HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

Writ Petition No. 14316 of 2008

ORDER :

This writ petition is filed seeking writ of mandamus declaring the proceedings No.5640/EMC/HUDA/96, dated 02.03.2008 issued by the second respondent stating that the allotment made to the petitioner company vide proceedings dated 28.08.1996 deemed to have been cancelled and returning the amount and forfeiting the initial deposit, as illegal and arbitrary and consequently to set aside the same and direct the 2nd respondent to register the plot No.5 admeasuring 1320 sq.mtrs in HUDA Trade Centre, Ramachandrapuram in the name of the petitioner company or its nominee.

2. Brief facts which are necessary for disposal of the writ petition are as follows:

In pursuant to the auction notification issued by the 2nd respondent for sale of open plots at Ramachandrapuram and Saroornagar, Hyderabad in the year 1996, the petitioner company participated in the auction held on 06.08.1996. As it was highest bidder, was allotted plot No.5, admeasuring 1320 sq.mtrs for a total sale price of Rs.6,73,200/- vide Confirmation cum Provisional Allotment Letter No.9715/EMC/Part-II/HUDA/93, dated 28.08.1996. As per condition No.15(d) of the auction notification, the said allotment is subject to rules and regulations under the A.P. Urban Areas (Development) Act, 1975 (for brevity 'the Act of 1975) or directions of the Government and such other terms and conditions as may be communicated by HUDA from time to time. As per the said terms and conditions of notification, the entire bid amount has to be paid within one month without interest which includes initial deposit soon after the acceptance of the bid and in case, if the entire amount is not paid, the same has to be paid within 3 months from the date of the auction with interest @ 20% and that as per Condition No.7(b), the interest is charged only on the reduced balance amount. After the allotment, the petitioner company has paid the following amounts i.e., EMD amount of Rs.50,000/- on 05.08.1996, an amount of Rs.1,18,300/- on 01.09.1996, an amount of Rs.2,64,900/- on 10.01.1997, an amount of Rs.1,00,000/- on 07.10.1997 and an amount of Rs.1,40,000/- on 07.11.1997, totaling Rs.6,73,200/-, which is entire sale consideration. Though the petitioner paid entire sale consideration, the 2nd respondent authority issued show-cause notice dated 08.08.2005 calling upon the petitioner to show-cause as to why the allotment should not be cancelled on or before 31.08.2005, else the allotment stands cancelled and demanded the petitioner for payment of Rs.5,07,312/- including interest as on 31.07.2005. The petitioner filed explanation dated 31.08.2005 requesting to grant concessional rate of interest at 13.5% per annum, as was considered in other cases. It is stated that before issuance of show-cause notice dated 08.08.2005, the petitioner paid an amount of Rs.1,14,028/- up to 20.07.2003 calculating compounding interest @ 13.5%, which was received and acknowledged by the 2nd respondent. The 2nd respondent had not considered the request of the petitioner company. However, the petitioner company paid an amount of Rs.5,60,000/- towards entire demanded penal rate of interest up to 30.11.2005 in pursuant to show-cause notice dated 08.08.2005 on 30.11.2005, by way of Demand Draft No.816627, drawn on Indian Bank, Srinagar Colony, Hyderabad. The petitioner had paid entire sale consideration along with interest as demanded by the 2nd respondent on 30.11.2005.

3. While so, the 2nd respondent issued impugned order dated 02.03.2008 returning an amount of Rs.11,78,928/- and forfeiting the initial deposit of Rs.1,68,300/- and cancelled the allotment of the plot stating that the petitioner neither submitted explanation nor paid the

amount as on 31.08.2005 and same is in violation of Condition Nos.11(a) & 11(d). The petitioner had paid the amount on 30.11.2005 by way of Demand Draft and the same was encashed by the second respondent authority. That 2nd respondent did not have any right to declare that the allotments are deemed to have been cancelled. In response to the impugned order, the petitioner filed representation to the first respondent along with the cheque sent to the petitioner and the same has been received and acknowledged by the 2nd respondent. However the 2nd respondent issued paper publication in Hindu on 10.06.2008 proposing to auction the 80 left over plots in various HUDA layouts including the plots at Ramachandrapuram. Aggrieved by the same, the present writ petition is filed.

