

Khela Banerjee

v.

City Montessori School

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SUDHANSU JYOTI
MUKHOPADHAYA

Review Petition (Civil) No. 2381-2382 Of 2012 In Civil Appeal No. 10180-10181 Of 2011 |
10-07-2013

1. These petitions have been filed for review of judgment dated 2.7.2012 passed in Civil Appeal Nos. 10181 and 10180 of 2011 arising out of SLP(C) Nos. 13585 and 22369 of 2011.

2. For deciding the review petitions we may briefly notice the relevant facts.

2.1 Plot No. 92A Mahanagar, Faizabad Road, Lucknow was leased out by the Nazul Officer to Shri Moni Mohan Banerjee in 1958 for a period of 30 years. After about 3 years, the Nazul Officer granted lease of the adjoining plot bearing No.92A/C to Shri Banerjee for a period of 7 years for garden purposes.

2.2 In 1992, the State Government decided to convert leasehold nazul lands into freehold and directed that the same be disposed of by auction or by inviting tenders.

2.3 On 24.11.1994, Lucknow Development Authority (LDA) invited bids for disposal of plots including plot No.92A/C. The review petitioner gave bid for 4 plots including plot No.92A/C, which were accepted by the competent authority. The review petitioner deposited 25% of the bid money, but did not pay the balance price in terms of stipulations contained in the tender notice. Instead, the Manager of the review petitioner represented for permission to pay the balance amount in six-monthly installments. LDA did not accept his request by observing that such facility is not available in respect of open nazul land and garden leases. Thereupon, the Manager of the review petitioner approached the Principal Secretary to the Governor and succeeded in persuading him to send letter dated 3.4.1995 to the State Government to instruct LDA to hand over possession of plots and accept the balance amount in easy installments. LDA did not accede to the request made on behalf of the review petitioner and cancelled the bids given by it.

2.4 The Manager of the review petitioner then approached the Governor, who passed order dated 17.12.1995 and directed that possession of the plots be handed over to the management and the balance amount be accepted in ten six-monthly installments.

2.5 In compliance of the order passed by the Governor, the Vice-Chairman of LDA and the Manager of the review petitioner executed agreement dated 12.1.1996, paragraphs 2, 3 and 4 of which read as under:

"2. Whereas the payment of the installments as indicated above will be paid by the Second Party compulsorily by the prescribed time limit, failing which or in case of failure to deposit two consecutive installments, this Deed of Agreement will become void and the First Party shall be free to exercise its discretionary power to forfeit 1/4th of the total deposit and refund the remaining amount and the First Party, if desired so, shall be free to enter the land in question and shall have right to sell it in favour of any third party;

3. Whereas 25% of the total tender amount has been paid by the Second Party and for rest of the 75% amount an agreement has been reached at between the parties. Possession of the land in question is being delivered by way of the instant Agreement. Therefore, according to the prevailing Greater Scheme (Mahayojana) of 2001, if the Second Party produces building map, it will be considered for approval, holding thereby that the possession of the land is with the Second Party, that the Nazul Land in question or building constructed on it can be transferred only when the entire tender/auction amount and the total expenditure payable by that time are cleared to the First Party. Sale Deed in respect of the Nazul Land will be executed on the stamp paper by paying required stamp fees. Stamp fee and other expenses will be borne by the Second Party;

4. Whereas the Second Party shall deposit the remaining aforementioned tender amount in 10 half yearly installments under relevant accounts titled "0075 legal general services-105 Sale of Land & Property-03 lump-sum amount on converting Nazul land into freehold property" by the prescribed date by treasury challan/ bank draft in main branch of the State Bank at Lucknow."

2.6 Although the Manager of the review petitioner took possession of the plots, he did not pay the balance price and entered into unnecessary correspondence with the functionaries of LDA on the issues of demarcation of land and fixation of installments. This was an unwarranted attempt to create evidence to show that functionaries of LDA were to blame for the delay in payment of the balance price.

2.7 After 13 years of execution of the agreement, the review petitioner filed Writ Petition No.8514/2009 for issue of a direction to the respondents to accept the total amount of sale consideration along with interest and for quashing all proceedings relating to conferment of freehold rights on Smt. Khela Banerjee and her husband who were legal heirs of Shri Moni Mohan Banerjee and who had also filed separate writ petition for regularization of plot in their favour.

2.8 The Division Bench of the High Court rejected the review petitioner's prayer for issue of a mandamus for enforcement of agreement dated 12.1.1996 by assigning the following reasons:

"Though we accept and hold in terms of the legal submissions, as above, urged by Shri Shanti Bhushan, Learned Senior Counsel, yet looking to the factual background of this case, we are of the considered view that the impugned agreement entered into between the petitioner and the official respondents on 12.01.1996 would not be enforceable in law after the lapse of a period of 13 years only on the strength of depositing an amount of Rs.7,40,700/-, said to be the one-fourth of the total consideration amount. It appears that the petitioner engaged itself only in correspondence with the official respondents and in litigation, in stead of paying the rest of the principal amount, leaving aside the interest amount, which could have been determined later by the Authority concerned. Even no efforts were made to seek direction from the Courts to accept the deposit of principal amount before the filing of this writ petition. It also appears that the initial agreement was cancelled on 14.06.1995 for default in depositing the rest, say, 3/4th of the consideration amount which had been demanded vide the letters dated 21.02.1995 and 08.03.1995. However, taking a considerate view, on a written request made by the petitioner school, the payment schedule was rearranged vide the agreement dated 12.01.1996 but again no amount was deposited towards the payment of any of the instalments. Thus, the petitioner school was not ready and willing to perform its obligation under the agreement and in Law."

