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Court : Allahabad

Decided On : Aug-04-2000

Reported in : (2000)3UPLBEC2336

Judge : D.S. Sinha and ;Dev Kant Trivedi, JJ.

Acts : Allahabad High Court Rules, 1952 - Rule 12

Appeal No. : Civil Misc. Writ Petition No. 1356 of 1998

Appellant : Parsvnath Developers Ltd. and anr.

Respondent : New Okhla Industrial Development Authority, Noida and ors.

Advocate for Def. : U.S. Awasthi, Adv. and ;Vinay Malviya, S.C.

Advocate for Pet/Ap. : Santosh Kumar Tripathi and ;U.K. Shandilya, Adv.

Judgement :

D.S. Sinha, J.

1. Order-sheet indicates that instant petition was filed on 15-1-1998 and was directed to come up on 19-1-1998. However, the petition came up on 20-1-1998 on which date a supplementary-affidavit was filed. The case was directed to be

listed after three weeks. Next date fixed in. the case was 25-11-1998. The order-sheet of that date indicates that the learned Counsel for the petitioners was directed to file an amended petition within two days. Thereafter, the matter was before the Court on 8-1-1999, and the Court passed the following order :

'Hon'ble M. Kathju, J.

Hon'ble R.K. Singh, J.

As prayed list on 27-1-1999 alongwith the record of Second Appeal No. 2110 of 1987 showing the name of Counsel for the parties in that appeal also. It is made clear that both these cases will be heard and disposed of on that date. This order has been passed in presence of Sri U. S. Awas-this, Counsel for the respondents.
Sd./- Sd./-M. Katju R.K. Singh'

2. The order-sheet dated 27-1-1999 indicates that again, on prayer being made in that regard, the Court directed the case to be. listed alongwith Second Appeal No. 2110 of 1987 on 23-2-1999. While passing the order the Court also passed an order making it clear that the case would be heard and decided finally on the date fixed. But, on 23-2-1999 the case was left out. It came up before the Court on 11-3-1999. On 11-3-1999 Shri Santosh Kumar Tripathi, one of the two learned Counsels, appearing for the petitioners, requested that the case be passed over and listed in the next cause list. The prayer was accepted. The case was up before the Court on 20-7-1999 and it was directed to come up the next day i.e., 21-7-1999. On 21-7-1999 the case was directed to be listed in the next week on the request of the Counsel.

3. After lapse of about one year, on 3-7-2000, the case was listed again. On this day Shri Santosh Kumar Tripathi, one of the two Counsels appearing for the petitioners, stated that the other Counsel Shri U.K. Shandilya had instructions to argue the case but he was out of station. On this statement Shri Tripathi prayed that the case might be adjourned for the day.. The prayer of Shri Tripathi was accepted. The petition was listed again on 11-7-2000. But, it was passed over as Shri Santosh Kumar Tripathi had sent an illness slip praying for adjournment of the case and the case was adjourned. On 19-7-2000 when the case was listed next

Shri Santosh Kumar Tripathi again sent an illness slip praying for adjournment of the case. The illness slip of Shri Tripathi was honoured and the case was adjourned.

4. Now the case is up for consideration today. Shri Santosh Kumar Tripathi, one of the two Counsels appearing for the petitioners, is present and prays for adjournment of the case on the ground that Shri U.K. Shandilya is not available. Shri Tripathi insists that the case must be adjourned and refuses to argue the case despite being invited repeatedly.

5. It is not the stand of Shri Tripathi that he has ceased to be Counsel for the petitioners. It is also not the case of Shri Tripathi that he has no instructions to argue the case.

6. Indeed, from the demeanour of Shri Tripathi, it appears that he wants to compel the Court to accept his request for adjournment of the case. At this stage, it will be relevant to notice that the prayer for adjournment is oral. There is no application in writing stating full facts and circumstances constituting sufficient cause warranting adjournment of the case as required by Rule 12 of Chapter VI of the Rules of Court, 1952 which provides procedure for motion for adjournment of any case.

7. In view of the fact that the case has been pending for admission for more than two and a half years, that the case has been adjourned at the behest of the learned Counsel for the petitioner on a number of occasions, specially on the last three consecutive occasions, to be precise, on 3-7-2000, 11-7-2000 and 19-7-2000; and that there is no application giving sufficient cause for adjournment, the Court declines to entertain the oral prayer for adjournment and once again invites Shri Santosh Kumar Tripathi to argue the case. Shri Tripathi again insists for adjournment and refuses to argue and assist the Court in deciding the case.

