2023 INSC 393

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 8549 OF 2014

GWALIOR DEVELOPMENT AUTHORITY AND ANOTHER **....APPELLANT(S)**

VERSUS

BHANU PRATAP SINGH **....RESPONDENT(S)**

J U D G M E N T

Rastogi, J.

1. The instant appeal is directed against the judgment and order dated 21st April, 2011 passed by the Division Bench of the High Court of Madhya Pradesh, Bench at Gwalior with the following directions:

i) The Respondents are directed to execute the lease deed in favour of the petitioner of remaining area of the land i.e. 9625.50 sq. mtr. in accordance with the acceptance of his offer of total plot area 27887.50 sq. mtr.

ii) The petitioner shall be liable to make payment of interest from 17.8.2001 upto 29.3.2006 when the lease deed was executed in favour of the petitioner excluding the period of 27.5.2004 to 29.3.2005.

iii) The Respondents are at liberty to calculate the amount of interest accordingly after verification of the amount which has been paid by the petitioner.

iv) The order be complied with within a period of three months from the date of receipt of the copy of the order.

2. The facts of the case culled out from the record are that the appellants, according to the land disposal rules, issued an advertisement and invited bids for grant of leases of different plots under the transport city scheme. The respondent was also one of the bidders for MC-2 (Market Complex-2) plot area 27887.50 sq. meters. The offer of the respondent @Rs.725/- per sq. meter being the highest bid was finally accepted. Consequently, a letter of allotment dated 29th September, 1997 was issued in favour of the respondent whereby it was informed that the bid of the respondent was found to be the highest and it had been decided to lease out the plot area of 27887.50 sq. meters in his favour for a consideration of Rs.2,06,67,966/- and the auction bidder/respondent was directed to deposit a sum of Rs.1,91,67,966/- upto the period of 31st October,

1999 in addition to the earnest money of Rs.15 lakhs in four instalments in the following manner:

(i) Rs.51,66,922/- by 31.10.1997 (for 25% amount)

(ii) Rs.51,66,922/- by 30.06.1998 (for first instalment)

(iii) Rs.51,66,922/- by 28.10.1999 (for second instalment)

(iv) Rs.36,36,990/- by 31.10.1999 (for third instalment)

3. The letter of allotment contained a rider that the market complex has to be constructed in accordance with the sanctioned plan by the Gwalior Development Authority (hereinafter being referred to as the "Authority") and construction work has to be completed within the period of two years with a further stipulation that failure to deposit the instalments in terms of the conditions of the bid document, the security amount shall be forfeited.

4. It is not disputed that the respondent deposited a total sum of Rs.2,02,18,437/- from September, 1997 to the last instalment on 25th August, 2005. The amount deposited by the respondent on various dates be stated as under:

1	27.9.1997	Rs. 15,00,000.00
2	6.11.1997	Rs. 2,00,000.00
3	31.12.1997	Rs. 3,00,000.00

4	17.4.1998	Rs. 5,00,000.00
5	22.1.2003	Rs. 16,00,000.00
6	30.1.2003	Rs. 3,00,000.00
7	30.1.2003	Rs. 2,00,000.00
8	31.12.2001	Rs. 5,00,000.00
9	19.12.2003	Rs. 5,00,000.00
10	12.4.2004	Rs. 10,00,000.00
11	27.2.2004	Rs. 10,00,000.00
12	5.1.2004	Rs. 10,00,000.00
13	25.8.2005	Rs.1,16,18,437.00
	Total	----------
		Rs.2,02,18,437.00
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5. It reveals from the record that, in the meanwhile, the respondent requested for revising the layout plan in order to enable to deposit the requisite amount with the Authority and the layout plans were also revised, but finally the amended layout plan was accepted by the Authority on 17th August, 2001. It is also not disputed that despite the respondent failed to deposit the instalments in terms of conditions of the bid document by 31st October, 1999 and the final amount being deposited on 25th August, 2005, no action was taken by the appellants either for cancellation of the bid or for forfeiture of the amount deposited by the respondent and what transpires between the parties is not made available on record but the fact is that the lease deed was finally executed for 18262.89 sq. meters on 29th March, 2006 to the extent of principal amount of

