

Nagendra Rai

v.

Om Prakash Singh and Ors

(Supreme Court Of India)

HON'BLE JUSTICE A. K. Patnaik HON'BLE JUSTICE J. S. Khehar

C. A. No. 9364 of 2013 (Arising out of SLP(C) No. 24285 of 2011) | 21-10-2013

1. Heard learned Counsel for the parties. Leave granted.

2. The Howrah Improvement Trust [for short 'the HIT'] invited tenders for purchase of commercial plots and plot for institutional purposes in Gulabi area of Howrah under HIT Scheme No. XI and stipulated therein that the plots would be sold on 'as is where is basis' to the highest bidder in the notice inviting tenders. However, it was stated that tender particulars including terms and conditions may be asserted and plans can be seen from the office of the Chief Valuer of the HIT. Pursuant to the notice inviting tenders, the Appellant submitted tender for purchase of the commercial land at the rate of ` 6,40,000/- per katta which was found to be the highest tender. The HIT, accordingly, informed the Appellant by a communication dated 7th June, 2001 to the Appellant that his offer was the highest and has been accepted by the HIT. By the said communication dated 7th June, 2001 the Appellant was informed that it has been decided by the HIT to undertake joint measurement with the Appellant on 15th June, 2001 at 12:00 hours in order to ascertain the actual quantum of land to be transferred in favour of the Appellant as per the terms and conditions. The decision of the HIT to accept highest offer of the Appellant was however, challenged before the High Court by Respondent No. 1 in Writ Petition No. 10445(W) of 2001 and the learned Single Judge of the Calcutta High Court allowed the writ petition by order dated 12th July, 2001 and issued a writ commanding the HIT not to give any effect to the tender process and to start the tender process afresh by publishing an appropriate public notice inviting tenders with due publicity in accordance with law and clearly specifying the details with regard to the plot when (sic) the application form can be obtained and place where the application will be received etc. The learned Single Judge also directed refund of the application money to the respective parties with liberty to submit fresh tender documents in accordance with law if they wish to

participate in the fresh tender process. Aggrieved, the Appellant filed FMA No. 187 of 2003 before the Division Bench of the High Court and by the impugned order, the Division Bench affirmed the order dated 12th July, 2001 of the learned Single Judge. Aggrieved, the Appellant has filed this appeal before this Court by way of special leave.

3. Learned Counsel for the Appellant vehemently submitted that after the tender of the Appellant was accepted by the HIT, the learned Single Judge could not have directed a fresh tender process after cancelling the tender process. Learned Counsel for the Appellant further submitted that in the appeal, the Division Bench of the High Court erroneously held that a notice inviting tender was nothing but an opportunity to the public at large so that a large number of offers can be received and the authority can get a chance to sell the property to the highest bidder and if there was only one offer then it cannot be said that the purpose of issuing the notice inviting tender has been fulfilled and in the instant case the authority had found only one offer which satisfy the terms of the tender. He submitted that the Division Bench of the High Court failed to appreciate that the highest offer of the Appellant has already been accepted by the HIT and there was no good reason for directing a fresh tender process on the grounds given by the learned Single Judge or by the Division Bench of the High Court.

4. We find that so far as the Appellant is concerned, he had not filed any writ petition before the High Court claiming any relief on the basis of the communication dated 7th June, 2001 of the HIT accepting the highest offer for purchase of land. Thus, the Appellant cannot be granted any relief against the HIT when the Appellant has not resorted to either writ petition or a suit in case the HIT was not willing to sell the land to the Appellant on the basis of the highest tender of the Appellant.

5. Learned Counsel for the Appellant however, submitted that he cannot claim any such relief until the orders passed by the learned Single Judge or by the Division Bench of the High Court in the writ petition and in the appeal are set aside by this Court and according to him the learned Single Judge and the division Bench of the High Court were not right in directing a fresh tender process. We find a lot of force in the aforesaid submission of the learned Counsel for the Appellant. The notice inviting tender is no doubt an opportunity

given to different tenderers to submit their tenders and participate in the tender process but if an offer is made pursuant to the notice inviting tender and the same is accepted and the terms and conditions of the bid documents and the law provide that such acceptance will bind the authority inviting tenders, then the notice inviting tender cannot be cancelled at this stage. The view taken by the learned Single Judge and of the Division Bench of the High Court, therefore, is not correct.

6. We, accordingly, set aside the judgments of the learned Single Judge as well as that of the Division Bench of the High Court but we make it clear that we have not expressed any opinion on the merits of the claim of the Appellant or that of the HIT with regard to the question as to whether or not there is a binding contract for sale of the land in question. The appeal stands allowed in the aforesaid terms.