
(2014) 09 AHC CK 0332

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 2101 of 1996

City Montessori School Society

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Citation : (2014) 9 ADJ 281

Hon'ble Judges : Rajiv Sharma, J;Mahendra Dayal, J

Bench : Division Bench

Advocate : P.K. Sinha, Pritish Kumar and S.L. Vaish, Advocate for the Appellant; Anuj Kudesia, B.K. Saxena, J.N. Mathur, Jaspreet Singh, N.C. Mehrotra, Rajesh Singh Chauhan, Shobhit Mohan Shukla and Umesh Chandra, Advocate for the Respondent

Judgement

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Mahendra Dayal, J.—The dispute in this writ petition relates to plot No. 90-A/A/754 measuring 2238 Sq. Feet situated at Maha Nagar, Lucknow. From the pleadings of the parties and perusal of the record we find that the opposite party No. 2, Lucknow Development Authority (in short "LDA") published an auction notice inviting tenders with regard to sale of plots adjacent to the Maha Nagar School of the petitioner's Society in daily newspaper "Dainik Jagaran" on 13.4.1995. The said plot of land was indicated as item No. 1 of the publication and the date fixed for submission of tender was 25.3.1995. As per the advertisement the plot of land was shown as commercial plot. The petitioner on 23.3.1995 came to know about the said advertisement and deputed an official of the Society to get the bank draft prepared and submit the tender in the office of the Lucknow Development Authority. However, the said official when reached the office of the Lucknow Development Authority alongwith the bank draft on 24.3.1995, he found that the office of the Lucknow Development Authority was closed on account of some local holiday. In the publication inviting tender it was mentioned that the tenders may be obtained one day before up to the evening at

5.00 P.M. from the date of submission of tender form. The petitioner was, thus, under impression that the tender forms would be made available till 24.3.1995 up to 5.00 P.M. But since on the said date, there was local holiday, the tender form could not be obtained on 24.3.1995. The said official then reached the office of Lucknow Development Authority on 25.3.1995 for obtaining the necessary tender form. It was under the orders of the Vice Chairman of the Lucknow Development Authority that the tender form was made available to the said official who after filling up the said form and completion of all the formalities dropped the same in the office of Lucknow Development Authority before 2.00 P.M. The petitioner had quoted the bid as 8,51,043.15 paisa. When the tenders were opened, it was found that only two tenders were received one from the petitioner and the other from the opposite parties No. 4 and 5 who had jointly submitted the bid. There is no dispute that the bid offered by the petitioner was higher than the bid offered by the opposite parties No. 4 and 5. After considering the tender forms the same was sent for approval to the Vice Chairman, who accepted the offer of the petitioner on 2.6.1995 and in turn the petitioner was communicated the acceptance of the tender in his favour. Thereafter 15% of the amount which comes to Rs. 1,26,610/- was deposited by the petitioner on 29.8.1995 through bank draft and further a sum of Rs. 5000/- was deposited on 30.8.1995, thus the total of 25% of the amount was deposited. The petitioner then requested the opposite party No. 2 to handover the possession of the said plot as the remaining amount was to be deposited in six monthly installments. The petitioner, however, could not deposit the monthly installment in time as a result of which the acceptance of tender was cancelled on 14.6.1995. The petitioner then moved an application for depositing the remaining amount in installments and restoring the acceptance of the tender in favour of the petitioner, vide order dated 12.1.1996 the petitioner was allowed to deposit the remaining 75% of the bid amount in 10 monthly installments. However, the possession of the said land was not given to the petitioner. All of a sudden, the petitioner was informed on 5.7.1996 through a communication by the opposite party No. 3 that the State Government has cancelled the acceptance of the tender in favour of the petitioner by the order dated 20.6.1996. The reason shown for cancellation of the tender was that the tender form was not purchased by the petitioner a day before the date of submission of tender form. It was also mentioned in the said communication that the State Government in view of the acceptance extended by the opposite parties No. 4 and 5 for purchase of the said land on the same amount had accepted their tender. Thus the cancellation of tender was made at the level of the State Government on a complaint but it was not mentioned in the aforesaid letter as to who was the complainant. The case of the petitioner is that before cancellation of his tender, the petitioner was not given any opportunity to explain as to why the tender form could not be purchased one day before. Thus the action of the State Government cancelling the tender of the petitioner was arbitrary and against the principles of natural justice. It is also a case of the petitioner that the State Government could have cancelled the tender of the petitioner but it had no jurisdiction to allot the land in

