
(2016) 01 RAJ CK 0047
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8079/2014

Adini Pictures Pvt. Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 226(3)

Citation : (2016) 01 RAJ CK 0047

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : R.N. Mathur, Senior Advocate and Punit Singhvi, for the Appellant;
P.C. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—1. This petition impugns the order dated 3-7-2014 whereby the allotment made to the petitioner company following an auction on 5-1-1981 has been cancelled.

2. The facts of the case are that the respondent Rajasthan Housing Board (hereinafter 'the RHB') advertised for auction of a plot of land admeasuring 3483 sq. meter specifically for setting up a cinema. Public auction was held on 5-1-1981. Having offered a sum of Rs. 1110/- per sq. meter at the auction for the plot in issue, the petitioner company was declared the successful bidder. As per the terms and conditions of the bid, 25% of the bid amount i.e. Rs. 9,66,532.50/- was paid by the petitioner company on 8-1-1981 and the remainder amount of Rs. 38,66,130/- was to be paid in seven annual instalments along with 14% interest. Possession of the land was given to the petitioner company on 21-4-1981.

3. The due instalments payable each year were not paid by the petitioner company alleging that RHB had failed to discharge its obligation of removing alleged obstruction and encumbrances on the plot in issue rendering it unusable

for the purpose allotted. The RHB then appears to have taken steps to re-auction the plot in question. Thereupon SBCWP No. 5198/1989, titled M/s. Adini Pictures Pvt. Ltd. Vs. Rajasthan Housing Board was filed by the petitioner company. On the matter coming up before this court on 15-6-1995, this court found the disputes raised by the petitioner company about the RHB's alleged breach of its obligations related to a contract between the parties for which the remedy to the aggrieved party lay in filing an appropriate suit and dispute could not be addressed/adjudicated in a petition under Article 226 of the Constitution of India. In the circumstances, while dismissing the writ petition the petitioner company was given liberty of laying a suit within thirty days, in which eventuality the suit was to be considered to have been filed within limitation. Aggrieved the petitioner company filed DB Special Appeal No. 487/1995. The said appeal was also dismissed vide order dated 8-9-1995. A Special Leave to Appeal thereagainst i.e. No. 943/1996 before the Hon''ble Supreme Court was also dismissed on 30-4-1996. However while dismissing the Special Leave to Appeal, on statement made by the counsel for the petitioner company, which was denied by the counsel for the RHB, the Hon''ble Supreme Court observed that in case the respondent RHB intended to settle the matter out of the court, the order of dismissal of the SLP need not be treated as a bar thereto.

4. It appears that thereafter, the matter remained unresolved. Vide letter dated 24-6-1996, the petitioner company was informed by the RHB that in respect of the plot in question auctioned on 5-1-1981 after adjusting for payments made, a sum of Rs. 92,91,030/- were payable to the RHB by 31-7-1996, and in the event of non payment of amount aforesaid by the due date, the allotment made would be liable to be cancelled without any further notice and amount already deposited forfeited by the RHB. Vide letter dated 25-7-1996 the petitioner company addressed a communication to the Chairman RHB and requested for issuing a memorandum of undertaking (MOU). Referring to various meetings with officers of the RHB on 12-3-1996, 27-3-1996, 4-4-1996, 13-5-1996, letters dated 14-3-1996, 30-3-1996, 6-4-1996, 4-5-1996, 10-6-1996 and more particularly the RHB's letter dated 24-6-1996 it was inter alia stated that principal amount would be paid within thirty days from the date of MOU and the remainder amount of interest would be paid in equal fifteen instalments. It was stated that as a goodwill gesture a sum of Rs. 5,03,179.74 towards part payment of principal amount by way of demand draft and Rs. 10 lacs against part payment of interest by demand draft dated 25-7-1996 was being paid. It was prayed that lease money recoverable from the petitioner company be made effective from the date of MOU and that permission for construction of the commercial complex on the land allotted be accorded in accordance with rules and regulations of the RHB instead of a cinema hall on the plot in question.

