(2012) 09 MP CK 0181

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3151 of 2011

Neetu Tej Kumar Bhagat and Another APPELLANT

Vs

Jabalpur Development Authority and Others RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Madhya Pradesh Nagar Tatha Gram Nivesh Viksit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 — Rule 5, 6

Citation : AIR 2013 MP 100 : (2012) ILR (MP) 2946 : (2012) 5 MPHT 118

Hon'ble Judges : Sushil Harkauli, Acting C.J.;Alok Aradhe, J

Bench : Division Bench

Advocate : Sharad Verma in Writ Petition No. 3151/2011 and Mr. Arvind Shrivastava in Writ Petition No. 7111/2011, for the Appellant; R.N. Singh and Mr. Avinash Patel Advocate with him for the Respondent No. 1, Mr. Rajendra Tiwari, R.P. Agrawal and Mr. Rohit Arya, Mr. Sanjay Agrawal, Advocate with them for the Respondent Nos. 2 and 3 and Mr. Swapnil Ganguly, Panel Lawyer for the Respondent. No. 4 in Writ Petition Nos. 3151 and 7111/2011 and Mr. Parag Chaturvedi, Advocate in Writ Petition No. 7111/2011 and, Mr. Anuj Agrawal, Advocate with them for the Respondent Nos. 2 and 3 in Writ Petition Nos. 3151/2011, for the Respondent

Judgement

Alok Aradhe, J.—The core issue involved in both the writ petitions is whether a public asset can be disposed of without ascertaining its market value in a fair and transparent manner. In order to appreciating the controversy involved in the writ petitions, for the facility of reference, we ate referring to the facts from W.P. No. 3151/2011. The erstwhile Town Improvement Trust, Jabalpur prepared a scheme namely, Scheme No. 18. Civic Centre, Jabalpur, which later on was transferred to Jabalpur Development Authority. In the said Scheme, an area admeasuring approximately 1232.169 sq. meters was reserved for construction of Cafeteria on the ground floor and the Library on the first floor. The area situate adjoining to area earmarked for Cafeteria, has been earmarked for children park and for a water body and is in existence. The Jabalpur Development Authority (hereinafter referred as "the Authority") constructed a building admeasuring 700.99 sq.

meters with two halls on the aforesaid land for the purpose of establishment of Cafeteria. Under an agreement dated 18-6-1987, two halls in the building were allotted for running the Cafeteria on licence, without issuing any Notice Inviting Tender. In the year 1992, the license was renewed in favour of a partnership firm comprising three persons including respondent No. 2 for running the Cafeteria for a period of 5 years, i.e., from 18-7-1992 to 27-7-1997. The said licence was renewable with enhancement of licence fee. During the currency of the licence, the licencee expressed its willingness to take the open terrace admeasuring 8074 sq. feet on rent and therefore, the aforesaid terrace was allotted on licence for a period of three years on 1-1-1995. The Housing and Environment Department, Government of Madhya Pradesh by order dated 24-8-1997 directed the Chief Executive Officer of the Authority to cancel the licence, as the same was granted without inviting any tenders. The Authority was further directed to invite tenders and to allot the same to the highest bidder on licence. In compliance of the aforesaid order, the Authority issued notice of eviction to the licencee. The licencee thereafter filed a writ petition, namely, W.P. No. 3022/97, in which the High Court granted stay with regard to proceeding for eviction initiated against the licencee. The licencee thereafter submitted a representation on 7-8-1999 that it is willing to pay entire arrears of rent and shall withdraw the writ petition if the licence is renewed. In order to resolve the dispute, instructions were sought from the State Government by the Authority. Thereupon the State Government, vide communication dated 27-10-1999 instructed the Authority to decide the issue pertaining to renewal of the agreement at its level keeping in view the interest of the Authority and the litigation, which was pending before the High Court.