favour of opposite parties No. 4 and 5. The acceptance of the tender was to be made only by the Vice Chairman of the LDA and not by the State Government. It is not disputed that the amount offered by the opposite parties No. 4 and 5 was less than the amount offered by the petitioner. On the basis of the aforesaid facts the petitioner has sought relief for quashing of the communication dated 5.7.1996 and has sought direction in the nature of mandamus commanding the opposite parties No. 1 and 2 not to execute any sale-deed in favour of the opposite parties No. 4 and 5 and also not to give possession of the said land in pursuance of the allotment.

2. This Court after hearing the learned counsel for the parties passed the interim order on 18.7.1996. The operative portion of the interim order is as under:

"During the meanwhile the parties would maintain status quo regarding the possession, whereas respondent No. 2 would refrain from executing a sale-deed in favour of respondents 4 and 5."

Counter and rejoinder-affidavits have been exchanged between the parties.

3. We have heard learned counsel for the parties and have also gone through the record.

4. It is not in dispute that in pursuance of the advertisement issued by the opposite party No. 2 for auction of the plot in question, the petitioner and the opposite parties No. 4 and 5 submitted tenders and the bid amount offered by the petitioner was higher than the bid offered by opposite parties No. 4 and 5. It is also not in dispute that the last date for submission of the tender form was 25.3.1995 and there was a condition that the tender form should be purchased a day before the last date of submission of tender forms i.e. the forms could be purchased only upto 24.3.1995. The petitioner although completed formalities on 24.3.1995 but the tender form could not be made available to him because the office of the L.D.A. was closed on account of some local holiday and it was on the written application, that the Vice Chairman of LDA made the tender form available to the petitioner on 25.3.1995 and the tender form was submitted on the same day i.e. on 25.3.1995.

5. It has also not been disputed by the opposite parties that the petitioner being the highest bidder was communicated with the approval of his tender and he also deposited 15% of the bid amount. The 10% of the bid amount was already deposited at the time of submission of tender form and thus the petitioner in all deposited 25% of the bid amount. However, he could not deposit the monthly instalments in time, hence the acceptance of his tender was cancelled. However, on his representation, the petitioner was allowed to deposit the remaining 75% of the bid amount in 10 monthly installments but again his bid was cancelled by the State Government on the ground that the tender form was not purchased a day before the last date of submission of the form and the State Government while cancelling the tender of the petitioner, allotted the land in question in favour of opposite parties No. 4 and 5.

6. It is also important to mention here that the opposite party No. 6 who is the father of the opposite parties No. 4 and 5 had filed a Civil Suit before the Civil Court being Regular Suit No. 285/1994 and this Court while passing the interim order on 18.7.1996 directed the opposite parties No. 4 and 5 to bring on record the documents relating to the aforesaid Civil Suit but the said suit was dismissed on 24.7.2000. Feeling aggrieved by the dismissal of the suit, First Appeal No. 81/2000 was preferred and during the course of hearing of First Appeal, the opposite party No. 6 got a consent order dated 6.12.2000 from this Court without disclosing the fact that the present writ petition is also pending. By the consent order referred to above, this Court directed the authorities to consider the application of the opposite party No. 6 for converting the lease hold land into free hold in accordance with law. The learned counsel for the petitioner has submitted that the aforesaid consent order dated 6.12.2000 does not bind the petitioner as he was not a party in the First Appeal but the officials of the LDA allowed it to be a free hold land in favour of opposite party No. 6 vide order dated 26.11.2001. Following the consent order, a sale-deed was also executed on 21.9.2000 in favour of opposite party No. 6 despite there being an interim order passed by this Court on 18.7.1996. It was only after this development that the petitioner had to implead the opposite party No. 6 also as one of the opposite parties and made necessary amendment in the memo of the writ petition. The petitioner by way of amendment has also challenged the aforesaid order dated 26.11.2000 by which the lease hold plot has been converted into free hold plot and the sale-deed dated 21.9.2000 executed in favour of opposite party No. 6.

