

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

+ WRIT APPEAL No. 1105 OF 2016

% Dated 11.09.2024

Hyderabad Urban Development Authority, rep.,
by its Vice Chairman, Hyderabad and another.

....Appellants

VERSUS

\$ S.V. Castle Creators & Engineers Private Limited,
rep., by its Director, Sri M.V.S. Sridhar,
S/o. M.Narayanaswamy Naidu, aged 41 years,
H.No. 7-1-414/37, Srinivasa Colony East, S.R.
Nagar, Hyderabad – 38.

... Respondent

! Counsel for Appellants : Sri Pottigari Sridhar Reddy, Spl.G.P.

^ Counsel for Respondent : Sri C.Raghu

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> HEAD NOTE:

? CITATIONS:

1. 2006(5) ALD 741 (DB)
2. (2015) 17 SCC 613

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT APPEAL No. 1105 OF 2016

JUDGMENT: *(per the Hon'ble Sri Justice J. Sreenivas Rao)*

This intra-court Appeal is filed aggrieved by the orders passed by the learned Single Judge of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in allowing Writ Petition No.14316 of 2008, dated 30.09.2015, setting aside the proceedings No.5640/EMC/HUDA/96, dated 02.03.2008, issued by appellant No.1 cancelling the allotment made in favour of the respondent *vide* proceedings dated 28.08.1996.

2. Heard Sri Pottigari Sridhar Reddy, learned Special Government Pleader representing learned Advocate General appearing on behalf of the appellants and Sri C.Raghu, learned Senior Counsel appearing on behalf of the respondent.

3. For the sake of convenience, the parties in this appeal are referred to as petitioner and respondents, as they are arrayed in the writ petition.

4. **Brief facts of the case:**

4.1. Respondent No.2-Hyderabad Urban Development Authority, Hyderabad, had issued auction of sale notification from respective bidders proposing to conduct public auction-cum-sale in respect of 22 commercial plots and 6 residential plots situated at Ramachandrapuram and Sarrornagar by mentioning the terms and conditions and conducted auction on 5th and 6th August, 1996. In the said auction, the petitioner-Company (hereinafter called, 'the petitioner') was declared as the highest bidder for plot No.5 admeasuring 1320 square meters equivalent to 1578.72 square yards, @ Rs.510/- per square meter, situated at HUDA Trade Center, Ramchandrapuram, with a total sale price of Rs.6,73,200/-. That the petitioner paid an amount of Rs.1,18,300/- towards initial deposit apart from EMD amount of Rs.50,000/- on 05.08.1996. Accordingly, respondent No.2 issued letter of provisional allotment to the petitioner on 28.08.1996 intimating to pay the balance amount of Rs.5,04,900/- without any interest within one month i.e. 27.09.1996, or with interest 20% per annum on or before 06.11.1996 and also mentioned that non-payment of the amount within the date will entail cancellation without any intimation as per the terms and conditions.

4.2 Thereafter, on 08.12.1996, respondent No.2 issued notice informing the petitioner to make the payment on or before 31.12.1996, failing which allotment will be cancelled without any notice. Again respondent No.2 issued another notice on 01.01.1997 asking the petitioner to make the payment on or before 10.01.1997, failing which respondent No.2 will cancel the allotment, as per the terms and conditions of allotment without any notice. On 10.01.1997, the petitioner paid an amount of Rs.2,64,900/-, out of Rs.5,04,900/-, with 20% interest to be paid.

4.3. Thereafter, on 16.09.1997 respondent No.2 issued notice to the petitioner to pay the balance amount, wherein it is further stated that the said notice may be treated as show-cause notice and if the amount not paid on or before 30.09.1997, the allotment will be automatically get cancelled, as per the terms and conditions of the allotment. The petitioner paid Rs.1,00,000/- on 07.10.1997 and Rs.1,40,000/- on 07.11.1997.

