

(2002) 07 BOM CK 0139

In the Bombay High Court

Case No : Writ Petition No. 2515 of 1987

Nilkanth Ramji Akarte

APPELLANT

Vs

Nagpur Improvement Trust and Another

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Nagpur Improvement Trust Lands Disposal Rules, 1955 — Rule 26, 5(2)

Citation : (2003) 1 ALLMR 630 : (2003) 1 BomCR 168 : (2002) 4 MhLj 706

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : A.M. Gordey, for the Appellant; S.K. Mishra and Khade, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—The petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 11-6-1987 passed by the Nagpur Improvement Trust whereby it has cancelled an auction in respect of the Plot No. 54(corner) which was held on 20-4-1987.

2. The Respondent Nagpur Improvement Trust had published an advertisement in Nagpur Times on 12-4-1987 for auction of certain plots in Khasra Nos. 20, 24 and 58 of Mouza Bidpeth on the terms and conditions mentioned in the said advertisement. Accordingly, an auction was held on the said date and before an auction, the terms and conditions of an auction were read over to the bidders and allotment of the land was to be made according to the said terms and conditions. The petitioner participated in the said auction and was the highest bidder in respect of plot No. 54 (corner) in Khasra Nos. 20-24 and 58 of mouza Bidpeth. The said auction was held on 20-4-1987 and the petitioner had given the highest bid for Rs. 62,000/-. Accordingly, as per the terms and conditions of auction, the petitioner deposited 1/4th of the total amount on 20-4-1987. As per the said terms and conditions of the said auction, the highest bidder has to deposit 1/4th amount on the date of the auction and thereafter 1/4th amount of

the "total amount has to be paid within 30 days and thereafter remaining half amount has to be deposited. It is an admitted position that the petitioner had deposited 1/4th amount on the date of auction i.e. on 20-4-1987. The respondent had issued a receipt of having received 1/4th amount to the tune of Rs. 16,000/- on 20-4-1987. It is an admitted position that no allotment letter was given to the petitioner.

3. It is the contention of the petitioner that though he was ready and willing to deposit the remaining amount, suddenly by letter dated 11-6-1987 the petitioner was informed that the said plot No. 54 (corner) was reserved for the "Freedom Fighters" Committee and, therefore, the auction dated 20-4-1987 was cancelled and that the amount deposited by the petitioner was offered to be refunded and the petitioner was informed that he should take refund of the said amount on any working day.

4. The petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India challenging the said cancellation of the auction by the respondents. The respondent- Nagpur Improvement Trust has filed a detailed reply. The N.I.T. has stated that the Board had already passed a resolution on 28-4-1987 in which they had resolved that since the said land was reserved and was to be distributed to the members of the Swatantra Sangram Sainik Samiti and, therefore, an auction which was held on 20-4-1987 was cancelled. The respondent, therefore, submitted that under the circumstances as the highest bid of the petitioner was not accepted by the Board, the proposal for allotment was not conveyed to the petitioner and as such no right of allotment was created in favour of the petitioner.

5. The learned counsel appearing on behalf of the petitioner submitted that the rules which are framed by the Government in respect of the Nagpur Improvement Trust Land Disposal Rules contemplated that the land could be disposed under Rule 5. The Rule 5 reads as follows :

"5. General. -- (1) No piece of Government land vested in or managed by the Trust shall be transferred except with the general or special sanction of the Government given in that behalf.

(2) Except as otherwise, provided in Sub-rule (1) and in Part VI of these rules, all other lands vested in and acquired by the Trust shall be disposed of by the Trust by -

i) holding public auction; or

ii) inviting tenders by public advertisement; or

iii) making offers to or accepting offers from any Government, Local Authority, Public Sector Undertaking or a body Corporate which is owned or controlled by Government;

iv) inviting applications from persons or bodies of person who are eligible for

allotment of plots under Rule 4, by public advertisement to be published at least in one leading local newspaper each in Marathi, Hindi and English on the basis of predetermined premium or other considerations or both and deciding these applications by drawing lots, if necessary, as it may determine, from time to time, in accordance with the rules hereinafter appearing.

v) Land for public amenities such as for primary school, vehicle stand, public latrine or urinal, public library, reading room, hospital, dispensary or such other purpose may be transferred to the Corporation of the City of Nagpur, either free of premium and ground rent or at nominal premium and ground rent as the Trust may determine in each case.