2. The Authority thereafter took a decision to renew the licence at an enhanced amount of rent subject to the condition that the arrears of rent would be deposited and the pending writ petition would be withdrawn from the High Court. It is pertinent to mention here that certain cart vendors had been vending food articles by encroaching upon the land situate adjoining to the property in question which belongs to the Authority. The encroachment could not be removed despite the repeated efforts. Thereupon, the Authority took special permission of the State Government to sell the land. The State Government, vide order dated 3-10-2003 granted permission to ''the Authority to allot the land at the rate of Rs. 1595/- per sq. ft. to the aforesaid cart vendors.

3. Thereafter, a meeting of the officials of various department authorities was held on 1-2-2006 under the Chairmanship of Minister of State, Urban Administration and Housing & Environment Department in which various issues pertaining to development projects undertaken by the Development Authorities in the State of Madhya Pradesh were discussed. In the said meeting, the development authorities were directed to consider the issue of advisability of retaining various properties which had been rented out as against the possibility of receiving a lumpsum amount by disposal of such properties. In pursuance of the aforesaid meeting, the State Government issued a circular dated 29-4-2006

by which the Development Authorities were directed to ascertain whether the amount which is received by way of rent in respect of a property is adequate or not. In case, the Development Authority found that the amount, which is being fetched by rent in respect of a property is inadequate, suitable action was directed to be taken for disposal of such property. In purported compliance of the aforesaid circular, the Authority obtained the valuation reports from three valuers in respect of the property in question. The aforesaid three valuers assessed the market value of the property at Rs. 4.05,19,170/-. However, the valuer of the Estate Branch of the Authority assessed the market value of the property in question @ Rs. 4,25,55,420/-. The Authority thereafter taking into account the aforesaid valuation reports as well as the guideline issued by the Collector with regard to market value of the properties of the year 2007, held negotiation with private respondents. The private respondents expressed their willingness to pay an amount of Rs. 4,25,55,425/-. Accordingly, an order of allotment was issued in favour of one Chandra Kumar Dengra on 1-12-2007 and a lease deed was executed on 3-7-2010 for a period of 30 years on payment of premium of Rs. 2,76,97,149/- in respect of an area admeasuring 8629 sq. ft. Thereafter, by another lease deed dated 28-8-2010, Cafeteria building admeasuring 4269 sq. ft. was leased out to one Naveen Kumar Bhatia and Smt. Sheetal Bhatia on payment of premium of Rs. 1,48.48.276/- for a period of 30 years. In the aforesaid factual background, the petitioners have approached this Court.

4. Learned Counsel for the petitioners submitted that the property in question has been leased out to private respondents in violation of Rules 5 and 6 of Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 (hereinafter referred to "1975 Rules"). It was further submitted that market value of the property in question was assessed on the rates fixed by the Collector in the year 2007 whereas, the lease deeds were executed in the year 2010. No attempt was made by the Authority to auction the property in question. In support of their submissions, learned Counsel for the petitioners have placed reliance in the cases of Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, , Vijay Kumar Tiwari Vs. State of M.P. and Others, and an order dated 8-5-2006 of the Division Bench of this Court in the case of Bhrampuri Sahakari Grih Nirman Samiti Maryadit Vs. Jabalpur Development Authority and three others.

5. On the other hand, learned Senior Counsel for respondent No. 1 submitted that Rules 5 and 6 of the 1975 Rules do not apply to the property in question as the land in question belongs to the State Government which has vested in the Authority. Learned Senior Counsel for respondent No. 1 in this regard has invited the attention of this Court to averments made in Para 19 of the additional return. It is further submitted that Rule 3 of the Rules applies to the facts of the case. It is further submitted that property in question was in occupation of licencee for a long time and, therefore, with a view to avoid litigation and in view of the circular (Annexure P-1), the decision was taken to allot the property in question on lease. The market value of the property was ascertained on the basis of the valuation

reports and the guideline which was issued by the Collector. It is also urged that there is no substantial change between the guidelines of the Collector between the years 2007 to 2010. However learned Senior Counsel for the Authority fairly conceded that no attempt was made by the Authority to ascertain the market value of the property in question from the open market.

