
(2007) 09 RAJ CK 0093

In the Rajasthan High Court

Case No : Civil Writ Petition No. 452 of 1996

Ridhi Sidhi Builders and Party

APPELLANT

Vs

Urban Improvement Trust and Another

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Urban Improvement (Disposal of Urban Land) Rules, 1974 — Rule 17(5)

Citation : (2008) 1 WLN 276

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The facts in brief are that the petitioner participated in the auction conducted by the respondent Urban Improvement Trust (for short "UIT") for sale of commercial plot situated at Sector No. 5, Hiran Magri, Udaipur. The petitioner deposited earnest money of Rs. 5,000/- in cash and thereafter, he gave bid of Rs. 311/- per sq. ft. That bid was highest. The total cost of the plot thereby came to be Rs. 15,86,100/-. The petitioner deposited amount of Rs.75,000/- in cash with the UIT and thereafter, deposited Rs. 3,20,000/- with in time, to complete Rs. 4,00,000/- which is 1/4th of the amount which was required to be deposited by the bidder on acceptance of his bid by the auctioneer/respondent. The petitioner has placed on record the copy of receipts dt. 17.01.1996 and cash challan of Rs. 3,20,000/- as Annex.2 and 3 along with the writ petition. According to the petitioner, sale was confirmed by Chairman on 18.01.1996. The petitioner thereafter requested for depositing the balance amount of Rs. 11,86,550/- and for that purpose, the petitioner gave three cheques to the respondent which are cheque No.671834 for Rs.4,00,000/-, cheque No.671835 for Rs. 4,00,000/- and cheque No. 671836 for Rs. 3,86,550/-. The cheques were dt. 12.02.1996, 14.02.1996 and 15.02.1996 respectively. Instead of executing the lease deed in favour of the petitioner, the petitioner was again communicated vide communication dt. 25.01.1996 that the bid which was accepted and confirmed by

Chairman, UIT, has been cancelled by District Collector cum Chairman, UIT and, therefore, cheque of Rs. 4 lakhs is being sent to the petitioner. This communication dt. 25.01.1996 followed by another communication dt. 30.01.1996 by which, cheques submitted by the petitioner in time to the UIT were returned to the petitioner.

3. The petitioner has, therefore, filed this writ petition.

4. Learned Counsel for the petitioner submitted that the respondent once has confirmed the sale and accepted the huge amount of Rs. 4,00,000/- cannot arbitrarily cancel the auction. It is submitted that the Chairman of the UIT once approved and confirmed the sale had no jurisdiction to cancel the sale. It is also submitted that no order has been communicated to the respondent by which the sale was cancelled by the Chairman of the UIT. It is submitted that that cancellation order, copy of which has been produced by the respondent, also shows that said order is wholly illegal and void as has been passed without affording an opportunity of hearing to the petitioner, therefore, the petitioner is entitled to a direction against the respondents to issue lease deed in favour of the petitioner.

5. The respondents submitted reply to the writ petition and it is stated that the bid given by the petitioner was not as per the market value of the land in question and, therefore, when this fact came to the knowledge of the Chairman of the UIT, the Chairman cancelled the auction of plot. The District Collector cum Chairman of UIT also observed that the proceedings were not conducted properly. It is also submitted that in fact, the petitioner is seeking specific performance of contract for which appropriate remedy is the suit for specific performance of contract and no relief can be granted under writ jurisdiction to the petitioner. The respondents in their reply also submitted that the first bid was of Rs. 301/- per sq. ft. and it concluded only at Rs. 311/- per sq. ft. There were only three bidders and, therefore, it is clear that the bid was accepted at a very low price. It is also submitted that the auction was not conducted properly and, therefore, the bid was cancelled.

6. It is further submitted that in fact, the bid was cancelled first and thereafter, the petitioner gave the cheques along with the letter dt. 30.01.1996 and those cheques were post dated and the amount was payable on 12.02.1996, 14.02.1996 and 15.02.1996. Therefore, in fact, the petitioner has not paid the full consideration. According to learned Counsel for the respondents, the cheques referred above were returned to the petitioner and, therefore, the petitioner is not entitled to any relief.

