



W.P.No.1091 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.1091 of 2022
and W.M.P.No.1154 of 2022

M.Vishnukumar

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 009.
- 2.The Tamil Nadu Housing Board,
Rep. by its Managing Director,
Nandanam,
Chennai – 600 035.
- 3.The Executive Engineer & Administrative Officer,
Coimbatore Housing Unit,
Tamil Nadu Housing Board,
Tatabad, Sivanandacolony,
Coimbatore – 641 012.
- 4.The Manager – Marketing & Service,
Coimbatore Housing Board Unit,
Tatabad,
Coimbatore – 641 012.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the fourth respondent in Letter No.A1/CHU040/2021 dated 07.01.2022 as illegal, quash the same and consequently direct the respondents to execute the sale deed in favour of the petitioner for the plot in Sl.No.107 CHU 040 Commercial site at Kovaipudur measuring an extent of 78910 sq.ft. as notified in its notification dated 23.08.2021.

For Petitioner : Ms.Lakshmi Sriram

For Respondents : Mr.B.Vijay,
Additional Government Pleader [R1]
Mr.D.Veerasekaran
TNHB [R2 to R4]

ORDER

This Writ Petition has been filed challenging the impugned order dated 07.01.2022, cancelling the allotment issued in favour of the petitioner for plot Sl.No.107 CHU 040 Commercial site at Kovaipudur measuring an extent of 78910 sq.ft., as notified in its notification dated 23.08.2021.

2. The petitioner has participated in the tender for allotment of plots called for by the Tamil Nadu Housing Board, Coimbatore Housing Unit, under the notification dated 23.08.2021. The subject plot Sl.No.107 CHU



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040 Commercial site at Kovaipudur measures 78910 sq.ft. The upset price was fixed under the tender notification dated 23.08.2021 as Rs.9,36,67,000/-.

The petitioner participated in the tender and submitted its bid for the aforementioned plot for Rs.9,41,00,000/- and he was a successful bidder.

The petitioner's bid was accepted by the respondents and as per the terms and conditions of the tender, the petitioner will have to pay 15% of the bid amount which is the EMD amount and it amounts to Rs.1,41,00,000/- which was paid by the petitioner for participating in the tender. Since the petitioner's bid was accepted being the highest bidder as per the terms and conditions of the tender, the petitioner also paid 10% of the additional bid amount on 23.09.2021 amounting to Rs.94,25,000/-. In all put together, the petitioner has paid Rs.2,35,25,000/- out of the total sale consideration of Rs.9,41,00,000/-.

3. The payment of the aforesaid amounts are not disputed by the respondents. However, by the impugned order dated 07.01.2022, the allotment of the plot granted in favour of the petitioner by the respondents has been cancelled without assigning any reason. The petitioner has challenged the impugned order on the following grounds:

(a) the impugned order passed by the fourth respondent is arbitrary and



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contrary to law and in violation of principles of natural justice

(b) the rejection of the petitioner's bid by the impugned order was passed after 3 months and 15 days from the date of the auction. The price quoted by the petitioner is not below than the upset price fixed by the Department but it is much higher.

(c) 20 plots were offered for allotment and all the 20 allotments have been cancelled by the respondents in a mechanical manner without assigning any reason.

(d) the impugned order suffers from *malafides* on the part of the respondents and is arbitrary, which is unsustainable in law.

(e) the Price Fixation Committee of the respondents comprises of:

- (i) The Managing Director of TNHB – the Chairperson
- (ii) The Board Secretary
- (iii) Financial Advisor and 2 members from the Accounts Department
apart from 2 members of Accounts Department.

The Sale Confirmation Committee consists of:

- (i) The Managing Director of TNHB – the Chairperson
- (ii) The Board Secretary
- (iii) Financial Advisor, who are also members of the Price Fixation

Committee and hence, they cannot say that the upset price is not competitive.