5. Vide letter dated 30-7-1996 the petitioner company in continuation of its earlier letter dated 25-7-1996 appears to have deposited Rs. 5,03,179.74 against due principal amount by way of demand draft and a sum of Rs. 10 lacs as part payment towards interest. Vide letter dated 1-8-1996 the RHB noted the

receipt of the amount as detailed hereinabove and stated that a sum of Rs. 77,87,851.26 remained outstanding and payable which be paid in 12 instalments (as agreed) along with interest @ 20% p.a. on reducing balance. The first instalment was to be due on or before 31-8-1996 and the last instalment of the 12 instalments was to be paid by 31-7-1997. With regard to the alleged terms and conditions pertaining to change of user of land allotted referred to in its letter by the petitioner company, it was clarified that no such agreement had been arrived at and the land use for the land allotted would remain a cinema only. The petitioner company was also again put to notice that default in the payment of any of the remainder 12 instalments would, without any further notice entail cancellation of the plot and forfeiture of deposits. Vide letter dated 26-9-1996 the petitioner company was informed that despite RHB's letter dated 1-8-1996 requiring payment of remainder due amount of Rs. 77,87,851.26 in 12 monthly instalments together with interest @ 20% p.a. no payment had been made as of 31-8-1996. It was again reiterated that nothing regarding change of land use had been agreed upon by the Board. Further it was pointed out that as far as the dispute with regard to the storm water drain passing through the plot in question, the RHB had no concern whatsoever therewith, as when possession of the plot admeasuring 3483 sq. meter had been given there obtained no such alleged obstruction to the use of land for the purpose allotted. It was also pointed out that the issue agitated with regard to a metalled road having allegedly been constructed through the plot, was again irrelevant for the reason that clear possession of the entire plot in question had been handed over to the petitioner company on 21-4-1981 under the signature of its authorised person without any demur. It was pointed out that the RHB has no objection to the petitioner company constructing a boundary wall around the plot allotted which possession was handed over on 21-4-1981. Vide letter dated 15-11-1997 the petitioner company was reminded that the due outstanding amount in terms of the RHB's decision conveyed on 1-8-1996 had not been paid and it was stated that the said due outstanding amount along with interest @ 20% p.a. for the period of delay be now cleared by 30-11-1997, failing which cancellation of plot allotted and forfeiture of deposits made would follow.

6. In response to the letter dated 15-11-1997 by the Board, the petitioner company vide letter dated 24-11-1997 required that its pending proposal for entering into a MOU inter alia with regard to change of land use for the cinema plot allotted be considered sympathetically, and meantime the demand for payment of due outstanding amount be kept in abeyance. It was submitted that following the decision by the RHB on the company's proposal for change of use of land allotted from cinema to commercial complex due payment would be made by the petitioner company. The same request was also communicated by the petitioner company to the Chairman of the RHB vide letter dated 15-12-1997.

7. On 17-1-1998, the RHB continuing to show indulgence to the petitioner company despite repeated defaults, again issued a show cause notice to the petitioner company, detailing the background facts with regard to payment of

due outstanding principal amount and interest thereon and making it clear that non payment would entail cancellation of the plot allotted and deposited amounts would be forfeited.

8. In response to the RHB's letter dated 17-1-1998, the petitioner company vide its letter nil dated 4-7-1998 stated that it be given some more time to pay the due outstanding both towards the principal amount and interest, but a decision on its proposal for change of land use from cinema to commercial complex be expedited. It was recorded in the letter aforesaid that the petitioner company had never refused to pay due amounts, albeit there was indeed delay in payment thereof.

9. Vide letter dated 5-8-1998 the petitioner company was informed that on the land use of the plot allotted to petitioner company, following the auction on 5-1-1981 would remain that for a cinema. It was also pointed out that despite the show cause notice dated 17-1-1998 the petitioner company had failed to pay the outstanding amount of consideration for the plot allotted as per the terms and conditions of the auction despite indulgences shown towards late payment of due amount. The petitioner company was advised to clear the outstanding amount, failing which the RHB was to be free to cancel the allotment of plot and forfeit the amounts deposited. Vide notice dated 25-9-1999 the petitioner company was again informed by the Board that in terms of its earlier letter dated 1-8-1996 a sum of Rs. 77,87,851.26 had to be deposited in 12 monthly instalments of Rs. 7,21,425/- per month. It was pointed out that consequently a sum of Rs. 79,35,050/- was now due and payable for the plot auctioned on 5-1-1981, which be deposited by 15-10-1999, failing which allotment would be cancelled with consequences. Nothing was yet done by the petitioner company, despite all the indulgences of the RHB and no payment made or credited to its account. Vide notice dated 21-10-2002 the petitioner company was again required to show cause as to why non payment of due amount constituting breach of the terms and condition of auction/allotment not entail cancellation of the plot as per provisions/rules applicable to the case.

