
(2022) 06 TEL CK 0009
In the Telangana High Court
Case No : Writ Petition No. 12331 Of 2009

M. Amarnath Babu

APPELLANT

Vs

Government Of Andhra Pradesh,

RESPONDENT

Date of Decision : 06-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 06 TEL CK 0009

Hon'ble Judges : Dr. G. Radha Rani, J

Bench : Single Bench

Advocate : K. Durga Prasad, N. Vasudeva Reddy

Final Decision : Allowed

Judgement

1. This writ petition is filed by the petitioner to declare the inaction of the respondent No.2 in not executing the registered Sale Deed in favour of the petitioner pursuant to the letter dated 03.06.2009 as illegal, null, void, arbitrary and without any basis and consequently to direct the 2nd respondent to execute registered Sale Deed to an extent of Ac.28-01 Gts in Survey No.848, 849, 876 and 877 of Narsapur Village, Bodhan Mandal, Nizamabad District.

2. Heard the learned counsel for the petitioner and learned counsel for the respondent No.2.

3. The learned counsel for the petitioner submitted that 2nd respondent was having more than Ac.12000 at Nizamabad District in various villages surrounding the Nizam Sugar Factory situated at Shakkar Nagar, Bodhan Town. After selling the factory to the private individual, the Government decided to sell the agricultural lands on public sale under the supervision of the District Collector. Large extent of land was sold to various individuals and some extent was also given to the employees who opted for voluntary retirement at the stage of closure of the factory. The second respondent issued a tender cum auction notice on 30.12.2002 for sale of farm lands and published in newspaper. Basing on such

notice, the petitioner along with his family members participated and submitted the tender for Ac.28-01 guntas situated at Narsapur Village, Bodhan Mandal, Nizamabad District. The petitioner became highest bidder for the land and he paid EMD at the time of tender. After becoming highest bidder, he visited the land and found that some people occupied the same and immediately he informed about the encroachment to the second respondent. The matter was kept pending. The petitioner made several representations. In the meantime, the second respondent evicted the encroachers by giving substitute land in other areas. After that the second respondent issued a registered notice on 23.04.2009 directing the petitioner to deposit the balance sale consideration along with interest @ 18% per annum. Basing on the said notice, the petitioner approached the second respondent and requested to delete the interest vide letter dated 18.05.2009. After that the second respondent issued a detailed registered notice on 20.05.2009 directing the petitioner to pay Rs.24,55,375/- towards balance sale consideration and Rs.26,64,392/- towards interest on principal amount. As per the directions of the second respondent, the petitioner paid an amount of Rs.51,19,767/- including balance sale consideration with interest fixed by the 2nd respondent. The 2nd respondent received the entire amount and issued a letter dated 03-06-2009 confirming the sale and handed over the possession to the petitioner and directed the petitioner to take necessary action for registration of the Sale Deed. After 03.06.2009, the sub-ordinates of the second respondent directed the petitioner to clear the bushes. As such the petitioner engaged labour and machinery and started clearing the bushes for cultivation and development of the land. The petitioner handed over the draft Sale Deed. In the meanwhile, due to political pressure, the 2nd respondent delayed the registration. To his surprise, the petitioner received a letter on 19.06.2009 from the 2nd respondent stating that it would take certain time to take administrative and legal clearances before proceeding to register sale deed. The second respondent lodged a police complaint at Bodhan against the petitioner stating that the petitioner was encroaching the lands. The police came to the petitioner and informed him to stop the work. The petitioner approached 2nd respondent on 22.06.2009 and requested him to execute Sale Deed, but the second respondent informed the petitioner that it would take some more time for getting clearance. Apprehending that something was going against him, the petitioner filed the Writ Petition.

4. Learned counsel for the 2nd respondent submitted that the writ petition was not maintainable as it arose under a contractual obligation and the relief sought for was in the nature of Specific Performance, the petitioner had to approach competent Civil Court for proper conveyance of title, but not maintainable under Article 226 of the Constitution of India. He further contended that the tender was issued for sale of farm lands located around Shakkarnagar on "as is where is basis". The bidders inspected the lands and having satisfied with the extent of the area shown and know what they were buying, submitted the bids, as such, the petitioner could not urge that the lands were under encroachment. He also denied that there was political pressure on them. He contended a Public Interest

Litigation was filed before the Court vide W.P.No.12657 of 2009 by one Kotha Ramakanth. In view of the pendency of public interest litigation, the 2nd respondent could not take any further steps in the matter. He further submitted that the present Writ Petition and the Public Interest Litigation were clubbed and heard together by a Division Bench of this Court and the said writ petitions were dismissed vide common order dated 9.03.2010. Thereafter, the matter was carried to the Hon'ble Supreme Court of India and the SLP's were dismissed. Thereafter, Review Petitions were filed by the State Government and the 2nd respondent against the order dated 09.03.2010 passed by the earlier Division Bench and the said Review Petitions were allowed on 13.02.2014 and the present writ petition was restored and direction was given to the single Judge to decide the matter afresh. He further submitted that pursuant to the Andhra Pradesh Re-Organization Act, 2014, the Nizam Sugars Limited being a Government Company was placed under Schedule IX institution and now owned by the State of Telangana on location basis. Hence, the State of Telangana represented by the Industries Department was a proper and necessary party for adjudication of the matter and prayed to dismiss the Writ Petition.

