

(2023) 11 CHH CK 0062
In the Chhattisgarh High Court
Case No : Writ Appeal No. 66 Of 2020

Ajay Chouhan

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 23-11-2023

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 417, 421, 421(4)

Citation : (2023) 11 CHH CK 0062

Hon'ble Judges : Ramesh Sinha, CJ; Naresh Kumar Chandravanshi, J

Bench : Division Bench

Advocate : Avi Singh, Aman Pandey, Chandresh Shrivastava, Manoj Paranjpe, Shreyansh Agrawal

Final Decision : Dismissed

Judgement

Ramesh Sinha, CJ

1. Challenge in this appeal is to the order dated 29.11.2019 passed by the learned Single Judge in WP No. 415 of 2002.

2. The appellant/writ petitioner had filed a writ petition being WP No. 415/2002 challenging the order dated 21.01.2002 passed by the Special Secretary, Urban Administration & Development Department, by which the lease granted in favour of the appellant/writ petitioner has been rejected by the respondent No. 1.

3. Facts, in brief, necessary for adjudication of this appeal, is that the Commissioner, Municipal Corporation Bhilai, published an advertisement inviting tender from the general public for grant of lease for four plots for a period of 30 years. The said tender notice was further modified on 10.08.1999 with respect to the numbering of plot about the dimension. Subsequently, on 05.10.1999 another the tender was invited with respect to the other two plots for grant of lease for a period of 30 years. The appellant submitted his tender for grant of six plots pursuant to the said two tender notice and deposited an earnest amount of Rs.62,500/- and Rs. 3,00,000/-. According to the appellant, he was granted

tender and preliminary permission with regard to four plots as per initial tender notice dated 05.08.1999 (modified on 10.08.1999). Likewise in respect to the second tender notice dated 05.10.1999 of two plots, the preliminary permission was granted on 10.02.2000.

4. Pursuant to the preliminary allotment for the period of 30 years for four plots Rs.1,63,592/- was deposited; whereas in respect of two plots Rs.4,09,862/- was deposited with the respondent Municipal Corporation. The respondent No.2 Municipal Corporation granted a lease of the plots for the period of 30 years whereas in respect of two separate plots, the lease was granted on 03.03.2000. Subsequently, in respect of four plots, the competent authority accorded physical possession in the month of October, 1999 and in respect of two plots, in the month of March, 2000. Subsequently, the building permission was also granted by the respondent Municipal Corporation. As two plots admeasuring 462 square meters and 96 square meters respectfully were valued more than Rs.1,00,000/-, therefore, as a mandatory requirement, the respondent Municipal Corporation sought approval from the State, which was accorded by letter dated 05.02.2000, whereas in respect of two other plots, the Municipal Corporation by a letter dated 02.11.1999 sent the proposal to the State Government to accord sanction, which was considered by the Government by letter dated 05.02.2000.

5. According to the appellant, an issue arose in the month of August, 2000 when the Commissioner, Municipal Corporation wrote a letter to the State highlighting irregularity and illegalities committed in awarding the tender/ lease to the appellant/writ petitioner. A DO letter was written after receipt of a complaint from one Sanjay Agrawal who was a competitor of the appellant. On the basis of the D.O. letter written by the respondent No. 2, the State Government in purported exercise under Section 421 (4) of the Municipal Corporation Act, 1956 vide order dated 25.09.2000 canceled the lease deed of the appellant/writ petitioner. Challenging the said order, the appellant filed a writ petition before this High Court which was numbered as W.P. No.5976/2000 which was allowed by the learned Single Judge and remanded the matter back to the State Government for examining afresh after giving the proper opportunity of hearing to the appellant.

6. Thereafter, on 04.07.2001, a fresh show cause notice was issued to the appellant which was duly replied. The respondent Municipal Corporation also submitted their reply. The appellant sought for necessary documents which was not supplied and eventually, the order dated 21.01.2002 was passed whereby the lease granted to the appellant was canceled. This order was sought to be challenged before the learned Single Judge in the writ petition.