6. Learned Panel Lawyer for the State submitted that the property in question has been transferred in violation of Rule 3 of the 1975 Rules, in as much as no permission from the State Government was taken before leasing out the same to the private respondents. Learned Panel Lawyer has supported the stand taken by the petitioners. Learned Senior Counsel for the private respondents submitted that they had paid 25% of the amount of premium in the year 2007 and the balance amount was paid in the year 2010. Thereafter, NOC was obtained from the Authority on 27-8-2010. The map was sanctioned by Municipal Corporation, Jabalpur on 22-10-2010. The attention of this Court was invited to the certificate of the Chartered Accountant to show that as on 31-3-2010, the private respondents had taken a loan of Rs. 2.83 crores. It was further submitted that the writ petitions suffer from delay and latches and should not be entertained. It was also urged that petitioners have not disclosed the market value on which the property could be sold. It was also submitted the Authority had taken a policy decision, which does not call for any interference in absence of plea of malafides. In support of their submissions, learned Senior Counsel for private respondents have placed reliance on a decision in the case of Netai Bag and Others Vs. The State of West Bengal and Others,

7. We have considered the respective submissions made by learned Counsel for the parties. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, it was held that power or discretion of the Government in the matter of grant of largess including award of jobs, contract, quotas, licence etc must be confined or structured by rational, relevant and non-discriminatory standard and if the Government departs from such standards or norms in a particular case, the action of the Government is liable to be struck down. The Government cannot act in a manner, which would benefit a private party at the cost of the State, as such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot give a contract or lease out its property for a consideration less than the highest that can be obtained for it unless of course, there are other consideration, which render it reasonable and in public interest to do so. See: Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, It is well settled in law that State owned or public owned property is not to be dealt with at the absolute-discretion of the executive. Certain precepts and principles have to be observed. The public interest is the paramount consideration. One of the methods of securing public interest, when it is considered necessary to dispose of a property is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule yet it is not an invariable rule. There may be situations where there are compelling reasons

necessitating departure from the rule, but then the reasons for departure must be rational and should not be suggestive of discrimination. See: Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, . A transparent and objective procedure has to be evolved for disposal of the property, which is based on reason, fair play and non-arbitrariness. See: Common Cause A Registered Society Vs. Union of India and others, and Akhil Bharti Upbhokta Congress (supra).

8. Before proceeding further, it would be appropriate to notice Rules 3, 5 and 6 of the 1975 Rules, which read as under:--

3. No Government land vested in or managed by the Authority shall be transferred except with the general or special sanction of the State Government given in that behalf.

5. Transfer of the Authority land shall be as under:--

(a) By direct negotiations with the party; or

(b) By public auction; or

(c) By inviting lenders; or

(d) Under concessional terms.

6. (1) In the case of disposal of land by direct negotiations the Authority land shall be disposed off at a premium fixed by the Authority in accordance with the general or special sanction given by the State Government to the scale of premium to be fixed and all the Authority land transferred in accordance therewith, shall be liable to ground rent of two percent of the premium.

Rule 3 of the 1975 Rules, imposes a bar against transfer of Government land vested in or managed by the Authority except with the general or special sanction of the State Government.

9. The Authority has been constituted for making better provisions for preparation and development of plans and to ensure town planning. The Authority is under an obligation to ensure that it functions according to the provisions of the Act and the Rules. The property in question is the property of the public, which has to be dealt with in a fair transparent and rational manner. In the instant case, admittedly, no attempt was made by the Authority to ascertain the market value cither by holding a public auction or by inviting tenders. The market value of the property in question could have been ascertained by the Authority only by making its intention known to public to dispose of the property by lease, in accordance with the modes well-known to law for disposal of the public property namely, either by inviting tenders or by holding auction. The valuation reports in our considered opinion could not have formed the basis to ascertain the market value of the property of the simple reason that potentiality of the property in question has not been taken into consideration while preparation of the valuation reports. Similarly, the guidelines

issued by the Collector could not furnish a reasonable basis for ascertaining the market value of the property for the reason that the guidelines are prepared by the Collector only for the purpose of payment of stamp duty. Therefore, the action of the Authority in not ascertaining the market value of the property by a fair and transparent manner cannot be approved.

