

(2015) 01 AHC CK 0088

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 563 of 2015

Gaur Arunima Impex International Pvt. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 1 ADJ 735 : (2015) 2 ALJ 273 : (2015) 109 ALR 475 : (2015) 2 AWC 1310 : (2015) 2 BC 219

Hon'ble Judges : Arvind Kumar Mishra, J.;Arun Tandon, J.

Bench : Division Bench

Advocate : Atul Mehra, for the Appellant; A.P. Srivastava, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. Heard Sri W.H. Khan, learned Senior Advocate assisted by Sri Atul Mehra, learned counsel for the petitioner, Sri A.P. Srivastava, learned counsel for respondent-U.P. Housing And Development Board and learned Standing Counsel for the State-respondents. U.P. Housing and Development Board published an advertisement on 3rd July, 2008 for sale of four plots under the category, institutional land demarcated for office only.

2. Petitioner, before this Court, took part in the auctions, which were held on 15th July, 2008 and offered the highest bid for plot No. 14/I.N.S./Office-3 on 45 meter Road, measuring 1584.52 square meters. Bid offered by the petitioner was approved and allotment of the plot was made in his favour under letter dated 12th August, 2008 for total price of Rs. 10,78,26,586/-. Petitioner deposited only 10% of the bid money. No installments were deposited thereafter for the reason that three plots situated over Khasara No. 433/2, Village Prahlad Garhi were submit matter of suit proceedings bearing Original Suit No. 327 of 2003 instituted by one Sukhbir Singh alongwith others against Uttar Pradesh Housing and Development Board. According to the petitioner, he was mislead by the

Housing and Development Board, while assuring in the advertisement that the land was free from all encumbrances. It was brought to the notice of the petitioner that Sukhbir Singh had filed a writ petition before the High Court being Writ Petition No. 887 of 2008 (Under Article 227 of the Constitution of India (Sukhbir Singh and others v. Additional District Judge and others) in the matter of grant of temporary injunction in the pending suit. The High Court had passed an order dated 18th September, 2008 to the following effect:

"As interim measure, the respondents are restrained from making any auction in pursuance of advertisement dated 1.8.2008, contained in Annexure-II of the writ petition, so far as it pertains to the plot of petitioners. They are also restrained from making delivery of possession to any third party, if at all auction has been held in respect of the plot of the petitioners." 3. From the records, it is apparent that a notice dated 16th November, 2012 was issued to the petitioner demanding balance consideration of Rs. 10,29,26,586/- alongwith interest to the tune of Rs. 4,47,99,572/-. Petitioner instead of depositing the money in response to the notice so issued, approached the National Consumer Disputes Redressal Commission, New Delhi by means of Consumer Complaint No. 327 of 2013 and the reliefs prayed for in the said complaint case read as follows:

"a. Set aside the impugned demand of interest of Rs. 4,47,99,572/- out of the total demand of Rs. 14,77,26,158, as mentioned in notice dated 16.11.2012 and further allow the complainant to deposit the balance sale consideration of Rs. 10,29,26,586/- pursuant to schedule of time prescribed in the letter of allotment dated 12.8.2008, with an undertaking that no matter whatsoever is sub-judice before any Court of law with regard to the plot in question and plot in question is free from all charges/encumbrances.

b. Award compensation/damages on account of escalation in the rates of material/labour after holding an enquiry as required under Order XX of Code of Civil Procedure.

c. Award compensation of Rs. 2.00 lacs on account of mental harassment.

d. Pass an interim order directing the respondent not to cancel and further allot, sale, create, mark any third party interest in the aforesaid plot.

e. Pass such and further order(s) as this Hon"ble Court may deem fit in the present facts and circumstances."

4. The complaint case came to be rejected by the National Consumer Disputes Redressal Commission vide order dated 11th November, 2013 on the ground that petitioner does not answer the description of "consumer". Petitioner thereafter filed a writ petition before the Delhi High Court being Writ Petition (C) 1891 of 2014, which has been got dismissed vide order dated 26th March, 2014 with liberty to approach the Court having territorial jurisdiction in the matter. Therefore, the petitioner has approached this Court by means of the present writ petition with following reliefs:

"i. to call for the records and issue a writ, order or direction in the nature of certiorari to quash the allotment letter dated 21.10.2014 issued in favour of respondent No. 4 (Annexure 23 to the writ petition);

ii. to call for the records and issue a writ, order or direction in the nature of certiorari to quash the order dated 17.12.2013 as stated in the letter dated 1.1.2015 (Annexure 20 to the writ petition) and the respondents be directed to bring on record the order dated 17.12.2013 before the Hon"ble Court;

iii. to issue a writ, order or direction in the nature of mandamus directing the respondents not to demand the balance amount, interest and penal amount till the dispute inter-se between Sukhvir Singh and other and Uttar Pradesh Awas Evam Vikas Parishad, is resolved;

iv. to issue any such other and further writ, order or direction which this Hon"ble Court may deem fit and proper under the facts and circumstances of the case; and

v. to award the cost of the petition in favour of the petitioner."