8. It is to be remembered that for so long as his engagement is not terminated by the litigant after obtaining leave of the Court or he is permitted by the Court to withdraw from the case an Advocate appearing in a case is legally obliged to conduct the case, and refusal to do so amounts to professional misconduct. Apart from his professional obligation towards his client an Advocate being an officer of

the Court owes the duty to assist the Court in the administration of justice. Refusal to assist the Court by the duly engaged Advocate, besides being breach of trust reposed in him by the litigant, amounts to obstruction in administration of justice which may invite proceeding for contempt of the Court.

9. Sri U.S. Awasthi, the learned Counsel appearing for the respondent No. 1, and Shri Vinay Malaiya, the learned Standing Counsel for State of U.P., appearing for respondents, are present and willing to assist the Court in adjudication of the case.

10. In the backdrop of what has been said above, availing the valuable assistance of the aforementioned two Counsels, the Court proceeds to consider the petition on merits.

11. New Okhla Industrial Development Authority, the respondent No. 1, (hereinafter called 'NOIDA') issued an advertisement in the newspaper 'Hindustan Times' on 28-6-1997 inviting offers through tender, inter alia, for a commercial plot bearing No. K-89 in Sector-18 of NOIDA falling in Khasra No. 401. According to notice, the tenders were to be opened on 10-7-1.997 at 3.00 p.m.

12. The invitation to offer in pursuance of the advertisement was subject to specified general terms and conditions. These terms and conditions are on record before the Court as Annexure No. '1' to the Supplementary-Affidavit of Col. Virender Kumar Oberoi, the petitioner No. 2.

13. Clauses I and III of General Condition No. 3 and the Condition No. 7, which are relevant in the context, read thus :

Condition No. 3.

'(1) The Chief Executive Officer, NOIDA or any other officer authorised by the Chief Executive Officer, NOIDA reserves the right to reject any tender including the highest tender without assigning any reason.'

'(III) After the acceptance of the tender by the Chief Executive Officer, NOIDA or any officer authorised by Chief Executive Officer, NOIDA tenderer will be informed of such acceptance in writing through allotment letter and the tenderer shall within

30 days thereof pay 25% of the tendered amount in cash or in Bank Draft, drawn in favour of NOIDA payable at NOIDA/Delhi/New Delhi. If this 25% amount is not paid, the deposit of Earnest Money will be forfeited. No extension of time shall be granted for deposit of the amount under any circumstances.'

Condition No. 7

'7. In case due to unavoidable circumstances the possession of plot is not handed over to allottee then full amount so deposited would be refunded back in due course to allottee. However, no interest would be paid to allottee.'

14. Respondent to the advertisement of NOIDA, inviting offers in regard to plot No. K-89 falling in Khasra No. 401, on the terms and conditions extracted above, the petitioners submitted tender giving his bid which, according to the petitioner, was found to be highest. The petitioners assert that despite several approaches by them through various communications between 10-7-1997 and 13-12-1997 no letter of allotment was issued to them.

15. Feeling aggrieved, the petitioners have filed instant writ petition urging this Court to direct the respondents to issue letter of allotment in respect of Plot No. K-89, Sector-18, NOIDA. Further prayer of the petitioners is that appropriate writ, order or direction directing the C.B.I, to conduct enquiry into the conduct of the respondents and their prosecution according to law be issued. The prayer for quashing Condition No. 3(1) of General Conditions has also been made.

16. On record of the petitioner, there is a letter dated 1-1-1998 addressed to the Chairman of the petitioning-company M/s.Parasvnath Developers Ltd. Which runs as under:

'To,

The Chairman,

M/s. Parasvanath Developers Ltd.,

G-2, Arunanchal,

19, Barakhamba Road,

New Delhi-110119

Dear Sir,

Against Scheme No. 9-98 XXX(02) your tender for plot No. K-89 Scooter-18 was received and opened on 10-7-1997. Plot No. K-89 falls in KR No. 401 village Chalera Bangar Mazra Atta. In Second appeal No. 2110/87 Amar Singh v. NOIDA, the Hon'ble Court has passed ad-interim order dated 19-8-1997 staying the dispossession of the plaintiff/appellant from the disputed land.