7. The learned Single Judge, after hearing learned counsel for the parties, dismissed the said petition.

8. Mr. Avi Singh, learned counsel for the appellant/writ petitioner would submit that the learned Single Judge has erred in law in determining the case as per the

law on grant of tender, rather than the law of civil penalty action, in which the burden of establishing malafides and/or irregularities is on the competent authority cancelling the contract / grant of lease, and a definitive findings of such malafides is a condition precedent of such cancellation. The notice of show-cause did not include any ground relating to non-fixing of minimum upset price. The impugned order contained certain reasons based on grounds not stated in the show-cause notice and therefore, there was no opportunity for the appellant to oppose any such ground by making appropriate reply supported by necessary documents. It is, however, a fact that the upset price was duly fixed by the Corporation on due consideration and appellant/writ petitioner's bid was found highest. The appellant/writ petitioner had obtained all requisite permission and only thereafter started construction by laying plinth. Since the appellant/writ petitioner had undertaken the construction project, the appellant/writ petitioner sought loans from market which incurred an additional liability of payment of interest and at this crucial juncture, lease was cancelled suddenly. Under these circumstances, equity favours the appellant/writ petitioner and estopes the respondents from taking any action including cancellation of the lease deed particularly when there is no actual financial loss caused to the Corporation nor the provision of any law has been claimed to have been violated. The respondents are bound by the principles of estoppels in taking any action towards cancellation of lease deed. The appellant/writ petitioner is statutorily protected under the terms and conditions of lease and therefore, it is not open for the Respondents to cancel the lease on any grounds other than the grounds mentioned in the lease-deed itself.

9. Mr. Singh would further submit that the Corporation had not placed relevant records before the Government and it appears that the same were deliberately concealed to ensure adverse order against the appellant/writ petitioner. The note-sheets of the Corporation dated 22.10.1999 contained details of fixation of upset price on the basis of which proposal was sent, were not placed before the Government. Therefore, it is factually incorrect to say that no upset price was fixed. Such a finding is contrary to the records of the Corporation. Further, the allegation that due approval of the Town & Country Planning authority was not obtained is also not correct. To the best of appellant/writ petitioner's knowledge, the approval sought from the Town & Country Planning was duly granted on 03.12.1999. The approval was not legally required. Such approval is required only when either change of land used is proposed or some development work or construction work is made in a planned area. It is pertinent to mention here that this ground was not included in the show-cause notice. The learned Single Judge, without quoting relevant provisions of law, assumed that such approval was required. It is submitted that no such approval was required under law though was some practice to this effect. Even following the practice, the approval was ultimately given. In any case the grant of lease and the purpose for granting of lease being not inconsistent with the provisions. of Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 and the Rules made thereunder nor in violation of

the Master Plan or any other planning of the area, the said objection is misconceived and no cancellation could legally be effected on this ground. The entire action of the Government is without provision of any law for the time being in force but only under purported exercise of power under Section 417 and 421 of the Municipal Corporation Act, 1956. The government itself approved grant of lease and granting lease by its own order could not have been cancelled by taking recourse to such a provision. It was within the full knowledge of the respondents as to how, in the past, rates were offered and withdrawn. Rates offered by the appellant/writ petitioner were also known to the respondents and it was upon the respondents to revise the offer, if required. No revision was done by the respondents and accordingly lease-deed came to be executed. Also, the price of adjoining lands near to the land in question is either equal or less than the rates on which the land in question have been allotted to the appellant/writ petitioner. The learned Single Judge has wrongly applied the law in the appellant/writ petitioner's case by shifting the burden of proof upon the appellant/writ petitioner from the respondents to establish that the allotment of land to the appellant/writ petitioner is done through advertisement in a newspaper of low circulation. Even the impugned order is absolutely silent with regard to the mode and manner of financial loss suffered by the respondents in the allotment of the plots to the appellant/writ petitioner. The appellant/writ petitioner has not been provided with proper opportunity of hearing inasmuch as the fact that show-cause notice issued to the appellant/writ petitioner alleges only one ground, however, the cancellation order mentions several other grounds, which were not mentioned in the show-cause notice. Therefore, the appellant/writ petitioner had no opportunity to rebut and/or present its case with respect to the other grounds upon which the cancellation order came in effect which is violative of principles of natural justice. The learned Single Judge failed to appreciate that the entire process of allotment of land and execution of lease-deeds in favour of the appellant/writ petitioner has been tested and found to be legal and valid by a 3-members Anti-Corruption Bureau, Economic Offence Wing team. The report of the team was also accepted by the Judicial Magistrate First Class, Durg in separate proceedings.