4.4 Respondent No.2 sent another notice on 25.02.1999 to the petitioner intimating that if the total amount is not paid on or before 15.03.1999, allotment shall be cancelled without any notice. Subsequently, on 15.07.2003 respondent No.2 issued another notice to the petitioner intimating that if the due amount is not paid on or before 31.07.2003, the allotment shall stands

terminated without any notice. Subsequently, on 26.08.2003 respondent No.2 issued another notice to the petitioner directing to pay an amount of Rs.3,19,936/- along with interest on or before 15.09.2003 or else allotment will be cancelled without any notice, as per Clause 11 of the terms of allotment. Once again on 16.10.2003, respondent No.2 issued notice to the petitioner directing to pay an amount of Rs.3,37,027/- with interest on or before 31.10.2003 and rejected the request made by the petitioner for reduction of interest and further stated that the present value of the property is now valued @ Rs.1,700/- to Rs.2,500/- per square yard.

4.5 On 10.11.2003, the petitioner submitted a letter to respondent No.2 stating that they are in financial crisis and sought for concession in rate of interest. On 08.12.2003, respondent No.2 issued show-cause notice directing the petitioner to submit explanation as to why the allotment shall not be cancelled, since the outstanding payment of Rs.5,07,312/- is not paid and directed them to submit explanation on or before 31.08.2005, or else action will be taken to cancel the allotment.

4.6 On 31.08.2005, the petitioner addressed a letter to respondent No.2 requesting for concessional interest, as the petitioner is in the state of bankruptcy. On 25.11.2005,

respondent No.2 took a decision for cancellation of allotment in File No.5640/HUDA/EMU/96. On 30.11.2005, the petitioner deposited the amount directly in the Bank account of respondent No.2 without their consent. On 02.03.2008, respondent No.2 passed the impugned order cancelling the allotment made in favour of the petitioner through proceedings No.5640/EMC/HUDA/96, dated 02.03.2008, by returning the amount of Rs.11,78,928/- through cheque bearing No.435354, dated 04.03.2008, after forfeiting the initial deposit amount, invoking condition Nos.11(a) and 11(d) of auction-sale notice. Aggrieved by the same, the petitioner filed W.P. No.14316 of 2008.

4.7 Learned Single Judge allowed the above said Writ Petition, on the ground that prior to passing of impugned cancellation of allotment order dated 02.03.2008, the petitioner had already paid entire amount and respondent No.2 themselves have extended the time limit for payment of amount from time to time and time is not the essence of contract, by its order dated 30.09.2015. Aggrieved by the same, respondent No.1 filed the present Appeal.

5. Submissions of learned Special Government Pleader for appellants:

5.1. Learned Special Government Pleader submits that as per the terms and conditions of auction-cum-sale notification and

provisional allotment letter, the petitioner has to pay the balance amount without any interest within one month i.e., on or before 27.09.1996, or with interest @ 20% per annum within three months i.e., on or before 06.11.1996. In spite of repeated demands, the petitioner has not paid the balance amount along with accrued interest. Respondent No.2 had issued show cause notice on 08.08.2005, wherein it is specifically stated that the petitioner is due an amount of Rs.5,07,312/- as on 31.07.2005 and directed to submit explanation as to why the allotment of plot cannot be cancelled forfeiting the amount deposited by the petitioner.

5.2 He further contended that pursuant to the said show cause notice, the petitioner has not submitted any explanation, on the other hand submitted representation on 31.08.2005 requesting the respondent No. 2 to consider concessional interest, though the said request was already rejected through letter, dated 16.10.2003 by giving reasons. He further submits that respondent No.2 after following the due procedure passed the impugned order on 02.03.2008 cancelling the allotment made in favour of the petitioner by invoking the condition Nos.11(a) and 11(d) of the auction-cum-sale notice by returning the amount of Rs.11,78,928/- in favour of the petitioner by way of Cheque.

5.3 He further contended that the petitioner without taking any consent or approval from the respondent No.2, deposited the amount in their bank account unilaterally. Basing on the alleged deposit, the petitioner is not entitled to claim any relief. Learned Single Judge without taking into consideration the above said fact, set aside the impugned proceedings issued by the respondent No.2, dated 02.03.2008 and allowed the Writ Petition and the same is contrary to law.