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4. A counter-affidavit has been filed by the second respondent on behalf of all the respondents and they would state that the petitioner having agreed to abide by the terms and conditions of sale, is now estopped from raising a plea that no reasons have been assigned for cancellation of allotment under the impugned order.

5. According to the respondents, under Clause 11 of the terms and conditions of sale agreed upon, the Auction Sale Confirmation Committee of the respondents/Board reserves the right of confirmation without assigning any reason. Therefore, according to the respondents, no reasons need be assigned for rejecting the petitioner's allotment.

6. According to the respondents, only based on the report received from the Sale Confirmation Committee of the Tamil Nadu Housing Board comprising of senior officials based on merits, on 23.12.2021, the present offer given by the petitioner was found to be non-competitive and the committee decided to reject the sale and go for a fresh auction, which will be giving more revenue to the Board.



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7. The respondents immediately after rejection of the petitioner's allotment under the impugned order, have also made several attempts to refund the amount paid by the petitioner and a cheque dated 31.01.2022 drawn on ICICI Bank, Coimbatore, was also taken in favour of the petitioner towards the said amount but the petitioner refused to receive the same.

8. Heard Ms.Lakshmi Sriram, learned counsel for the petitioner, Mr.B.Vijay, learned Additional Government Pleader appearing for the first respondent and Mr.D.Veerasekaran, learned counsel for TNHB appearing for the respondents 2 to 4.

9. The learned counsel for the petitioner reiterated the contents of the affidavit filed in support of the Writ Petition and drew the attention of this Court to the impugned order as well as to the documents filed along with the Writ Petition and would submit that arbitrarily and illegally even though the petitioner has paid a substantial sum of more than Rs.2 crores in compliance with the terms and conditions of the sale and being the successful bidder, the respondents without assigning any reason, have cancelled the allotment under the impugned order. The learned counsel further drew the attention of this Court to the following authority in support of her contention and in particular,



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she referred to the decision of the Hon'ble Supreme Court in the case of '**Kalu Ram Ahuja & another Vs. Delhi Development Authority & another**' reported in '**(2008) 10 SCC 696**'.

10. However, the learned standing counsel for the respondents would reiterate the contents of the counter-affidavit filed by the respondents and would submit that there is no necessity for the respondents to give reasons for cancellation of allotment as the same has been agreed upon by the petitioner. He would also submit that only based on the report received by the Sales Committee of the Tamil Nadu Housing Board, a conscious decision was taken by the respondents to cancel the allotment of the petitioner on the ground that the offer given by the petitioner is a non-competitive one. He also drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of '**Rajasthan Housing Board & another Vs. G.S. Investments & another**' dated 31.10.2006 passed in Civil Appeal No.4608 of 2006. The learned standing counsel would further submit that in the case of the petitioner, it was found that the offer given by him was too low and not competitive and therefore, the respondents have got the right to cancel the allotment. He also drew the attention of this Court to a Division Bench



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judgment of this Court dated 28.09.2012 in the case of '**S.Abdul Rasheed Vs. The Tamil Housing Board & others**' passed in WA.No.1510 of 2009, in support of his submission.

11. Admittedly, the petitioner has paid 25% of the total sale price. It is also an admitted fact that the petitioner was a successful bidder. At the time of submitting an application seeking for allotment, the petitioner has paid 15% of the bid amount. The total sale consideration offered by the petitioner was Rs.9,41,00,000/-. At the time of submitting his application, he has paid Rs.1,41,00,000/- to the respondents, which is not disputed by them. He became the successful bidder having given the highest offer for the purchase of the plot at Rs.9,41,00,000/-. As per the terms and conditions of the tender, the petitioner has also paid an additional 10% amount which is Rs.94,25,000/-. The same is also not disputed by the respondents. Therefore, the petitioner has paid a total sum of Rs.2,35,25,000/- out of the total sale consideration of Rs.9,41,00,000/-. The petitioner has paid 15% EMD amount on 01.10.2021 and the additional payment of 10% was paid on 22.09.2021. Therefore, 25% of the total sale price was paid by the petitioner as early as on 23.09.2021.



