

(2014) 02 TP CK 0042

In the Tripura High Court

Case No : Writ Petition (C) No. 242 of 2006

**Shri Sudhir Chandra Paul VsMunicipal Council and National Building
Construction Corporation Limited (NBCC Ltd.)**

Date of Decision : 14-02-2014

Acts Referred:

Citation : (2014) 02 TP CK 0042

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

**Advocate : A. Roy Barman, for the Appellant; A. Ghosh and Mr. K.K. Pal, for the
Respondent**

Final Decision : Allowed

Judgement

S.C. Das, J.—The case of the petitioner in short is that Agartala Municipal Council (for short, AMC) while intending to construct a multi-storeyed building in its land situated at Akhaura Road (Lenin Sarani), Jackson Gate, proposed to construct sixty numbers of shop rooms in the ground floor of the said multi-storeyed building, and to distribute the said shop rooms, invited applications from interested persons, and in response thereof they received huge numbers of applications and the petitioner also made an application for a shop room depositing earnest money of Rs. 2,500/- (rupees two thousand five hundred). To sort out the distribution of sixty numbers of shop rooms, the Municipality arranged lottery in Agartala Town Hall on 30.04.1992 and the petitioner came out successful in the lottery and got allotment of a shop room bearing No. A-3 in the ground floor of the proposed building. The administrator of AMC issued a letter of allotment of shop room No. A-3 to the petitioner and in pursuance thereof the petitioner deposited 25% of the total money of Rs. 2,00,000/- (rupees two lakhs), amounting to Rs. 50,000/- (rupees fifty thousand) to AMC through Punjab and Sind Bank within the stipulated date. It was proposed that the construction will be taken up on 31.03.1992 and will be completed tentatively by 31.03.1993, if not earlier.

2. The petitioner was eagerly expecting for the shop room to be constructed and

was always enquiring about it and he was informed by the AMC that the AMC was looking for an agency for the purpose of construction and as soon as an agency is fixed construction will be taken up and after construction the rooms of shops will be distributed. It is also stated in the allotment order as well as in the broacher of AMC that each room shall be measuring 130 sq. feet and the petitioner was allotted room No. A-3, measuring 130 sq. feet in the ground floor of the building.

3. While the petitioner was so eagerly waiting for his shop room, to his utter surprise, he received order dated 28.06.2005 (Annexure-D to the writ petition) issued by Chief Executive Officer (CEO) of AMC asking the petitioner to take back the bid money of Rs. 50,000/- and the earnest money of Rs. 2,500/- since the AMC decided to return the bid money which was received from the petitioner for the shop hut in the municipality building at Jackson gate. The petitioner refused to receive the amount since he was badly in need of the shop room as per the allotment. He made representation to the respondent-AMC that he may be allotted a space in the ground floor of the proposed building or in the municipality building at Central Road for his shop but he received no response. He made numerous correspondences (Annexure-E, F, G and H to the writ petition) but received no response.

4. Thereafter, he issued a notice (Annexure-I to the writ petition) u/s 271 of Tripura Municipality Act, 1994 through his lawyer but the municipality failed to redress his grievance. At that juncture the petitioner found a notice published by respondent No. 2, National Building Construct Corporation Ltd. (for short, NBCC) published in a daily newspaper, namely "Dainik Sambad" dated 12.12.2005, proposing to let out rooms for hotel, restaurant, shops, office spaces, etc. in the Jackson gate, the proposed construction site of AMC. The petitioner got surprised seeing the notice published by respondent No. 2 and could understand that there might be an alliance between AMC and NBCC and, therefore, the AMC made the proposal to return the bid money and earnest money.

5. The petitioner intimated the AMC to get his room as per the allotment and when his demand was not redressed he filed Title Suit No. T.S. 7/2006 in the Court of Civil Judge, Jr. Division, Court No. 1, Agartala, and during pendency of the suit, AMC proposed to allot a room to the petitioner in the newly constructed Durga Chowmuhuni Supermarket but the petitioner was not interested to have a shop at Durga Chowmuhuni Supermarket and he demanded his allotted shop at Jackson gate Municipal building. Ultimately, the petitioner has withdrawn the civil suit with a liberty to file afresh and the civil Court allowed his prayer and the suit was withdrawn on 24.02.2006.

