

SUPREME COURT OF INDIA

Dipak K. Ghosh

Vs

State of West Bengal and Others

Writ Petition (Civil) 216 of 1999; I.A.Nos. 4-9 of 2005 In Writ Petition(C) No. 216 of 1999

(H. K. Sema and Dr. Ar. Lakshmanan, JJ)

10.03.2006

JUDGMENT

H. K. SEMA, J.

Heard parties.

This I.A.No. 4 of 2005 arises out of W.P. No.216 of 1999 with C.A.No. 6707 of 1999 disposed of on 19.11.2004 inter alia with the following directions:-

(i.) The Government may appoint a Govt. Valuer and after assessing the cost of construction, at the prevailing rate at the time of construction, (cost of land will not be included), offer the said price to respondent No. 8 and the Govt. may take over the building. In this event the Government should give to respondent No.8 one year's time to vacate, provided respondent No.8 and all family members and persons residing in the bungalow file an undertaking in this Court within 8 weeks from today, that they will hand over to the Government vacant and peaceful possession at the end of one year.

(ii.) Alternatively, if respondent No.8 feels that he should receive the prevalent market value for the

bungalow, he may so intimate the Government. The Government may then put the house along with the land for public auction by advertising the same in two national dailies and one local daily, if any, widely circulated in the area and offer to sell the house to the highest bidder.

(iii.) In the case, as in Clause (ii), there would be two separate bids - one for the house and the other for the land. In respect of the house the reserve price should be fixed which shall not be less than the market value of a bungalow of this type at present rates. Such valuation to be fixed by the Government Valuer. The value to be based on vacant possession being delivered to the purchaser.

(iv.) The price of the house fetched in the auction sale be paid to Justice B.P. Banerjee and he must within a week of receipt of the price hand over vacant and peaceful possession to the purchaser. If not delivered, the Government to ensure eviction and delivery of possession to the purchaser.

(v.) The process of the aforesaid directions shall be completed within six months from the date of receipt of this order.

(vi.) The Chief Secretary of the Government of West Bengal shall send the compliance report within the period stipulated.

(vii.) We clarify that respondent No. 8 or his relations shall not be allowed to bid in the auction sale

We may mention here that the Review Petition against the aforesaid judgment and directions was dismissed on 22.2.2005. Curative Petition was also dismissed on 30.11.2005.

The aforesaid directions having not been adhered to by respondent No.8 Mr. Justice B.P.Banerjee (Retd.), this I.A. was filed by the State of West Bengal seeking the following directions from this Court:

(a) Pass appropriate directions to Respondent No.8, Mr. Justice B.P.Banerjee (Retd.) that he should cooperate with the applicant State of West Bengal in its efforts to implement this Hon'ble Court directions passed in its judgment dated 19.11.2004; and

(b) To extend the time stipulated by this Hon'ble Court in the said judgment by a period of another 3 months time.

(c) and pass such further or other orders as this Hon'ble Court may deem just and in the circumstance of the case."

The interim order was passed by this Court on 6.5.2005 as under:

"There will be an interim order directing Justice Banerjee to allow the valuer appointed by the Government to take inspection of the bungalow. Such inspection and valuation will be subject to the result of this I.A. Time is extended till the disposal of this I.A."

On 17.2.2006, a compliance report was filed by the Chief Secretary, on behalf of the Government of West Bengal. We need not adhere to the entire facts recited therein. Suffice it is to say that a public auction notice was published in two national dailies viz., The Times of India, The Statesman and in one local daily viz., Ananda Bazar Patrik.

The reserve price of the house was fixed at Rs.Twenty Lakhs which is the market value fixed by the Government valuer and the reserve price of land was fixed at Rs.Four Lakhs Fifty Thousand per catta

On 4.2.2006, public auction was held. There were two separate bids, one for the land and one for the house as per clause 26(iii) of the judgment. In the said auction there were three bidders. One Shri Pradeep Murarka offered the highest bid, Rs.20.50 Lakhs for the land and Rs.30.50 lakhs for the house. The highest bid was accepted and Shri Pradeep Murarka deposited Rs.12, 01, 000/- on the day of auction through pay order. On 8.2.2006, he deposited the balance amount. On 13.2.2006, the pay order of Rs.30, 50, 000/-, payable to Justice B.P. Banerjee (Retd.) Respondent No.8, as price of the house fetched in the public auction was collected from the Bank of Maharashtra, Bidhannagar Branch. On 14.2.2006, the pay order of Rs.30, 50, 000/- was sent to Justice B.P. Banerjee (Retd.) at his house FD 429, Salt Lake, Sector-III, Kolkata-700 106 through the process server, attached to the office of District Magistrate, North 24 Parganas. Justice B.P.Banerjee (Retd.) respondent No.8 was not available in his house and no body present in the house accepted this letter and pay order. On 15.2.2006, respondent No.8 wrote a letter that he was unable to accept the bid money of the building as his two applications i.e. I.A. Nos. 5 and 6 were pending in the Supreme Court and acceptance of bid money would render I.A. Nos.5 and 6 as infructuous. Respondent No.8, however, undertook in the following terms:

