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M. Padmavathi Vs. Hyderabad Urban Development Authority

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Court : Andhra Pradesh

Decided On : Sep-08-2006

Reported in : 2006(5)ALD741; 2006(5)ALT722

Judge : G.S. Singhvi, C.J. and ;G.V. Seethapathy, J.

Acts : Andhra Pradesh Urban Areas (Development) Act, 1975 - Sections 54; Constitution of India - Articles 12, 14 and 166

Appeal No. : WP No. 14901 of 2006

Appellant : M. Padmavathi

Respondent : Hyderabad Urban Development Authority

Advocate for Def. : T. Niranjan Reddy, (SC)

Advocate for Pet/Ap. : R. Narasimha Reddy, Adv.

Disposition : Petition dismissed

Judgement :

G.S. Singhvi, C.J.

1. The petitioner, who along with four others gave highest bid of Rs. 20,80,800/- for a plot measuring 4080 square metres auctioned by Hyderabad Urban Development Authority (for short 'HUDA') in 1996, but did not deposit the

instalments of price in accordance with the conditions of allotment necessitating cancellation of her bid by the competent authority on 24-2-1999, has filed this petition for quashing the fresh auction proposed to be held by HUDA. She has further prayed for issue of a mandamus to HUDA to execute and register the sale deed in her favour by accepting the balance amount.

2. The petitioner participated in the auction conducted by HUDA on 5th and 6th of August, 1996 for sale of plots in HUDA Trade Centres at Ramachandrapuram and Saroornagar. She along with Sarvasri L. Srinivas, M.V.S. Sridhar, L, Chandrasekhar and Dr. Jaganmohan Rao gave bid of Rs. 20,80,800/-for Plot No. A measuring 4080 square metres meant for cinema theatre. Their bid was accepted by the competent authority and provisional allotment letter dated 28-8-1996 was issued by the Vice-Chairman of HUDA. In terms of that letter, the petitioner and her co-bidders were required to pay balance price of Rs. 15,60,600/- within one month from the date of auction or within three months from the date of auction with interest @ 20%, but they failed to do so. Consequently, vide proceeding N0.5642/EMC/HUDA/96, dated 24-2-1999, the competent authority cancelled the allotment and refunded Rs. 2,25,283/- after making necessary deductions. For the next four years and ten months, the petitioner and her co-bidders kept quiet. She made representation dated 20-12-2003 to the Chief Minister for restoration of allotment. After another seven months, she made representation dated 1-7-2004 to the Chairman of HUDA for restoration of allotment by stating that she was prepared to pay the balance price. On 12-7-2006, she made another representation to the Vice-Chairman of HUDA with the complaint that she has been discriminated inasmuch as the allotment of Plot No. D measuring 9624-02 square metres, which was meant for medical institution and hospital, was restored despite the fact that the allottee had not paid the price, but, in her case, order for restoration has not been issued and the plot has been notified for re-auction. After some time, she instituted this petition for restraining HUDA from auctioning the plot in question and for restoration of allotment in her favour by asserting that the respondents have arbitrarily refused to entertain her plea. She has relied on some policy decision taken on the note file bearing No. 1695/EMU/ HUDA/03 and pleaded that when the HUDA authorities have restored plots of others by accepting the balance price with penalty, there is no justification

to deny similar treatment to her.

3. In the counter-affidavit filed by Shri P. Venkat Rama Reddy, Secretary of HUDA, it has been averred that the petitioner and her co-bidders are not entitled to restoration of plot because the same had been cancelled more than seven years ago on account of non-payment of the balance price. In paragraphs 4, 5 and 8, the deponent has averred as under:

4. It is submitted that in reply to Para 2 of the affidavit filed in support of the writ petition, it is submitted that as per condition No. 7 of the brochure, the total sale price shall be payable in one month without interest which includes the initial deposit paid soon after the acceptance of the bid and as per the condition No. 7(b), the applicant shall have the option to pay the balance sale price remaining after payment of ID within three months from the date of auction with interest. The final allotment letter will be issued only on receipt of full sale consideration with interest, if any, whereas the Confirmation-cum-Provisional Allotment Letter was issued after payment of 1/4th sale consideration.