10. No reply was filed by the petitioner company. Instead, the show cause notice dated 21-10-2002 entailed SBCWP No. 8188/2002 before this court with the following prayers:-

"In the premises therefore, it is most respectfully prayed that Your Lordships may graciously be pleased to:-

a) Issue a writ of mandamus, any other writ in the nature of mandamus or any other appropriate writ, order or direction wherein directing the respondents to proceed in the proceedings initiated by the show cause notice dated 21-10-2002 in accordance with the true and fair procedure as per law.

b) Issue a writ of mandamus, any other writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to proceed in the matter which initiated by the issuance of show cause notice dated

21-10-2002 by granting proper opportunity of being heard in accordance with law to the petitioner.

c) Issue a writ of mandamus, any other writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to proceed in the matter initiated by the show cause notice dated 21-10-2002 in such a way that the respondents must disclose their own side of story which they have failed to mention in the show cause notice so issued inspite of numerous reminders which have been given by the petitioner now almost for more than 3 years.

d) Issue a writ of certiorari or any other appropriate writ, order or direction as actions of the respondents are violative of legal fundamental and natural rights of the petitioner.

e) pass such orders or further orders as your Lordships may deem fit and proper in the circumstances of the case."

11. On the matter coming up before this court in SBCWP No. 8188/2002 on 13-11-2002, by ex-parte order this court stayed the show cause notice dated 21-10-2002 with a direction that "till further orders status quo be maintained". An application under Article 226(3) of the Constitution of India at the instance of the RHB was dismissed on 11-2-2005. Thereafter, it appears that on 19-8-2011 on adjournment being sought on behalf of the petitioner the court declined to continue the interim order passed on 13-11-2002. And on the said ex-parte order dated 13-11-2002 thus having been vacated, the RHB vide order dated 3-7-2014 cancelled the allotment of plot in question on 5-1-1981. SBCWP No. 8188/2002 was then disposed of as infructuous. And now this petition impugning the order dated 3-7-2014.

12. Mr. R.N. Mathur, Senior counsel appearing with Mr. Punit Singhvi has submitted that the order dated 3-7-2014 is liable to be quashed and set aside on the ground that it is in violation of the principles of natural justice; and for the reason that it is wholly arbitrary inasmuch as the petitioner company has deposited approximately Rs. 1.38 crores with the Board over time against the due amount for the plot auctioned on 5-1-1981 constituted of the principal and interest thereon. It was further submitted that the accounting at the instance of the RHB holding that further amounts are payable is opaque, arbitrary and without essential details. It was finally submitted that in any event having paid about Rs. 1.38 crores for the plot auctioned in the year 1981 the petitioner company had the legitimate expectation that it would be entitled to use the said plot, disputes as to due amounts notwithstanding which could be amicably resolved and not be deprived of its property by the RHB in a most unfair, arbitrary and unjust manner.

13. Dr. P.C. Jain appearing on behalf of the RHB has in turn submitted that the writ petition deserves dismissal at the threshold for its seeking to agitate a contractual dispute arising from breach of the contract between the petitioner company and the Board following the auction dated 5-1-1981. He submitted that

