THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.29921 of 2013

ORDER:

The petitioners filed this Writ Petition by invoking the provisions under Article 226 of the Constitution of India, seeking to quash the orders passed by HMDA in Proceedings No.B5/7944/2010, dated 25.07.2013, and to declare the action of the respondents in cancelling the allotment of Schedule Land in favour of the 1st petitioner and ordering resumption of possession of the schedule land, title of which has been duly conveyed in favour of the 1st petitioner under a registered sale deed bearing No.7616 of 2010, dated 27.08.2010, as arbitrary and illegal, or in the alternative, to direct respondents No.1 and 2 to forthwith refund the entire sum of USD 2,15,49,905 invested by the petitioners in the project together with interest, damages and legal costs and permit the same to be repatriated out of India.

Heard and perused the material available on record.

The brief facts are that the 1st petitioner herein after execution of a sale deed by the respondents herein, came into possession of the land which is in question in the impugned proceedings. After registration of the sale deed in favour of the 1st petitioner herein on 27.08.2010, the impugned proceedings were issued on 25.07.2013. The said proceedings also speak about allotment of land originally in favour of the 2nd petitioner herein or its group/affiliated companies. The 1st petitioner is the affiliated company of the 2nd petitioner. The said authorities cancelled the same on various reasons. Hence, the present writ petition is filed.

The learned Counsel for the petitioners submitted that HMDA has no authority to cancel the allotment of the land once a sale deed was executed in favour of the petitioners conveying the title, and that the impugned order/proceedings do not disclose any valid reasons for cancelling the allotment of land. He further submitted that mere issuance of proceedings by the authorities concerned cancelling the allotment of land after execution of sale deed, will not invalidate the existing sale deed.

The short point for consideration in this petition is whether the impugned proceedings issued by the 2nd respondent cancelling the allotment of land, after execution of sale deed based on the allotment that too, in the year 2010, is valid and whether it has any legal sanctity.

The relevant portion of the order under challenge is as follows:

1. On review of the allotment made to M/s Alexandria Equities Management India Private Limited, it is observed that the land in question was allotted to HUDA/HMDA by the Government at the market value of Rs.12 Crores per acre in 2008. However, the land was allotted to the petitioner-company by HUDA at Rs.10 Crores in 2010. Moreover, HMDA is of the view that the market value of the land in 2010 was higher. Further no auction was conducted for the allotment as required by HMDA Act. In the light of the above, it is seen that the allotment has been made to the petitioner-company in total violation of HMDA Act, 2008 and caused severe financial loss to the statutory organization and the Government.
2. No proper lay out was developed for the land parcel and the company was allotted land by the main road side,

disrupting the total lay out development plan of the land parcel.

3. The Government directed to take further action for reviewing the matter on loss of revenue to the HMDA and other aspects.

On such directions of the Government, the petitioners were called upon for clarification as to the following aspects:

1. There is no board resolution of either Alexandria or its affiliated companies to purchase the land at Khanamet and there is no resolution of Alexandria Company that the land can be registered in the name of Genome Valley-II though the amount was paid by Alexandria.
2. To confirm the willingness to pay the market value of the land allotted to them as the rate was mentioned was not correct.
3. Proof of using the land for which, it is allotted.

The petitioners filed a reply on the above aspects. But the Government passed the impugned order observing following omissions:

1) There is no board resolution from Alexandria Equities Management. The reply was supported only by the copies of the resolution of Genome Valley though the HMDA specifically asked for the Board resolution of Alexandria Equities Management.

2) There is no mention in the letter of Alexandria dated 19.06.2010 about the existence of company called Genome valley.

3) The provisional allotment letter dated 01.07.2010 was sent to Alexandria confirming allotment to Alexandria or its Group affiliate of companies.

4) It is mentioned in the agreement of sale dated 20.07.2010 that Genome Valley is an affiliate company of Alexandria.

5) Whereas in the registered sale deed dated 27.08.2010 the name of the Alexandria Company was not mentioned at all and further it was not mentioned that Genome Valley is an affiliate company of Alexandria.

6) In the minutes of Board meeting of Genome Valley resolved to accept the nomination for allotment of land allotted to Alexandria. But there is no mention about their affiliation.

7) There is no board resolution of Alexandria to nominate Genome Valley to get the land registered in its name.

8) In the explanation submitted the Genome Valley reiterated that question of making any additional payments does not arise as it has paid more for the property that the value ascertained by their consultants. But, the allotment was only based on a tentative rate even as per the allotment letter. Hence, it can be reviewed on verification of record and finding that there is loss to the review to HMDA or Government.

It is the case of the petitioners that the impugned order was passed without considering the reply submitted by the petitioners and that no opportunity was given for hearing the petitioners and that at the time of relevant transaction, HMDA made representations to the petitioners to the effect that no auction was required for transferring the schedule land in favour of the petitioners and that the scheduled land was being transferred at a premium to the then existing market price which had been independently verified by internationally reputed valuation agencies and that the land was specifically transferred for the establishment of a project of substantial public importance and the said transfer was not in the nature of a transaction whereby the land was being sold to the highest bidder and that HMDA had all necessary powers to enter into and execute the transfer in favour of the 1st petitioner. Further, HMDA represented that the 1st petitioner would be entitled to enjoy the schedule land without any reference whatsoever from the HMDA. The schedule land was not sold at a lower rate than the then prevailing market rate. Now the Government cannot seek to resile from those binding contracts and it should not be permitted to do so. It is the further case of the petitioners that the Government have no right to cancel the allotment order subsequent to the registration of the land in favour of the petitioners herein. Further, it is the case of the petitioners that the petitioners spent huge amount of money in excess of about INR 40.5 Crores on the Project till date in addition to payment of sale consideration of Rs.50 Crores to HMDA for the allotment of the Schedule Land in their favour. Further, the investment was made through dollar remittances in the sum of USD 2,15,49,905.

It is established by the petitioners by filing a reply affidavit that there is no misrepresentation, and that the market value is concerned, the petitioners produced the registered sale deeds of the lands situated in the same area, which discloses that the same were sold for lesser price than the price paid by the petitioners herein. Further, the petitioners placed copy of sale deed dated 5.6.2009 bearing document No.2597/2009 in respect of plot No.2, admeasuring Ac.1.09 gts., situated in Sy.No.136 of Gachibowli, which shows that the said land was sold for a total consideration of Rs.6,12,51,225/-. Further the Sub-Registrar issued a market value certificate as per the basic value register for the lands in Sy.No.41/14 of Khanamet Village showing the value of the land at Rs.12,000/- per sq.yd. as on 1.4.2010, which works out to Rs.5,81,76,000/-, which is almost half of the price paid by the petitioners herein.

At the time of hearing of the matter, the learned Advocate General fairly conceded, informing that after execution of the sale deed in favour of the 1st petitioner by the respondents herein, the impugned proceedings cancelling the allotment of land does not have any validity.

On perusal of the record, it is evident that there are many irregularities on the part of the authorities concerned in issuing the proceedings in question after execution of the sale deed in favour of the 1st petitioner in respect of the land in question. Considering the above circumstances, this Court is of the view that factually and legally, the order impugned is not valid under law. Hence, the impugned proceedings are not sustainable under law and are liable to be set aside.

Accordingly, the writ petition is allowed setting aside the proceedings No.B5/7644/2010, dated 25.07.2013, passed by the 2nd respondent. However, the respondents are at liberty to avail the remedies that are available under law, if they so desire. No costs. Consequently, pending miscellaneous petitions, if any, shall stand closed.

RAJA ELANGO, J

June 16, 2017
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