4. Counter affidavit is filed by the 2nd respondent denying the averments in the affidavit filed in support of the writ petition stating that the dispute in this writ petition is arising out of contractual obligation, which is in the realm of a contract and not a statutory one. That after payment of initial deposit and EMD totaling Rs.1,68,300/- on 09.08.1996, this respondent issued confirmation letter dated 28.08.1996 with an intimation to pay Rs.5,04,900/- without any interest within a period of one month or pay with interest @ 20% on or before 06.11.1996. As the amounts were not paid by the petitioner, this respondent issued show-cause notice dated 08.12.1996 requesting the petitioner to make payments on or before 31.12.1996. In spite of issuing several notices, the petitioner failed to make payment of balance sale consideration. Though this respondent issued notice on 26.08.2003 requesting to make payment of Rs.3,19,936/- along with interest on or before 15.09.2003, petitioner failed to pay the same. Therefore, show-cause notice dated 08.08.2005 was issued to the petitioner directing it to submit explanation as to why the allotment should not be cancelled. Finally, the HUDA has passed the order for

cancellation of sale on 25.11.2005 in its note file. The petitioner had paid the amounts on 30.11.2005 directly in the bank account of this respondent without its knowledge or consent. As per Condition No.11(a)(d) of the terms and conditions of the notification, if the amounts are not paid within the time, the allotment is deemed to be cancelled. Therefore, as per the terms and conditions of the sale, the petitioner is not entitled to the plot and this respondent has rightly forfeited the initial deposit paid by the petitioner and cancelled the allotment by forfeiting the remaining amount and sought for dismissal of the writ petition.

5. Reply affidavit is filed by the petitioner reiterating the averments of the writ affidavit and denied the contents of the counter affidavit stating that after receipt of the notice dated 26.08.2003, the petitioner has paid an amount of Rs.1,14,028/- calculating interest upto 20.07.2003 @ 13.5%. In response to the show-cause dated 08.08.2005, the petitioner submitted explanation and having satisfied with the same, the 2nd respondent did not initiate any action till 02.03.2008. 2nd respondent cannot rely upon the present market value of the plot since the 2nd respondent had received entire sale consideration as demanded by 30.11.2005 and the principal amount was already received by the 2nd respondent 07.11.1997 itself. It is a contract between the petitioner and the second respondent and as per condition No.7b, whatever the amounts that are paid by the petitioner should be first adjusted to the principal amount. Till 02.03.2008, the second respondent had not issued any notice specifically canceling the said allotment except making a statement that the said allotment is deemed to have been cancelled pursuant to the notice dated 08.08.2005 on the ground that no proper explanation was submitted by the petitioner by 31.08.2005. As the explanation submitted by the petitioner had been accepted by the respondent, there cannot be any

retrospective cancellation.

6. Heard Sri C.Raghu, learned counsel for the petitioner and Sri K.Vivek Reddy, learned Standing Counsel for the 2nd respondent.

7. Sri C.Raghu, learned counsel for the petitioner vehemently contends that the entire sale consideration with interest at the rate of 13.5% has been paid by the petitioner on 07.11.1997. Thereafter, the petitioner gave several representations for calculating interest at the rate of 13.5% per annum as was done in other cases. The respondent authorities have kept quite about the same and issued show-cause notice dated 08.08.2005 asking the petitioner to submit explanation, otherwise, allotment made in favour of the petitioner shall be deemed to have been cancelled. In pursuant to the same, the petitioner submitted explanation on 31.08.2005. However, the petitioner, having waited for the 2nd respondent's reply, paid the entire sale consideration calculating interest at the rate of 20% p.a, on 30.11.2005 by way of Demand Draft No.816627, drawn on Indian Bank, Srinagar Colony, Hyderabad, as demanded by the respondents. However, the 2nd respondent had issued impugned order dated 02.03.2008 canceling the allotment made in favour of the petitioner, which is arbitrary and illegal.

