

Korada Vindhya Vs. Visakhapatnam Urban Development Authority and anr.

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Court : Andhra Pradesh

Decided On : Feb-15-2008

Reported in : 2008(3)ALD716; 2008(3)ALT270

Judge : C.Y. Somayajulu, J.

Appeal No. : Writ Petition No. 14221 of 2004

Appellant : Korada Vindhya

Respondent : Visakhapatnam Urban Development Authority and anr.

Advocate for Def. : V. Preeti Reddy, Adv.

Advocate for Pet/Ap. : V. Srinivas Rao, Adv.

Disposition : Petition allowed

Judgement :

ORDER

C.Y. Somayajulu, J.

1. The petitioner, who participated in public auction held on 03-08-2004 by the Visakhapatnam Urban Development Authority (first respondent) for sale of plots in T.S. No. 442/P of Kothapeta South Ward Cattle Shed Layout, Vizianagaram Town, became the highest bidder in respect of plot No. 13 by offering the highest amount

of Rs. 1,990/- per square yard. When the petitioner received letter dated 05-07-2004 in R.C. No. 2426/02/F1 informing her that bid amount offered for plot No. 13 is not accepted and hence D.D submitted by her for Rs. 10,000/- with the application is returned therewith, the petitioner filed this petition questioning the said proceedings received by her.

2. In the counter-affidavit filed on behalf of the first respondent and also the auction committee-second respondent, the Secretary of the first respondent stated that in the earlier auction that was conducted on 29-02-2004 where Sri K.S.S. Srinivas Rao, who figured as the highest bidder for Rs. 4,560/- per square yard, did not pay the amount in time, that auction was cancelled and the plot was put up for auction again on 08-06-2004, where the petitioner figured as the highest bidder for Rs. 1,990/- per square yard. As the auction committee which reserved a right to delete any plot from auction at any stage either before the commencement of the auction or during the course of the auction or reject the highest bid offered or to postpone the auction without assigning any reasons, and as the petitioner subscribed her signature accepting that condition, she cannot question the rejection of her offer by the committee, on the ground that her bid was less than the bid in the earlier auction. In fact, when the same plot was re-auctioned on 03-08-2004, the father of the petitioner, who participated in the said auction, offered Rs. 3,150/- per square yard but his bid could not be confirmed because of the stay obtained by the petitioner in this petition.

3. The main contention of the learned Counsel for the petitioner is that inasmuch as the letter received by the petitioner, which is questioned in this petition, does not disclose the reasons for rejecting the highest bid of the petitioner, petitioner is not aware of the reasons for rejection of her bid and as public authorities have a duty to act fairly and honestly, merely because condition No. 18 clothes the respondents with a right to reject any offer without assigning any reasons, respondents cannot reject the offer made by the petitioner without assigning any reasons, and contended that participation of the father of the petitioner in the next auction held by the respondents, and his making a bid higher to that made by the petitioner does not and cannot validate an invalid action of the respondents of rejecting the highest bid of the petitioner.

4. The contention of the learned standing counsel for the respondents is that in view of condition No. 18 of the terms and conditions of the bid, which was accepted to and agreed by the petitioner by subscribing her signature thereto, respondents have a right to cancel the bid without assigning any reasons, and contended that the bid of the petitioner was not accepted inasmuch as the earlier bid received for the same plot was Rs. 4,560/- and so the second respondent felt that the price offered by the petitioner is not a proper price for the plot and hence, it did not accept the offer of the petitioner, in pursuance of the power vested in it by condition No. 18 of the terms and conditions of the sale, and in fact when the plot was put to re-auction the father of the petitioner offered an amount of Rs. 3,150/- which fact also establishes that the offer made by the petitioner does not reflect the real price of the plot and so the petitioner is not entitled to any relief.

5. On my direction, the learned standing counsel for the respondents, produced the file. I have gone through the file produced by the learned standing counsel. That file does not contain any of the proceedings of the auction committee (the second respondent). When I asked the learned standing counsel for the respondents to show the proceedings) of the second respondent whereat it allegedly took a decision not to accept the bid of the petitioner, she, by showing a copy of the letter impugned, stated that that is the only document available with her and that she has instruction to state that the auction committee rejected the offer for the reasons mentioned in the counter affidavit.

6. Condition No. 18 of the terms and conditions of the auction reads as under:

Terms and conditions of auction: Condition No. 18:

18. The auction committee reserves the right to delete any plot from Auction at any stage either before the commencement of the Auction or during the progress of the proceedings of the Auction and to reject any or all applications received for Auction and to reject even the highest bid amount offered in the auction and to postpone the auction without assigning any reason. The applicants or the participants in the auction shall not be eligible to make any claim for compensation or otherwise in the event of such deletion of plots or rejection of bid or postponement of auction.

7. In view thereof it is for the auction committee to take decision, on the bid made by the petitioner.

8. As stated earlier, the proceedings of the second respondent, where it is said to have rejected the bid of the petitioner, is not produced before me for my inspection. So for what reasons the second respondent i.e. the auction committee, rejected the bid of the petitioner is not known.

9. As rightly contended by the learned Counsel for the petitioner though condition No. 18 vests a right in the second respondent to reject the bid, that right cannot be exercised arbitrarily. Though the communication received by the petitioner need not contain the reasons for the decision, there should at least be a file to show that the second respondent in fact met and took a decision on the bid of the petitioner.

10. As condition No. 18 vests a right in the second respondent to reject any bid, not everybody in the first respondent except the second respondent have a right to take a decision on the bid made by the petitioner.

11. As no file showing that it is the second respondent that took the decision not to accept the bid of the petitioner, and as the reckoning in the Courts of law about things not in existence and things not produced before it, in spite of an order for production, is the same, it cannot but be held that it is not the second respondent that took a decision not to accept the bid of the petitioner, and it may be somebody else that took such a decision. The reasons for such decision are not found in the file produced before me. Only the counter affidavit filed on behalf of the respondents gives the reasons for not accepting the bid of the petitioner. It is not known whether the deponent to the affidavit is a member of the second respondent or not.

12. Therefore, the order impugned is liable to be and hence is set aside. Respondents shall execute the sale deed in favour of the petitioner on payment of price as per the bid made by her. The writ petition accordingly is allowed with costs.