2.9 Notwithstanding the above conclusion, the High Court granted relief to the review petitioner by relying upon the Right to Education Act, 2009 and directed the official respondents to hand over possession of plot No.92A/C and execute the sale deed on payment of market price at the current rate. This is evinced from the following portions of the order passed by the High Court:

"Needless to say that this Court is not only the court of law but also a Court of equity and, therefore, its decision must subserve the cause of justice and in an appropriate case it may grant such relief to which the writ petitioner would be entitled to in law as well in equity. Equity is not anti-law but a moral dimension of law. Rather it is a grace and conscience of living law, and thus, a Court's discretion is to be exercised with circumspection within the precincts of justice, equity and good conscience while keeping in view the given facts and circumstances of the case.

Thus, taking into consideration the facts that the Parliament has passed the Right to Education Act, that the petitioner deposited 25% (Rs. 7,40,700/-) of the consideration amount way back in 1995, and that he is ready to pay the present market price of the plot whereas no such offer has come from private respondent nos. 4 and 5 during the course of hearing, we think it expedient in the interest of justice to direct the settlement of property in question in favour of the petitioner school upon making payment of cost price at the current market rate prevailing in the locality.

In the premises set out hereinabove, we partly allow the writ petition with direction to official respondents to hand over the possession of the plot in question and execute the sale deed after completing necessary procedural formalities on payment of market price at current rate prevailing in the locality where the plot is situated within a period of two months from the date of receiving a copy of this order. In case, the petitioner fails to pay the market price at current rate to be determined by the authority concerned, the official respondents would be at liberty to invite fresh tender for the auction of the same at a price not less than the prevailing market price so that the public exchequer is not made to suffer in any manner and the property is able to fetch the maximum price."

2.10 The review petitioner challenged the order of the High Court in SLP(C) No.22369/2011, which was converted in Civil Appeal No.10180/2011 and was disposed of on 2.7.2012 along with Civil Appeal No.10181/2011 arising out of SLP(C) No.13585/2011 titled Smt. Khela Banerjee and another v. City Montessori School and others. This Court also held that the High Court was not entitled to invoke the Right to Education Act, 2009 for directing LDA to allow the review petitioner to retain plot No. 92A/C. For the sake of reference, paragraphs 8 and 9 of judgment dated 2.7.2012 are reproduced below:

"8. It is significant to note that agreement dated 12.1.1996 contained an unequivocal stipulation that if respondent No.1 fails to pay the installments of balance price within the prescribed time limit then the agreement would become void and LDA will be free to sell the plot to any other person.

Admittedly, respondent No.1 did not pay the instalments of balance price. Therefore, the agreement stood automatically terminated and LDA became entitled to dispose of the plot by adopting an appropriate mechanism consistent with the doctrine of equality enshrined in Article 14 of the Constitution. It is rather intriguing as to why the functionaries of LDA remained silent for more than 13 years and did not repossess the plot in question. This was perhaps due to the pressure brought by the Manager of respondent No.1 from different quarters, administrative as well as political.

9. The next question which requires consideration is whether the High Court could invoke the provisions of the 2009 Act and direct LDA to hand over possession of plot No.92A/C to

respondent No.1 and execute the sale deed on payment of market price at the current rate. In the writ petition filed on behalf of respondent No.1 it was not claimed that in view of the provisions contained in the 2009 Act, LDA is bound to allot plot No. 92A/C or allow respondent No.1 to retain the plot for which its bid had been accepted by the competent authority. Therefore, neither the appellants nor the official respondents had the opportunity to controvert such claim and show that the provisions of the 2009 Act do not provide for allotment/sale of land to the educational institutions. The High Court has made a passing reference to the 2009 Act and granted relief to the respondent No.1 only on the ground that it had already deposited 25% of the bid amount way back in 1995 and respondent Nos.4 and 5 had not made an offer to take the plot by paying the current market price. We have carefully gone through the provisions of the 2009 Act and find that they do not even remotely deal with the issue of allotment of land to the educational institutions. Therefore, the Division Bench of the High Court was not at all justified in ordering transfer of the plot to respondent No.1 and that too by ignoring its own finding that the said respondent was a ranked defaulter and the writ petition was filed after a time gap of 13 years without any tangible explanation."