5.4 In support of his contention, he relied upon the Division Bench judgment of the erstwhile High Court of Judicature, Andhra Pradesh at Hyderabad in **M.Padmavathi vs. Hyderabad Urban Development Authority, Secunderabad**¹.

6. Submissions of learned Senior Counsel appearing on behalf of respondent:

6.1 Per contra, learned Senior Counsel contended that the petitioner had deposited the entire amount along with accrued interest on 30.11.2005. Respondent No.2 without properly considering the said fact, passed the impugned order, dated 02.03.2008 cancelling the allotment made in favour of the petitioner. He further contended that respondent No.2 has not disputed the deposit of entire amount subsequent to the show

¹ 2006(5) ALD 741 (DB)

cause notice, dated 08.08.2005, on the other hand, passed the above said order after lapse of more than two years and the same is not permissible under law.

6.2 He also contended that respondent No.2 themselves extended the time from time to time and the petitioner paid the entire amount along with interest, as enumerated in the provisional allotment letter. Respondent No.2 before cancelling the said allotment through impugned order, dated 02.03.2008, they have not issued any show cause notice and the same is gross violation of the principles of natural justice.

6.3 He further contended that respondent No.2 issued show cause notice, dated 08.08.2005, directing the petitioner to pay the balance amount on or before 31.08.2005 and that respondent No.2 has not issued any show cause notice proposing to cancel the allotment made in favour of the petitioner. In the absence of the same, respondent No.2 passed the impugned order, dated 02.03.2008 and the same is gross violation of the principles of natural justice.

6.4 He also contended that the learned Single Judge after taking into consideration the contentions made by the respective parties and also after due verification of the records has rightly

allowed the Writ Petition on 30.09.2015 and there are no grounds to interfere with the above said order.

6.5 In support of his contention, he relied upon the judgment of the Apex Court in **Sunil Madnani vs. Delhi Development Authority²**.

Analysis of the case:

7. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that respondent No.2 conducted public auction for allotment of plot No.5 admeasuring 1320 square meters situated at HUDAs Trade Center, Ramchandrapura, on 05.08.1996 along with other property. In the said auction, the petitioner was declared as highest bidder for total sale price of Rs.6,73,200/- on 09.08.1996, and therefore, the petitioner paid an amount of Rs.1,18,300/- towards initial deposit and Rs.50,000/- towards EMD. Pursuant to the same, respondent No.2 issued provisional allotment letter to the petitioner on 28.08.1996. As per the terms and conditions mentioned in auction-cum-sale notification, the petitioner has to pay the balance amount of Rs.5,04,900/- on or before 27.09.1996 or they have to pay the said amount along with interest @ 20% per

² (2015) 17 SCC 613

annum on or before 06.11.1996 and the petitioner has accepted the said conditions but has not paid the amount within the stipulated time. However, respondent No.2 had issued notice on 08.12.1996 directing the petitioner to make the payment on or before 10.01.1997, failing which the allotment will be cancelled without any notice. Again issued another notice on 01.01.1997 directing the petitioner to pay the amount on or before 10.01.1997. The petitioner instead of paying the amount of Rs.5,04,900/-, paid only an amount of Rs.2,64,900/-. Thereafter respondent No.2 had issued another notice on 16.09.1997 directing the petitioner to pay the balance amount, and if the amount is not paid on or before 30.09.1997, the allotment will get automatically cancelled.

8. It appears from the record that the petitioner paid an amount of Rs.1,00,000/- on 07.10.1997 and Rs.1,40,000/- on 07.11.1997. However, the petitioner has not paid the entire due amount along with interest. It further appears that respondent No.2 had once again issued notice on 25.02.1999 informing the petitioner that if they have not paid the entire amount on or before 15.03.1999, the allotment shall be cancelled without any further notice. Again respondent No.2 issued another notice on 15.07.2003 intimating the petitioner that if the due amount is not

paid on or before 31.07.2003, the allotment shall stand terminated without any notice. Once again on 26.08.2003, respondent No.2 issued another notice directing the petitioner to pay an amount of Rs.3,19,936/- with interest on or before 15.09.2003, else the allotment will be cancelled without any notice, as per the clause 11 of the terms and conditions of auction sale notice. Thereafter on 16.10.2003 respondent No.2 issued another notice directing the petitioner to pay the amount of Rs.3,37,027/- with interest on or before 31.10.2003 and also rejected the claim of the petitioner for reduction of interest.

