(2014) 11 KAR CK 0326

In the Karnataka High Court

Case No : W.P. No. 43595/2014 (APMC)

Rakesh Traders APPELLANT

Vs

The Government of Karnataka and Others RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Citation : AIR 2015 Kar 56 : (2015) 2 AKR 489 : (2015) ILR 461 : (2015) 1 KCCR 1015

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : M.V. Ramesh Jois, Advocates for the Appellant; H.V. Manjunatha, AGA, Advocates for the Respondent

Judgement

B.S. Patil, J.—Petitioner is a licensed trader in APMC, Mysore. It has been allotted a site bearing No. 369 in ''A'' block of the APMC Yard vide lease-cum-sale agreement dated 05.07.2007. Pursuant to notification dated 18.08.2012 notifying auction of corner sites by way of lease-cum-sale, petitioner filed an application on 07.09.2012 by paying earnest money deposit.

2. Petitioner was the highest bidder in a public auction that was held on 10.09.2012 for site No. 261 in Block ''A'' of the yard. Petitioner''s participation, so also the factum of it having emerged as the highest bidder was confirmed by a communication issued to the petitioner vide Annexure-F dated 13.09.2012. Petitioner was also called upon to pay the balance amount of Rs. 11,20,900/- within seven days from the date of receipt of the notice. The total bid amount for site No. 261A was Rs. 47,50,000/-. Petitioner was required to pay 25% of the bid amount, i.e., a sum of Rs. 11,87,500/- within seven days. That is how Annexure-F notice was issued. In response to the said notice, petitioner deposited a sum of Rs. 11,20,900/- and addressed a letter dated 15.09.2012 in that regard.

3. The 3rd respondent issued a notice to the petitioner on 23.04.2014 vide Annexure-H informing the petitioner that it was required to pay the balance amount of Rs. 35,62,500/-within 90 days and have the lease-cum-sale deed

registered. But, as the petitioner had not paid the said amount, it was informed that 90 days time had expired on 21.04.2014 and therefore, for the next 60 days, interest at 12% would be levied and that balance amount shall be paid along with interest, failing which the amount already paid would be forfeited and the allotment would be cancelled. Thereafter, the petitioner addressed a letter dated 19.05.2014 to the 3rd respondent enclosing a demand draft for a sum of Rs. 35,62,500/- as payment towards the balance sale consideration. It is the case of the petitioner that, interest for the delayed payment in terms of the notice issued by the 3rd respondent was paid in a sum of Rs. 32,795/- on the same day.

4. As the market committee - 3rd respondent did not put the petitioner in possession of the property by executing a lease-cum-sale deed, a letter was addressed by the petitioner to the Director of APMC - the 2nd respondent herein requesting him to intervene in the matter and to ensure that possession of the property was handed over to the petitioner.

5. Thereafter, the impugned communication was issued on 21.08.2014 to the petitioner by the 3rd respondent informing them that in terms of Sub-clause 2 of Rule 7 of the Karnataka Agricultural Produce Marketing (Regulation of Allotment of Property in Market Yard) Rules, 2004 (for short ''the Rules'') petitioner who had already been allotted with one site in the APMC yard was not eligible for allotment of another site and therefore, as per the communication/direction dated 02/04-08-2014 directing cancellation of the allotment and for refund of the bid amount, the allotment was cancelled. Accordingly, the 3rd respondent enclosed a cheque for Rs. 47,50,000/- including interest paid by the petitioner totally amounting to Rs. 47,82,795/- and communicated the petitioner about cancellation of allotment. This intimation is produced at Annexure-L. It is this communication that is challenged in this writ petition.

6. Learned counsel for the petitioner vehemently urges that the impugned notice has been issued without providing any opportunity to the petitioner and without hearing them. He urges that Rule 7(2) of the Rules has no application to the allotments to be made by way of public auction in the form of lease-cum-sale as per Rule 9. It is further contended that in the absence of any misrepresentation, misstatement of facts or fraud on the part of the petitioner, there was absolutely no justification for respondents 2 and 3 to cancel the allotment made in favour of the highest bidder.

7. Learned counsel appearing for the 3rd respondent contends that prohibition contained in Rule 7(2) of the Rules is applicable both to allotments made in regular course under Rule 3 and also to allotments of corner sites made by way of public auction. He urges that if a person being a market functionary already owns a site, shop, godown or shop-cum-godown or other building in the market yard, then, no allotments under the Rules can be made in his favour even though the allotment is sought to be made by way of public auction. He urges that a person who is already owning a site or shop or godown in the market yard

cannot seek exemption from the express prohibition contained under Rule 7(2) of the Rules.