"For your information and I would like place it on record that I have kept myself in absolute readiness to quit and vacate the premises within 7 days as and when called upon to do so by the Hon'ble Supreme Court."

Mr.Prashant Bhushan, learned counsel for the petitioner in original Writ Petition No. 216 of 1999 in fact contended that the market value fixed by the Government valuer Mr.Syamales Datta was Rs.Thirty Seven Lakhs for the land and Rs.Twenty Lakhs for the house. According to him, this market value fixed by the Government should be accepted and respondent No.8 should be paid only Rs.Twenty Lakhs for the house. This, in our view, is quite a sensible suggestion but since we have already ordered for public auction at this stage we are unable to relegate to that position.

Mr. S.S. Ray, learned senior counsel, appearing for respondent No.8 contended that the judgment and order passed by this Court on 19.11.2004 is void, a nullity and non est as this Court has no

jurisdiction to pass such an order. He has also contended that the public auction has been conducted contrary to the directions of this Court. We have perused the compliance report and we are of the view that the public auction was conducted consistent with the directions of this Court.

We also noted with dismay the contention of the learned senior counsel Mr. S.S. Ray that this Court has no jurisdiction to pass such an order and the same is a nullity, void and non est. This contention was persistently pursued despite repeated reminders by the Court that the Review Petition and the Curative Petition have been dismissed and it was too late in the day to raise such a contention, which would amount to re-opening of the entire controversy. It is unfortunate.

In this connection, he has referred to the decisions of this Court in the case of Bishambhar Dayal Chandra Mohan vs. State of Uttar Pradesh , Jilubhai Nanbhai Khachar vs. State of Gujarat , Kiran Singh vs. Chaman Paswan , Arjun Khiamal Makhijani Vs. Jamnadas C Tuliani , M.S. Ahlawat Vs. State of Haryana, , Gaurav Jain vs. Union of India 9, Supreme Court Bar Association vs. Union of India, , Prem Chand Garg Vs. Excise Commissioner, U.P. Allahabad, , A.R. Antulay Vs. R.S. Nayak 1988 (2) SCC 602, Union Carbide Corporation Vs. Union of India , Desh Bandhu Gupta Vs. N.L. Anand & Rajinder Singh, 6, Gajadhar Prasad Vs. Babu Bhakta Ratan, , State of Kerala vs. P.P. Hassan Koya, .

In our view, all these decisions referred to by Mr. S.S. Ray would not be applicable in the facts and circumstances of this case, in the sense that it is not permissible to re-open the case to be heard on merits.

As already stated, I.A. No.4 has been filed by the State of West Bengal seeking from this Court a direction to respondent No.8 to cooperate with the State Government in its efforts to implement the directions of this Court passed on 19.11.2004 within a time stipulated by the Court.

In the facts and circumstances recited above we now dispose of I.A.No.4 in terms of our directions as quoted earlier:

(a) The public auction held on 4.2.2006 is confirmed.

(b) The highest bid amount of Rs.30.50 lakhs for the house be paid to Justice B.P.Banerjee (Retd.) within a week from today and he shall accept the same without any demur.

(c) He shall thereafter vacate the house in question and hand over the vacant and peaceful possession to the purchaser within a week from the day of receipt of the bid amount of Rs.30.50 lakhs. In case he refuses to accept the amount, one week from the date of refusal.

(d) If not delivered, the Government to ensure eviction and delivery of possession to the purchaser.

(e) Rs.20.50 lakhs should be paid to the Government of West Bengal.

With the aforesaid directions I.A.No.4 is allowed. The compliance report is accepted.

We are constrained to observe that I.A. Nos.5 to 8 were filed by respondent No.8 Mr. Justice B.P. Banerjee (Retd.) with a view to circumvent the order passed by this Court. Such practice is deprecated. Same is the fact of I.A. No.9 filed by the intervener. I.A. Nos. 5 to 9 are dismissed.

Henceforth, no application filed by either of the parties in this case shall be accepted by the Registry without leave of this Court.