
(2005) 02 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Special Appeal No. 127 of 2005

Raj. Housing Board and Another

APPELLANT

Vs

Shri Chandar Shekhar Sharma

RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Citation : (2006) 2 RLW 1443

Hon'ble Judges : S.C. Singhal, J;Gyan Sudha Mishra, J

Bench : Division Bench

Advocate : Bharat Vyas,A.A.G, for the Appellant; H.C. Ganesia, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Misra, J.—The appellant-Rajasthan Housing Board has preferred this appeal against the judgment and order of the learned Single Judge passed in S.B. Civil Writ Petition No. 7122/2004 dated 13.10.2004 by which the learned Single Judge relying upon the reasonings assigned in S.B. Civil Writ Petition No. 3415/2002 dated 4.8.2004 was pleased to grant liberty to the petitioner, who is respondent herein to file fresh representation before the respondent i.e., Rajasthan Housing Board and further directed to consider his representation after which it was directed to issue demand notice for the balance amount of bid which had been accepted by the Rajasthan Housing Board.

2. To make the position clear, it is relevant to state that the appellant Rajasthan Housing Board had held an auction for allotment of plots where shops were to be constructed. The auction proceeding was held for this purpose on 20.2.2002 and several plots were auctioned on the said date. After completion of the auction proceeding, certain persons were held as successful bidders for allotment of the plots out of which respondent herein was also one of the successful bidder alongwith several other persons, One G.S. Investment was also held to be the highest bidder for another plot and the respondent herein was also one such bidder for a different plot. After acceptance of the amount from the successful

bidders i.e., highest bidders, a part of the amount was also accepted by the Rajasthan Housing Board on the same date i.e., 20.2.2002. Suddenly, after few months, the bid was cancelled in the month of April by the Housing Board. One of the highest bidders, G.S. Investment filed S.B. Civil Writ Petition No. 3415/2002 challenging the cancellation of the bid and the said writ petition was allowed by order dated 4.8.04 against which the Rajasthan Housing Board preferred an appeal before the Division Bench bearing D.B. Civil Special Appeal No. 589/2004. This appeal preferred by the Rajasthan Housing Board was dismissed by the Division Bench by order dated 23.9.2004. The Rajasthan Housing Board then preferred a review petition before the Division Bench against this order, but the same was also rejected. Thus, the judgment and order of the Division Bench has become final upholding the validity of the auction proceeding in regard to the allotment of several plots.

3. It appears that the respondent in the meantime had acquiesced with the cancellation of the bid and had also taken refund of the amount. But when he came to know that another highest bidder-although for a different plot, which took place in the same auction proceeding had succeeded before the High Court, he filed a writ petition before the learned Single Judge bearing S.B. Civil Writ Petition No. 7122/04 and the learned Single Judge relying upon the earlier order passed on 4.8.2004, disposed of the writ petition by order dated 13.10.2004 granting similar relief to the respondent. The appellant-Rajasthan Housing Board, therefore, has preferred this appeal against the order of the learned Single Judge.

4. It is quite obvious from the aforesaid facts that the case of the respondent stands on similar footing to that of G.S. Investment whose bid had also been cancelled but he succeeded before the High Court as stated hereinbefore. Thus, if an order has already been passed in the case of G.S. Investment which order was upheld upto the Division Bench, we find no justification how the Rajasthan Housing Board thought it proper to contest this matter once again by filing an appeal merely on the ground that no notice had been issued to the Housing Board before allowing the writ petition. If the writ petition is disposed of granting similar relief relying upon the earlier order of the court which stand on identical footing, we are not prepared to accept the contention of the learned Counsel for the appellant that the writ petition should not have been disposed of without issuing notice to the respondents. The appellant Housing Board was quite aware that if cancellation of the bid was set aside and the auction was upheld by the High Court upto the Division Bench, the same had assumed finality and in all fairness the Housing Board should have taken a similar view in case of all other successful bidders also. But it is for the Housing Board to realise why it has adopted a different approach in case of the respondent clearly ignoring the order in the case of G.S. Investment. We cannot permit imposition of different yard stick in case of persons who are similarly and identically situated, we therefore approve of the order of the learned Single Judge and hence dismiss this appeal. The learned Addl. A.G. however stated that there is a likelihood that the Housing Board might succeed before the Supreme Court. It hardly needs to be mentioned

that if at any point of time, the appeal of the Housing Board is allowed against the case of G.S. Investment, it will be at full liberty in that event to file a review petition before this Court. But unless that position emerges, we cannot entertain this appeal and hence, it is dismissed.

Chauhan

The following note is being appended as directed by Hon''ble the Acting Chief Justice vide order dt. 04.04.2005

The Order/Judgment was dictated & delivered in Open Court by the D.B. Comprising Hon''ble Mrs. Justice G.S. Misra and Hon''ble Mr. Justice S.C. Singhal as he then was on 28.2.2005, but signature of Hon''ble Mr. Justice S.C. Singhal could not be obtained on the Order/Judgment because his sad demise on 08.03.2005.