7. The submission on behalf of the petitioner is that the controversy involved in this writ petition is as to whether the opposite parties No. 2 and 3 could have passed an order dated 26.11.2001 and could have executed a sale-deed on 21.9.2002 in favour of opposite party No. 6 in pursuance of the consent order dated 6.12.2000 passed in First Appeal No. 81/2000.

8. The operative portion of the order dated 6.12.2000, is reproduced as under:

"In this view of the matter, although we do not consider it expedient to interfere in the findings recorded in the trial Court, yet in view of the statements made at the Bar, Vice-Chairman Lucknow Development Authority has to consider the application of the plaintiff for conversion of leasehold into free hold right in respect of the Garden lease in question and pass appropriate orders expeditiously and it goes without saying that the respondents are entitled to evict the plaintiff-appellant, as stated by them only in accordance with law."

9. The submission on behalf of the petitioner is that by means of the consent order dated 6.12.2000 the authorities were directed to consider the application for conversion of land from lease hold to free hold in accordance with law but without any specific direction. If the opposite parties could not have passed the order cancelling the acceptance of tender of the petitioner and simultaneously giving it to the opposite parties No. 4 and 5, then the said order is against the conditions mentioned in the advertisement inasmuch as the opposite parties No.

4 and 5 had not deposited any amount except 10% amount which was deposited at the time of submission of tender form.

10. The learned counsel for the petitioner by way of written submission has brought to the notice of the Court that in case of another similar plot No. 91-A-B-754, which was allotted to Smt. Khela Banerjee and on whose application the plot was sought to be converted into free hold, the petitioner had filed Writ Petition No. 8514(M/B) of 2009. This Court vide judgment and order dated 4.5.2009 set aside the order of conversion. However the Court held that the petitioner too was not entitled to get this plot on account of nonpayment of instalment for 13 years rendering the agreement dated 12.1.1996 in favour of the petitioner as not enforceable. However, this Court found that 25% of the bid amount deposited by the petitioner was lying with the Lucknow Development Authority since 1996 and under the Right of Children to Free and Compulsory Education Act, 2009, the petitioner be permitted to purchase the said plot on market rate if it so desire. The relevant and operative portion of the aforesaid judgment is being reproduced as under:

"Needless to say that this Court is not only the Court of law but also a Court of equity and, therefore, its decision must subserve the cause of justice and in an appropriate case it may grant such relief to which the writ petitioner would be entitled to in law as well in equity. Equity is not anti-law but a moral dimension of law. Rather it is a grace and conscience of living law, and thus, a Court's discretion is to be exercised with circumspection within the precincts of justice, equity and good conscience while keeping in view the given facts and circumstances of the case.

Thus, taking into consideration the facts that the Parliament has passed the Right to Education Act, that the petitioner deposited 25% (Rs. 7,40,700/-) of the consideration amount way back in 1995, and that he is ready to pay the present market price of the plot whereas no such offer has come from private respondent Nos. 4 and 5 during the course of hearing, we think it expedient in the interest of justice to direct the settlement of property in question in favour of the petitioner school upon making payment of cost price at the current market rate prevailing in the locality.

In the premises set out hereinabove, we partly allow the writ petition with direction to official respondents to hand over the possession of the plot in question and execute the sale-deed after completing necessary procedural formalities on payment of market price at current rate prevailing in the locality where the plot is situated within a period of two months from the date of receiving a copy of this order. In case, the petitioner fails to pay the market price at current rate to be determined by the authority concerned, the official respondents would be at liberty to invite fresh tender for the auction of the same at a price not less than the prevailing market price so that the public exchequer is not made to suffer in any manner and the property is able to fetch the maximum price.