12. The impugned order is dated 07.01.2022 passed after a period of three months and 5 days. Admittedly, no reasons have been assigned under the impugned order for cancelling the allotment granted in favour of the petitioner. The respondents have themselves admitted in the counter-affidavit that they have not given reasons for cancellation of allotment. Therefore, it is clear that for no fault of the petitioner, his allotment has been cancelled.

13. The only contention raised by the respondents is that as per the terms and conditions of the tender, no reasons need be assigned for cancelling allotment. According to them, having agreed to abide by the terms and conditions, the petitioner is now estopped from raising a plea that no reasons will have to be assigned for cancellation of allotment.

14. Being a public authority, such an arbitrary and unfair stand cannot be taken by the respondents. The petitioner has invested huge amount of money towards the purchase of the plot and he has not alone invested money but has also spent considerable amount of time in getting the sale deed executed in his name. As seen from the counter-affidavit, there has been no delay on the part of the petitioner to make the payments as per the terms and conditions of the sale. The entire fault is only on the part of the respondents.



Any public authority, will have to act justly and fairly and there should be no arbitrariness.

15. The Hon'ble Supreme Court in the case of '**Kalu Ram Ahuja & another Vs. Delhi Development Authority & another**' reported in '**(2008) 10 SCC 696**' stated supra, relied upon by the learned counsel for the petitioner, which also involves identical set of facts, has held as follows:-

“..... Undisputedly, the D.D.A. had taken a conscious decision to auction the plot. It is neither the pleaded case of the respondents nor any material has been produced before this Court to show that the said decision was taken by the competent authority under some mis-apprehension. It is also not in dispute that the appellants participated in the auction held on 1st June, 1988, and gave highest bid, which, as mentioned above, was rejected by the Vice-Chairman, D.D.A. The communication dated 7th July, 1988, does not make a mention of the reason which may have prompted the Vice-Chairman to reject the bid given by the appellants. No other record has been produced before the Court to show that the decision of the Vice-Chairman was based on rational and tangible reasons and was in public interest. Therefore, there is no escape from the conclusion that the decision of the concerned authority was wholly arbitrary. The learned Single



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Judge without properly appreciating the nature of the appellants' challenge to the rejection of their bid, dismissed the writ petition. The Division Bench also committed the same error by dismissing the appeal. Therefore, the impugned orders are legally unsustainable. Accordingly, the appeals are allowed, impugned orders passed by the High Court are set aside, writ petition filed by the appellants before the High Court is allowed and the decision of the Vice- Chairman, D.D.A. to reject the bid of the appellants is quashed. The appellants are directed to deposit the amount of bid along with the interest thereon at the rate of eighteen per cent from the date of bid till the date of actual payment within a period of three months from today. Thereafter the D.D.A. shall complete all the formalities of land and hand over possession to the appellants. The needful be done within three months from the date the amount is deposited by the appellants."

16. The aforesaid decision is squarely applicable to the facts of this case. In the impugned order under which the petitioner's allotment has been cancelled, no reasons have been given for cancellation of the allotment. If the cancellation of allotment has been done in public interest, reasons must have been given in the impugned order. Minutes of the meeting recorded by the Sales Committee referred to in the counter-affidavit filed by the respondents



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is also not reflected in the impugned order and a copy of the same has also not been given to the petitioner. Therefore, this Court is of the considered view that arbitrarily and illegally, the allotment made to the petitioner has been cancelled under the impugned order.

17. The petitioner has also relied upon other decisions which are as follows:

(a) *Union of India & others Vs. Dinesh Engineering Corporation & another* reported in **(2001) 8 SCC 491**: For the purpose of the proposition that a *public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by Courts while dealing with public property. The Hon'ble Supreme Court had held in the aforesaid decisions that this requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review.*

(b) In the other decision relied upon by the learned counsel for the petitioner in **'State of Punjab Vs. Bandeep Singh & others'** reported in



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'(2016) 1 SCC 724', the Hon'ble Supreme Court has held as follows:

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The off quoted decision of '**Mohinder Singh Gill v. Chief Election Commissioner**', also makes it clear that *any statutory functionary which makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.*

18. According to the learned counsel for the petitioner, since no reasons have been given under the impugned order as held in the aforesaid decision, the respondents cannot supplement the same by fresh reasons in the counter-affidavit filed by them.

