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(2024) 10 KL CK 0046

In the High Court Of Kerala

Case No : Writ Appeal No. 810 Of 2019

M.S.Nishad APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 08-10-2024

Acts Referred:

Constitution of India, 1950 — Article 243W
Kerala Municipality Act, 1994 — Section 58, 215

Citation : (2024) 10 KL CK 0046

Hon'ble Judges : Nitin Jamdar, CJ;S.Manu, J

Bench : Division Bench

Advocate : P.B.Krishnan, P.M.Neelakandan, P.B.Subramanyan, Sabu George, Manu Vyasan Peter, T.Naveen, K.P.Harish

Final Decision : Dismissed

Judgement

S.Manu, J

1. This intra-court Appeal is preferred by the Writ Petitioner, aggrieved by the dismissal of his Writ Petition by the learned Single Judge.

2. Brief facts are as follows:-

Second Respondent Municipality acquired land for establishing an industrial estate to promote industrial entrepreneurs. The property was divided into 17 plots. Plot No.11 having the extent of 10 cents was initially allotted to one K.P.Valsan for an amount of Rs.30,000/- per cent in 2002. As he failed to remit the amounts, the allotment was cancelled. The Appellant engaged in the business of manufacturing of soaps tried later, in 2011, for allotment of plot No.11. An application was submitted before the Hon'ble Minister for Industries and the same was forwarded to the Municipality by the Government. By Ext.P1 order dated 5 July 2012, the plot was allotted to the Appellant. The price of the property explicitly stated in Ext.P1 is Rs.1,25,000/- per cent. The Appellant had remitted 25% of the value before Ext.P1 was issued. He was directed to remit

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remaining amount of Rs.9,37,500/- in 20 half yearly installments from 2013. He was also required to execute an agreement. The Appellant thereafter remitted a total amount of Rs.7,81,575/-. Relying on Ext.P3 Government Order dated 5 April 1969, he made a request to the Municipality on 8 March 2013 to re-fix the value of land. Later, he approached the Hon'ble Minister for Local Self Government Department with Ext.P4 representation dated 4 September 2014. Pursuant to the same, the Principal Secretary called for a report from the 4th Respondent who reported to the Government that the land value should be fixed as per Ext.P3 and the same can be only Rs.66,911/- per cent. The report is produced with the Writ Petition as Ext P5. The Secretary to Local Self Government Department, by Ext.P6 letter dated 10 May 2016, directed the 2nd Respondent Municipality to re-fix the land value. The Municipality replied to the Principal Secretary by Ext.R3(a) letter dated 27 October 2016 that the Government may reconsider the issue and decide it in favour of the Municipality. Several reasons were stated in Ext.R3(a) by the Municipality in support of its plea for reconsideration by the Government. In the Writ Petition, the Appellant mainly sought a direction to the Municipality to act on the direction of the Government in Ext.P6.

3. The Municipality resisted the Writ Petition by filing a comprehensive counter affidavit. The Appellant thereafter filed a reply affidavit rebutting the contentions of the Municipality. Later, the Appellant filed an application to produce additional documents marked as Ext.P12 which are internal communications between the Municipality and the Local Self Government Department. The learned Single Judge heard the parties and by judgment dated 30 January 2019 dismissed the Writ Petition.

4. We heard Sri.P.B.Krishnan, learned Senior Counsel appearing for the Appellant, Sri.T.Naveen learned Standing Counsel appearing for the Respondent Municipality and the learned Government Pleader. We have carefully perused the pleadings and documents of both sides.

5. From undisputed facts, we note that the Municipality had fixed the value of the land under plot No.11 as Rs.1,25,000/- per cent. In its counter affidavit, Municipality explained that the request of the Appellant for allotment was placed before the Municipal Council which deputed a sub committee to consider the matter and to submit a report. The sub committee considered the fact that the price of the land in 2002 was Rs.30,000/- per cent and the same was increased as Rs.50,000/- per cent in 2008. The sub committee also found that the market value of the nearby plot reached Rs.5,00,000/- per cent in the year 2012. Therefore, the committee reported that the price of the plot per cent has to be increased from Rs.50,000/- to Rs.1,25,000/-. The report was approved by the Finance Committee of the Municipality. The Appellant, with open eyes, accepted the conditions in Ext.P1 and remitted a total amount of Rs.7,81,575/-. Thereafter, he disputed the land value by approaching the Government. Ext.P3 Government Order dated 5 April 1969 was relied on by him. Government also

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proceeded as if the same would govern the allotment. Whether Ext.P3 Government Order was applicable for the allotment made by the Respondent Municipality is the primary issue to be decided.

6. We have carefully examined Ext.P3. The opening clause in Ext.P3 reads as follows:-

“1. These rules may be called the Kerala Allotment of Government land in Development Areas on hire purchase for industrial purpose Rules”.

''Development area'' is defined under clause 2(c) as follows:-

“(c) “Development Area” shall for the purpose of these rules consist of lands acquired by Government for the purpose of the industrial development of an area.”