This writ petition and the Review Petition (210 of 2009) are, thus, disposed of."

11. Being aggrieved and dissatisfied by the aforesaid judgment the petitioner as well as Smt. Khela Banerjee both filed S.L.P. before the Hon"ble Supreme Court. The Hon"ble Supreme Court while disposing of those Special Leave Petitions upheld the judgment passed by this Court to the extent of setting aside the order of conversion from free hold to leasehold. The Hon"ble Supreme Court further held that the agreement was executed on a direction issued by the Governor on 17.12.1995 who had no rules of business to make such directions.

12. After the judgment and order of the Hon"ble Supreme Court the petitioner came to know that there was Governor Rule between 8.10.1995 and 17.10.1996 and thus the Governor had full power to pass any administrative directions. The petitioner then filed a review petition before the Hon"ble Supreme Court about the President's proclamation. The final judgment was passed by the Hon"ble Supreme Court on 10.7.2013, in which it was held that the Governor had power to direct for passing of the order on 12.1.1996 and further that even if the agreement dated 12.1.1996 was validly passed the same has rendered null and void on account of non depositing of two consecutive instalments. Thus after the partial confirmation of the judgment passed by this Court in Writ Petition No. 8514(M/B) of 2009 one thing became clear that so far as the order of free hold dated 26.11.2001 alongwith the sale-deed dated 21.9.2001 is concerned the same is liable to be set aside in view of the observations made by the Hon"ble Supreme Court in the case of Khela Banerjee.

13. It has also been submitted on behalf of the petitioner that during the pendency of this writ petition, another writ petition No. 1804(M/B) of 1995 filed by the petitioner in respect of Plot No. 92/A/C/754 which was dismissed vide judgment and order dated 26.9.2013. A Special Leave Petition, filed against the aforesaid order of dismissal, was also dismissed by the Hon"ble Supreme Court on 7.4.2014.

14. In respect of the direction of Hon"ble Supreme Court for re-auction of the plot the submission on behalf of the petitioner is that in the case of Khela Banerjee the agreement was executed on 12.1.1996 and as per the terms of the agreement in case of non payment of two consecutive instalments the agreement would become a nullity. The Hon"ble Supreme Court on the basis of the aforesaid terms and condition declared that even if the Governor had power to direct for fixation of instalments, the petitioner having failed to deposit instalments for 13 years, has rendered the entire agreement as nullity. In the present case, the facts were slightly different as the order of instalment dated 12.1.1996 has already been superseded vide impugned order by cancelling the bid of the petitioner in the year 1996 and as such the question of entering into the agreement with the petitioner did not arise. In the present case before the agreement could be made with the Lucknow Development Authority, the State Government on representation of opposite parties No. 4 and 5 set aside the highest bid finalized in favour of the petitioner vide impugned order dated

20.6.1996 superseding the order of instalment dated 12.1.1996. The petitioner had, thus no opportunity to deposit any instalment. The order dated 12.1.1996 is therefore not a nullity as held by the Hon"ble Supreme Court in the case of Smt. Khela Banerjee.

15. The learned counsel for opposite party No. 6 has submitted that the auction in favour of opposite party No. 6 was earlier challenged but the same was dismissed. It is also a submission on behalf of opposite party No. 6 that the order of conversion of plot into freehold was passed as per the Government Order dated 17.2.1996, according to which garden plot could be converted into freehold like other leasehold Nazul land. Further submission is that the petitioner has been guilty of latches of delay in challenging the order of freehold passed in favour of opposite party No. 6. Moreover the plot in question is a residential plot and the petitioner requires the plots for school purposes which is against the master plan of 2021.