the dispute is purely a civil one in nature without any public law element. It was then submitted by Dr. P.C. Jain that in any event this court in an earlier writ petition qua the same auction of 5-1-1981 had correctly taken a view that the writ petition was not maintainable as it pertained to a purely contractual dispute and the petitioner company was granted liberty to lay a suit. And therefore this court in this third petition (SBCWP No. 8188/2002 being the second one which was disposed of infructuous) should also take a similar view and not be persuaded by the petitioner company to entertain the writ petition on the manufactured grounds of denial of the principles of natural justice or arbitrary calculation of due amounts overcharging interest and compounding it. It was submitted that from the record it is an admitted fact that the petitioner company has been in breach of its obligation to make payment of due outstanding amount, for the last over three decades despite RHB's indulgences much beyond its obligations either in contract, law or equity. Dr. Jain argued that in this view of the matter it is untenable for the petitioner company to submit that the cancellation dated 3-7-2014 is void for non compliance with the principles of natural justice. Interest has been validly charged for delays in payment of amount due. And this court ought not to go into this issue in the writ petition more so when earlier in correspondences with RHB the petitioner company had never objected in regard thereto. It was pointed out that the correspondences on record evidences the fact that the petitioner company had in fact abandoned its intent to set up a cinema house, the specific purpose for which the plot in question was auctioned on 5-1-1981, and instead wanted to set up a commercial complex. Payment of due amount was sought to be made contingent on change of land use. Dr. Jain further submitted on the basis of correspondences that the petitioner company had been granted several opportunities to show cause and even pay the due amount extending the last date beyond several years over the initial time of 7 years permissible following the auction dated 5-1-1981. Counsel submitted that the petitioner company did not make all due payment but wrongly insisted that requisite payment would be made after the RHB agreed for change of land use. This the Board could not allow and made it clear to the petitioner company that its proposal for change of land use had no linkage whatsoever with its obligation to pay due amount as per terms and conditions of auction 5-1-1981. Dr. Jain submitted that condition 18 of the bid clearly provided that the land allotted was to be used for setting up cinema house. The terms and conditions of the auction dated 5-1-1981 indicated that after the initial deposit of 25% of the bid amount, the remainder 75% amount of the bid along with interest 14% was payable in seven yearly instalments. Further condition 6 of the terms of bid envisaged completion of construction of cinema house on plot in question within 30 months of the licence. Aside of the above, the "shahari jamabandi" was payable yearly in advance, but was never paid in breach of the condition 11. Dr. Jain submitted that the bid conditions provided that any violation/contravention of the terms and condition of auction the RHB would entitle cancellation of the allotment of plot and its resumption with all construction thereon. It was emphatically submitted that the petitioner company

was in evident breach of the aforesaid terms of condition of the auction dated 5-1-1981, neither having made requisite due payments despite indulgences of extended time for payment by the RHB nor having made construction of the cinema house within thirty months of the possession. Contrarily the petitioner company has made some unauthorized construction over the plot in issue. Dr. Jain finally submitted that aside of above, the petition is liable to be dismissed for the petitioner having not come before this court with clean hands by not disclosing various correspondences at its instance admitting to this liability to pay remainder amounts, setting up instead a false case of all due payments having been made.

14. Heard. Considered.

15. Jurisdiction of this court under Article 226 of the Constitution of India is discretionary in nature to be exercised ordinarily in cases of breach of legal and/or fundamental rights, or failure to discharge statutory obligations under statute and in cases of manifest public interest being made out. The jurisdiction of this court is not in substitution for that of the civil courts, which are more appropriate for adjudication of the civil rights of parties as when they pertain to disputes arising out of the terms and conditions of an underlying non-statutory contract. Alleged breaches of such contracts can be ascertained only on basis of documentary evidence and oral evidence through examination and cross examination in the course of a regular trial. For this reason, this court in deciding SBCWP No. 5198/1989 relating to the very same contract following the auction dated 5-1-1981--as in issue in this petition, took a view that the petitioner company was agitating a dispute in respect of a contract and its invoking of Article 226 of the Constitution of India was misdirected and it should have instead approached the civil court with its grievances.

16. In the case of National Highways Authority of India Vs. Ganga Enterprises [, (2003)7 SCC 410] the Supreme Court has held that it is settled law that disputes relating to a contract are not amenable to jurisdiction of a writ court under Article 226 of the Constitution of India. In the case of State of Gujarat Vs. Meghji Pethraj Shah Charitable Trust [, (1994)3 SCC 552] it was held by the Apex Court that in respect of contractual matters a writ petition under Article 226 of the Constitution of India would not be maintainable. It was also held that termination of a contract was an act neither administrative nor executive nor quasi judicial but one purely in exercise of a right under an agreement. Hence no hearing was necessary prior to termination and no question of breach of the principles of natural justice could arise in such a case. In the case of Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd. [, (1981)3 SCC 238] the Apex Court has held that Article 226 of the Constitution of India could not be invoked in respect of plain contractual matters by using the camouflage of constitutional infraction such as a breach of fundamental right--where at the bottom of it no such grounds could be made out independent of the contract under consideration.

