

(2018) 05 RAJ CK 0099

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14405, 14386, 14387, 14388, 14389, 14390, 14391, 14392, 14393, 14394, 14395, 14396, 14397, 14398, 14399, 14401, 14402, 14403, 14404, 14406, 14407, 14408, 14409, 14410, 14412, 14413, 14414, 14415 of 2015

Nand Ram @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 09-05-2018

Acts Referred:

Rajasthan Municipalities (Urban Lands Disposal) Rules, 1974 — Section 15, 15F
Constitution of India, 1950 — Article 226

Citation : (2018) 05 RAJ CK 0099

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : RDSS Kharlia, B.S.Sandhu, Pratishtha Dave

Final Decision : Disposed Off

Judgement

Â Heard learned counsel for the parties. Perused the material available on record.

This bunch of writ petitions involves common questions of facts and law. The petitioners herein applied for allotment of plots in the Gudmandi

Commercial Extension, Hanumangarh. The auction was held on 18.12.2008. The petitioners herein succeeded in the auction. Conditions No.1, 2, 3 and

4 of the auction notice being germane for the controversy at hand, are reproduced hereinbelow for the sake of ready reference:

â??1- d`fâ??k Hkwfe ds [kjhnus ds bPNqd O;fDr;ksa dks :i;s 50000@& crkSj vekur jkfâ??k igys tek djokuh gksxhA 2- IyKWV [kjhnus ds bPNqd

O;fDr;ksa dks :i;s 5000@& crkSj vekur jkfâ??k igys tek djokuh gksxh o uhykeh lekIr gksus ij IyKWV dh ,d pkSFkbbZ jkfâ??k rqjUr ekSds ij tek djokuh

gksxhA 3- fufâ??pr uhykeh frfFk dks cksyh ls cps gq, IyKWV dk foÃ?; vkxkeh fnol esa fufâ??pr cksyh esa fd;k tkosxkA 4- uhykeh dh iqfâ??V

gksus ij â?ksâ??k rhu pkSFkbbZ jkfâ??k uksfVI izkfIr ds 30 fnol esa tek djokuh

gksxh 3@4 jkfâ?k rhu fnol iwoZ vof/k dk LFkkuh; pSd@cSadj

pSd@fMek.M MÂakÂ¶V Lohdkj fd;k tkosxkAâ??

As per the terms and conditions of the auction notice, the aspirants were required to deposit a sum of Rs.50,000/- as security in the cases of

agricultural land and Rs.5000/- as security in the cases of plots. Furthermore, 1/4th of the reserve price was to be deposited in advance. As per

Clause No.4, upon the sale being confirmed, the purchaser was required to deposit the balance 3/4th sale price with the Municipality within a period of

30 days from the date of issuance of notice in this regard. The petitioners succeeded in the auction and duly deposited 1/4th of the reserve price with

the respondent Municipality in the year 2008 itself. It is an admitted position as emerging from record that the plots in question which were sold to the

petitioners through auction for construction of shops in the Gudmandi were already under encroachment. The petitioners kept on representing the

respondents to have the encroachments removed and issue them the notice for depositing the remaining 3/4th of the sale amount so that they could

use the plots as per the terms of the allotment. Finally, under the order dated 18.2.2013 passed by Honâ??ble Division Bench of this Court in

D.B.Civil Writ Petition No.11958/2011 â??Anil Kumar Vs. The State of Rajasthan & Ors.â?, the encroachments on the land in question were

removed in the year 2014 i.e. after six years of the auction. However, despite the encroachments being removed, the notices for deposit of balance

sale price were not received by the petitioners, nor they were handed over possession of the plots. They filed repeated applications/representations to

the Municipality which in turn, sought permission from the State Government for confirming the sale of the disputed 35 plots which, had been sold to

the petitioners herein in the auction held in the year 2015. Finally, the State Government issued the letter dated 18.11.2015 under which, the

Municipality was given sanction to regularize these 35 plots after charging the remaining 3/4th amount alongwith simple interest @ 15% from the

auction purchasers. The cost/penalty was waived. In furtherance of such direction, the petitioners herein received the impugned notices in the year

2015 requiring them to deposit balance 3/4th sale amount with 15% interest thereupon applied from the date of the auction. The petitioners are

aggrieved by the condition in the notice whereunder, they were required to pay

interest from the date of auction on the balance 3/4th sale amount and hence they have approached this Court through these writ petitions filed under Article 226 of the Constitution of India for assailing the said demand of interest.

Dr.RDSS Kharlia learned counsel for the petitioners has, during the course of arguments, placed on record, copies of two judgments dated 17.10.2014

passed by the Additional District Judge No.2, Hanumangarh in separate civil suits filed by coapplicants akin to the petitioners viz. Mohd.Rafiq and

Abdul Hameed. In both these cases, the Civil Court passed decrees to the effect that the respondents shall forthwith execute the lease deeds in

favour of the plaintiffs without charging any interest in terms of the notice. Cost of Rs.5000/- was imposed upon the Municipality on account of its

failure to execute the documents in time. As per Shri Kharlia, these two judgments have not been challenged till date. He thus urges that endeavour of

the respondents in charging interest from the petitioners for their own indifference/inaction in providing vacant possession of the plots in question and

in failing to timely notify the petitioners to deposit the balance sale price amounts to an absolutely unjust, arbitrary and high handed executive action

which deserves to be struck down. On these grounds, equitable relief of quashing the impugned notices to the extent of demand of interest is prayed

for by the petitioners in the writ petition. It may be stated here that the petitioners have deposited under protest the amounts in terms of the demand

notices with interest and now crave reimbursement of the excess amount charged from them.