As per clause 5, application for allotment of land in a development area shall be submitted to the Director of Industries and Commerce through the District Industries Officer. Clause 7 provides that the application shall be disposed of by the Director of Industries and Commerce. According to Clause 15, cost of the land allotted under the Rules shall be fixed by the Director of Industries and Commerce.

7. In the case on hand, the land allotted was not situated in a “Development Area” as defined under the Rules. Appellant has no case that application for allotment was submitted to the Director of Industries and Commerce or that the allotment was made by the said authority. The cost of the land was fixed by the Municipality. For these reasons, we are of the firm view that Ext.P3 Rules have no application to the allotment made by the Municipality. We therefore uphold the contention of the Municipality in this regard. We are of the considered view that the perception of the Government to the contrary and interference made by the Department concerned referring to Ext.P3 are not sustainable in the eye of law. Fact that some other local bodies adopted Ext P3 in the matter of allotment of plots cannot be a reason to impose the same on the Respondent Municipality.

8. The learned Senior Counsel for the Appellant raised a contention that Ext.P6 was issued by the Government in exercise of the powers under Section 58 of the Municipality Act and therefore the Municipality was bound to obey. We note that the Municipality, by Ext.R3(a) had replied to the Government regarding in-applicability of Ext.P3 Rules and sought reconsideration of Ext.P6. As rightly noted by the learned Single Judge in the impugned judgment, Municipality is vested with ample powers to acquire and dispose of property by virtue of Section 215 of the Kerala Municipality Act, 1994. Article 243W contemplates Municipalities as institutions of self-governance. A Municipality cannot be considered as an extension of a Department of the Government or as a subordinate institution. Interference by the Government with the affairs of a Municipality, even under the powers available under Section 58 of the Kerala Municipalities Act, can be only in accordance with law. As rightly pointed out by

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the Municipality in Ext R3 (a), issuance of Ext P6 by placing reliance over Ext P3 by the Government was improper. For these reasons we find no merit in the contention of the Appellant regarding pertinence of Section 58 of the Kerala Municipality Act, in the facts of the case on hand.

9. Another contention raised by the learned Senior Counsel for the Appellant was that the land was acquired by the Municipality under the Integrated Development of Small and Medium Towns (IDSMT) scheme. The learned Senior Counsel argued that State Governments are responsible for monitoring the IDSMT Scheme and therefore Ext.P6 issued by the Government had binding effect on the Municipality. It is true that Municipality has stated in Ext.P12 that the property acquired for allotment was obtained under IDSMT. At this juncture, it is relevant to note that the Appellant has not given any explanation in the affidavit filed in support of his application to produce Ext.P12 as an additional document as to how he got access to the said document which is an internal communication between the Municipality and the Government. Be that as it may, we are of the considered view that the reliance placed on IDSMT scheme also cannot be of any help to the Appellant. As rightly pointed out by the learned Standing Counsel for the Municipality the revised guidelines issued by the Ministry of Urban Affairs and Employment of the Government of India does not provide any such authority on the State Governments. Paragraph 4.3 of then guidelines is extracted hereunder:-

“4.3 The cost of land owned by the State Government or the local bodies will not be funded under IDSMT. Cost of land could only form part of the project cost in cases where land would have to be acquired from private parties. However, in such cases, the Central assistance will be subject to a ceiling of 25% of the cost of acquisition. Advance action should be initiated by the city/town concerned before the IDSMT project proposals are drawn up and the stage of acquisition indicated in the project report. Sites and services projects could be included subject to the condition that titles to land are available and without dispute. Funding for serviced sites should be of a short-term nature so as to encourage the implementing agencies to develop land at a faster pace.”

10. It shows that the central assistance was limited and the Municipality acquired the property not wholly depending on central assistance. We do not find any provision in the revised guidelines which would justify an interference by the State Government as made by it in this case. Therefore, we are not inclined to accept the contention of the Appellant in this regard also.

11. The learned Standing Counsel for the Municipality argued that the Appellant who approached the Municipality for allotment of the plot by making initial payment of 25% of the value and also by paying a substantial part of the remaining amounts in installments is estopped from turning round and seeking re-fixation of the land value. If the price fixed by the Municipality in Ext.P1 was not accepted by the Appellant, the Municipality could have allotted the plot to someone else in need. After evidently accepting the price fixed by the

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Municipality, the Appellant made an attempt to get it re-fixed. Yielding to his demand would result in huge loss to the Municipality. He further contended that if the request of the Appellant was accepted, other allottees also might have raised similar claims. We find merit in these submissions of the learned Standing Counsel. It is evident that the Appellant accepted the conditions in Ext P1 and acted in tune with them. He later turned round and attempted to get the value re-fixed on untenable grounds. Government supported him. Municipality is a public institution having a distinct role as a Local Self Government Institution under the Constitutional scheme. Causing loss to the Municipality is indisputably against public interest.

12. In view of the above discussion, we find no reason to differ with the view adopted by the learned Single Judge in the impugned judgment. The Appeal therefore fails. Accordingly, it is dismissed.

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