07.2013 before the Chairman of the respondent Board highlighting that they are prepared to pay their arrears outstanding to the KSHB along with the interest within a period of two weeks. It was submitted that the petitioners had genuine difficulty in paying off the amounts at the appropriate time to the Board. Therefore, it was submitted that it was just and necessary that the additional respondent is directed to consider and pass orders on Ext.P13 representation after affording the petitioners an opportunity of being heard.

9. According to the petitioners, they did not have sufficient knowledge about the terms and conditions of the auction, which is alleged to have been published by the respondents in the print media. It cannot be denied that all the three petitioners made substantial payments towards the bid amount. It was on account of the

circumstances beyond the control of the petitioners that the entire bid amount could not be paid as per the schedule published by the Kerala State Housing Board. The petitioners had made representations before the Board expressing the difficulties in paying the bid amount within the stipulated time and they sought extension of time for making payments. Though the plots were bid in 2006, it was long thereafter that the petitioners came to know that the plots were being re-auctioned, i.e., in March 2008 through Ext.P4. Thereafter, the petitioners had also represented to the Minister for Housing to grant further time and to adjourn the auction, which was scheduled to be held in March 2008. Exts.P5 & P6 would indicate that proceedings under Section 85 of the Act were initiated by issuing notice, calling upon each of the petitioners to submit their explanations as to why they should not be evicted from the premises surrendered to them pursuant to the bid. As Exts.P5 & P6 were issued under Section 85 of the Act, the only presumption that can be drawn is that

the petitioners were given possession of the plots, because, proceedings under Section 85 of the Act cannot be initiated unless the bidder is given possession of the plot pursuant to the bid. Therefore, it is absolutely incorrect to say that the possession of the plot is not handed over to the petitioners. Though it is averred in para 9 of the counter affidavit that the possession has not been handed over to the petitioners, the same cannot be accepted in the light of what is stated above.

10. Exts.R1(b) & R1(c) are the notices under Section 85(2) of the Act. The power conferred on the competent authority under Section 85(3) to grant extension of time specified in such notice on such terms is for the payment and recovery of the amount claimed in the notice. It can be seen from the preliminary notice in Form-1 issued under Section 85(2) of the Act that a sum of ₹38,800/- was shown as the amount due from the 1st petitioner. The action under Section 85 can be initiated only when conditions under Section 85(i)(a) or (b) are not satisfied.

The present position so far as the petitioners are concerned can only be traceable to Section 85(i)(a)(iii). This Court, while disposing of the previous WP(C) No.7773/2008 (Ext.P10), directed the 2nd respondent, Secretary of the Board, to consider and pass orders on Ext.P7 representation after affording opportunity to the petitioners. The definite case of the petitioners is that in the enquiry conducted thereafter, the petitioners have deposed that the amounts have been collected from all of them even after the expiry of time stipulated in the conditions of auction. However, Ext.P12 is silent on the same. What is stated in Ext.P12 is that all the petitioners defaulted payment of the balance amount in accordance with the conditions of the auction and petitioners 1 & 2 did not make payment even after the extension of time was granted to them. The only ground, which weighed with the 2nd respondent in ordering rejection of their representation is that the re-auction proceedings after a lapse of 5 years would fetch much higher amount than the

amount, for which the plots were bid by the petitioners and the attempt of the petitioners is only to thwart the re-auction proceedings, causing huge loss to the Board by retaining the plots at a reasonably low price.

11. It is crucial to note that no intimation has been given to the petitioners regarding cancellation. Cancellation of bids would invite civil consequences so far as the petitioners are concerned. It is imperative that the petitioners are put on notice before the bids are cancelled. In the earlier writ petition, an interim order was granted staying all further proceedings pursuant to re-auction, however, on condition that 50% of the balance amount be remitted by each of the petitioners. However, when the balance amount was attempted to be paid in obedience to the interim order passed by this Court, the officials of the Board refused to accept the same; and therefore, IA No.3913/2008 was filed seeking a direction to the respondents to accept payments. Only because of the refusal on the part of the officials to accept the amount as

directed in the interim order, the balance amount were kept with the petitioners and the said amount along with interest was offered to be paid to the Board as evidenced by Ext.P9 representation. The respondents have not stated anything regarding the non-receipt of the amount pursuant to the interim order. As the respondents proceeded with re-auction proceedings, the petitioners filed IA No.7832/2013 praying for stay of further proceedings. However, the re-auction could not be materialized for want of bidders; and accordingly, the said IA was dismissed as not pressed. As rightly pointed out by the learned counsel for the petitioners, the deprivation of the plots bid by the petitioners will constitute serious infringement of their right in terms of Article 300A of the Constitution of India.

12. As could be presumed that the possession has been handed over, there had been a concluded contract; and the respondent Board, being an instrumentality of the State, is bound by the principles of the terms of the

agreement as well as the principles of natural justice. Though it was strenuously argued by the learned Standing Counsel for the respondent board that there was no binding contract and there was only an offer to make payment on some other day, which amounts to only a counter offer, I am not inclined to accept the same. Taking into account the very fact that Exts.P4 & P5 would indicate that proceedings were initiated under Section 85 of the Act, which can be done only if the bidder is given possession of, it can be safely concluded that the offer of the petitioners was accepted by the Board; and therefore, there was a concluded contract.

13. The argument advanced by the learned Standing Counsel for the respondents is that there is no evidence to show that at what point of time that possession has been handed over. This Court is of the view that the petitioners cannot be blamed for that. As notice issued under Section 85(2) presupposes the handing over of the possession to the petitioners, the decision of the respondents for re-

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auction without cancelling the allotment under due notice to the petitioners is quite incompetent. Therefore, on a consideration of the entire materials now placed on board, this Court is of the definite view that the petitioners are entitled to the relief as prayed for.

In the result, the writ petition is allowed. Ext.P12 is quashed. Respondents are directed to accept payment from the petitioners towards full and final discharge of dues from them and to allow the petitioners to have the enjoyment of plot nos.15, 9 & 6 respectively within a period of two months from the date of receipt of a copy of this judgment.

As there is delay in paying the instalments, the petitioners shall pay simple interest at the rate of 10% per annum on each instalment from the dates, on which they have become due till the date of actual payment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-