

APOT/436/2023
with
WPO/1717/2023
IA NO:GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

ZAID ALAM
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE M. V. MURALIDARAN
Date : December 11, 2023.

Appearance:
Mr. Upendra Roy, Advocate
Md. Mustafa, Advocate
Mr. Rishab Ahmed Khan, Advocate
Mr. Sourav Guchhait, Advocate
....for appellant

Mr. Alak Kumar Ghosh, Advocate
Mr. Swapan Kumar Debnath
...for KMC

Mr. Anirban Kar, Advocate
Mr. Munshi Ashiq Elahi, Advocate
...for respondent No.5

The Court: By consent of the parties, the appeal and the connected application are taken up together for hearing.

An order dated December 6, 2023, passed by a learned Judge of this Court in a writ petition of the respondent no.5 herein being WPO/1717/2023, is under challenge in this appeal at the instance of the respondent no.5 in the writ petition.

It appears that the appellant herein runs an ad-agency from a stall measuring about 90 sq.ft., the owner of which is Kolkata Municipal Corporation (in short, "KMC"). The appellant says that he has been running his business from that stall for about the last 25 years.

Disputes arose as regards the appellant's right to occupy the said stall. The appellant approached the writ Court. The matter was ultimately carried to the Division Bench by KMC.

The appeal was registered as FMA 4/2019.

On September 12, 2019, the Division Bench passed an order, the relevant portion whereof reads as follows:

"Having heard the learned advocate for the parties and during the pendency of the appeal, we grant liberty to the Kolkata Municipal Corporation to conduct an open auction in respect of the stall which is presently in possession of the respondent no.1 / writ petitioner. The respondent no.1 / writ petitioner shall be eligible to participate in the said auction. In the event the respondent no.1/ writ petitioner is the not the highest bidder; he shall be given an opportunity to match the highest bid by the concerned authority of the Kolkata Municipal Corporation. However, if the respondent no.1 / writ petitioner chooses not to participate in the open auction, he will also be given an opportunity to come forward with an amount which shall be not less than 10% of the highest bid amount within a period of 48 hours from the time of conclusion of the open auction."

By an order dated September 19, 2019, the Division Bench clarified that the real purport of the earlier order dated September 12, 2019 was to ensure *“that an opportunity be given to the respondent no.1/writ petitioner – in the event he chose not to participate in the open auction – to come forward with an amount that should be at least 10% higher than the highest bid amount within a period of 48 hours from the conclusion of the open auction.”*

The appeal and the connected applications were disposed of by the Division Bench by a judgement and/or order dated September 30, 2019. The said order reads as follows:

“Pursuant to our dated 12th September, 2019 (read with the clarificatory order dated 19th September, 2019), the concerned authority of Kolkata Municipal Corporation conducted an open auction in respect of the stall which is presently in possession of the respondent no.1/writ petitioner.

Learned advocate representing the Kolkata Municipal Corporation hands over a photocopy of a document, which contains step by step details leading to the open auction as also a comparative statement of the bids received by the Kolkata Municipal Corporation. Let a copy of the said document be taken on record.

Perusing the same, it appears that five individuals, including the respondent/writ petitioner, participated in the open bid. Out of the five, Sarfaraz Middya was the highest bidder having quoted a sum of Rs.45,11,111/- and Zaid Alam, the respondent no.1/writ petitioner, being the second lowest bidder having bid an amount of Rs. 10,00,000/-.

In compliance of the order of this Court, the respondent no.1/writ petitioner was requested to inform the Kolkata Municipal Corporation whether he would match the highest bid of Rs. 45,11,111/- and he stated that he would inform the Kolkata Municipal Corporation in writing about his decision on 27th September, 2019. However, it appears from the document handed over to the Court today that the concerned authority of the Kolkata Municipal Corporation never received any intimation from the respondent no.1/writ petitioner till 27th September, 2019, being the date when the document was prepared.

At the time of hearing of the matter, the learned advocate representing the respondent no.1/writ petitioner submits that his client is at present unable to pay the amount which would be at least 10% higher than the highest bid amount, i.e., Rs. 45,11,111/-, being the bid of Sarfaraz Middy.

In our order dated 12th September, 2019 (read with the clarificatory order dated 19th September, 2019), we had made it clear that the respondent no. 1/writ petitioner was required to come forward with an amount, which shall be at least 10% higher than the highest bid amount, within a period of 48 hours from the time of conclusion of the open auction. It is, therefore, apparent that the respondent no.1/writ petitioner is unable to make payment in terms of our dated 12th September, 2019 (read with the clarificatory order dated 19th September, 2019).

However, purely in the interest of justice, we grant the respondent no.1/writ petitioner - who is in possession of the stall-in-question a time-frame of 30 days from date to put in at least Rs. 50,00,000/- and a further period of 15 days to deposit another Rs. 5,00,000/- in order to retain the stall which is presently under his possession. In the event, the respondent/writ petitioner fails to make the entire payment as stated above within the time-frame as specified above, he shall hand over possession of the stall to the concerned authority of the Kolkata Municipal Corporation and the concerned authority of the Kolkata Municipal Corporation shall thereafter hand over possession of the said stall to the highest bidder, namely, Sarfaraz Middy, upon receipt of Rs.