10. Mr. Singh would rely on the decisions rendered by the High Court of Bombay in *Tejpal Singh Arora v. State of Maharashtra* {2006 SCC OnLine Bom 1139, paragraphs 29, 33 to 39}, decision rendered by the Apex Court in *Shivsagar Tiwari v. Union of India*, {(1996) 6 SCC 558, paragraph 11}

11. On the other hand, Mr. Chandresh Shrivastava, learned Additional Advocate General appearing for the State/respondent No. 1 would submit that the present appeal as framed and filed by the appellant is bereft of merit and substance and therefore the same deserves to be dismissed. The Instant appeal preferred by the appellant is devoid of merit and is liable to be dismissed. The learned Single Judge has passed the order on the basis of the grounds taken and the arguments raised, is not tenable and deserves outright rejection.

12. Mr. Manoj Paranjpe, learned counsel for the respondent No. 2 would also pray for dismissal of the appeal stating that the appellant, for the first time has raised so many grounds in the instant appeal. It is submitted that the order passed by the Hon'ble Single Bench is well reasoned order and the same has been passed after hearing the parties and after appreciating the documents annexed with the writ petition. The respondent-Municipal Corporation Bhilai filed its return to the writ petition and it was submitted that allotment was cancelled in exercise of power under Section 421(4) of the Municipal Corporation Act, 1956. It was also contended that before the Hon'ble Single Bench that the State can always reverse an order, call for the record when there is a disposition of the property. The Municipal Corporation has also alleged the violation of the Rules of 1994. The Municipal Corporation filed the documents before the Hon'ble Single Bench which shows that the financial loss has been caused to the Municipal Corporation in the matter of allotment of disputed plots. It is admitted position that earlier for the same plots the auction proceedings were drawn and the rate quoted were on the higher side and in the auction held in respect of the plots in question, the rates were on the lower side and the State Government has accorded the approval without appreciating the earlier auction proceedings. The State Government while passing the impugned order has observed that certain material facts were concealed while obtaining the sanction/approval/permission. Under the Rules of 1994 or under the Municipal Corporation Act, the Municipal Corporation is not bound to allot the plot to the auction purchaser and if the rates quoted by the auction purchasers are not violable and appears to be non workable, the auction proceedings can be dropped. Mr. Paranjpe would also submit that criminal proceedings were initiated against the officers of the Municipal Corporation and Crime No. 14/2001 was registered by the Special Police Establishment Lokayukt, Bhopal. The Special Judge, Atrocities, vide its order dated 28.11.2017 has accepted the final report submitted by the investigating agency on 10.03.2008 and the matter was closed. Mere exoneration of officers of the Municipal Corporation will not ipso facto nullify the proceedings of the State Government. Since the offences registered against the officers of the Municipal Corporation were required to be proved beyond all reasonable doubts but as sufficient materials could not be collected by the prosecuting agency, therefore, the closer report was submitted and the same was accepted. On a complaint made by one Badruddin Qureshi, the State Government has conducted the general enquiry in respect of 300 plots, allotted to various persons and submitted the report. The said enquiry report, nowhere shows the discussion with regard to allotment the plot in question. That, appellant has raised certain grounds in the instant appeal which were not raised before the writ Court. The appellant cannot be permitted to raise the fresh grounds before this Hon'ble Court. The judgment of the Hon'ble Single Judge ought to have been examined on the basis of the grounds raised in the writ petition and during the arguments.

