

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 16113 of 2007

ORDER:

1) The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking issuance of writ of mandamus, to declare the action of the respondents in resorting to cancellation of Plot No.14 auctioned in favour of the petitioner after receipt of total bid amount from the petitioner, as illegal, arbitrary and malafide.

2) The facts as narrated in the affidavit are as under:-

The Executive Engineer, A.P. Housing Board, Mahaboobnagar Division, conducted an auction of open plot No.14 admeasuring 88.89 sq. yards at Andhra Pradesh Housing Board Colony, Chevella on 23.09.1999. The petitioner participated in the said auction, which was confirmed by the respondents in his favour at Rs.660/- per sq. yard, on 23.09.1999. The total amount payable, including charges for registration and conveyance, was Rs.44,251/-. The petitioner claimed to have paid a sum of Rs.5,000/- towards allotment of the plot on 23.09.1999 and also paid a further sum of Rs.10,254/- towards 1/4th cost and one percent auction expenses for the said plot. On 03.01.2000, he is said to have paid a sum of Rs.30,000/- as demanded by the authorities. On 04.05.2006 the petitioner is said to have received a final notice demanding him to pay a sum of Rs.14,251/-

within 15 days. Immediately thereafter, he paid the said sum vide DD.No.311272. In spite of payment of the entire amount, there was no response and hence, he made a representation to first respondent on 26.09.2006. On 19.01.2007 he received a letter from the second respondent informing him about the cancellation made and also forfeiture of the entire sale consideration. Challenging the same, the present Writ Petition came to be filed.

3) Learned counsel for the petitioner mainly submits that as per the request and demand made by the respondents/authorities, he has paid the amount to the satisfaction, but in spite of the same they have cancelled the allotment and forfeited the amount already paid, without any basis. He further submits that in all he paid Rs.59,504/- which is more than the auction amount and there is no justification for the authorities to cancel the allotment.

4) A counter came to be filed by Executive Engineer stating that the averments made in the affidavit are all false and invented for the purpose of this case. There is no dispute that the petitioner participated in the auction which was conducted on 23.09.1999 by depositing the EMD of Rs.5,000/-. He became the highest bidder in respect of the open plot No.14. Pursuant to which, he executed a declaration in the auction sheet stating that the auction was knocked down with his own pleasure and consent and that he shall in every way abide by the terms and conditions mentioned in the auction

notification. According to them, as per the Condition No.2 of the terms and conditions of the auction notification, the petitioner deposited 1/4th of the bid amount + 1% auction expenses on the same day and he has to pay a balance of Rs.44,251/- within a month from the date of receipt of the confirmation of auction memo by the Vice Chairman and the Housing Commissioner as per the condition No.2 of the terms and conditions of the auction. It is averred that the Vice Chairman, A.P. Housing Board confirmed the auction in favour of the petitioner on 23.11.1999 and vide memo dt:24.11.1999, the petitioner was informed about the same and was also asked to pay the balance amount of Rs.44,251/- on or before 27.11.1999 i.e., within a period of one month from the date of confirmation. It was also stated that if the said amount is not paid, the auction would be cancelled forfeiting the amount already paid by him. The said memo was served on the petitioner on 26.11.1999. The averments in the counter also show that on 03.01.2000, the petitioner paid Rs.30,000/-, but, however failed to pay the balance amount. Thereafter a final notice dated 28.04.2000 was issued to the petitioner requesting him to pay the balance of Rs.14,251/- within 15 days from the date of receipt of the same, but failed to pay the said amount. After giving sufficient time, the petitioner's bid was cancelled on 04.05.2006, by forfeiting the amount paid. The said proceedings were communicated by Registered post with acknowledgment due to petitioner on 10.05.2006. It is further stated in the counter that after cancellation of the auction,

the petitioner submitted a DD for Rs.14,251/- and obtained a receipt from the Asst. Engineer, Vikarabad, who was stationed at Chevella on that day and who was not aware about the cancellation of the auction. But, however, the said DD was not encashed. Therefore, urged that the argument of the learned counsel for the petitioner that the entire amount has been paid is incorrect. As the representation made by the petitioner to consider his request was rejected, the present Writ Petition came to be filed.

5) Relying upon the judgments of the Supreme Court, learned counsel for the respondents would submit that the authorities were justified in canceling the allotment made and that no relaxation of the conditions can be given to the petitioner, at this length of time.

6) By an order dated 30.07.2017 this court granted interim stay of allotment of the plot in question for a period of three weeks, which was subsequently extended until further orders.

7) No reply came to be filed to the counter.

8) The facts in issue are not in dispute. It is an admitted fact that though the petitioner had paid initial amount within the time prescribed, but failed to pay the balance amount, to the final notice dated 28.04.2000, within 15 days of the receipt of the said notice. The petitioner is said to have paid the amount of Rs.14,251/- after 5 years of receipt of the final notice and that too after receipt of

cancellation of the bid, and forfeiture of the amount already paid. It is also not in dispute that the said amount, which was paid by way of DD, was not encashed.

9) Now, the question is, whether the petitioner is entitled for any relief?

10) It is to be seen here that final notice was issued in the year 2000 calling upon the petitioner to pay an amount Rs.14,251/- within 15 days from the date of receipt of notice. But he failed to pay the amount. Six years later a notification was issued, canceling the bid duly forfeiting the amount paid by the petitioner. The said notice was received by the petitioner on 10.05.2006. Thereafter, the petitioner is said to have come forward with a DD for the said amount and deposited it before the Assistant Engineer at Vikarabad stationed at Chevella and obtained a receipt. But, however, the said DD was not encashed. It is not the case of the petitioner that, final notice issued to him in the year 2000, was not served on him. The averments in the affidavit filed in support of the writ petition are silent on the said aspect. Therefore, no explanation is forthcoming as to why no effort was made by the petitioner to pay the amount and why he kept quiet for nearly five years.

11) Though the learned counsel for the petitioner relied upon the judgment of the Apex Court in **R.K.Saxena v. Delhi Development**

Authority¹ in support of his plea, but the facts in the said case are different. It was a case where even after the prescribed date for payment of the amount, the authorities have accepted the amount with interest on belated payment, which was held to be a deemed extension. Under those circumstances, the Apex Court held that the cancellation order passed by the authorities having accepted the amount with delay and interest thereon is illegal and improper. Situation on hand is some what different. In the instant case after the year 2000, the petitioner had not paid any amount though he was informed in the year 2000 itself, about the payment of the money within 15 days thereof. He has come forward and deposited Rs.14,251/- after receipt of the order canceling the allotment. But, it has been stated in the counter that DD was given to unconnected person who was not aware about the cancellation, but the same was not encashed. Therefore, the facts in the instant case differ from the facts in the case referred to above. However, in similar circumstances, this Court in W.P.No.19874 of 2007, upheld the order of canceling allotment, in view of the violations of the conditions imposed therein.

12) As the petitioner failed to comply with the terms of the auction and in view of the fact that there is flagrant violation of the

¹ (2001)4 Supreme Court Cases 137

term of the auction, the request of the petitioner to set-aside the order of cancellation cannot be accepted.

13) However, the averments in the counter-affidavit show that basing on the representation made by the petitioner, the Vice Chairman of the Housing Board, seems to have been made an endorsement that they will return the amount paid by the petitioner after forfeiting only 10% of the total bid amount. If such an endorsement is made, and if a copy of the same is produced or if the records disclose the same or even if the same is acceptable now, without production of earlier endorsement, the respondents/authorities shall consider the request of the petitioner for refund of amount paid.

14) With the above observation, the Writ Petition is dismissed. No costs. Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:14.09.2017
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