10. Admittedly, the property in question belongs to the State Government, which on constitution of the Authority vested in it. Rule 3 of the 1975 Rules provides that no Government land vested in or managed by the Authority shall be transferred except with the general or special sanction of the State Government given in that behalf. The Authority while dealing with property of the State Government, which has vested in it, acts like an agent of the State Government. There are two limitations imposed by law which control the discretion of the Authority in granting largess, firstly with regard to the terms on which largess may be granted and other in regard to the persons who may be recipients of such largess. Therefore, under Rule 3 of the 1975 Rules, the Authority is required to take an approval from the State Government with regard to the manner of disposal of the land as well as the value on which it is proposed to be transferred, as the Authority is the custodian of the property of the Government. In the instant case, the Authority has not obtained the sanction as required under Rule 3 of the Rules. Thus, the property has been transferred in violation of Rule 3 of the 1975 Rules.

11. Now we may advert to the objection raised on behalf of private respondents that since the writ petitions suffer from delay and latches and, therefore, the writ petitions are liable to be dismissed. The lease deeds were executed on 3-7-2010 and 28-8-2010. The writ petitions have been filed before this Court in January, 2011 and in April, 2011, i.e., within 5 months and 9 months respectively from the date of execution of the lease deeds. It is well settled in law that in considering the question of delay, the test is not of physical running of time. See: M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and and District Board, Shahabad and others, . The delay may not defeat the claim for relief unless the position of the other side is so altered which cannot be retracted on account of lapse of time or inaction on the other party. However, the question of delay has to be examined in the facts of each case. See: Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, and M.P. Ram Mohan Raja Vs. State of Tamil Nadu and Others, It is equally well settled legal proposition that delay and latches alone should not be sole ground for throwing out Public Interest Litigation. Keeping in view the magnitude of public interest, the Court may consider the desirability to relax the rigours of accepted norms. See: Bombay Dyeing and Mfg. Co. Ltd. Vs. Bombay Environmental Action Group and Others,

12. From the return which has been filed on behalf of the private respondents, we find that the NOC was obtained from the Authority on 27-8-2010. The building sanction was granted and the map was approved on 22-10-2010 by

Municipal Corporation, Jabalpur. The private respondents have stated that they have completed the construction of the basement however, the construction of the ground floor could not be made due to an interim order which was passed by this Court on 5-8-2011. While making reference to the certificate of the Chartered Accountant, it was submitted that respondent No. 2 had taken a loan of Rs. 2.83.23,898/-. We have gone through the certificate issued by the Chartered Accountant (Annexure R-2/13), which shows that respondent No. 2 has taken unsecured loan of Rs. . 1,87,05,290/- from relatives and friends and secured loan of Rs. 96,18,608/-. However, it is pertinent to mention here that details of loan taken from the relatives and friends have not been disclosed. In the facts of the case, the position of private respondents has not been altered which cannot be retracted. In other words, the private respondents can be compensated for the construction, which has been raised by them. In any case, the writ petitions have not been filed after an inordinate delay. Besides that, keeping in view the magnitude of public interest, we are not inclined to accept the submission made by learned Senior Counsel for private respondents that writ petitions should be dismissed on account of delay and latches.

13. In view of the preceding analysis, the lease deeds dated 3-7-2010 and 28-8-2010 executed in favour of private respondents are hereby quashed. The Authority is directed to issue a Notice Inviting Tender for disposal of the property in question on lease. It will be open for the private respondents as well, to participate in the aforesaid process. In case the bids submitted by private respondents are found to be the highest, the lease deeds would be executed in their favour in respect of property in question. However, in case the bids of private respondents are not found to be the highest, in such an eventuality, the respondent No. 1-Authority shall refund the amount spent by private respondents on the construction of property in question from (he bid amount, which will be received by the Authority subject to private respondents furnishing an account of the amount spent by them in raising the construction, which shall be duly supported by the documents. With the aforesaid directions, the writ petitions are disposed of.