8. He would further contend that the decision relied on by the learned Standing Counsel for the 2nd respondent in **M.Padmavathi v. Hyderabad Urban Development Authority, Secunderabad**[1] is not applicable to the facts and circumstances of the case on hand as in the said decision, it is a case where the allotment was cancelled and petitioner sought for revocation of the cancellation order on the ground she was ready to pay the amount of sale consideration as demanded by the respondent therein. But in the present case on hand, the petitioner has paid entire amount before the order of cancellation of allotment and having received the entire sale consideration by the 2nd

respondent and having waited for three years, the present impugned order has been issued, as such, the facts in the present case stand on different footing. Therefore, the decision relied on by the learned Standing Counsel for the 2nd respondent is not applicable to the present case on hand. He would further contend that though the condition is stipulated in the terms and conditions, the 2nd respondent itself issued notices for payment of the amount, according to which, the petitioner made entire payments, except for the interest part, that too differential interest at the rate of 13.5% to 20% per annum. He also submits that in the show-cause notice dated 08.08.2003, there is no stipulation for payment of amount, but the petitioner was asked to submit its explanation and the petitioner submitted explanation on 31.08.2005, as such, basing on the said show-cause notice, the respondents could not have passed impugned order. In support of his contention, he relied on the judgments reported in **Kailash Nath Associates v. Delhi Development Authority and another**[2], **R.K.Saxena v. Delhi Development Authority**[3], **Rashmi Metaliks Limited and another v. Kolkata Metropolitan Development Authority and others**[4], **Poddar Steel Corporation v. Ganesh Engineering Works and others**[5], **Bharat Petroleum Corporation Limited and another v. N.R.Vairamani and another**[6], **Union of India v. Amrit Lal Manchanda and another**[7].

9. On the other hand, Sri K.Vivek Reddy, learned Standing Counsel appearing for the 2nd respondent submits that since the issue is regarding sale of assets of the respondent Authority, the question of receiving interest and concluding contract does not arise after long lapse of time. He would further contend that the present transaction is not a money transaction between the petitioner and the respondent authority for charging interest. It is a sale transaction of immovable

property of the respondent authority and the petitioner is bound to pay the amount within the stipulated time as mentioned in the notification for sale and cannot seek extension of time for payment of interest when once the stipulated time is over. He would further contend that admittedly, the petitioner had violated the tender conditions in respect of sale of plot, as such, the petitioner cannot be granted any relief. In support of his contention, he relied on the Judgment reported in **B.S.N.Joshi & Sons Ltd., v. Nair Coal Services Ltd., and others**[8]**.** He would also contend that the essential conditions in the tender cannot be relaxed and in the present case, the payment of amount within the stipulated time is the essential condition and same cannot be relaxed, as it would be amounting to arbitrary action. In support of his contention he relied on the judgment reported in **Ramana Dayaram Shetty v. International Airport Authority of India and others**[9]**.** He would further contend that the petitioner has violated condition Nos.7(b) and 11 (a) & (d) of the tender conditions, as such, no relief can be granted to the petitioner. He also contends that the subject matter is in the realm of contractual matters, as such, this Court cannot interfere in the matter by exercising the power of judicial review under Article 226 of the Constitution of India. He would further contend that even according to the petitioner, the entire amount along with interest @ 20% per annum has not been paid by the petitioner within the stipulated period of three (3) months. He also submits that the 2nd respondent authority has not received the amount allegedly paid by the petitioner on 30.11.2005, but petitioner on his own cannot deposit in the account of the respondent authority, as such, it is not payment at all and the same has been returned.

9. In the instant case, it is not in dispute that the petitioner had paid entire amounts towards principal along with interest at the rate of 13.5% per annum on 20.07.2003, though not within the time mentioned

in the tender conditions, but within the time stipulated in the notice dated 15.07.2003 issued by the 2nd respondent. The respondents have received the same and kept quite about the same. Only in the year 2005, show-cause notice dated 08.08.2005 was issued to the petitioner directing to submit explanation by 31.08.2005, without indication for cancellation of the allotment. It is the case of the petitioner that it had submitted explanation on 31.08.2005, which is within the stipulated time. It is an admitted case that the petitioner had paid entire amount towards differential interest from 13.5% p.a to 20% p.a on 30.11.2005.