19. In another decision relied upon by the learned counsel for the petitioner in '**Indian Oil Corporation Ltd & others Vs. Shashi Prabha Shukla & another**' reported in '**(2018) 12 SCC 85**', wherein it was held by the Hon'ble Supreme Court that a *public authority in its dealings has to be fair, objective, non-arbitrary, transparent, and non-discriminatory.*

20. Therefore, from the aforementioned decisions of the Hon'ble Supreme Court, it is clear that the impugned order suffers from arbitrariness



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and is illegal on account of the fact that no reasons have been assigned for cancellation of the petitioner's bid even though the petitioner has not committed any default and has paid a substantial amount of money amounting to more than Rs.2 crores, which covers 25% of the total sale price.

21. The decisions relied upon by the learned standing counsel for the respondents namely the decision rendered by the Hon'ble Supreme Court in the case of '*Rajasthan Housing Board & another Vs. G.S. Investments & another*' dated **31.10.2006** passed in *Civil Appeal No.4608 of 2006*, is distinguishable from the facts of the instant case.

22. In that decision, there were conclusive reports to reveal that the price offered by the bidder was too low and is not the market price. But in the case on hand, it is not so. No reasons have been assigned in the impugned order for cancellation of allotment in favour of the petitioner. There is also no conclusive reports produced by the respondents to show that the price offered by the petitioner is not a competitive one and is not the market price. In fact, the upset price fixed under the tender was Rs.9,36,67,000/- whereas, the price offered by the petitioner was Rs.9,41,00,000/- much higher than the upset price.



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WEB COPY 23. The learned standing counsel of the respondents has also relied upon a Division Bench judgment of this Court dated **28.09.2012** in the case of '**S.Abdul Rasheed Vs. The Tamil Housing Board & others**' rendered in **WA.No.1510 of 2009 and WP.No.11288 of 2009**, involving auction sale, primarily in respect of a commercial transaction, in which the Hon'ble Division Bench has held that discretionary powers under Article 226 of the Constitution of India has to be exercised with utmost care and caution and that too in furtherance of public interest and also keeping in mind the overall welfare of the State. The Hon'ble Division Bench held that when a Court of law comes to a conclusion that the public interest requires interference, then, it is bound to interfere unhesitatingly, to prevent aberration of justice.

24. In the case on hand, no *iota* of evidence has been furnished by the respondents to the petitioner to show that the plot was agreed to be sold to the petitioner for a throw away price and the offer given by the petitioner was a non-competitive one. Therefore, this Court is of the considered view that the aforesaid decision of the Division Bench has no bearing for the facts of the instant case. Based on the materials available on record before this Court as well as before the respondents, there is no proof to show that public



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interest will be affected if the allotment of plot in favour of the petitioner is not cancelled.

25. For the foregoing reasons, the impugned order passed by the fourth respondent, cancelling the petitioner's allotment has to be necessarily quashed and the Writ Petition will have to be allowed.

26. Accordingly, this Writ Petition is allowed and the impugned order dated 07.01.2022, is quashed. This Court directs the petitioner to pay the balance sale consideration of Rs.7,05,75,000/-, within a period of six (6) weeks from the date of receipt of a copy of this order and on receipt of the balance sale consideration, the respondents (Tamil Nadu Housing Board) shall execute a sale deed in favour of the petitioner, immediately. No costs. Connected miscellaneous petition is closed.

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Speaking/Non-speaking order
Index: Yes/No

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To

- 1.The Secretary,
State of Tamil Nadu,
Housing and Urban Development Department,
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ABDUL QUDDHOSE,J.

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