Shri B.S.Sandhu has filed replies to the bunch of writ petitions. He took recourse of Rule 15F of the Rajasthan Municipalities (Urban Lands Disposal)

Rules, 1974 and urges that the statute itself provides for interest to be charged whenever the amount is offered after one month of the auction. He

thus urges that the action of the respondents in applying interest @ 15% per annum to be charged on the balance 3/4th sale amount is absolutely in

consonance with the statute and cannot be called into question in the writ jurisdiction of this Court.

Dr.Pratishtha Dave, A.G.C. supported the stand taken by Shri Sandhu.

I have heard and considered the arguments advanced by learned counsel for the parties and have gone through the impugned orders as well as the

reply filed by the respondents.

It is virtually an admitted position as emerging from record that the plots in question were under encroachment even before the same were put up for

auction. Once the auction proceedings were completed, duty to provide vacant possession of the plots to the purchasers after charging full sale price

was undoubtedly upon the seller i.e. the Municipality, who failed to perform its lawful obligations and did not handover the vacant possession of the

plots to the auction purchasers, who kept on submitting

representations for issuing them the notices for finalizing the sale while offering the balance 3/4th amount and claiming vacant and free possession of

the plots. As usual, this Court had to step in to get the encroachments removed and the order dated 18.2.2013 came to be passed by Honâ??ble

Division Bench of this Court in the abovementioned Writ Petition No.11958/2011 wherein, the following directions came to be issued:

â??5. Learned counsel for the petitioner, in rejoinder, submitted that all the traders to whom plots have been allotted, will deposit the amount,

therefore, the respondent no.5 be directed to get the road and public utilities constructed within three months from the date of deposit of entire amount.

6. We have considered the submissions of the learned counsel for the parties.

7. So far as encroachments are concerned, the same have already been removed from New Gud Mandi Area in Hanumangarh town, as stated by the

learned counsel for the respondent no.5. Learned counsel for the petitioner also admits this fact.

8. The question which arises for consideration is only in respect of construction of road and public utilities in New Gud Mandi Area. The problem

stated by the learned counsel for the respondent is of money, whereas, the learned counsel for the petitioner submitted that all the traders will deposit

the amount of allotment of plots at the earliest. In these circumstances, we direct the respondent no.5 to serve a notice of demand for depositing the

amount to all the traders at the earliest and as and when amount is deposited by the petitioner and other allottees, the respondent no.5 will see that the

road and public utilities are constructed in the Gud Mandi Area. Any how, we give a final direction that road and public utilities in Gud Mandi Area will

be got constructed by the respondent no.5 as early as possible, but not later than a period of six months from today. In case, the traders do not deposit

the amount of allotment of plots as demanded by the respondents, then it will be open for the respondent to file an application for extension of time for

raising the road and public utilities constructed.â??

Only after the said direction given by Honâ??ble Division Bench of this Court in the above Public Interest Litigation, the encroachments in question

were removed. By the time, the encroachments came to be removed, the period of more than 10 months as per Clause (D)(i) of Schedule prescribed

under Rule 15 of the Rajasthan Municipalities (Urban Land Disposal) Rules, had lapsed and therefore, the Municipality became functus officio in the

matter of finalizing the sale. Thus, sanction to execute the sale deeds was sought from the State Government, from where the order dated 18.11.2015

came to be issued permitting the Municipality to finalize the sales after accepting the balance 3/4th sale amount and interest thereupon @ 15% per

annum. However, this order does not clarify as to from which date, the interest was to be applied. Manifestly, the order does not convey that the

interest would be chargeable from the date of the auction.Â From a bare reading of the various clauses of Rules of 1974, it is apparent that the

successful bidder would be liable to deposit the balance 3/4th of the sale price only upon receiving notice thereof from the seller i.e. the Municipality.

It is further not in dispute that the first notice for demand of the balance 3/4th amount was issued by the Municipal Council, Hanumangarh as late as in

the month of November 2015. Therefore, considering the import of the statutory provisions and keeping in view the abject failure of the Municipality to

provide vacant possession of the plots in question to the auction purchasers for a period of nearly 8 years from the auction, manifestly, the interest if

any, towards the balance sale amount, could at best be applied prospectively and not retrospectively. It may be stated here for the sake of reference

that the Municipality kept on enjoying the fruits of the 1/4th amounts deposited by the petitioners without providing them the plots in question for a

period of nearly eight years. Thus, equities weigh heavily in favour of the petitioners and against the respondent Municipality.

In wake of the discussion made hereinabove, this Court is convinced by the argument of the petitionersâ?? counsel that the respondent Municipal

Council, Hanumangarh was absolutely unjustified in demanding interest @ 15% per annum from the petitioners on the balance 3/4th sale price of the

plots in question w.e.f. 30 days of the date of auction. The interest if any, would be chargeable from the date of issuance of the notice of demand of 30 days and not prior thereto.

The writ petitions thus deserve to be and are hereby allowed. The petitioners have reportedly deposited the balance 3/4th amount under protest in

furtherance of the impugned notices with interest applied from the date of auction. Thus, as a consequence of the acceptance of the petitionersâ??

plea, the respondent Municipality would have to reimburse the excess amount of interest charged from the petitioners under the impugned notices. The

excess amount charged from the petitioners towards interest @ 15% applied from the date of the auction till the date of the issuance of the notices of

demand shall be reimbursed to them within a period of four months from today failing which the petitioners shall be entitled to interest on the amount

@ 9% per annum on the period of delay.

Stay applications are disposed of.

No order as to costs.

A copy of this order be placed in each file.