5. It is submitted that the petitioner paid the following amounts in piece meal manner as shown below contrary to the above conditions and continued to pay till 6.8.1998 and still keeping balance sale consideration pending. Whereas the due date as per auction to pay in installments which is 4.11.1996.

Total cost of the plot 20,80,000.00EMD paid on 5.8.1996 50,000.00ID on 6.8.1996 (Rs. 1,90,000/-) 4,70,200.009.8.1996 (Rs.1,00,000/-)7.8.1996 (Rs. 1,80,200/-)Balance Sale price paidon 20.11.1996 3,00,000.0010.1,1997 2,10,000.0010.1.1997 30,000.0011.2.1998 1,20,000.00 31.7.1998 50,000.006.8.1998 1,00,000.006.8.1998 1,00,000.00Total amount paid 14,30,200.00Interest paid as on 31.12,1998 6,84,717.00Principal amount paid ason 31.12.1998 7,45,483.00Balance principal amount ason 31.12.1998 13,34,517.00% of principal amount paid as 35.84%on 31.12.1998 whereas the cancellation ordered on 24.2.1999 Cancellation orders issued vide Dated 24.2.1999proceedings No. 5642/EMC/HUDA/96, dated 24.2.1999 forfeiting the initial deposit and interest or belated payments while refunding Rs. 2,25,283/-.The allottee paid another amount Rs. 1,50,000.00on 15.5.1999 after cancellationand

thereafter no payments were made.8. The petitioners have made representations on 19.11.1996, 10.1.1997, 7.10.1997, 11.2.1998 and 31,7.1998 for extension of time for payment of balance sale consideration and never complied with forcing the authority to ultimately cancel the Confirmation-cum-Provisional Allotment on 24.2.1999 in spite of giving sufficient opportunity, the petitioners failed to pay the balance sale consideration even after 2 1/2 years. Again the petitioners in their representation dated 15.5.1999 while remitting Rs. 1.50 lakhs requested to grant three months time to pay the balance amount and their request was rejected on 7.6.1999 informing that their allotment was already cancelled for nonpayment of balance sale price and question of granting time does not arise.

4. On the issue of restoration of Plot No. D, Sri P. Venkat Rama Reddy has made the following averments in paragraphs 10 and 11:

10. In reply to the allegations made in Paras 6 and 7 of the affidavit filed in support of the writ petition, it is submitted that the highest bidder of Plot No. D had paid the following amounts on the date of cancellation i.e. by 24.4.1998.

Total cost of the plot Rs. 49,17,430/-I.D. amount forfeited on the dateof cancellation on 24,4.1998 Rs. 12,29,358/-Interest forfeited on 24.4.1998 Rs. 1,81.878/-Refunded Rs. 22,28,122/-Total actually paid Rs. 36,39,358/-As seen from the above, the allottee paid principal amount of Rs. 34,57,480/- out of sale price of Rs. 49,17,430/- and paid an interest of Rs. 1,81,878/-. Thus, the percentage of principal amount paid by the allottee is 70.3%. Therefore, the request of the allottee was considered for revocation and sale deed executed whereas the percentage of the payment of the petitioner under reference is only 35.84% far less than the 60%. It is submitted that the case of the bidder of Plot No. D was considered as he paid the amount of more than 70% of the sale price. As pointed out earlier, the petitioner had not paid the 60% of the total sale consideration at any point of time and as such her case never came up for consideration. The allegation made in the affidavit that discrimination was shown to the petitioner is factually incorrect and the same is denied. It is submitted that the decision to regularize the plot was implemented in 2003 only to the allottees who paid the 60% of the total bid amount. Hence, it is submitted that the authority

acted fairly and no discrimination was shown to allottee at any point of time.

