

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.30974 of 2010

ORDER:

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This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking the following relief/s:-

“....to issue an appropriate writ, order or direction more particularly in the nature of writ of Mandamus declaring the order bearing Rc.No.A1/1891/09 dt. 19-11-2010 of the 1st respondent Vice-Chairman of VGTMUDA as illegal and violative of the constitutional rights of the petitioners herein and consequentially direct the respondents to refund the EMDs (Earnest Money Deposits) of Rs. 12,00,000/- to the petitioners and pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(Reproduced Verbatim)

2. I have heard the submissions of the learned counsel for the writ petitioners and the learned standing counsel representing the first respondent-VGTMUDA. I have perused the material record including the pleadings in the writ petition.

3. The case of the writ petitioners, as set out in the writ petition and as per the submissions now made, in brief, is as follows:-

The petitioners are man and wife. The first respondent organised sale of open plots of land in Lakshmi Narasimha Enclave of Guntur on 24.08.2010, that is, open plots in a total extent of 8 acres and 2 cents of land, which belonged to Sri Lakshmi Narasimha Swami vari Devasthanam, Mangalagiri. The first petitioner made an application to the first respondent on 16.08.2010 and participated in the tender-cum-open auction on 24.08.2010 and had submitted a bid for plot number 11 by remitting the earnest money deposit of Rs.6,00,000/-. Along with him, some others have also participated in the open auction for plot number 11. However, considering the fact that he was the highest bidder for plot number 11, the first petitioner was allotted plot number 11. His wife, the 2nd petitioner had also participated in the said tender-cum-open auction on the same day for plot number 12, having paid the earnest money deposit of Rs.6,00,000/- by way of a demand draft dated 21.08.2010

bearing number 727140 drawn on Andhra Bank, Vijayawada. Two bidders have participated in the said open auction for the plot number 12. Since the second writ petitioner's bid was found to be the highest, she was allotted the said plot number 12. Since both the husband and the wife were allotted plots in the said open auction, they have decided between themselves that they need only one plot. Therefore, the second writ petitioner addressed a letter on 25.08.2010 to the first respondent explaining the facts and seeking cancellation of plot number 12 allotted in her name. She had also made a request that the earnest money deposited by her may be adjusted towards the first instalment of 10% payable by her husband in respect of plot number 11, which was allotted to him. Therefore, the petitioners requested for confirmation of one of the plots in favour of the husband, i.e., the first writ petitioner and cancellation of the plot allotted to the 2nd writ petitioner in the open auction. However, the 2nd writ petitioner received a communication bearing Rc.No.A1/1891/09 dated 19.11.2010 from the first respondent asking her to pay 10% of the total cost of the plot within 4 days; 40% within 30 days; 25% within 45 days and balance of 25% within 60 days from the date of allotment and stipulating that registration of the title deed should take place within three months from the date of the last remittance. Feeling aggrieved of the same, this writ petition is filed.

4. No counter is filed by the respondents 1 and 2. However, the learned standing counsel for the first respondent resisted the writ petition stating that as per the terms and conditions of the tender-cum-open auction, particularly term number 15, any successful bidder to whom the plot is allotted, has to remit 10% of the value of the plot within 4 days and that on failure to so pay the amount, the allotment of the plot stands cancelled and that the first respondent is entitled to forfeit the earnest money and that in the facts and circumstances of the case, the earnest money deposit stood forfeited and that therefore, the writ petitioners are not entitled to seek refund of the earnest money deposit of Rs.6,00,000/-, which was deposited by the second petitioner at the time of participating in the tender-cum-open auction for allotment of plot number 12 to her.

5. The learned counsel for the writ petitioners, in reply, would submit that on the next day of allotment of the plot, i.e., on 25.08.2010, the writ petitioners have submitted a representation to the first respondent stating that since plot number 11 was allotted to the husband i.e., first writ petitioner, they do not require the second plot i.e., plot number 12 allotted to the wife-the second petitioner and that accordingly they had sought for cancellation of allotment of the plot of the wife and adjustment of the earnest money deposit towards the first instalment of 10% payable by her husband in respect of plot number 11 which was allotted to him, or in the alternative they had sought for refund of the earnest money deposit to the second petitioner-wife, in view of the cancellation sought for in respect of plot number 12 allotted to her and that inspite of the said request made on the very next day of allotment, confirmation orders allotting plot number 12 to the second petitioner were issued asking her to pay the balance instalments and that therefore, the said action of the first respondent is in violation of the law and constitutional rights.

6. I have gone through the conditions of the tender-cum-open auction. Even as per the said conditions, the 10% of the cost of the plot shall be paid by the allottee within 4 days of allotment. There is no dispute about the dates of the various events in this case. The material record would show that the allotment of plot number 12 was made on 24.08.2010 in favour of the second petitioner and that the second petitioner had made a representation on 25.08.2010, i.e., on the very next day, for cancellation of the plot number 12 allotted to her and adjustment of the earnest money deposit towards the 1st instalment of amount payable by her husband, the first petitioner, in respect of the plot number 11 allotted. A copy of the representation filed with the material record contains an endorsement that it is received by an officer of the 1st respondent's office, though the designation of the officer is not mentioned under his signature. No counter is filed denying the fact that the said representation was made by the writ petitioners on 25.08.2010. Even otherwise, the instrumentality of a State is not expected to retain the money of a citizen, particularly when the cancellation of the plot was fairly sought on the ground that a plot was already allotted to her husband and that the petitioners, who are husband and wife, do not require the second plot allotted to the wife. While exercising equitable jurisdiction, this

Court having regard to the facts and circumstances of the case, is of the considered view that it is a fit case to grant the relief sought by the writ petitioners in this writ petition.

8. In the result, the writ petition is allowed directing the respondents to duly accept the request of the 2nd petitioner for cancellation of the plot allotted to her and return the earnest money deposit of Rs.6,00,000/- made by her with the first respondent authority vide demand draft dated 21.08.2010 bearing number 727140 drawn on Andhra Bank, Vijayawada as expeditiously as possible and at any rate not later than one month from the date of the receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.Seetharama Murti, J

01st February, 2016

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