WPO No. 587 of 2015

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

Bandana Sil & Anr.

Versus

Kolkata Municipal Corporation & Ors.

For the petitioner	: Mr. Anirban Ray , Advocate Mr. Partha Banerjee, Advocate
For the respondents	: Mr. Ashoke Banerjee, Senior Advocate Mr. Alok Kumar Ghosh, Advocate Mr. H.S. Mondol, Advocate
Heard on	: 30.09.2020
Judgment on	: 12.10.2020

RAVI KRISHAN KAPUR, J:-

1. The grievance of the petitioners is directed against an order passed by the Joint Municipal Commissioner (G & D), Kolkata Municipal Corporation ("the impugned order"). It is pertinent to mention that the impugned order came to be passed pursuant to an earlier direction of this Hon'ble Court in W.P. No. 197 of 2014, directing the respondent authorities to consider and dispose of the representation of the petitioner.

2. Shorn of details, the facts of the instant case are as follows:-

   (a) The Kolkata Municipal Corporation (KMC) is the owner of the premises no. 4, D.L. Khan Road, Kolkata –700025. In or about 1987, the KMC decided to develop the premises by constructing a multistoried building with the ultimate aim of leasing out the flats on long term basis to the highest offerors.

   (b) Pursuant to such intent, the KMC published a brochure containing details of the proposed residential complex and also the payment schedule. The brochure published by the KMC prescribed the terms of payment which were to be adhered to by a prospective allottee upon becoming a successful bidder in respect of any of the aforesaid flats. The terms of payment provided as follows:-

   "1st instalment: 25% of the total offered price to be paid within ten working days after issue of allotment letter.

   2nd instalment: 25% of the total offered price to be paid within four months after payment of 1st instalment.

   3rd instalment: 25% of the total offered price to be paid within eight months after payment of 1st instalment.

   4th instalment: 25% of the total offered price to be paid within twelve months after payment of 1st instalment."

   (c) Pursuant to the aforesaid publication, the original petitioner had applied for allotment of several flats in the aforesaid residential complex. In fact, the original petitioner was allotted the following six flats being C-202, C-302, D-501, D-301, D-401 and D-502 respectively. In respect of two of the flats being nos. C-202 and C-302, it is alleged that a lease deed had been executed in favour of the original petitioner on 21 October, 2003. There is no dispute in this petition pertaining to the said two flats being flat nos.C-202 and C-302 respectively.

(d) It is significant to mention that in respect of the allotments in favour of the original petitioner, he was issued different allotment letters all dated 8th December, 1994. The original petitioner paid the first installment towards all the four flats well within the stipulated time period but, thereafter, failed to make payment of the rest of the installments within the aforesaid time schedule.

(e) Under the printed terms and conditions the KMC could extend the time of payment by a maximum period of two months at its discretion and also charge interest at the rate of 12% per annum for the extended period from the date of default;

(f) It is pertinent to mention that the original petitioner had filed an earlier writ petition being W.P. No. 1177 of 2008 before this Hon'ble Court. By an order dated 21st April, 2014, said writ petition was withdrawn. Subsequently, the original petitioner filed another writ petition being W.P. No. 197 of 2014 before this Hon'ble Court. By an order dated 2nd September, 2014 a Learned Judge of this Hon'ble Court admitted the writ petition and directed the respondent authorities to give a hearing to the original petitioner and to consider his representation. It is in this background, that the impugned order came to be passed.

(g) On a perusal of the impugned order it is evident that the same has been passed after giving a hearing to the parties. The impugned order records all the facts and circumstances of the case and also addresses the issues raised on behalf of the petitioners. In passing the impugned order, the Authority concluded that, the petitioners did not deserve any lease in respect of any of the four flats. A relevant factor that weighed with the Joint Municipal Commission (G & D) in passing the impugned order was that the outstanding dues had not been paid by the petitioners for a period of more than 20 years from the date of allotment of the flats. It is further recorded in the impugned order that the original petitioner had by his deliberate inaction in making payment within the prescribed time schedule disabled himself from any right of obtaining any lease in respect of any of the aforesaid flats. It is primarily on this ground that the respondent authorities have rejected the representation of the original petitioner.