It is submitted mat in reply to Para 8 of the affidavit filed in support of the writ petition, it is submitted that a reply has been sent to the Chief Minister Office on 16.4.2004 with reference to the letter dated 1.3.2004 of Principal Secretary to Chief Minister informing that the sale price was not paid in spite of several written request, the allotment was cancelled on 24.2.1999 and also informing that in the auctions held in February, 2004, a maximum rate fetched in the above complex is Rs. 9,650/- per sq. yard by which the site under reference will fetch Rs. 2.81 crores compared to Rs. 510/- per Sq.Mtr. amounting to Rs. 20.80 lakhs during the auction held on 5.8.1996 and the Provisional Allotment was cancelled on 24.2.1999 i.e. (5) years back for violation of terms and conditions.

5. Sri R. Narasimha Reddy, learned Counsel for the petitioner argued that the failure of HUDA to abide by the policy decision dated 19/20-2-2003, which is reflected from the note file bearing No. 1695/EMU/HUDA/03, has resulted in violation of the petitioner's fundamental right to equality guaranteed under Article 14 of the Constitution of India. Learned Counsel submitted that HUDA has implemented the policy decision in other cases and restored the allotment, despite the fact that the highest bidders had failed to abide by the conditions of allotment, but, in the petitioner's case, order of restoration of allotment has not been passed despite the fact that she had expressed her willingness to pay the balance price with penalty. Learned Counsel emphasized that the policy decision taken by HUDA is required to be uniformly applied and the petitioner cannot be discriminated without any rhyme or reason. Lastly, he submitted that if HUDA is allowed to re-auction the plot, the petitioner would suffer irreparable injury.

6. Sri T. Niranjan Reddy, learned Counsel for HUDA, on the basis of the instructions given to him, made a statement that in the auction conducted on 21-7-2006, highest bid of Rs. 6 crores has been given for the plot in question, but final decision could not be taken on account of ad-interim order dated 20-7-2006 passed by the learned Single Judge. On merits, he submitted that the provisional allotment made in favour of the petitioner and her co-bidders was cancelled because they failed to pay the balance price in accordance with the conditions of

allotment. On the issue of discrimination, Sri T. Niranjan Reddy submitted that the case of the petitioner has no similarity with that of the allottee of Plot No. D, who had paid 70.3% of the principal amount as against 35.84% of the principal amount paid by the petitioner and her co-bidders.

7. We have given serious thought to the respective arguments. Article 14 of the Constitution of India, which declares that the State shall not deny any person equality before the law or the equal protection of the laws within the territory of India, represents positive concept to ordain the State to treat all the similarly situated persons equal before the law and extend equal protection of the laws. There is nothing in the language of Article 14 or its interpretation by the superior Courts of the country from which it can be inferred that the doctrine of equality embodied therein can be enforced by directing a public authority to act in violation of law or commit any illegality or pass an illegal order or confer a benefit upon a person by violating the statutory provisions merely because some illegality has been committed in another case or an illegal order has been passed in favour of some other person. To put it differently, no person can claim equality and seek enforcement of Article 14 by contending that a public authority has acted illegally in a similar case. This proposition of law must be treated as settled by the decisions of the Supreme Court in Chandigarh Administration v. Jagjit Singh : [1995]1SCR126 , Secretary, Jaipur Development Authority v. Daulat Mal Jain : (1997)1SCC35 , Gursharan Singh v. New Delhi Municipal Committee : [1996]1SCR1154 , Faridabad CT Scan Centre v. D.G. Health Services : 1997ECR801(SC) , Style (Dress Land) v. Union Territory, Chandigarh : AIR 1999 SC3678 and State of Bihar v. Rameshwar Prasad Singh : AIR 2000 SC2306 .

8. The facts of Jagjit Singh's case (supra), were that the respondents who had given the highest bid for 338 square yards plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him

was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under;

We are of the opinion that the basis or the principle, if it be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong

orders in accordance with law - but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/ order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course - barring exceptional situations -would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).

9. In Secretary, Jaipur Development Authority v. Daulat Mal Jain (supra), the Supreme Court held as under:

The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the

respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts.

10. In Gursharan Singh v. New Delhi Municipal Committee (supra), the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law.

11. In Faridabad CT. Scan Centre v. D.G. Health Services (supra), the three Judges Bench of the Supreme Court overruled the earlier decision of the two Judges Bench and held:

Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others.