13. The appellant/writ petitioner has also filed rejoinder to the return filed by the respondents basically reiterating as to what has be pleaded in the appeal.

14. We have heard learned counsel for the parties, perused the pleadings and the documents appended thereto.

15. The appellant/writ petitioner is basically aggrieved by cancellation of the plots allotted to him vide order dated 05.02.2001, by order dated 21.01.2002 passed by the Special Secretary, Government of Chhattisgarh, Urban Administration and Welfare Department. From perusal of the order dated 21.01.2002, it transpires that the appellant/writ petitioner was allotted six plots on extremely low price whereas the market price was much higher which caused loss to the Municipal Corporation. The said order impugned before the learned Single Judge also took note of the fact that the Madhya Pradesh Municipal Corporation (Transfer of Immovable Property) Rules, 1994 was not followed in its proper spirit. Publication for allotment of plots was made in newspapers having very low circulation which led to a situation where majority of public was not aware of the allotment of plots. The learned Single Judge has also taken note of the ground raised that on earlier occasions also, similar publications were made in those very newspapers. There is no negative equality. A benefit conferred without any legal basis cannot be relied upon as a principle of parity. The purpose behind floating advertisement is to attract more and more bidders/competitors so that the State may get maximum price which could not be achieved in case of the allotment of land to the petitioner.

16. The order of the learned Single Judge also takes note of the show cause notice issued to the appellant/writ petitioner, at paragraph 12 of the order, which itself is self explanatory.

17. The learned Single Judge has rightly taken note of the judgments rendered by the Supreme Court in *State of Tamil Nadu & Another v. Abdullah Kadher Batcha & Another*, {(2009) 1 SCC 333}, *State of Haryana v. Jage Ram* {(1983) 4 SCC 556}, *Sachidanand Pandey v. State of W.B.*, {(1987) 2 SCC 295}, *Padma v. Hiralal Motilal Desarda & Others* {(2002) 7 SCC 564}, *Centre for Public Interest Litigation v. Union of India* {(2012) 3 SCC 1}, *Jamshed Hormusji Wadia v. Port of Mumbai* {(2004) 3 SCC 214}, *City Industrial Development Corporation v. Platinum Entertainment & Others* {(2015) 1 SCC 558}, *Humanity & Another v. State of West Bengal & Others* {(2011) 6 SCC 125}, which deals with all the grounds raised in the writ petition as well as this appeal.

18. The learned Single Judge has rightly observed that on the basis of the material available before the Court, prima facie the finding of the State that in the year 1996 much higher price was quoted by the different bidders, however, subsequently, it was not materialized appeared to be logical. In order to achieve a bonafide end, the means must also justify the end. As has been held by the Supreme Court, the bonafide ends cannot be achieved by questionable means, specially when the State or its instrumentalities were involved. In the case on hand, the State had seriously withdrawn from the allotment by giving finding, therefore, the learned Single Judge did not find any illegality in the action of the Government and it appeared that the State had acted on the basis of documents,

within the discipline of constitutional law canceling the allotment.

19. The appellant/writ petitioner cannot be allowed to avail the benefit if there was any mistake or procedural flaw while allotting the plots and any loss to the State exchequer cannot be allowed to continue. If corrective measures have been taken by the State by issuing the order dated 21.01.2002, the same cannot be said to be arbitrary or irrational. The appellant/writ petitioner has not been able to point out any illegality or irregularity in the order passed by the learned Single Judge. Further, as rightly pointed out by the learned counsel for the respondent No. 2, the appellant has raised various other grounds which were not raised before the learned Single Judge and the said grounds cannot be considered at this stage.

20. We do not find any infirmity or illegality in the order passed by the learned Single Judge and as such, this appeal stands dismissed.