10. It is specifically averred in the affidavit as well as in the reply affidavit of the petitioner that the entire amounts including penal interest @ 20% compounded quarterly was paid by way of a Demand Draft on 30.11.2005 and that the respondent Corporation had encashed the said amount. When once the amount is paid by way of demand draft and the same had been encashed by the respondent authority, it cannot be said that the petitioner had deposited the same in the account of the respondent Corporation, without their knowledge. Even otherwise, the respondent Corporation, after receipt of the said amount, kept quite for a period of more than three years and issued impugned order on 02.03.2008 cancelling the allotment of subject plot in favour of the petitioner. If the respondents felt that the payment alleged to have been made by the petitioner on 30.11.2005 by way of Demand Draft has to be rejected, they should have returned the payment immediately, but they have not done so. They have waited for more than three years and had passed impugned order on 02.03.2008, which cannot be countenanced. The respondents mainly relied on the judgment of the Division Bench of this Court in **M.Padmavathi v. Hyderabad Urban Development Authority, Secunderabad (supra),** wherein it is held as follows:

> "14. In our considered view, the petitioner cannot seek restoration of

allotment of Plot No.A merely because in some other case the HUDA authorities have, in utter violation of the provisions contained in the Act and rules and regulations framed thereunder, restored the allotment despite the fact that the bidder failed to comply with the conditions of auction/allotment. Such a decision or action can appropriately be termed as a fraud on the statute and cannot be made basis for invoking Article 14 of the Constitution."

The facts and circumstances of this case are different from the facts in the above cited judgment. In the aforesaid judgment, the petitioner sought for revocation of cancellation of allotment of plot on the ground that the same was done in similar cases by the respondent authority therein. But in the instant case on hand, it is not the case of revocation of cancellation order. In this case, the petitioner had paid entire sale consideration before passing impugned revocation order, which is not in dispute. Therefore, the facts before the Division Bench in the above cited decision were not similar to that of the present case. Judgments cannot be read as statute as one additional factor may make all the difference while arriving at a decision.

a) In **Union of India v. Amrit Lal Manchanda and another (supra),** the Hon'ble Supreme Court held as follows:

"16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

b) In **Bharat Petroleum Corporation Limited and another v. N.R.Vairamani and another (supra),** the Hon'ble Supreme Court held as follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

The only ground on which the respondent authority issued the impugned order is that the amount has not been paid by the petitioner as stipulated in the tender conditions. However, the respondents, on their own, went on giving notices for payment of amounts to the petitioner and the amounts have been paid within the time stipulated as narrated in the said notices and after recovery of amounts, allotment was cancelled, which appears to be arbitrary.

11. Though, the present case arises out of contractual matter, the Hon'ble Apex Court in **ABL International Ltd., and another v. Export Credit Guarantee Corporation of India Ltd., and others**[10] held writ petition can be entertained in contractual matters if State acts in an arbitrary manner.

12. In **Rashmi Metaliks Limited and another v. Kolkata Metropolitan Development Authority and others (supra),** the Hon'ble Supreme Court held as follows:

"16. The following observations found in the celebrated decision in Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi, AIR 1978 SC 851 are relevant to this question :

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16) (at p.18):

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow order."

In view of above decision, respondents cannot be allowed to support impugned order on different ground than mentioned therein by relying on averments in counter affidavit.

In **Kailash Nath Associates v. Delhi Development Authority and another (supra)** the Hon'ble Supreme Court held as follows:

"20. In our judgment, Webb's case would directly apply to the facts here. In that case, it was held:

"But if time be made the essence of the contract, that may be waived by the conduct of the purchaser; and if the time is once allowed to pass, and the parties go on negotiating for completion of the purchase, then time is no longer of the essence of the contract. But, on the other hand, it must be borne in mind that a purchaser is not bound to wait an indefinite time; and if he finds, while the negotiations are going on, that a long time will elapse before the contract can be completed, he may in a reasonable manner give notice to the vendor, and fix a period at which the business is to be terminated."