45,11,111/-, subject to compliance of all required formalities under the relevant statute, rules and i regulations.”

It appears that nothing happened thereafter. The appellant continued to occupy the stall and run his business therefrom. Neither did he deposit any money with KMC nor did he hand over possession of the stall to KMC to enable KMC to pass on possession to the highest bidder who is the respondent no. 5 in this appeal.

The highest bidder ultimately approached the learned Single Judge in the present round of litigation essentially for implementation of the earlier order of the Division Bench. The learned Single Judge passed the impugned order, the relevant portion whereof reads as follows:

“The said Zaid Alam being the private respondent no.5 herein has failed to deposit the money as fixed by the Hon'ble Division Bench. At the same time, the said Zaid Alam has not handed over possession of the stall to the Corporation, as a result whereof, the Corporation has not been able to hand over possession of the said stall to Sarfaraz Middy, the petitioner herein.

As on date there is no order passed by any competent Court modifying, vacating and/or setting aside the order passed by the Hon'ble Division Bench, accordingly, the said direction has attained finality and is liable to be complied with by the parties.

A long time had elapsed from the date of the order passed by the Hon'ble Division Bench. It is high time that the Corporation takes steps to act in terms of the direction passed by the Hon'ble Division Bench.

As the private respondent herein has, for reasons best known, failed to deposit the amount fixed by the Hon'ble Division Bench, the Corporation is directed to immediately put a padlock to the said stall and take possession of the said stall within 24 hours.

The Corporation will thereafter conclude the required formalities and hand over possession of the stall to the petitioner subject to payment of the amount fixed by the Hon'ble Division Bench and subject to the formalities to be complied with as per law.”

Being aggrieved, the respondent no.5 in the writ petition has come up by way of this appeal.

The appellant says that it offered Rs.50 lakhs to KMC. KMC refused to accept the money. He is still willing to pay Rs.50 lakhs to KMC. However, there is an ambiguity in the earlier order of the Division Bench dated September 30, 2019. While the Division Bench had observed that the appellant should offer at least 10% more than the highest bidder, due to inadvertent error, the Division Bench directed the appellant to pay Rs.55 lakhs (Rs.50 lakhs + Rs.5 lakhs). 10% of Rs.45 lakhs approximately which was the highest bid would come to Rs.4.5 lakhs. Hence, at best, the appellant's obligation was to pay Rs.49.50 lakhs which may be rounded up to Rs.50 lakhs.

The appellant says that soon after the order dated September 30, 2019 was passed, he applied for clarification of the order. That application is still

pending. The appellant should be protected till such application is disposed of.

Learned advocate for the respondent no.5 (highest bidder) says that there is absolutely no ambiguity in the order dated September 30, 2019, if read with the earlier orders dated September 12, 2019 and September 30, 2019. Learned advocate has placed those orders before us.

Learned senior counsel representing KMC strongly denies that the appellant herein ever offered any money to KMC. He says that if in fact KMC refused to accept the money tendered by the appellant, nothing stopped the appellant from sending the demand draft by post. No such attempt was made by the appellant. He has deposited not a single rupee with KMC.

Having considered the respective contentions of the parties, we are of the view that the order dated September 30, 2019 is quite clear. The clear mandate was that if the appellant participated in the open auction but did not emerge as the highest bidder, he would be at liberty to match the highest bid received by KMC. However, if the appellant chose not to participate in the bid process, he shall still be given an opportunity to offer an amount which shall be not less than 10% of the highest bid amount within a period of 48 hours from the time of conclusion of the open auction. In the present case, the appellant participated in the auction process and therefore, he could have matched the highest bid in terms of the Division Bench order. He did not do

so. Still, by the final order dated September 30, 2019, the Division Bench gave another opportunity to the appellant to retain possession of the concerned stall by paying Rs.50 lakhs within a month and further Rs.5 lakhs within fifteen days thereafter. The appellant has not done so. There is no conflict or inconsistency between the order dated September 30, 2019 and the order dated September 12, 2019.

We find no infirmity in the order under challenge. Indeed, the earlier Division Bench order stares at our face and what Her Ladyship did was the right thing. At this stage, the appellant says that he has already been dispossessed as the direction of the learned Single Judge was carried out on December 6, 2023 itself.

Mr. Ghosh, learned senior counsel for KMC, says that as per direction of the learned Single Judge, KMC has put a padlock on the concerned stall. Belongings of the appellant are lying in the stall. KMC has written a letter calling upon the appellant to remove such articles.

To our query, learned advocate for the appellant says that two weeks' time should be granted to the appellant to remove his belongings. We grant such time. We clarify that if within two weeks the appellant does not remove all his things from the concerned stall, it will be open to KMC to dispossess whatever things are lying there in the manner it deems fit.

We affirm the order of the learned Single Judge.

The appeal and the connected application are dismissed

Since we have not called for affidavits, the allegations made in the application are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(M. V. MURALIDARAN, J.)

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