

Srinivas H Vs. The Site Auction Confirmation Committee

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Court : Karnataka

Decided On : Aug-27-2015

Judge : Ram Mohan Reddy

Appeal No. : WP 12804/2015

Appellant : Srinivas H

Respondent : The Site Auction Confirmation Committee

Advocate for Def. : Sri. K.Krishna

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE27H DAY OF AUGUST 2015 BEFORE THE HONBLE MR. JUSTICE RAM MOHAN REDDY WRIT PETITION NO.12804 OF2015(BDA) BETWEEN: SRINIVAS .H, AGED ABOUT46YEARS, SON OF HUCHA THIMMEGOWDA, RESIDENT OF NO.92 44, 1ST BLOCK, GANESHA TEMPLE ROAD, NANDINI LAYOUT, BANGALORE560096. (BY SRI. VENUGOPAL M.S., ADVOCATE) AND:

1. PETITIONER THE SITE AUCTION CONFIRMATION COMMITTEE, BANGALORE DEVELOPMENT AUTHORITY, T. CHOWDAIAH ROAD, KUMARAPARK (WEST), BANGALORE560020, REPRESENTED BY ITS PRESIDENT.

2. (BY SRI. K. KRISHNA, ADVOCATE) THE COMMISSIONER, BANGALORE DEVELOPMENT AUTHORITY, T. CHOWDAIAH ROAD, KUMARAPARK (WEST), BANGALORE 560020. RESPONDENTS 2 THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE DECISION OF THE R-1 VIDE PROCEEDING DATED 9.1.2015 IN SO FAR AS SITE NO.14 SITUATED AT NAGARABHAVI 2D STAGE, 4TH BLOCK VIDE ANNEXURE-G AND ETC; THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner responded to an e-Auction notification dated 19.11.2014, Annexure-A by making an application for registration and payment of Rs.4,00,000/- towards Earnest Money Deposit (EMD) so as to bid for sites in a public auction to be conducted by Bangalore Development Authority (for short BDA). The E-auction is said to have been held on 9.12.2014 whence petitioners bid for site No:

14. was accepted and on the conclusion of said auction at 16:00 hours on the same day, in terms of e-auction notification Annexure- A, petitioner was required to deposit 25% of the bid amount within 72 hours therefrom i.e. by 16:00 hours on 12.12.2014. Petitioner did not deposit the amount 3 within the time fixed but did so by making a deposit of Rs.14,30,938/- on 13.12.2014 beyond the period of 72 hours, whence the bid was cancelled and EMD forfeited. Hence this petition to quash the decision dated 9.1.2015 to cancel petitioners bid insofar as it relates to site No.14 as indicated in E-auction notification Annexure-A and for a writ of mandamus to direct respondent to accept the amount in deposit and confirm the sale of said site.

2. Petition though not opposed by filing statement of objections, nevertheless, Sri K.Krishna, learned counsel for respondent-BDA making reference to the records submits that no discretion is vested in the BDA to extend the period of 72 hours in the matter of payment of 25% of the bid amount, while, the only discretion available to the Commissioner is in relation to payment of balance of value of the site under Rule 6 (4) of the Bangalore Development Authority (Disposal of Corner

Sites & Commercial Sites) Rules 1984, for short 4 Rules. According to learned counsel, since petitioner did not make payment of 25% of the bid amount the question of payment of balance bid amount did not arise under Sub-rule (4) of Rule 6.

3. Sub-rule (4) of Rule 6 reads thus : (1) xxx (2) xxx (3) xxx xxx xxx xxx xxx xxx xxx 6. Conditions of auction sale of corner sites or commercial sites: (4) The Commissioner may grant extension of time not exceeding ninety days for depositing the balance of the bid amount. Whenever the amount is paid during such extended period the auction purchaser shall also pay interest thereon at eighteen per cent per annum and a penalty of rupees hundred and failing such payment, the Authority shall be entitled to forfeit the deposit made by the auction purchaser and resell the site at the risk of the auction purchaser. In the light of admitted facts supra, it is needless to state that Sub-rule (4) of Rule 6 has no application to the facts of the case and petitioner is not entitled in extension of time for payment of 25% of bid amount. The aforesaid rule has no application to the case of 5 payment of 25% of the bid amount, since it cannot be equated to payment of balance of the bid amount which represents the entire bid amount. Therefore the condition in the e-Auction notification that the successful bidder must deposit 25% of the bid amount within a time frame does not attract Rule 6(4) of the Rules.

4. The following observations of the Apex Court in *Bedanga Talukdar vs. Saifudaullah Khan and Others*¹, in the circumstances, is apposite: Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is 1 2011(12) SCC856 provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are

afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India. In terms of e-Auction notification Annexure-A, since petitioner did not comply with the said terms and conditions over payment of 25% of the bid amount within the time stipulated, the respondent-BDA forfeited the EMD made by the petitioner. Rs.4,00,000/- being Earnest Money Deposit of the petitioner, ends of justice would be met by directing respondent-BDA to treat the said amount as EMD, in the event, petitioner responds to any future 7 e-Auction notification whence sites are put up for auction and permit the petitioner to make his bid.

5. Subject to the above observation, this petition is rejected. Ia Sd/- JUDGE

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