5. Perused the record and the earlier litigation on this aspect.

6. As seen from the record, Writ Petition No.12657 of 2009 was dismissed and the present Writ Petition No.12331 of 2009 was allowed, contrary to the contention of the learned counsel for the 2nd respondent that both the said writ petitions were dismissed vide common order dated 9.03.2010. Record also would disclose that two SLP's were filed before the Hon'ble Supreme Court of India in C.C.No.7537 and 7538 of 2010 and the Hon'ble Supreme Court of India rejected the SLP's on 12.05.2010. A Review Petition was filed by the respondent Nos.1 and 2 before the Division Bench of this Court and this Court vide Review W.P.M.P.Nos.20169 and 20173 of 2010 in W.P.No.12331 of 2009 dated 13.02.2014 set aside the judgment in W.P.No.12331 of 2009 and directed this Court to hear the matter de novo after considering the material on record.

7. Though the contention of the learned counsel for second respondent that the relief sought was in the nature of Specific Performance and the petitioner had to approach the competent Civil Court for obtaining the relief under Specific Relief Act appeared to be valid as the petitioner had an alternative remedy available and without availing the same, filed the writ petition under Article 226 of the Constitution of India seeking the Writ of Mandamus, however, considering that the matter was long pending before this Court, and the same was disposed on merits by this Court earlier and the Division Bench also directed this Court to decide the matter afresh basing on the material on record, it is considered not appropriate to direct the petitioner to approach the Civil Court at this length of time.

8. As seen from the facts on record, the second respondent had not denied issuing notification for tender on 30.12.2002 in the newspaper and that auction was conducted on 28.01.2003 and 29.01.2003 and that the petitioner became

successful bidder for total sale consideration of Rs.26.02 lakhs and paid EMD of Rs.1,64,000/- within the time fixed. It was also not disputed that the Government took a policy decision in respect of payment of final sale consideration by the preferred bidders to charge interest @ 18% per annum and communicated the same to the company vide letter dated 02.08.2003 and in pursuance of the policy decision taken by the Government, the second respondent asked the petitioner to pay the bid amount of Rs.26.20 lakhs together with interest @ 18% per annum and the petitioner paid the total amount of Rs.52.84 lakhs. The petitioner paid interest @ 18%, almost equal to the principal bid amount and paid double the bid amount. The Managing Director of the second respondent approved handing over the physical possession of the land. The petitioner addressed a letter dated 17.06.2009 to the second respondent requesting them to take steps for execution of Sale Deed.

9. The Division Bench of this Court in common order in W.P.Nos.12657 and 12331 of 2009 dated 09-03-2010 observed as follows:

“When once the company accepted the amount of Rs.51,19,767/- paid by the 3rd respondent under various demand drafts/bank cheques, as can be seen from the letter dated 30.05.2009 and the endorsement of the receipts contained thereon and when the said amount has been accepted without any protest and in accordance with the policy of the Government by charging interest at 18% per annum for the delay, it is not open for the 2nd respondent to complain about the delay in making the payment to the 3rd respondent or to wriggle out of the transaction or to avoid taking further steps to complete the transaction of sale on the ground that there has been abnormal delay in payment of the balance sale price. When the 3rd respondent has paid interest at 18% per annum for the period of delay and when the 2nd respondent accepted the same in pursuance of the policy of the Government, the fact that there has in fact been delay in remittance of the balance, pales into insignificance and the 2nd respondent cannot on the ground of the said delay avoid execution of the sale deed, as the 3rd respondent has compensated for the delay, by paying interest. In the letter dated 19.06.2009, the 2nd respondent, however, stated that they are taking steps for completing required formalities as early as possible. The said letter dated 19.06.2009 was addressed in reply to the letter dated 17.06.2009 wherein, the 3rd respondent has stated that he was ready and willing to pay the stamp duty and other registration charges as required to be paid by the 2nd respondent in their letter dated 12.06.2009 and the 2nd respondent, who therefore, called upon to execute a registered sale deed in favour of 3rd respondent for the said extent of Ac.28.01 guntas purchased by 3rd respondent in the public auction in respect of which, 3rd respondent has paid the entire sale price together with interest at 18% per annum, which was also admittedly received by the 2nd respondent.”

10. These facts are not denied by the 2nd respondent. The petitioner had performed the terms and conditions of the agreement and he was ready and

willing to perform the remaining part to pay the stamp duty and other registration charges as required to be paid. He could not do so because of prevention by the 2nd respondent. As it was the 2nd respondent who failed and neglected to perform his part of the agreement by executing the registered Sale Deed in favour of the petitioner, it is considered fit to direct the 2nd respondent to execute the registered sale deed in favour of the petitioner.

11. Since it was only the 2nd respondent who was the concerned party, and there was no interest of the State involved, the contention of the 2nd respondent that the Telangana Government should be added as party to the petition is considered not required and the said contention is rejected.

12. As the petitioner had performed his part of the agreement and paid the total amount including the interest and as it was the 2nd respondent who failed to perform his part by executing a registered sale deed, it is considered fit to allow the writ petition, directing the 2nd respondent to execute a registered Sale Deed in favour of the petitioner in pursuant to the letter dated 03.06.2009, as the petitioner is entitled for execution of the registered Sale Deed in his favour to an extent of Ac.28.01 guntas of land in Sy.Nos.848, 849, 876 and 877 of Narsapur Shivar Village, Bodhan Mandal, Nizamabad District.

13. Hence, the writ petition is allowed, directing the 2nd respondent to register the Sale Deed in favour of the petitioner as prayed for.

14. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.