(3) Except as otherwise provided in Sub-rule (1) and in Part VI of these rules, the buildings vested in and acquired by the Trust shall be disposed of by the Trust by-

- i) inviting applications; or
- ii) calling for public tenders; or
- iii) auction

along with such land and on such terms as may be agreed to by the Trust and the transferee having regard to the use for which the building is intended by public advertisement to be published at least in one leading newspaper each in Marathi, Hindi and English on the basis of predetermined premium or other considerations or both by deciding these applications by drawing of lots, if necessary."

He submitted that, therefore, in the present case as per Rule 5(2)(a) the land was being disposed of by public auction. He submitted that once the land is auctioned, the Government had, under the special consideration, power to relax the rule which was provided in Rule 26. Rule 26 reads as follows:

"Relaxation of rules: The Government may, for the reasons to be recorded in writing, relax any of these rules in respect of a case which, in its opinion, is of a special nature."

He submitted that in the present case since already an auction had taken place after completion of an auction, the provisions of Rule 26 could not come into operation and, therefore, submitted that the cancellation of an auction by respondents was patently illegal and the said order dated 11-6-1987 was liable to be quashed and that further directions be given to the respondent No. 1 to complete the auction and hand over the possession of the plot No. 54 to the petitioner.

6. The learned counsel appearing on behalf of the petitioner submitted that the petitioner had paid an amount of Rs. 16,000/- on the date of auction as he had legitimate expectation that the N.I.T. would complete their part of the statutory obligation. He submitted that the petitioner had paid first installment as is

required by the Rules and the terms and conditions of an auction and he was always ready and willing to pay the balance amount. However, the respondent had arbitrarily cancelled the auction. He, therefore, submitted that an appropriate writ should be issued by this Court and directions as prayed by him in the petition may be granted.

7. The learned counsel appearing on behalf of the respondent submitted that in Clause 11 of the terms and conditions of an auction, it was specifically mentioned that the N.I.T. could cancel the highest bid given by the bidder without assigning any reasons. It is submitted that the petitioner had accepted the said term and condition of an auction and, therefore, he is now estopped from raising the present claim. The respondent also submitted that in a similar case where the auction of another land was made by the respondent No. 1, was subsequently cancelled, which was challenged up to the Apex Court. The Apex Court had upheld the cancellation of the auction wherein the Apex Court had held that no right had accrued to the highest bidder either on the basis of the statutory provisions under Rule 4(3) or under the conditions of sale which had been notified before the public auction was held. In the said case, the Apex Court in C.A. No. 1683/82 Laxmikant and Ors. v. Satyawani and Ors., decided on 19th March, 1996 had held that no letter of confirmation of an auction was given to the bidder and, therefore, no right had accrued in favour of the highest bidder. It was also contended by the counsel appearing on behalf of the respondent that in the Board Meeting dated 28-4-1987, an auction of five more plots along with plot of the petitioner, were also cancelled as those plots were to be allotted to the members of the Swatantra Sangram Sainik Samiti.

8. We have heard the learned counsel appearing on behalf of the petitioner at length and also the counsel appearing on behalf of the respondents. We have perused the petition and annexures thereto. We have also perused the Judgment and order of the Apex Court passed in C.A. No. 1683/82. In our view, the ratio laid down by the Apex Court in C.A. No. 1683/82, would be squarely applicable to the facts of the present case.

9. In the present case, the petitioner was the highest bidder and he had deposited Rs. 16,000/- on the said date and only the receipt of the said amount was issued to him. Neither the letter of confirmation nor letter of allotment was issued to the petitioner. Immediately, on 28-4-1987 a decision was taken by the Board to allot the plot in question along with five other plots to the Members of the Swatantra Sangram Sainik Samiti. Under Rule 26 of Nagpur Improvement Trust Land Disposal Rules, 1983, the Government has power to relax the rule and accordingly a decision to that effect was taken. In our view, therefore, there was no right vested in the petitioner only by virtue of the payment of the said amount of Rs. 16,000/- towards the first initial deposit of the 1/4th amount of the total amount to be paid to the respondents.

10. Under the circumstances, no case has been made out by the petitioner for any interference by this court by invoking its jurisdiction under Articles 226 and

227 of the Constitution of India. The petition is, therefore, dismissed. Rule is discharged. No order as to costs.