

(2013) 01 RAJ CK 0098

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 630 of 2012

Rajasthan Housing Board and Another

APPELLANT

Vs

Anand Mohta and Another

RESPONDENT

Date of Decision : 14-01-2013

Acts Referred:

Citation : (2013) 2 WLN 266

Hon'ble Judges : Dinesh Maheshwari, J;Arun Bhansali, J

Bench : Division Bench

Advocate : P.C. Sharma, for the Appellant; Dinesh Mehta and Mr. Lalit Pareek, Advocates for the Respondent No. 1 and Mr. K.K. Bissa, Government Counsel for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—After having heard the learned counsel for the parties and having perused the material placed on record, we have formed an opinion that the matter is required to be re-considered by the learned Single Judge of this Court in the writ petition filed by the respondent No. 1 (CWP No. 308/2005). For the order proposed to be passed in this appeal, dilatation on all the factual and legal aspects does not appear necessary; and only a brief reference to the background aspects of the matter would suffice.

2. The respondent No. 1 filed the writ petition leading to this appeal while challenging the order dt. 20.08.2004 (Annex. 10) whereby the allotment of a commercial plot bearing number CC-4 in Chopasni Housing Board Scheme, Jodhpur was ordered to be cancelled for his failure to deposit the requisite amount within the stipulated time. The contentions of the petitioner had been that there were encroachments on and around the plot in question; and an electric pole was also creating obstruction and thus, he made several representations in that regard but of no avail. The stand of the appellants before the learned Single Judge had been that the writ petitioner was required to deposit the balance amount after the initial deposit within two months of the

issuance of the allotment order failing which, the allotment was liable to be cancelled without further notice; and, as the petitioner failed to deposit the requisite amount within the specified time and even after reminders, the allotment was rightly ordered to be cancelled.

3. The learned Single Judge has proceeded to dispose of the writ petition with a short order only with reference to the offer as made by the petitioner (respondent No. 1 herein), of depositing the remaining amount with interest. The impugned order, in its entirety, reads as under:-

Heard.

The petitioner has shown his willingness to pay the remaining three fourth amount of the bid alongwith the interest at the prevailing rate at the Rajasthan Housing Board.

The request appears to be reasonable as there is no revenue loss to the Government. Respondent Rajasthan Housing Board is directed to accept the entire three fourth amount i.e. Rs. 16,05,000/- alongwith interest amount as prevailing at Rajasthan Housing Board within 45 days from the date of this final order and to complete the allotment proceedings in favour of the petitioner of the plot in question. This exercise of allotment shall be completed within 15 days after petitioner's depositing the said amount.

The writ petition stands disposed of finally with the aforesaid observations and directions.

4. The learned counsel for the appellants has strenuously argued that while passing the order impugned, the learned Single Judge has not taken into consideration the submissions sought to be made by the appellants and even the amount as stated in the order impugned is not correct. In any case, according to the learned counsel, the writ-petitioner, having failed to comply with the requirements of the allotment order, could not have been granted indulgence by the writ Court without examining all other relevant aspects of the matter including those of price escalation. The learned counsel for the respondent No. 1 frankly submitted that though in the order impugned, all the contentious issues have not been adjudicated upon but, according to the learned counsel, on the substance of the matter, the order remains just and proper because there was no likelihood of any revenue loss to the appellant Housing Board; and delay, whatever, had essentially been for the faults and short-comings on the part of the appellant Housing Board.

5. After having given thoughtful consideration to the entire matter, we are clearly of the view that looking to its subject matter, the writ petition could not have been disposed of only with reference to an offer made by the writ-petitioner, of depositing the amount alongwith interest at the prevailing rate. The submissions as sought to be made by the appellants, who had been respondents in the writ petition, ought to have been taken into consideration and could not have been

over-looked. Thus, when the order impugned does not appear specifically dealing with the submissions sought to be made by the appellants, it appears just and proper that the writ petition be restored for re-consideration of the learned Single Judge.

6. We would hasten to observe that hereinabove, the broad outlines of the submissions sought to be made by the respective parties have only been taken note of; but without any expression on merits of the case either way. In other words, the entire matter is left open for re-consideration of the learned Single Judge in accordance with law.

7. Accordingly, this intra-Court appeal is allowed to the extent and in the manner indicated above. The impugned order dt. 19.09.2006 is set aside; and CWP No. 308/2005 is restored for re-consideration of the learned Single Judge.

8. The parties through their respective counsel shall stand at notice to appear before the learned Single Judge on 04.02.2013. The parties may, of course, make a request before the learned Single Judge for early consideration of the writ petition looking to its subject matter and the surrounding circumstances. No costs.