6. Since the petitioner's grievance was not redressed, ultimately, he filed the writ petition praying for directing the respondents to allot a shop room as per the allotment order dated 30.04.1992 (Annexure-A to the writ petition).

7. Respondent No. 1-AMC submitted counter affidavit, inter alia, stating that AMC

proposed to construct a multi-storeyed building in its land at Jackson gate and decided to accommodate sixty number of shop rooms (each room measuring a carpet area of 130 sq. feet) of different categories in the ground floor of the building, and it was decided that the construction will be taken up by 31.03.1992 and will be completed by 31.03.1993, if not earlier. For the proposed shop rooms, AMC received so many applications from various persons and so the AMC decided that those sixty shop rooms will be distributed through lottery, and accordingly, lottery was organized on 30.04.1992 in which the petitioner came out successful and a shop room bearing No. A-3 was allotted in favour of the petitioner and he was asked to deposit 25% of the total cost of Rs. 2,00,000/- and he also deposited the earnest money of Rs. 2,500/-. Due to some difficulties and for some unavoidable circumstances the construction of the building could not be taken up and so the AMC proposed to return the amount received from the petitioner but the petitioner refused to accept the amount. On that issue, the petitioner instituted Title Suit No. T.S. 7/2006 in the Civil Court at Agartala but the civil suit was ultimately withdrawn since the injunction prayer was not allowed and the Court imposed a cost of Rs. 2,000/- on the plaintiff-petitioner but that cost has not been paid by the plaintiff-petitioner and avoiding the civil Court the plaintiff petitioner came before the writ Court seeking a direction, and hence, the writ petition is not maintainable. It is also stated that the petitioner was offered a room at Durga Chowmuhuni Supermarket but the petitioner refused to accept it. Regarding the notice issued by the NBCC dated 12.12.2005, the respondent-AMC contended that it was not related to the AMC. So, they have nothing to say. Since the petitioner earlier instituted a civil suit, the writ petition, on the same issue, is barred by res judicata and the same is not maintainable.

8. Respondent No. 2, the NBCC also submitted counter affidavit, inter alia, stating that while the AMC was proposing to construct a multi-storeyed building complex at Jackson gate, NBCC proposed to the AMC for developing the land and to construct a commercial multi-complex plaza and, accordingly, a Memorandum of Understanding (MoU for short) was signed between the AMC and NBCC on 11.01.2005. After the MoU was signed, the NBCC took up responsibility of construction of multi-storeyed building in the proposed site of AMC and thereafter published the open notice dated 12.12.2005 in the local daily newspapers including "Dainik Sambad". It is stated that the writ petitioner filed a civil suit against the AMC and NBCC but the civil suit was withdrawn, whereas, the cost imposed by the Court was never paid. It is further stated that pursuant to the MoU signed between the AMC and NBCC, the NBCC taken up the responsibility of construction of multi-storeyed building which would be a shopping complex with various facilities and amenities in the vacant land of AMC and for the purpose of distribution of the same the public notice was made by NBCC on 12.12.2005 (Annexure-J to the writ petition). Since the NBCC taken up the responsibility of construction, pursuant to the MoU signed between the AMC and NBCC, the claim of the petitioner cannot be satisfied and no shop hut as claimed by the petitioner can be allotted.

9. Heard learned counsel, Mr. A. Roy Barman for the petitioner and learned counsel, Mr. A. Ghosh for respondent No. 1, AMC and learned counsel, Mr. K.K. Pal for respondent No. 2, NBCC.

10. It may be mentioned here that there were attempts taken by both side for settlement of the dispute amicably since AMC proposed to allot a room in favour of the petitioner but, ultimately, the attempt of compromise did not materialize and since the matter is pending from the year 1992, the petitioner insisted for disposal of the case on its merit.

11. Learned counsel, Mr. Roy Barman has submitted that the AMC decided to construct a multi-storeyed building with sixty shop rooms in the ground floor and invited applications for distribution of the shop rooms wherein the petitioner also participated after depositing the earnest money of Rs. 2,500/- and a lottery was arranged in which the petitioner came out successfully, and accordingly room No. A-3, measuring 130 sq. feet was allotted in the name of the petitioner and the petitioner deposited Rs. 50,000/, i.e. 25% of the bid money of Rs. 2,00,000/-. The AMC proposed to start construction by 31.03.1992 and fixed target to complete the construction by 31.03.1993, if not earlier, but thereafter the AMC surreptitiously entered into an agreement with the NBCC and handed over the responsibility of construction to NBCC and NBCC again made a publication for distribution of the shop rooms ignoring the earlier allotment of rooms by the AMC. It is submitted by Mr. Roy Barman, learned counsel of the petitioner that the petitioner is entitled to get room No. A-3 having a plinth area of 130 sq. feet in the ground floor of the building and the AMC is bound to hand over that room to the petitioner. The NBCC stepped into the shoes of AMC and they cannot take a different stand and they are bound by the allotment order issued by the AMC.