Rs.1,32,39,356/- @Rs.725/- per sq. meter plus the component of interest for the said amount for the delay in deposit of Rs.69,97,087/- total Rs.2,02,18,437/- and the lease deed was executed by the respondent without any demur. We do not find any justification as to what was the reason for the Authority to grant such undue indulgence to the respondent in depositing the instalments which ought to have been deposited by 31st October, 1999 but were deposited upto 25th August, 2005, be that as it may, it appears that after some round table negotiations to the extent of principal amount it was adjusted against the auction bid and balance to be adjusted towards interest, the total land which was put to public auction of 27887.50 sq. meters, was reduced to 18262.89 sq. meters and with the consent of parties and without any demur, the lease deed was executed on 29th March, 2006.

6. After more than a period of three and half years, the writ petition came to be filed by the respondent under Article 226 of the Constitution seeking a mandamus against the appellants to execute the lease deed for the remaining area of 9625.50 sq. meters in addition to the lease earlier executed in favour of the respondent and

the Division Bench of the High Court while accepting the prayer made by the respondent, directed the appellants to execute the lease deed in favour of the respondent for the remaining area of 9625.50 sq. meters without any consideration with liability on the respondent to make payment of interest for the period 17th August, 2001 upto 29th March, 2006, the day when the lease deed was executed in favour of the respondent, excluding the period of 27th May, 2004 to 29th March, 2005. As a matter of fact, no additional consideration was required to be paid by the respondent except the interest for the interregnum period of which reference has been made under the impugned judgment and that became the subject matter of challenge at the instance of the Authority in the instant appeal.

7. Notices were issued by this Court on 4th January, 2012 and after hearing the parties, leave was granted on 5th September, 2014.

8. It reveals from the record that at one point of time, it was informed to this Court that there is a possibility of settlement of dispute between the parties, which reflects from the order of this Court dated 27th August, 2019, but later, it reveals from the order dated 4th May, 2022, that counsel for the respondent on instructions

informed this Court that the circle rate fixed by the State Government in reference to the subject land in question is not viable and is much higher than the market value of the subject property as on that day for commercial use. As no settlement was arrived at between the parties, the matter was finally heard and arguments stood concluded on 13th April, 2023.

9. Learned counsel for the respondent informed this Court that on 16th March, 2023, although it was not reflected in the order, the respondent was called upon as to whether the prevalent circle rate in reference to the subject property in question is acceptable, the appellant Authority can be called upon to examine, but we find from the record that there was no such order as referred to by the respondent's learned counsel, the fact is that whatever circle rate prevalent at the relevant point of time of which we have made a reference, was not considered to be viable by the respondent and once this amicable resolution has failed, the matter was being heard on merits.

10. Shri Sanjay Hegde, Senior Advocate appearing for the appellants, submits that undue indulgence was granted to the

respondent and the last instalment which was to be made over by the respondent by 31st October, 1999 was finally paid by 25th August, 2005. Although, in the ordinary course, since the conditions of bid were not complied with by the respondent (successful bidder), the auction ought to have been cancelled, but the Authority after due deliberations, in the peculiar facts and circumstances, granted indulgence to the respondent and taking into consideration the fact that the last instalment was deposited by him on 25th August, 2005, with a break-up of principal amount and the component of interest thereof, the lease deed was duly executed between the parties without demur, obviously with the consent of the parties, as they are signatories to the document/instrument for 18262.89 sq. meters which was executed on 29th March, 2006.

