***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ W.P.Nos.4906,4907 and 5006 of 2018

% 24-12-2020

WP.No.4096 of 2018

R.Saraswathi

... Petitioner

Vs.

$ Naidupeta Nagara Panchayat
Rep., by its Municipal Commissioner,
Naidupeta, SPSR Nellore District.

... Respondent

! Counsel for the petitioner: Sri V.Vinok K.Reddy

! Counsel for the Respondent: Sri N.Ranga Reddy

< Gist:

> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

W.P.Nos.4906, 4907 and 5006 of 2018

COMMON ORDER :

These three writ petitions are filed by three individuals, who have participated in the tenders conducted by the respondents and were successful tenderers with regard to the lease of shops. Three months after the tenders were filed, the premises was offered for actual occupation. Contending that there was a delay in handing over the premises. The petitioners have issued a notice to the respondent-Municipality informing that they are not interested in the tendency and seeking refund of the amounts paid. The respondent also issued a notice demanding certain amount as losses. These writ petitions are filed challenging the notices.

In WP.No.5006 of 2018, the petitioner is one K.Subhadramma. She has bid for shop No.4 in Sri Venkateswara Shopping Complex. In WP.No.4907 of 2018 the petitioner has bid for shop No.5 and in WP.No.4906 of 2018 the petitioner has bid for shop No.3 in Sri Venkateswara Shopping Complex. The counter affidavit was filed in WP.No.5006 of 2018 and the arguments were heard in that matter. Counter affidavit and submissions are treated as common for all the three writ petitions, with the consent of the learned counsels.

This Court has heard Sri Vinod K. Reddy, learned counsel for the petitioners and Sri N.Ranga Reddy appearing for the respondent.

Counsel for the petitioners argued that tender was invited by the respondent and bids were submitted by the petitioners. However, learned counsel argues that there was no concluded contract as the respondent did not disclose that there was a pending litigation and that they would not be able to deliver the possession of the shop. Learned counsel also argues that the auction was held on 04.03.2016. He points out that the publication was made on 13.02.2016 inviting bids. By that date, orders were passed in Writ Appeal in the combined High Court of Andhra Pradesh and on 04.02.2016 before The Hon'ble Supreme Court of India in cases filed by the previous occupants of the shops. Learned counsel submits that the respondent had a duty to disclose the pendency of this litigation in the tender. He submits that after the bids were submitted and the deposit was paid, the respondent suddenly said that premises cannot be delivered in view of the judgment of the Courts. He points out that ultimately, on 11.07.2016, the premises was offered for occupancy. Learned counsel points out that on 15.07.2016, the petitioners have issued a notice repudiating their bids. In the light of these circumstances, learned counsel argues that there is no concluded contract and that therefore, the respondent has to refund what is paid already. He further argues that the demand made by the respondent is also not tenable and that

any re-auction etc., conducted after the petitioners walked out is not binding on them. He also states that without prejudice to his other contentions, the manner in which the demand is made, is totally incorrect. He points out that there is no provision of charging of interest or other demands including service tax. Therefore, both legally and factually, it is submitted that as there is no concluded contract, the respondent cannot make the demand and that they are in fact bound to repay the amount that has been paid/deposited by the petitioners.

In response to this, the learned standing counsel Sri N.Rangareddy argues that there is a concluded contract, which is evidenced by the fact that the petitioners have deposited rent as advance. He argues that the petitioners are duty bound to take over the premises. He also argues that because the previous occupants went to Supreme Court and as the Supreme Court gave them three months time to vacate the premises, the respondent had no choice but to offer the vacant possession after the earlier tenant had cleared the premises. He points out that the respondents by their letter dated 08.07.2016 directed the petitioners to take over the possession from 11.07.2016 only. Therefore, it is his contention that as the petitioners did not take over possession, despite being successful bidders, the respondent had to re-auction the shop. In the re-auction, the learned counsel submitted that they have sustained a loss as the re-auction went for a very small sum in comparison to the petitioners bid. Learned counsel submits that the petitioners

have quoted a rent which is high and therefore, in order to avoid this obligation, they have created this litigation. This averment that the petitioners quoted a high rent when compared to the surrounding shops, is mentioned specifically in paragraph 6 of the counter. He states that the petitioners had a duty to inspect the premises before quoting for the same and like all successful business persons, they would have inspected the premises and quoted the rate. Therefore, learned standing counsel argues that there is a concluded contract, which was breached and as loss was caused to the respondent due to the re-auction, petitioners are bound to pay the amount that is demanded.