Under Clause 7 of terms and condition of brochure, bid is not accepted and the plot No. K-89 Sector 18 is withdrawn from the scheme. The full amount deposited by you hereby refunded to you as per details given below :

(1) Cost form No. Rs. 1000/- Cheque No. 188220 dated 24-12-97 drawn on State Bank of Patiala, Noida.

(2) Processing fee Rs. 10,000/- as per Draft No. 358225 dated 10-7-97 submitted by you,

(3) Earnest money Rs. 15,00,000/- as per Draft No. 900157 and 358226 dated 9/10-7-97 submitted by you.

Yours faithfully,

(K.K. Gupta)

Desk Officer(Comm.)'

17. From the letter dated 1-1-1998, it transpires that plot No. K-89 falls in Khasra No. 401 of village Chalera Bangar, Mazra Atta in respect of which a dispute between one Shri Amar Singh and NOIDA is pending before this Court in Second Appeal No. 2110 of 1987 wherein an interim order dated 19-8-1987 was passed by the Court staying dispossession of Shri Amar Singh, the appellant in the appeal. The record of Second Appeal is before the Court and reveals that in fact

there is an interim order in favour of Shri Amar Singh restraining NOIDA from dispossessing him from the disputed land till further orders. The record also shows that the interim order is still continuing. The letter dated 1-1-1998 discloses that the reason for not accepting the bid of the petitioners and not making consequential allotment of the plot in question is the interim order dated 19-8-1987 passed by this Court in Second Appeal No. 2110 of 1987, *Amar Singh v. NOIDA*.

18. In not accepting the bid of the petitioners and withholding the allotment of the plot in question in favour of the petitioners, NOIDA has acted in conformity with the interim order dated 19-8-1987 passed by this Court in Second Appeal No. 2110 of 1987, mentioned above. Indeed, the NOIDA is under legal obligation to obey the interim order of this Court so long it is operative. Therefore, in the opinion of the Court, NOIDA committed no illegality in not accepting the bid of the petitioners and not making allotment of the plot in question in their favour. The action of the NOIDA cannot be, by any stretch of imagination, held to be contrary to law. Under the General Terms and Conditions extracted earlier NOIDA had every right to reject the tender of the petitioners notwithstanding their bid being highest.

19. The controversy almost identical to the one raised in this petition, was also raised before a Division Bench of this Court in Civil Misc. Writ Petition No. 976 of 1996, *Shri Virat Bhushan v. New Okhla Industrial Development Authority through its Chairman and Anr.*, decided on 21st August, 1997. Relying on the decisions of the Hon'ble Supreme Court rendered in cases *Surendra Pal Singh v. Zila Parishad, Muzaffarnagar*, reported in (1991) 2 UPLBEC 925, *Asis Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd. and Ors.*, reported in (1997) 1 Supreme Court Cases 738, *State of U.P. and Ors. v. Vijay Bahadur Singh and Ors.*, reported in AIR 1982 SC 1234, and *Agra Cantt. Vendors Co-operative Society Ltd., Agra v. The Union of India and Ors.*, reported in 1984 UPLBEC 181, the Division Bench rejected the claim of the petitioner for acceptance of his bid despite his bid being highest and dismissed the petition. Neither it is appropriate nor is there any justification for taking a view contrary to the view taken by the said Division Bench.

20. Shri U.S. Awasthi, the learned Counsel for the respondent NOIDA, draws the attention of the Court to the averments made in paragraph 3 of the counter-affidavit of Shri K.K. Gupta, filed on behalf of the respondent No. 3, wherein it is stated that the money deposited by the petitioners in pursuance of their bid has been refunded to the petitioners and it has been accepted by them. There is nothing on the record to show that the averments made in paragraph 3 of the counter-affidavit have been rebutted by the petitioners. Shri U.S. Awasthi contends that in view of the fact that the amount tendered by the petitioners was returned to them and the same had been accepted by them, they are estopped from claiming the reliefs prayed for. The contention of Shri Awasthi is well-founded.

21. All told, in the opinion of the Court, the petition is devoid of substance and deserves to be dismissed. It is dismissed accordingly. The interim order/orders shall stand vacated. However, there is no order as to costs.

22. The Second Appeal No. 2110 of 1987, Amar Singh v. NOIDA, shall no longer be treated to be linked with instant writ petition, and may be listed before the appropriate Bench for disposal. Decided accordingly.