17. A public law element in contractual dispute which can indeed be an occasion

for invoking the writ jurisdiction under Article 226 of the Constitution of India can arise only in cases where issues of corruption, implementation of unlawful policy or manifest public interest affecting a large number of people is made out. This has been so held in the case of Reliance Airport Developers (P) Ltd. Vs. Airports Authority of India [, (2006)10 SCC 1] and Indian Bank Vs. Godhara Nagrik Cooperative Credit Society Limited [, (2008)12 SCC 541]. But this situation does not obtain in the facts of the case hand, and in fact neither been so pleaded or argued.

18. In the case of State of Kerala Vs. M.K. Jose [, (2015)9 SCC 433] the Apex Court has reiterated that where the issue before the court is of breach on contract involving disputed questions of facts, invoking Article 226 of the Constitution of India in respect thereof and more so repeatedly (as in this case) would only be an abuse of the process of the court. In Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot [, (1974)2 SCC 706] the Apex Court has stated with emphasis that the power of a statutory authority to deal with purely contractual matters on the one hand and its power to deal with rights of parties under obtaining statutory law are wholly different and distinct and the exercise of power under the two cannot be mixed up and conditions relevant for the exercise of one cannot be extrapolated on the other.

19. The whole conspectus of the instant case would indicate that the contract entered into between the petitioner company and the respondent RHB is not a statutory contract and in fact neither so pleaded nor argued. The rights/ obligations of the petitioner company thereunder are purely contractual. In the auction of the plot in question on 5-1-1981 under the operative terms and conditions, the petitioner company had to pay 25% of the bid amount immediately (Rs. 9,66,532.20 out of total amount Rs. 38,66,130/-) and the remainder 75% of the bid amount along with interest @ 14% in seven yearly instalments. The petitioner company was also given possession of the plot in question on 21-4-1981 and was to complete construction of the cinema house within thirty months thereafter. No objection with regard to plot in question such as it being unsuitable were contemporaneously raised by the petitioner company even while it took possession on or about 12-4-1981. The taking of possession was without any demur. Dues of the remainder 75% bid amount along with applicable interest were not paid for the next seven years in breach of obligation under the contract. Thereafter in 1989 a dispute was raised with regard to the alleged unsuitability of the land allotted for the purpose of construction of a cinema house. That dispute was found purely contractual and not maintainable with the dismissal of SBCWP No. 5198/1989--which was upheld upto the Supreme Court. Yet even thereafter payment of due outstanding amounts were not made by the petitioner company despite several opportunities over two decades despite the petitioner company admitting its liability in various correspondences with the respondent RHB during which time it sought approval of its proposal for change of land use from cinema to a commercial complex.

20. The facts on record make, it is evident that the disputes at hand in this petition are one in the realm of contract between the parties and of facts such as to whether the petitioner company was justified in failing to make full payment of the outstanding remainder bid amount to the Board despite a period of about 34 years having elapsed; whether the petitioner company was in fact obstructed by encroachment of multiple kinds over the plot in question from using the land allotted for the construction of a cinema justifying non-payment of due amount within time; whether the petitioner company in fact had made all due payments to the RHB as now sought to be claimed in this petition contrary to its admission of liability earlier made in correspondences with RHB, and whether the respondent RHB is overstating due amounts by excess charging of interest and compounding it. These contractual disputes and question of facts can not be adjudicated by a writ court and can be so done, only in a regular trial based on documentary and oral evidence. Even the interpretation of the terms and condition of the auction dated 5-1-1981 and resultant contract between the parties would be a matter for the civil court's consideration as has been held by the Apex Court in the case of State of U.P. Vs. Bridge and Roof Company (India) Ltd. [, (1996)6 SCC 22].

21. Consequently without expressing any view on the respective contentions of the counsel for the parties, lest it prejudice one or the other disputants before the court in the course of a regular trial, I would be disinclined to interfere in this writ petition and instead remit the petitioner company to its remedy before the civil court. From the facts on record it is evident that a civil suit inter alia challenging the show cause notice 21-10-2002 (leading to the impugned cancellation of 3-7-2014) is pending before the jurisdictional civil court. In the circumstances, the petitioner company would be free to amend the said suit taking into account the subsequent cancellation of allotment vide order dated 3-7-2014 or otherwise to take fresh proceeding thereagainst if so advised.

22. The writ petition is accordingly dismissed.