5. We may first deal with the prayer made by the petitioner for quashing of the order dated 17th December, 2013, as has been noticed in the letter dated 1st January, 2015 enclosed as Annexure-20 to the present writ petition.

6. It is apparent that after offering the highest bid as noticed herein above and after depositing only 10% of the bid money in pursuance thereof in the year 2008, for the last 7 years, petitioner has not deposited even a single penny with the respondent-Housing and Development Board in garb of pendency of the writ petition filed by Sukhbir Singh detailed above and the interim order passed therein.

7. It is admitted on record that the petitioner did not make any attempt to deposit the installments in accordance with the agreed terms and even today, there is no offer to deposit the money with interest as demanded.

8. What has been contended before this Court is that since the land was encumbered, the respondent-Housing and Development Board could not have put the same for auction and therefore, the petitioner is justified in not depositing the money in terms of the bid offered, in the alternative, demand of penal interest is unjustified. According to the petitioner, since under the order of the High Court, delivery of possession was stayed, it was advised not to deposit the balance amount of the bid.

9. We may record that in the order of the High Court dated 18th September, 2008 itself, it has been noticed that the property has already been put to auction and the matter has been finalized.

10. If the petitioner was aggrieved in any manner with the non-information of the injunction, which was granted in the matter of delivery of possession and therefore, mislead in offering the highest bid, which had been approved, the

proper course available to the petitioner was to have withdrawn his bid on the plea of ground of wrong information about the status of the plots. But he has chosen not to do so. On the contrary he wanted to stick to his offer, he only desired waiving of the penal interest as is reflected from the prayer clause in Complaint Case No. 327 of 2013 (Supra). In this petition also there is no such prayer.

11. The other course open to him was to make an application in the pending writ petition and to have got the interim order vacated. Mere pendency of the writ petition No. 887 of 2008 cannot be the cause for non-deposit of the balance bid amount as per its offer.

12. We may record that terms of the contract entered into between the petitioner and the Housing and Development Board, as per highest bid accepted were binding and did not stand diluted because of pendency of writ petition filed by Sukhbir Singh referred to above in any manner. The liability of the petitioner to deposit the money in terms of the bid offered by him and in accordance with the terms agreed upon at the time of auction, could not have been avoided in the garb of pendency of the writ petition filed by a third party.

13. The Apex Court has repeatedly held that writ proceedings under Article 226 of the Constitution of India cannot be resorted to for the purposes of avoiding contractual obligations (Ref. Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, . Radhakrishna Agarwal and Others Vs. State of Bihar and Others, ; Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, ; and Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., .).

14. We are of the considered opinion that in the facts of the case the petitioner has committed default in payment of the installments in violation to the terms agreed upon between the parties. The respondent-Housing and Development Board is justified in cancelling the acceptance of the bid of the petitioner and in forfeiting the earnest money which it had so deposited.

15. Since only one view is possible on the admitted facts, issue of opportunity of hearing having not been afforded to the petitioner is not of much relevance. The Apex Court in the case of Punjab National Bank and Others Vs. Manjeet Singh and Another, , has opined as follows:

"The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The Court will not insist on compliance with the principles on natural justice in view of the situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice". 16. Once the Court comes to the conclusion that the petitioner has lost his rights in the matter of allotment of the plot in question because of the cancellation of the same, subsequent auction of the plot in favour

of third person cannot be objected to by the petitioner on the ground that there is an interim order in the matter of delivery of possession in respect of the plot in question, inasmuch as that would be an issue between the person, who has filed the said writ petition before the High Court referred to above, and the respondent Housing and Development Board and the subsequent allottee.

17. Learned counsel for the petitioner then contended that in respect of an other person, who had been allotted the land similarly situate, respondent-Housing and Development Board has taken a decision to refund the earnest money even after they had committed default in payment of the installments as agreed upon at the time of auction.

18. If such is the situation, the petitioner is at liberty to make an application before respondent No. 3, which shall be dealt with in the same manner as it has been dealt with in respect of other person similarly situate if any. With the aforesaid observations, the present writ petition is disposed of.