3. Counsel on behalf of the petitioners contended that the impugned order fails to consider the relevant facts and circumstances of the case and is liable to be set aside. It was submitted on behalf of the petitioners that the Municipal Commissioner in passing the impugned order has

erroneously proceeded to deal with other two units being C-202 and C-302 which is not the subject matter of the disputes raised in the petition. It was further submitted that the findings of the Commissioner are contrary to the records and contrary to the facts of the case in concluding that the allotment of flats stood canceled in favour of the petitioners. It was submitted that a sum of Rs.25,00,000/- (Twenty five lacs) has been deposited by way of a fixed deposit with the Advocate-on-Record of the petitioners in a nationalized bank pursuant to an order dated 9 June, 2015 passed by this Hon'ble Court. As such, there was not default in the obligation of the original petitioner to make payment under the terms and conditions before the KMC.

4. The respondent Corporation has contended that the impugned order calls for no interference whatsoever. It was submitted on behalf the respondent Corporation that in passing the impugned order the authority has taken into consideration all the relevant facts and circumstances of the instant case and that the original petitioner was under an obligation to pay the installments in respect of all flats within the stipulated and prescribed time period but had willfully and deliberately failed to do so. In such circumstances, it was submitted that the respondent authorities were well within their rights to cancel the allotment in favour of the original petitioner. The petitioners are only entitled to get refund of the total deposit after deducting of the booking money in full and 50% of the balance amount deposited. It was further

submitted that there was no question of executing any lease deed in favour of the petitioners. The petitioners had not acquired any indefeasible right on the basis of the allotment letter. It is categorically recorded in the Notes of Submissions filed on behalf of the Corporation that matters relating to other two flats i.e. C-202 and C-302 are not directly related with the instant case. It was further submitted on behalf of the Corporation that the original petitioner had deliberately failed and neglected to make payment of the balance consideration in respect of the aforesaid four flats. As such, the petitioners ought not to be allowed to take advantage of their own wrong and accordingly and the writ petition was liable to be dismissed.

5. I have perused the pleadings filed on behalf of the parties, I have also considered the averments made on their behalf. I am of the view that the impugned order was passed after granting the original petitioner a full and adequate opportunity of hearing by the respondent authorities. The original petitioner had appeared before the respondent authorities. The original petitioner had also filed their written representation before the authorities.

6. I also find that, the impugned order is a well reasoned order and considers all the grievances raised by the petitioners. In passing the impugned order, the Joint Municipal Commissioner, has given proper and adequate reasons and dealt with all the grievances raised by the petitioner. The Joint Municipal Commissioner has taken into account the

facts that the original petitioner had failed and neglected to make timely payment within the prescribed time period. The impugned order also records the glaring fact that for a long period of more than 20 years that had lapsed since the initial publication the petitioners were in default and the increase in the market value was a very relevant factor that disentitled the petitioners to any relief.

7. Accordingly, there are good reasons and I on a perusal of the impugned order find no infirmity with the reasoning of the Joint Municipal Commissioner. I find that there is no violation of the decision making process. On the contrary, the view taken in the impugned order was certainly a view that cannot be said to be illegal, irrational or unreasonable. There is no arbitrariness or irrationality or perversity in the impugned order that warrants any interference whatsoever by a Writ Court. I also find that, in the facts and circumstances of the instant case there is no equity whatsoever in favour of the petitioners. In conclusion, I also have strong reservations as to whether a writ petition of this nature was maintainable or not. It is obvious that the petitioner in filing this writ petition is attempting to enforce a purely contractual right. Even on the basis of the best arguable case of the petitioners, the petitioners would at most be entitled to a decree for specific performance which ordinarily no Writ Court should grant. However, since the impugned order came to be passed, pursuant to an earlier direction of this Hon'ble

Court, I have proceeded to deal with the matter on merits and have not dismissed the writ petition on the ground of maintainability alone.

8. For the forgoing reasons, the writ petition is dismissed. The amount of Rs.25,00,000/- (Twenty five lacs) deposited by the original petitioner with their Advocate-on-Record in a nationalized bank pursuant to the order dated 9 June, 2015 be returned to the petitioners alongwith accrued interest. I further direct that the entire process of cancellation of the allotment with respect to the aforementioned four flats and refund, if any, of the amount due and payable to the petitioners in terms of the brochure be expeditiously completed forthwith by the respondent Corporation. However, there will be no order as to costs.

9. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ravi Krishan Kapur, J.)