11. Learned senior counsel further submits that the auction proceedings which were initiated at the first instance on 13th March, 1997, finally culminated into execution of the lease deed without demur for 18262.89 sq. meters on 29th March, 2006 and the transaction has attained finality. There was no reason or justification for the respondent to open the transaction which was finally

concluded on execution of the lease deed, with no cause of action subsisting filed a writ petition under Article 226 of the Constitution and that too after three and half years of the execution of the lease deed on 29th March, 2006.

12. Learned counsel submits that the High Court has committed a serious manifest error in completely overlooking the fact that once the lease deed was executed without demur on 29th March, 2006 and the transaction initiated pursuant to a tender floated by the Authority on 13th March, 1997 finally concluded by execution of the lease deed without demur and that being a pure business/commercial transaction entered with the open eyes, there was no justification available to invoke the jurisdiction under Article 226 of the Constitution with a direction to execute the lease deed for the remaining area of land i.e. 9625.50 sq. meters without any consideration and that amounts to amendment in the instrument which was duly registered and an amendment in the instrument was not permissible in law even under the jurisdiction of the High Court under Article 226 of the Constitution.

13. Learned counsel, on instructions, submits that the land available at the disposal of the Authority is always to be put to commercial use and disposed of in terms of the land disposal rules, but in the peculiar facts of the case, the Authority may consider the claim of the respondent if they are interested for the remaining area of land i.e. 9625.50 sq. meters on the prevalent circle rate if acceptable, only to give a quietus to the dispute which is pending for quite a long time, failing which the only option left with the Authority is to dispose of the area of land admeasuring 9625.50 sq. meters in accordance with land disposal rules.

14. Per contra, learned counsel for the respondent, while supporting the finding recorded by the High Court, submits that once the tender was floated by the appellants for 27887.50 sq. meters and the bid of the respondent @Rs.725/- per sq. meter was the highest in September, 1997 and accepted by the Authority and the last instalment of 25th August, 2005 was accepted, there was no justification available with the appellant to segregate and sever the land which was put to auction into two parcels and the very execution of the lease deed for 18262.89 sq. meters on 29th March, 2006 and

keeping away the remainder of the land and not taking any action thereof, has compelled the respondent to invoke the jurisdiction of the High Court by filing a petition under Article 226 of the Constitution and the appellant being the public Authority and a State within the meaning of Article 12 of the Constitution, it is always expected to act fairly even in the business/commercial transactions and as there was denial of the legitimate right conferred to the respondent and the interests of the appellants have been fully secured by putting the liability on the respondent to pay interest for the interregnum period and that is the only equitable way in balancing the right and interest of the parties inter se and in the circumstances no error was committed by the High Court which calls for interference of this Court.

15. We have heard counsel for the parties and with their assistance perused the material on record.

16. It is not in dispute that the tender was originally floated by the appellants on 13th March, 1997 and the respondent was a successful bidder and submitted his offer for 27887.50 sq. meters @ Rs.725/- per sq. meter for a total value of Rs.2,06,67,966/- which was to be

paid in four instalments and after making the advance payment of Rs.15 lakhs as earnest money, the remaining four instalments were to be deposited on 31st October, 1997, 30th June, 1998, 28th October, 1999 and the last instalment by 31st October, 1999. Admittedly, the respondent deposited the amount in piecemeal and not in terms of the instalments, as agreed, which was in terms of the conditions of the tender document and the final instalment was deposited in reference to the auction bid by 25th August, 2005.

17. In the ordinary course of business, as the respondent has failed to deposit in terms of the tender document, the last instalment by 31st October, 1999, the auction was supposed to be cancelled and the earnest money deserved to be forfeited. We find no reasonable justification in the present facts and circumstances as to what would be the reason for undue indulgence being shown to the respondent while extending him the benefit to deposit the instalment by 25th August, 2005 and we have our strong reservations and such exercise of power by the Authority, in our view, is a clear abuse of discretion which is not only violative of Article 14 of the Constitution, but also smacks of an undue favour which is always to be avoided and

whenever there is such a business/commercial transaction, it is always to be examined on the commercial principles where equity has no role to play. Be that as it may, as much water has flown in the Ganges, we would not like to stretch it any further.