2.11 The appeal filed by Smt. Khela Banerjee and another was also dismissed by this Court.

3. Shri Shanti Bhushan, learned senior counsel appearing for the review petitioner invited our attention to paragraph 7 of judgment dated 2.7.2012 and submitted that the observations made by this Court that the review petitioner did not challenge the cancellation of bids by availing appropriate legal remedy and that the Governor had passed order for restoration of plot in favour of the review petitioner in violation of the Rules of Business are factually incorrect. Learned senior counsel referred to letter dated 5.7.1995 sent by the Manager of the review petitioner to Commissioner, Lucknow Division and order of the same date passed by the latter to show that soon after cancellation of the bid, the review petitioner did represent its cause before the higher authority and the action taken by the Vice Chairman of LDA to cancel the bid was suspended by the Commissioner. Shri Shanti Bhushan also referred to communication dated 18.7.1995 sent by Commissioner, Lucknow Division to the Chairman, LDA and argued that this Court committed an error by non-suiting the review petitioner on the ground that it had not availed legal remedy against the cancellation of bid. Learned senior counsel also referred to the Presidential Proclamation issued under Article 356 of the Constitution and submitted that with the imposition of President's Rule, the Governor acquired all the powers exercisable by the State Government and, therefore, the order passed by him for restoration of the plot cannot be characterized as arbitrary or illegal. In the end, Shri Shanti Bhushan relied upon paragraph 67 of this Court's judgment in *Akhil Bhartiya Upphokta Congress v. State of Madhya Pradesh and others* (2011) 5 SCC 29 and submitted that the Court may direct the State Government and the LDA to allow participation only of the educational institutions in the auction to be held in view of the directions contained in judgment dated 2.7.2012.

4. Learned counsel for the State and LDA submitted that once the plot has been converted into freehold and the same is required to be disposed of by auction, the eligibility to participate in the auction cannot be confined to the educational institutions.

5. We have considered the respective arguments/submissions and carefully perused the record. Though, this may appear to be a repetition of the facts mentioned in the judgment of which review has been sought, we consider it necessary to mention that after depositing 25% of the bid money, the review petitioner did not pay the balance amount within the stipulated period despite the notices issued by LDA. The request made by the Manager of the review petitioner for permission to pay the balance price in six monthly instalments was specifically rejected by the Competent Authority and the bid was cancelled vide letter dated 14.6.1995. The Manager of the review petitioner convinced the Governor of the State to pass order dated 17.12.1995 for restoration of possession and acceptance of balance price in ten six-monthly installments with interest. As a sequel to that order, agreement dated 12.1.1996 was executed between LDA and the review petitioner. Even then the review petitioner did not pay the balance price in accordance with the agreement. Therefore, in terms of paragraph 2 of agreement dated 12.1.1996, the same automatically became nullity.

6. While approving the view taken by the High Court that a mandamus cannot be issued for enforcing agreement dated 12.1.1996, this Court did observe that the review petitioner had not challenged the cancellation of bids by filing appropriate legal remedy and its Manager succeeded in persuading the Governor of the State to pass an unusual order of handing over possession of the plots and acceptance of the balance amount in six monthly installments. The first portion of this observation cannot be considered as erroneous simply because the Manager of the review petitioner had made representation to the Divisional Commissioner and obtained stay order. The pleadings of the civil appeals, the review petitions and the documents filed by the parties do not show that the review petitioner had challenged the decision contained in letter dated 14.6.1995 by filing a suit or a writ petition. Therefore, this Court rightly observed that the petitioner did not challenge the cancellation of bids by availing appropriate legal remedy and the mere fact that some representation was made to the Divisional Commissioner is not sufficient for accepting the review petitioner's assertion that this Court committed an error by making the said observation. However, the second observation about the competence of the Governor to pass order has to be treated as incorrect because with the imposition of President's Rule, the Governor became entitled to exercise all the powers of the State Government under the Rules of Business.

7. Notwithstanding the above-mentioned error, which crept in judgment dated 2.7.2012 because copy of the proclamation issued by the President under Article 356 of the Constitution was not brought to the notice of the Court, we do not find any valid ground to entertain the prayer for review of judgment dated 2.7.2012. In paragraph 8 this Court unequivocally held that the agreement stood automatically terminated on account of the review petitioner's failure to pay the installments of balance price in terms of agreement dated

12.1.1996 and as a consequence thereof LDA became entitled to dispose of the plot by adopting an appropriate mechanism consistent with Article 14 of the Constitution.

8. The last submission made by the learned senior counsel cannot be accepted for the simple reason that the plot had already been converted into freehold and there is no justification for directing LDA to invite bids only from the educational institutions. What has been observed in paragraph 67 of the judgment in *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh* (supra) is that the State can allot land to the institutions/organizations engaged in educational, cultural, social or philanthropic activities otherwise than by way of auction but the mechanism for disposal of the plot has to be consistent with the doctrine of equality enshrined in Article 14. Those observations cannot be pressed into service for enabling the review petitioner to steal a march over others who may participate in the auction and give higher bids.

9. In the result, we hold that judgment dated 2.7.2012 does not suffer from any error apparent which may justify its review. Consequently, the review petitions are dismissed.

10. As a sequel to dismissal of the review petitions, all pending applications are disposed of.