9. In the above said notice dated 16.10.2003, respondent No.2 specifically stated that the market rate prevailing in the area as on that date between Rs.1,700/- to Rs.2,500/- per square yard. Whereas the allotment made in favour of the petitioner on 28.08.1996 @ Rs.510/- per square meter. Hence, question of reduction of interest claimed by the petitioner does not arise. In spite of repeated notices issued by the respondent No.2, petitioner has not chosen to pay the entire amount along with interest. On the other hand, once again submitted representation on 10.11.2003 requesting respondent No.2 to grant concessional rate of interest due to their financial crisis, though respondent No.2

has already rejected the claim of petitioner through notice dated 16.10.2003 for reduction of interest.

10. On 08.08.2005 respondent No.2 had issued show cause notice exercising the clause Nos.11(a) and 11(d) of the terms and conditions of auction-cum-sale notice, wherein specifically stating that as on 31.07.2005, the petitioner is due an amount of Rs.5,07,312/- and directed the petitioner to submit explanation why the allotment of subject property shall not be cancelled and forfeit the amount.

11. It appears from the record that the petitioner has not submitted explanation to the above said show cause notice. On the other hand, submitted representation on 31.08.2005 requesting respondent No.2 for concessional interest, though the request made by the petitioner was already rejected by the respondent No.2 through letter dated 16.10.2003 explaining the reasons. On 25.11.2005 the competent authority has taken a decision for cancellation of the allotment made in favour of the petitioner also and for refund of the amount to the petitioner as per their entitlement.

12. It further reveals from the record that the petitioner unilaterally deposited the amount in the Bank account of respondent No.1, directly in the absence of any permission or

authorization, and filed representation on 30.11.2005 by enclosing the Xerox copy of challan, dated 30.11.2005 in the inward section of respondent No.2 Office. The above said document clearly reveals that the petitioner had not obtained prior permission or consent for depositing the above said amount, on the other hand, they unilaterally deposited the amount in the respondent No.2 bank account. Respondent No.2 had issued the impugned order on 02.03.2008 cancelling the allotment made in favour of the petitioner and returned the amount of Rs.11,78,728/- by way of cheque by forfeiting the amount as per the terms and conditions of the auction sale notice.

13. Learned Single Judge allowed the writ petition only on the ground that respondent No.2 themselves extended the time limit for payment of amount from time to time. Hence, time is not the essence of the contract and also on the other ground that respondent No.2 passed the impugned order dated 02.03.2008 cancelling the allotment made in favour of petitioner subsequent to deposit of the amount.

14. It is pertinent to mention that the petitioner after accepting the terms and conditions of the auction-cum-sale notice and provisional allotment letter dated 28.08.1996, failed to pay the entire amount within the stipulated time, in spite of repeated

reminders issued by the respondent No.2 and the petitioner is not entitled to take shelter on the ground that the petitioner deposited the entire amount voluntarily in the bank account of respondent No.2 behind their back even before cancellation of the allotment made in their favour, especially without consent of respondent No.2 and basing on the said deposit, the petitioner is not entitled to seek equitable relief under Article 226 of the Constitution of India.

15. It is also pertinent to mention here that at the time of conducting auction in the year 1996, the value of the property is Rs.510/- per square meter and the petitioner has to pay the entire amount within a period of one (1) month i.e. on or before 27.09.1996 without interest and with interest within a period of three (3) months i.e. on or before 06.11.1996 and the petitioner has not paid the said amount within the stipulated time in spite of several reminders issued to the petitioner. Similarly, the request made by the petitioner for reduction of interest was rejected by the respondent No.2 on 16.10.2003 by giving reasons, specifically stating the market value of the property prevailing in the said area was in between Rs.1,700/- to Rs.2,500/- per square yard as on the date of issuance of the said notice approximately. Whereas the subject property was allotted to the petitioner @ Rs.510/- per

square meter only. In spite of the same, the petitioner has not chosen to pay the due amount along with interest.