18. However, the fact is that the parties sitting across the table, got the lease deed executed for 18262.89 sq. meters without demur on 29th March, 2006 and the transaction stood concluded after execution of the lease deed, which was initiated pursuant to a tender floated by the appellant on 13th March, 1997 and since the lease deed was to be compulsorily registered under Section 17 of the Registration Act, 1908, it was nowhere open to be altered or amended even by the High Court in exercise of its jurisdiction under Article 226 of the Constitution.

19. The High Court under impugned judgment has although passed a very lengthy order, but the judgments on which reliance has been placed have no semblance to the facts of the instant case and natural justice has no role to play in the given facts and circumstances, of which reference has been made. In our considered view, the judgment passed by the High Court in issuing a mandamus to

execute the lease deed in favour of the respondent for the remaining area of 9625.50 sq. meters is completely beyond jurisdiction and such directions, in our view, being contrary to law deserve to be set aside.

20. The submission made by the respondent that the tender floated by the appellants on 13th March, 1997 was called upon to the bidders to submit their bid for 27887.50 sq. meters and which could not have been segregated, more so after the bid has been finalized @Rs.725/- per sq. meter and that alone has been taken care of by the High Court by directing to execute the lease deed for the remainder of the land, in our considered view, is bereft of merit for the reason that so far as the tender floated by the Authority on 13th March, 1997 is concerned, the transaction was concluded on execution of the lease deed executed without demur for 18262.89 sq. meters on 29th March, 2006 and after the transaction is concluded and the instrument being registered under the law, it was not open to either party to question at least in the writ jurisdiction of the High Court under Article 226 of the Constitution and the mandamus issued by the High Court to execute the lease deed for the remainder of the area without

any consideration is completely contrary to the settled principles of law and deserves to be set aside.

21. Learned counsel for the respondent further submits that although at one point of time they have not been able to consider the remainder of the land in reference to which the High Court has directed for execution of the lease deed viable as per the circle rate fixed by the State Government, but later on, they revisited and took a decision to take the remainder of the land independently on the circle rate fixed by the State Government as it was on 16th March, 2023, but in our considered view, once the negotiations have failed and the respondent has shown his inability for taking the remainder of the land on the circle rate notified by the State Government not considered to be viable, it is always open for the parties to negotiate afresh and settle, if advised, but it may not be available to the respondent on the prevalent circle rate notified by the government/competent authority.

22. Before we conclude, we would like to observe that the litigation is pending for sufficiently long time and keeping in view the escalation in the value of the property in question based on

commercial principles, we consider it appropriate to observe that the respondent being originally the bidder for the remainder of the land as well, let one opportunity be made available to the respondent for the remainder of the area on priority basis on the prevalent circle rate notified by the Government.

23. It is informed that the remaining area at the relevant time was 9625.50 sq. meters, but certain developments have taken place and part of the land has been used for public purpose and as on today the remaining area of the land is less than what is being reflected in the impugned judgment. Taking that into consideration, we make it clear that let the first opportunity be afforded to the respondent to purchase the remaining area of the land which was a part of the land originally put to auction in terms of tender floated on 13th March, 1997 for 27887.50 sq. meters and if it is acceptable to the respondent on the present prevalent circle rate notified by the Government, the Authority may consider his request on priority basis and if the respondent fails or does not show his inclination or interest on the present prevalent circle rate of the subject land in question, the

appellants are at liberty to put the subject land for disposal as per their land disposal rules.

24. The appeal deserves to succeed and is accordingly allowed. The judgment impugned dated 21st April, 2011 passed by the Division Bench of the High Court of Madhya Pradesh, Bench at Gwalior is quashed and set aside with the afore-stated observations.

25. Pending application(s), if any, shall stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(BELA M. TRIVEDI)

NEW DELHI
APRIL 19, 2023.