12. In State of Bihar v. Rameshwar Prasad Singh (supra), the Supreme Court held as under:

The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.

13. If the petitioner's case is considered in the light of the propositions of law laid down in the aforementioned decisions, we have no hesitation to hold that her prayer for issue of a direction to HUDA to restore allotment of Plot No. A or to restrain the authorities of HUDA from auctioning the plot is wholly misconceived and the writ petition is liable to be dismissed.

14. In our considered view, the petitioner cannot seek restoration of allotment of Plot No. A merely because in some other case the HUDA authorities have, in utter violation of the provisions contained in the Act and rules and regulations framed thereunder, restored the allotment despite the fact that the bidder failed to comply with the conditions of auction/allotment. Such a decision or action can appropriately be termed as a fraud on the statute and cannot be made basis for invoking Article 14 of the Constitution.

15. The so-called policy decision taken by HUDA, which is reflected in note file bearing No. 1695/EMU/HUDA/03, is in the form of a note prepared by Executive Officer on 19-2-2003, which was approved by the Secretary on 20-2-2003 and by

the Vice-Chairman on 21-2-2003. Paragraphs 6 to 10 of the note file, which have been annexed with the writ petition as Annexure P-3, read as under:

6. A general policy may be applied to all cases of revocation in all layouts and complexes developed by HUDA. Cancellation orders may be revoked if the allottee has paid 50% and above of the cost of the plot/house while imposing penalty of 5% of sale price as in Shamshabad layout.

7. Orders may also be issued regarding circulation of all such files to VC for approval.

8. xxx

Sd/-E.O. (19/2/03) Secy. V.C.9. The cases can be considered, where allottees have paid 50% and more and the penalty may be imposed, not less than 1% on sale price.

Sd/-Secy. (20/2/03) V.C.10. Revocation of cancellation can be done in all cases where payment is 60% and more with 5% penalty on sale price.

Put up a policy for interest rates and compounding also.Sd/-Vice-Chairman (21/2/03)

16. It is neither the pleaded case of the petitioner nor any document has been produced before the Court to show that in furtherance of the so-called policy decision, any general order or notification duly authenticated in terms of Section 54 of the Andhra Pradesh Urban Areas (Development) Act, 1975 (for short, 'the Act') was issued by the competent authority so as to make the public aware of the decision. Therefore, the noting recorded in the file cannot be treated to be a policy decision taken by HUDA and the same cannot be enforced by issue of a mandamus. In Bachhittar Singh v. State of Punjab AIR 1963 SC 395, the Constitution Bench of the Supreme Court considered the question whether notes recorded in the file or an order passed by the Minister on the file of the Government can be treated as an order of the Government and answered the same in negative by recording the following reasons:

Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by Clause (1) of Article 166 of the Constitution and then it has to be communicated. The Constitution requires that the action must be taken by the authority concerned in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State. Constitutionally speaking the Minister is no more than an adviser and that the head of the State, the Governor is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor, whatever the Minister or the Council of Ministers may say in regard to particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister of the Council of ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Therefore to make the opinion amount to a decision of the Government it must be communicated to the person concerned. It is of the essence that the order has to be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and therefore till its communication the order cannot be regarded as anything more than provisional in character.

17. 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.

18. No other point has been argued.

19. For the reasons mentioned above, the writ petition is dismissed. The petitioner shall pay costs of Rs. 10,000/- for filing a frivolous and vexatious petition, which has compelled the respondent to engage a lawyer by paying fee and consumed substantial time of the learned Single Judge as well as the Division Bench of this Court. The amount shall be deposited by the petitioner with the Andhra Pradesh State Legal Services Authority within one month from today. The Member Secretary, Andhra Pradesh State Legal Services Authority should inform the Court in writing about the deposit of costs by the petitioner, so that if it becomes necessary, the Court may issue further direction for recovery of the amount of costs by coercive methods.

Note: Conditional order has been complied with end and the cost of Rs. 10,000/- paid vide USR No. 8329 dated 16-9-2006.

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