13. It is the specific averment of the learned Standing Counsel for the 2nd respondent Authority that the petitioner had violated Condition No.7 (b) and 11 (a) & (d) of the terms and conditions of the auction-cum-tender, as such, the 2nd respondent authority has rightly cancelled the allotment made in favour of the petitioner. He would further contend that the power to relax the terms and conditions of the auction is not within the domain of the 2nd respondent authority and that this Court cannot also interfere with the decision of the 2nd respondent authority. In support of his contention, he relied on the judgment reported in **B.S.N.Joshi & Sons Ltd., v. Nair Coal Services Ltd., and others (supra)** the Hon'ble Supreme Court observed

as follows:

> "66. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under :
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> i) If there are essential conditions, the same must be adhered to;
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> ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;
>
> iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing
>
> iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction..
>
> v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.
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> (vi) The contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.
>
> (vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint."

For the purpose of clarity, they are extracted hereunder:

"Condition No.7. Payment of sale price:

a) The total sale price shall be payable in one month without interest which include the ID paid soon after the acceptance of the bid.
b) The applicant shall also have the option to pay the balance sale price remaining after payment of I.D within three months from the date of auction with interest at 20%. However interest is charged only on the reduced balance amount.

Condition No.11:

a) For non payment of the sale price within the stipulated time, the allotment will be cancelled without any intimation of whatsoever nature. All the payments by the applicant shall be made within the stipulated time.

d) In case of cancellation for whatsoever reason the I.D in full will be forfeited and of the balance amount, if any, the interest paid with any part payment and the interest due on the defaulting amount will be deducted and the remaining amount if any after such deduction will only be refunded by Cheque."

Though condition No.11 of the terms and conditions of tender postulates for cancellation of allotment in case of non payment of the consideration amount within the stipulated time, the 2nd respondent authority issued show-cause notice dated 25.02.1999 asking the petitioner to pay an amount of Rs.1,29,370/- towards interest at the rate of 20%. The 2nd respondent authority ought not to have issued notices for payment of balance sale consideration. Though, the petitioner paid the sale consideration after the stipulated period as mentioned in the auction notice, the 2nd respondent authority ought not to have accepted the same. But surprisingly, the 2nd respondent authority had also issued notices for payment of the remaining sale consideration with interest, which the petitioner had paid without fail, within the period mentioned therein. As held in **Kailash Nath Associates v. Delhi Development Authority and another (supra)** time cannot be essence of contract. If time was essence of contract, respondents should not have waived, as such, decision in **B.S.N.Joshi & Sons Ltd., v. Nair Coal Services Ltd., and others (supra)** is applicable to the facts of the case. Therefore, it cannot be said that the petitioner had violated the terms and conditions of the contract and that he had not paid the sale consideration as and when notices issued by the 2nd respondent authority, within the time stipulated therein.

In view of above discussion, the impugned order issued by the 2nd authority vide proceedingsNo.5640/EMC/HUDA/96, dated 02.03.2008 is hereby set aside.

Accordingly, the writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous applications, if any pending in this Writ Petition, shall stand disposed of.

A.RAJASHEKER REDDY, J

30.09.2015.

KVS

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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[1] 2006 (5) ALD 741 (DB)
[2] (2015) 4 Supreme Court Cases 136
[3] (2001) 4 Supreme Court Cases 137
[4] (2013) 10 Supreme Court Cases 95
[5] (1991) 3 Supreme Court Cases 273
[6] (2004) 8 Supreme Court Cases 579
[7] (2004) 3 Supreme Court Cases 75
[8] (2006) 11 Supreme Court Cases 548
[9] (1979) 3 Supreme Court Cases 489
[10] (2004) 3 Supreme Court Cases 553