8. Learned Additional Government Advocate supports the stand taken by the 3rd respondent.

9. Having heard the learned counsel for all the parties, the point that arises for consideration is:

"Whether the prohibition contained under Rule 7(2) of the Rules is applicable even for allotment of corner site by way of public auction in terms of Rule 9 of the Rules?"

10. Rule 3 of the Rules deals with offer of sites, etc., for allotment on lease-cum-sale basis. It mandates that the Market Committee may, subject to the Rules and the general or special orders of the State Government offer for allotment of sites, shops, godowns or shop-cum-godowns in the market yard on lease-cum-sale basis. As per sub-rule (2) of Rule 3, there is requirement of giving due publicity in respect of said allotment with details of the location, number of sites, godowns, shop-cum-godowns etc., providing fifteen days time for submission of application for such allotment, by publication in not less than two Kannada newspapers having wide circulations. When such applications are called for as per sub-rule (2) of Rule 3, any licensed market functionary who is registered under Rule 6 may apply to the Market Committee in Form No. 3 by making an initial deposit which shall not be less than 25% of the value of the site, godown etc. If an applicant fails to get allotment of site, godown etc., then as per sub-rule (4) of Rule 3, he would be entitled to make application for the subsequent allotments on the basis of registration already made unless he has withdrawn his registration by surrendering registration certificate. Sub-rule (5) of Rule 3 states that the market committee having regard to the provisions of Rules 4, 5, 7 and 8 may allot a site, shop, godown or shop-cum-godown on lease-cum-sale basis.

11. Rule 4 of the Rules provides for determination of value of site. Rule 5 lays down the criteria for fixing the value of site. Rule 6 pertains to Registration. It provides an opportunity for every licensed market functionary desirous of applying for allotment, to apply for registration to the Market Committee by paying non-refundable registration fee. Rule 7 of the Rules lays down the eligibility conditions. Sub-rules (1) to (3) of Rule 7 read as under:

"(1) No site, shop, godown or shop-cum-godown, in the market yard shall be allotted either on lease-cum-sale basis or leave and licence basis to a person or an institution or organization who is not a licensed market functionary and who is a defaulter in payment of any dues either to the seller or to the Market Committee and not engaged either in the marketing of notified agricultural produces or the allied activities connected with Agriculture, Horticulture or Animal Husbandry except the State or Central Warehousing Corporation, Service institutions, registered associations of market functionaries or Banks or (for setting up of petrol bunk or site measuring 10'' x 10'' for establishing only STD booths or milk parlors) or for construction of common amenities for the market users.

(2) Allotment under these rules shall not be made to a licensed market functionary who already owns a site, shop, godown or shop-cum-godown or other building in the market yard either in his name or in the name of the firm in which he is a partner.

(3) If the shop, shop-cum-godown or godown is lying vacant after allotment process under Rule 13 is over and the market committee receives any application for allotment of the same from private institution etc., the market committee after considering whether such allotment affects the trading activity in the yard etc., may submit proposal to the Director of Agricultural Marketing for approval. The Director of Agricultural Marketing after satisfying himself and recording reasons for the same may give approval to such proposal."

12. Rule 8 deals with principles for selection of application for allotment. It states that wherever the allotment was to be made under Rule 3 or under 13, the case has to be considered on the basis of the principles enumerated in sub-clauses (i) to (iii) of Rule 8, that is to say, (i) the status of the applicant as to whether he is an individual or joint family or a partnership firm (ii) the number of years the licensed market functionary has been waiting for allotment and his inability to get inspite of being eligible in his previous attempts; (iii) the total market fee paid during the previous three years and the average market fee paid in a year. Provision is also made for drawing up of a seniority list of the applicants as is provided under sub-rule (4) of Rule 8.

13. Rule 9 of the Rules deals with allotment of corner sites. It states as under:

"9. Allotment of corner site - (1) Notwithstanding anything contained in Rule 3 but subject to Rules 4 and 5 and sub-rule (1) of Rule 7 corner site in the market yard shall be allotted through public auction on lease-cum-sale basis to any licensed market functionary. The procedure specified in sub-rules (1) and (2) of Rule 3 shall apply mutatis mutandis for such allotment.

(2) Any person desirous of making an application under this Rule shall make an application in Form III along with an initial deposit which shall not be less than twenty-five percent of the value of the site.

(3) The highest bidder shall remit twenty-five per cent of the bid amount quoted by him after deducting the initial deposit already made within one week from the date of auction failing which the initial deposit made by the highest bidder shall be forfeited and the second highest bidder will be given a chance for payment of such amount. In case the second highest bidder also fails to pay the amount the market committee shall hold re-auction."