7. The petitioner submitted additional affidavit of the partner of the petitioner firm and stated that in the same block, where the plot in dispute is situated, another auction was held on 18.12.1996 after about 12 months from the auction in question and in that auction, the highest bid came was of Rs. 236/- per sq. ft. The petitioner has placed on record the copy of the auction proceedings. Said bid

was accepted and sale was confirmed on 27.12.1996. This plot too was purchased by the petitioner in auction and the petitioner was granted permission to raise construction after execution of the sale deed in favour of the petitioner. Copy of lease deed is also annexed as Annex.7. The petitioner also placed on record the copy of map approved by the UIT. In view of the above facts, according to the petitioner, the respondents' contention that the petitioner's bid was less than the market value of the property is factually wrong.

8. Learned Counsel for the respondent UIT submitted that the property which was auctioned in the month of December, 1996 though was situated in the same block but was of different nature and, therefore, its price cannot be compared with the price which was offered for the property in dispute.

9. I considered the submissions of learned Counsel for the parties and perused the facts of the case.

10. The facts which are not in dispute are that the respondent UIT put the plot in question for sale by auction on 17.01.1996. The petitioner gave bid of Rs. 311/- per sq. ft. and that was the highest bid. The petitioner deposited total Rs. 4,00,000/- which is the 1/4th of the amount. The respondent UIT itself conveyed that the sale has been confirmed by the Chairman of the UIT on 18.01.1996. The petitioner was asked to deposit the balance amount of Rs. 11,86,550/- by 15.02.1996.

11. On 24.01.1996, the Chairman of the UIT wrote, "Rate seems quite less. The current rate is approximately 500/- per sq. ft. The proceedings are not conducted properly." It appears from the said endorsement which is dt. 24.01.1996 but before that the Chairman of the UIT already confirmed the sale on 18.01.1996. Thereafter, the petitioner was asked to deposit the balance 3/4th amount vide letter dt. 19.01.1996. Therefore, once the sale has been confirmed by the Chairman of UIT, it could not have been cancelled by the Chairman. Said order of cancellation dt. 24.01.1996 was also passed without giving opportunity of hearing to the petitioner and without recording any basis for reaching to the conclusion that the market rate of the property at relevant time was Rs. 500/- per sq. ft. It is true that it was not obligatory on the part of the Chairman, UIT to accept the highest bid but when the sale is confirmed by the Chairman, UIT, a right accrued in favour of the petitioner and that could not have been taken away unilaterally and that too without affording opportunity of hearing to the aggrieved person. Therefore, on this ground alone, the order referred above, which only recorded the fact that the price is less than the current market rate and the price of the land could have been Rs. 500/- per sq. ft. and which specifically has not cancelled the auction or the bid, is violative of principles of natural justice and, therefore, liable to be set aside.

12. So far as factual aspect is concerned, the petitioner has placed on record the approval granted for the sale of the plot at the rate of Rs. 236/- per sq. ft. and that too, to the petitioner by the respondent UIT itself and that sale was

confirmed and that plot was also not a small plot but measuring 3850 sq. ft. and had cost of Rs. 9,09,050/- and further that sale took place after 12 months from the time of sale of the present plot, then on facts also, it appears that there was no reasonable basis for cancelling the confirmation of sale of the plot of the petitioner by the Chairman, UIT by order dt.24.01.1996. It may be true that the size of the plot in question is 5100 sq. ft. as against the size of plot which was sold in December, 1996 which is 3850 sq. ft. but it appears that both the plots are of commercial nature.

13. In view of the above discussion, this writ petition is allowed and the respondents are directed to accept the remaining amount of Rs. 11,86,550/- from the petitioner and execute the lease deed in favour of the petitioner.

14. However, since the petitioner did not part with money, therefore, it will be appropriate that the petitioner should pay interest over the balance amount of Rs. 11,86,550/- at the rate of 15% p.a. to the respondent UIT or its successor from 30.01.1996, the date on which the cheques were returned to the petitioner. This interest shall be appropriate in view of Sub-rule (5) of Rule 17 of the Urban Improvement (Disposal of Urban Land) Rules, 1974.