12. Learned counsel, Mr. Ghosh appearing for AMC with all his fairness has submitted that room No. A-3 was allotted in favour of the petitioner but subsequently construction work was handed over to the NBCC under a MoU. So, the situation got changed. The AMC was always eager to hand over a room to the petitioner but because of the complex situation of AMC and NBCC the matter could not be resolved.

13. Learned counsel, Mr. Pal appearing for the NBCC has submitted that NBCC as per MoU constructed the building and so the previous allotment order cannot compel NBCC to part with a room to the petitioner and, hence the petitioner is not entitled to get any relief.

14. It is an undisputed fact that the AMC took up initiative for construction of a multi-storeyed building in its land at Jackson gate with accommodation of sixty numbers of shop rooms in the ground floor. Numerous applications were received from different tenderers for the shop rooms and, therefore, a lottery was arranged on 30.04.1992 and the petitioner came out successful in lottery and got allotment of room No. A-3, measuring an area of 130 sq. feet. It is also an admitted fact that the AMC proposed to start construction by 31.03.1992 with a

target to complete the same by 31.03.1993 and will hand over the shop rooms to the petitioner and other allottees.

Annexure-A, the allotment order given in favour of the petitioner reads as follows:

OFFICE OF THE ADMINISTRATOR AGARTALA MUNICIPALITY AGARTALA

To

Sri Sudhir Ch. Paul,

S/O Sri Nibaran Ch. Paul,

Ghoshpatti C/O Hotel Manik, Agartala,

Sub:- Allotment of shops.

Sir/Madam,

In the Lottery organized on 30th April, 1992 in the Town Hall, you have been found successful in the Lottery and you have been allotted shop No. A-3.

As per terms and conditions No. 6 for Allotment of shops at Agartala Municipality Complex, you will have to pay 25% of Rs. 2.00 lacs within 30(thirty) days from the date of issue of this allotment order, i.e. 2nd May, 1992, that is, you will have to deposit Rs. 50,000/- (Rupees fifty thousand) within 1st June, 1992 with the Punjab & Sindh Bank, Agartala failing which your allotment order will stand withdrawn. Earnest Money will be forfeited and next eligible person from the waiting list prepared on the basis of Lottery held on 30th April, 1992, will be considered in your place.

Under no circumstances, the last date will be extended for payment of Rs. 50,000/-.

N.B. Rs. 2500/- of earnest money already paid by you will be adjusted on the last and final instalment of Rs. 2.00 lakhs to be paid by you.

Yours faithfully, -Sd- illegible (C.S. Chattopadhyay) Administrator Agartala Municipality

15. The petitioner, pursuant to the above allotment order, deposited the amount of Rs. 50,000/- towards 25% of the bid money and was expecting a shop room in the building. It is also admitted that the AMC wanted to return the bid money with earnest money but the petitioner refused to accept it. While a room was allotted to the petitioner by the AMC in due course, the AMC was bound and under obligation to hand over the room to the petitioner in terms of the allotment. The subsequent MoU signed between the AMC and NBCC is of no consequence on the petitioner. NBCC simply stepped in to the shoes of the AMC and should be presumed to have bound by the order issued by the AMC.

16. In the present case, in the admitted facts and circumstances, the petitioner is entitled to get room No. A-3 with a space of 130 sq. feet in the ground floor of

the AMC building and the respondents are directed to hand over the room to the petitioner within 30 days from today after taking the rest of bid money from the petitioner. Accordingly, the writ petition is allowed. Respondents are directed to hand over room No. A-3 with a plinth area of 130 sq. feet in the ground floor of AMC building at Jackson gate, Agartala to the petitioner within 30 days from today. The writ petition accordingly stands disposed of with a cost of Rs. 5,000/- to be paid equally by the respondents within 45 days.