14. It is thus clear from Rule 9 that notwithstanding anything contained in Rule 3 but subject to Rules 4 and 5 and sub-rule (1) of Rule 7 corner site in the market yard shall only be allotted through public auction on lease-cum-sale basis to any

licensed market functionary by following the procedure prescribed in sub-rules (1) and (2) of Rule 3. The person applying for corner sites has to apply under Form-Ill. The highest bidder shall remit 25% of the bid amount deducting the initial deposit within one week from the date of auction.

15. A conjoint reading of Rule 3, Rule 7 and Rule 9 would make it clear that so far as allotment of corner site is concerned, the non-obstante clause used in sub-rule (1) of Rule 9 exempts the rigor of Rule 3 whenever it is a case of allotment by way of auction of corner sites, but expressly makes such allotments of corner sites subject to Rules 4 and 5 and also sub-rule (1) of Rule 7. Rules 4 and 5 pertain to, as already stated above, determination of value of site and criteria for fixing the value of site. It would be applicable both for allotment of regular sites and also corner sites. Rule 7(1) deals with the eligibility. It enacts a prohibition for allotment of site to a person or institution who is not a licensed market functionary and who is a defaulter in payment of any dues either to the seller or to the Market committee and not engaged in the marketing in notified agricultural produces or the allied activities connected with Agriculture, Horticulture or Animal Husbandry. Prohibition or criteria of eligibility contained in Rule 7(1) has been expressly incorporated if it is for allotment of sites by way of auction sale. Whereas the prohibition contained under Rule 7(2) which states that allotments under these rules shall not be made to a licensed market functionary who already owns a site, shop, godown, etc. in the market yard, is not provided for in Rule 9.

16. Therefore, the intention of the Rule making Authority becomes clear, in that, so far as allotment of corner sites are concerned, the prohibition which the Rule making Authority has imposed is the one that has been enacted in Rule 7(1) and not the one that has been enacted in Rule 7(2). In other words, for regular allotments, the person must establish that he does not already own a site, shop, godown, etc. in the market yard. But, if it is a case of allotment of corner site, there is no such prohibition for him to participate in the bid and get the sale deed registered in his favour if he were to become the highest bidder. If the intention was otherwise the Rule Making Authority while referring to Rules 4, 5 and 7(1) in Rule 9 would have also referred to Rule 7(2) thereby making Rule 9 subject to Rules 4, 5, 7(1) and 7(2). The omission to refer to sub-rule (2) of Rule 7 in sub-rule (1) of Rule 9 is intended to make it clear that so far as auction of corner sites were concerned, anybody who was otherwise eligible under Rule 7(1) was entitled to apply and participate in the bid.

17. The purpose behind auctioning the corner sites and excluding them for allotment on regular basis is to ensure that the market committee augments its resources by disposing of the corner sites at higher rates in the open competition. If it was the intention of the Rule Making Authority that in the sale/ allotment of corner sites, person already owning any site or shop in the market yard shall not participate, then, the same ought to have been mentioned in Rule 9. It has not been mentioned advisedly because it would have come in the way

of involving larger rival competitors for participating in the bid to augment resources.

18. The contention of the learned counsel for the 3rd respondent and as also the learned Additional Government Advocate that a rich person who may be owning more than one site or shop in the market yard would be permitted to participate in the bid and again secure rights over the corner sites which would affect the interest of other market functionaries who may not be owning any site for them, cannot be accepted. The context in which sub-rule (1) of Rule 9 has been enacted shows that purpose here is to ensure that the corner sites are sold at a good price for augmenting resources to the 3rd respondent. Even if a rich person participates, he has to abide by the conditions imposed in the terms and conditions of the agreement regarding subjecting the use of the property for the purpose for which it is allotted etc. Therefore, it is not as if any unconnected person can come and participate in the public auction. He should be the market functionary first and must be prepared to abide by the conditions which are included even in case of allotment of corner sites.

19. Therefore, in my view, conjoint reading of these Rules in the context of the object and purpose for which the rules have been enacted would make it clear that for allotment of corner site by way of public auction, prohibition contained in Rule 7(2) has no application.

20. Therefore, impugned communication issued by the 3rd respondent cannot be sustained. Hence, the same is set aside. Writ petition is allowed in part. A direction is issued to respondents 2 and 3 to consider the matter in the light of the above and take appropriate action in accordance with law within three months from the date of receipt of a copy of this order.