This Court after hearing learned counsel notices that the first issue to be decided in this case is whether there is concluded contract or not.

As per the settled law on the subject, a tender notice is an invitation to offer. Therefore, by publishing a notice dated 18.02.2016, the respondent requested the public to make their offer/bid. The petitioners submitted their bids. This was accepted by the proceedings of the respondent by which the petitioners were asked to deposit certain amount. The petitioners in fact deposited the amount. Therefore, the bid submitted/offer made by the petitioners was accepted. This led to the formation of the contract. Merely because a formal lease agreement was not concluded, it does not mean that there is no concluded contract. The petitioners have deposited the money as directed by the respondent. Therefore, as the offer made by

the petitioners was accepted by the respondent, this Court is of the opinion that an agreement has come into existence.

With regard to the submission that the property was not physically delivered to the petitioners and was in fact ready for occupation only on 11.07.2016, this Court notices that in view of the pendency of the litigation, the property was not offered in time for occupation. The request, however, made by the respondent as can be seen from the letter dated 08.07.2016, is to take possession of the property from 11.07.2016 and then get the lease deed registered at the cost of the petitioners. It is also mentioned that the rent is to be paid from then. Therefore, after examining the respective contentions, this Court notices that the respondent had only offered the premises from 11.07.2016 and requested the petitioners to occupy the premises. In the opinion of this Court, this request made by the respondent to occupy the premises from 11.07.2016 is correct. Merely because the property was not offered for occupation for two months does not lead to an inescapable conclusion that there is no concluded agreement. As mentioned earlier, the petitioners submitted an offer/bid which was accepted and a concluded contract came into existence on the acceptance and the communication of the acceptance. Thereafter, if there was a delay in delivery of the property, the petitioners can at best claim waiver of the rent/remission etc., for the period for which the property was not actually delivered. The contention of the counsel for the petitioners that there is no concluded contract and they need

not occupy the premises is therefore held to be incorrect. The delay is for three months which is not unreasonable considering the lease period in the tender.

It is also a fact that as can be seen from the records, the respondent has stated that they have sustained loss and have issued a notice in August 2016 demanding certain amounts which are the subject matter of the challenge in these writ petitions. As far as calculation is concerned, this Court is of the opinion that the respondent has made a mistake. The respondent is only entitled to claim the loss that they have actually sustained and nothing more. This loss is the difference between the rent offered by the petitioners and the rent that has been quoted by the subsequent tenderer in the re-auction. This is a loss which must be pleaded, proved and established. The question of mitigation of damages and all other issues would also arise in this matter. The impugned notices in the opinion of this Court suffer from a flaw. The rent which the petitioners were supposed to have paid is demanded as the loss. For example, in WP.No.5006 of 2018, the petitioner has quoted Rs.13,000/- for the shop. In the re-auction, as per the counter, a sum of Rs.2,000/- per month was quoted by Smt. K.Manemma. The difference between these two, namely Rs.11,000/- can at best be said to be the loss that is sustained. This is quoted as an example only. Therefore, the demand that is issued to the petitioners to pay the entire amount paid by them is not correct. This Court also holds that the petitioners

will have to establish that they are entitled to the loss said to be sustained; the service tax and also interest thereon. This Court is not expressing any further opinion on the inherent merits of the claim of the respondent. But, is only reiterating the principle that damages/compensation can only to be claimed for the actual loss that is sustained. Only the loss that arose naturally in the usual course of things can be claimed. (Section 73 of the Indian Contract Act). Therefore, the respondent can only claim reimbursement or payment of the actual loss that they have sustained. They can also claim service tax, interest etc., provided they are able to establish their right to claim the same either on the basis of a statute/rule or a clause in an agreement.

For the purpose of these writ petitions, this Court holds that the petitioners' contentions that there is no concluded contract is not correct. In the opinion of this Court, there is a concluded contract. The reason given by the petitioners for rescinding the same or walking out of the same is not correct in the opinion of this Court. Even the lawyers notice on which the learned counsel for the petitioners relies upon clearly states that the respondent has "reneged on the part of the agreement". That there is an agreement is also reiterated in the other parts of the notice. Since the Court is not adjudicating the claim of the respondent, *per se*, nor it awarding the amounts demanded, the issues are left open.

With the above observations, the writ petitions are dismissed. All the legal pleas are left open to the parties. No order as to costs.

As a sequel, the miscellaneous petitions if any shall stand dismissed.

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D.V.S.S.SOMAYAJULU,J

Date : 24.12 .2020
Note: L.R.Copy be marked.
KLP