16. In **M.Padmavathi** (supra), the Division Bench of erstwhile High Court of Judicature, Andhra Pradesh at Hyderabad specifically held as follows:

“Before concluding, we deem it proper to take judicial notice of the fact that the price of real estate has been escalating in last 20 years. Therefore, implementation of the so-called decision taken by the functionaries of HUDA to restore the allotment in favour of a person who had paid 60 per cent of the total price on the condition of imposition of 5 per cent penalty would be gravely detrimental to the financial interest of HUDA, which is a creature of a statute. The very fact that the plot in question has been auctioned on 21.7.2006 for a sum of Rs.6.00 Crores as against a paltry amount of Rs.20,80,800/- offered by the petitioner and her co-bidders in 1996 is sufficient to demonstrate that the so-called decision taken by HUDA was highly injudicious, unwarranted and contrary to public interest and this Court cannot enforce such decision.”

17. In the case on hand, the auction was conducted on 05.08.1996 in respect of the subject property along with other properties and the provisional allotment order was issued in favour of the petitioner on 28.08.1996. As per the terms and conditions of the auction sale notice and also provisional allotment order, dated 28.08.1996, the petitioner has not paid the amount within the stipulated time and in spite of several

reminders. Due to escalation of the prices, the subject property value in the year 2003 itself is more than Rs.2,500/- per square yard and therefore, the petitioner is not entitled to claim any equity on the ground that he paid the amount to respondent No.2 even before passing the impugned order of cancellation of allotment made in their favour. Especially, the petitioner deposited the amount in respondent No.2 Bank account unilaterally without any consent/permission from the respondent No.2. Basing on the alleged deposit, the petitioner is not entitled to claim any equities.

18. The judgment relied upon on by the learned Senior Counsel for the appellant in **Sunil Madnani** (supra), wherein cancelled the allotment of property made in favour of the appellant therein for non-payment of balance sale consideration, though the respondent therein passed a resolution, dated 12.10.2009 granting benefit in favour of 18 plot holders in another locality. The Apex Court held that the cancellation of allotment made in favour of appellant therein and non-extending the very same benefit which was given by the respondent authority in favour of 18 plot holders amounts to discrimination. The above said judgment is not applicable to the facts and circumstances of this case on the ground that the petitioner has not pleaded that

respondent No.2 has taken any similar decision or extended the benefits to the similarly situated persons by dropping the cancellation of allotment.

19. It is already stated supra, that petitioner has not paid the amount pursuant to the terms and conditions mentioned in the auction-cum- sale notice and also as per the provisional allotment letter. Respondent No.2 had issued show cause notice dated 08.08.2005 directing the petitioner to submit explanation as to why the allotment made in their favour should not be cancelled. Petitioner without submitting any explanation to the said show cause notice, deposited the amount in the respondent No.2 Bank account unilaterally behind their back, in the absence of any permission/authorization and basing upon the same, the petitioner is not entitled to claim any equities and respondent No.2 has rightly cancelled the allotment made in favour of the petitioner exercising the powers conferred under condition Nos.11(a) and 11(d) of auction-cum-sale notification and refunded the amount of Rs.11,78,728/- by forfeiting the amount. By virtue of the escalation of the prices, the value of the property is increased tremendously. Further, the property belongs to State and the public interest is also involved. If the respondents have

conducted the auction in the year 2005, the property value would fetch more.

20. For the foregoing reasons, the impugned order passed by the learned Single Judge in W.P. No.14316 of 2008 dated 30.09.2015 is liable to be set aside and accordingly, set aside.

21. Accordingly, the Writ Appeal is allowed. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

ALOK ARADHE, CJ

J.SREENIVAS RAO, J

Date: 11.09.2024.

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