

(1999) 01 MAD CK 0094

In the Madras High Court

Case No : Writ Petition No's. 4992, 4993 and 5641 of 1998 and W.M.P. No's. 7726, 7727 and 8746 of 1998

Veera Property Development Pvt. Ltd. and etc.

APPELLANT

Vs

Tamil Nadu Slum Clearance Board

RESPONDENT

Date of Decision : 13-01-1999

Acts Referred:

Constitution of India, 1950 — Article 14
Contract Act, 1872 — Section 2, 38

Citation : AIR 1999 Mad 304 : (1999) 1 MLJ 676 : (1999) WritLR 71

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : P. Subba Reddy and G. Rajan, for the Appellant; Haja Naziruddin, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—In all the above writ petitions, the petitioners have challenged the order of the respondent dated 12-3-1998 under which the bid amounts of the petitioners were rejected.

2. The petitioners pursuant to the notification in the newspaper dated 19-12-1997 of the respondent, calling for tenders proposing to purchase the commercial plots at Pallikaranai Site and Service Scheme adjoining the Velachery --Tambaram Highway, the petitioners submitted tenders or participated in the auction held on 22-1-1998. Since the petitioners are the highest bidders, they paid 25% of the bid amount, apart from the Earnest Money Deposit. According to the petitioners, the payment of the said 25% of the cost was made by way of cheque within the time stipulated and the same has been realised by the respondent. It is the case of the petitioners that accepting the highest bid the respondents realised the said 25% of the bid amount, the part of the consideration, they cannot now pass the impugned order, cancelling the bid amounts.

3. The learned counsel appearing for the petitioners have submitted that, admittedly, the petitioners are the highest bidders, and by accepting the said bid amounts the respondent received the portion of the consideration. Having accepted so, the respondent has no right to revoke the contract and so the order impugned cannot be sustained.

4. The conditions mentioned in the notification calling for the tenders, and the conditions of the tender are more or less similar. The persons who are submitting sealed tender also have to pay Earnest Money Deposit of 1% of the value of the plot the persons who are willing to participate in the auction has to pay the Earnest Money Deposit. Clause (6) of the conditions, it is specifically stated that "the highest amount in the scaled tender will be taken as the upset price for tender and the highest amount in the auction/sealed offer will be taken into consideration for acceptance". From a reading of the said clause it is very clear that merely because the petitioners' bid was the highest either in the auction or among the tenderers, it cannot be said that the same would amount to acceptance. As stated in the said clause, the said highest amount will be taken into account for acceptance.

5. As per Clause (8), the successful bidders should deposit 25% of the plot cost at the auction site. Merely because the successful bidders are directed to deposit 25% of the plot cost, it cannot be said that the bid has been accepted and the contract has been concluded. To sustain their arguments, the learned counsel appearing for the petitioners have submitted that since the said amount of 25% had been realised and utilised, it has to be construed that the bid had been accepted under the provisions of the Indian Contract Act, and the contract had been concluded, and so thereafter the respondent has no right to cancel the same, and the reasons stated also are arbitrary.

6. It is well settled that a decision, not to give contract or to reject all the tenders, must be a fair and just decision, informed by reasons. Judicial scrutiny of such a decision in the exercise of writ jurisdiction cannot be set out, merely, on the ground that there was power in the Government or public authority to reject all the tenders and that in exercise of this power all tenders have been rejected.

7. So, I have to appreciate the arguments raised by the learned counsel appearing for the petitioners, on merits. The main submission of the learned counsel is that 25% of the plot cost paid by the petitioners was not only received but also realised and utilised and so it amounts to acceptance under the provisions of the Contract Act. I am not able to accept the said submission. u/s 7 of the Indian Contract Act, the acceptance must be absolute and unqualified. In the present case, it cannot be said that the confirmation is a formal one. Mere reading of Clauses 8 and 9 of the conditions, we can safely come to the conclusion that only if a successful bidder pays 25% of the plot cost, his bid will be considered for confirmation, and the Chairman is having right to accept or reject any offer. So, the acceptance of 25% of the plot cost, though it is part of

sale consideration, and though the said amount was realised, it cannot be said that it is an absolute acceptance.

8. While dealing with similar issue, the Apex Court in *Union of India (UOI) and Others Vs. Bhim Sen Walaiti Ram*, , has held as follows :--

"On behalf of the appellants it was contended by Dr. Seyid Muhammad that the respondent was under a legal obligation to pay one-sixth of the annual fee within seven days of the auction under Clause 21 of Rule 5.34 and it was due to his default that a resale of the excise shop was ordered. Under Clause 22 of Rule 5.34 the respondent was liable for the deficiency in price and all expenses of such resale which was caused by his default. We are unable to accept this argument. The first portion of Clause 21 requires the "person to whom the shop has been sold" to deposit one-sixth of the total annual fee within seven days. But the sale is deemed to have been made in favour of the highest bidder only on the completion of the formalities before the conclusion of the sale. Clause 16 of Rule 5.34 states that "all sales are open to revision by the Chief Commissioner" . Under Clause 18, the Collector has to make a report to the Chief Commissioner where in his discretion he is accepting a lower bid. Clause 33 of the conditions, Ex. D-28, states that "all final bids will be made subject to the confirmation by the Chief Commissioner who may reject any bid without assigning any reasons". It is, therefore, clear that the contract of sale was not complete till the bid was confirmed by the Chief Commissioner and till such confirmation the person whose bid has been provisionally accepted is entitled to withdraw his bid. When the bid is so withdrawn before the confirmation of the Chief Commissioner the bidder will not be liable for damages on account of any breach of contract or for the shortfall on the resale. An acceptance of an offer may be either absolute or conditional. If the acceptance is conditional the offer can be withdrawn at any moment until absolute acceptance has taken place".

Thus if a tender is given it is merely an offer and only if it is accepted absolutely, any contract can come into force; other wise no right flows from such an offer.

9. The learned counsel appearing for the petitioners have further submitted the bid had been rejected in an arbitrary manner, and the reasons stated therefore cannot be sustained. The reasons for rejection as stated in the counter are that the larger extent plots have fetched lesser revenue, whereas the smaller extent plots fetched more revenue, and so the highest extent of plots have to be subdivided and re-auctioned, after obtaining the approval of the Chennai Metropolitan Development Authority to fetch more revenue to the Board. It is the further submission of the learned counsel that the said reasons are arbitrary.

10. As stated above, the Chairman of the respondent-Board is entitled to decide whether the highest tender should be accepted or whether fresh tender should be called for. Unless that decision should be construed to be unreasonable, no reasonable person could arrive at such a decision that the said decision could not be called arbitrary. Such a decision can be reached by a reasonable person on a

given set of facts and the dme has to be judged with reference to the totality of the circumstances and the subject-matter with reference to which the decision is reacted. The reasons stated by the respondent cannot be said to be arbitrary as the respondent proceeds on the basis of the revenue of the respondent-board. Further, the respondent has found out that the larger extent of plots could not be sold for more value and so they have to be divided and sold. The said reason cannot be said to be arbitrary.

12. For the foregoing reasons, these writ petitions are dismissed accordingly. No Costs. Consequently, W.M.P. Nos. 7726, 7727 & 8746 of 1998 are closed.