16. In reply to this, the submission on behalf of the petitioner is that there was no occasion for the petitioner to file writ petition challenging the auction of the opposite party No. 6 as the bid in favour of the school had already been accepted. With regard to the conversion of the plot into freehold, the submission on behalf of the petitioner is that prior to the issuance of the Government Order dated 7.2.1996 the plot was already auctioned as per the earlier Government Order dated 3.10.1994 wherein it was made clear that all the garden plots should be disposed of only by way of auction. Thus the subsequent Government Order dated 7.2.1996 was not applicable in the case of plot in question. Mere passing of the consent order by this Court does mean that the authorities were not required to apply correct law. With regard to the master plan of 2021 the submission on behalf of the petitioner is that the schools are permitted in both residential and commercial areas. In the case of Khela Banerjee this Court has already held that the schools are permitted in both the residential and commercial areas.

17. In the aforesaid background if we examine the facts of the present case, it transpires that after the bid of the petitioner was accepted, he deposited 25% of the bid amount, but the same was cancelled only on the ground that the tender form was not obtained by the petitioner a day before the submission of the sealed tenders. However, on the application and representation of the petitioner, he was permitted to deposit the remaining 75% of the bid amount in instalments. Before the petitioner could deposit any amount of instalment or could get possession of the plot in question, he was informed that the State Government has cancelled the acceptance of the tender in favour of the petitioner by the order dated 20.6.1996. Again the reason shown for cancellation of auction was that the tender form was not obtained a day before the date of submission of tender form. The State Government not only cancelled the auction of the petitioner but also allotted the plot in question to the opposite parties No. 4 and 5 while admittedly the bid amount offered by them was less than the bid

amount offered by the petitioner. Once the petitioner was permitted to deposit the remaining 75% amount in 10 instalments then under what circumstances, State Government cancelled the acceptance of tenders in favour of the petitioner and that too without giving any opportunity of hearing to the petitioner. The order of the State Government dated 20.6.1996 which was communicated to the petitioner on 5.7.1996 is, therefore, arbitrary and being against the principles of natural justice is liable to be quashed. Apart from this the power of allotment of plot vests with the Lucknow Development Authority and not with the State Government. The State Government had therefore no jurisdiction to allot the plot in question in favour of opposite parties No. 4 and 5.

18. We also find from the perusal of the record that the opposite parties No. 4 and 5 did not deposit even 10% of the bid amount which was to be deposited by them at the time of submission of tender. The opposite parties No. 4 and 5 were not only allotted the plot in question in hasty manner but the possession thereof was also delivered to them and a sale-deed was also executed in their favour. If the allotment of the plot in question by the State Government in favour of opposite parties No. 4 and 5 was arbitrary and against the law, then handing over its possession to them and executing a sale-deed in their favour, being a consequence of allotment, is also a nullity.

19. The opposite party No. 6 in the meantime applied for conversion of the land into freehold and the authorities on the basis of the consent order dated 6.12.2000 but without going through the relevant rules, converted the land into freehold while there was no such direction of the Hon"ble Court to convert the land in question into freehold. Applying the principle laid down by the Hon"ble Supreme Court in the case of Khela Banerjee we are of the view that the order of conversion dated 26.11.2001 is illegal as the same has been passed without changing the market value of the land from the opposite party 6. Since in a similar matter the Hon"ble Supreme Court has directed the Lucknow Development Authority to dispose of the plot by public auction keeping in view of the proposition laid down by the Hon"ble Supreme Court in the case of Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, , the prayer of the petitioner for a direction to execute sale-deed in favour of the petitioner and hand over the possession of the plot in question to him, does not arise. The Supreme Court in the aforesaid case also directed the original allottee to hand over the possession of plot in question to the Vice Chairman, Lucknow Development Authority within a period of 15 days. In view of what has been discussed above, we partly allow the writ petition and set aside the order dated 20.6.1996 as well as the communication dated 5.7.1996 and also hold that the sale-deed dated 21.9.2000 passed in favour of opposite party No. 6 is a nullity. We further set aside the order dated 26.11.2001, whereby the plot in question was converted into freehold. We, however, keep it open for the Lucknow Development Authority to put the plot in question to fresh auction in accordance with the law laid down by the Hon"ble Supreme Court in the case of Smt. Khela Banerji after observing the necessary formalities required for auction.