

SUPREME COURT OF INDIA

Kasturibai Sukharam Khandelwal Trust

Vs.

Indore Development Authority

C.A.No.5308 of 2010

(N.V.Ramana,J., Mohan M.Shantanagoudar and Ajay Rastogi,JJ.,)

03.10.209

JUDGMENT

Ajay Rastogi,J.,

1. Both the appellants (respondents before the High Court) being dissatisfied with the impugned judgment dated 4th November, 2008 Signahave preferred these appeals.

2. The facts in brief relevant for the purpose are that the appellant Smt. Kasturibai Sukharam Khandelwal Trust and the 2nd respondent Shri Khandelwal Trust (writ petitioner) are registered public trusts. The 2nd respondent made an application directly to the Indore Development Authority(hereinafter referred to as “Authority”) for allotment of land for public purpose and to carry out trust activities on 30th September, 1988. In sequel thereto, another application was addressed to the then Chief Minister on 29 th December, 1988 for allotment of land for the purpose of construction of a community hall to be used for public purposes.

3. The authority thereafter issued an advertisement dated 7 th September, 1989 inviting applications for allotment of land to registered institutions indicating necessary requirements to be furnished by the institutions desirous for allotment of land. In response to the advertisement, the appellant Trust submitted an application on 9th October, 1989. After the applications were processed, the authority took a decision to allot 50,000 sq. ft land in scheme no. 54/75-C in favour of the appellant Trust vide communication dated 2nd July, 1990 and simultaneously, the authority also communicated the decision for allotment of 30,000 sq. ft. of land in Scheme No. 54/74-C to the 2nd respondent vide communication dated 2nd July, 1990.

4. Immediately after it reveals to the authority of the allotment being made to both the trusts of the same community at the same place, the authority revisited its decision and under its Resolution no. 21 dated 11th February, 1991 decided that it may not be advisable to allot land to two trusts of Khandelwal community, cancelled the application of the 2nd respondent and confirmed the allotment in favour of the appellant Trust and that became

the subject matter of challenge in a writ petition filed at the instance of the 2 nd respondent under Article 226 of the Constitution of India.

5. The Single Judge of the High Court, after hearing the parties, dismissed the writ petition under its order dated 1st February, 2001 which came to be challenged in letters patent appeal. The Division Bench of the High Court of Madhya Pradesh, taking note of the rival claim of the parties and noticing the fact that, in the interregnum period, the plot had also been allotted to Life Insurance Corporation (respondent no. 4) which was nowhere the subject matter but still taking note of the material on record and giving *quietus* to the dispute, disposed of the writ petition under its order impugned dated 4th November, 2008 with a direction to the authority to reconsider the matter of allotment of land afresh after affording opportunity of hearing to the parties and assess the comparative assessment and merit of the appellant Trust and 2nd respondent and pass speaking order in accordance with law.

6. Mr. Ranjit Kumar, learned senior counsel for the appellant Trust submits that the allotment could be made in terms of the Regulations for Disposal, 1987 (hereinafter being referred to as "Disposal Regulations 1987") which has been framed in exercise of power under Section 58 read with Section 86 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 and procedure for allotment has been provided under Chapter III and Regulation 3(A) clearly postulates that where the authority proposes to transfer any property except as provided under Regulation 3(B), 3(C) and 3(D), it may do so by (a) public auction; or (b) inviting tenders or (iii) inviting applications from eligible persons either on continuing registration basis or otherwise, as may be specified in terms of the advertisement.

7. The present appellant Trust submitted application pursuant to an advertisement inviting applications dated 7th September, 1989 and indisputedly no application was submitted by the 2 nd respondent, still the application was processed but, after noticing by the authority that the allotment of land to 2nd respondent being in contravention of Chapter III of Disposal Regulations, 1987, the mistake was immediately rectified by cancelling the letter of allotment in favour of the 2nd respondent and confirmed the allotment in favour of the appellant Trust under its Resolution No. 21 dated 11th February, 1991 and the decision of the Authority being in conformity with Chapter III of Disposal Regulations, 1987, interference in writ appeal was not justiciable and deserves to be interfered by this Court.

8. Learned counsel further submitted that the 2 nd respondent does not appear to be interested in the instant proceedings to put forth his claim. At the same time, the present appellant had constructed a community hall which has been used for public purposes and also by the community for a sufficient long period and the Division Bench of the High Court was not justified in reopening and reverting back to square one leaving the authority to decide their respective claims at such belated stage and, therefore, impugned judgment deserves to be set aside.

9. Learned counsel for the appellant in the connected appeal filed by Indore Development

Authority, while supporting the submissions, further submits that apart from the fact that 2nd respondent had not submitted any application for allotment pursuant to an advertisement dated 7th September, 1989 required under Disposal Regulations, 1987, the authority was of the view that it will not be advisable to provide adjoining plots to one community and after revisiting the factual matrix of the matter considered it appropriate to cancel the decision for allotment made in favour of the 2nd respondent and there being no error in the decision making process held by the authority, the Division Bench of the High Court committed manifest error in directing to revisit the whole process of allotment and that needs interference by this Court.

10. Learned counsel further submits that so far as the allotment made in favour of 4th respondent(LIC) is concerned, it has nothing to do with the allotment made in reference to the trust which is impugned in the proceedings and calling upon the 4th respondent(LIC) to participate in the whole process was not justiciable.

11. Heard learned counsel for the appellants and no one has put an appearance on behalf of the contesting respondent despite service and with their assistance perused the material available on record.

12. Indisputedly, the 2nd respondent had not submitted any application for allotment of land pursuant to an advertisement inviting applications for allotment of land dated 7th September, 1989, despite being published in the local newspaper. At the same time, application of the appellant Trust was found to be in order complying with the necessary requirements as indicated in the advertisement and after due scrutiny of the applications, plot ad-measuring 50,000 sq. ft was allotted to the appellant in Scheme No. 75-C for community hall by letter of allotment dated 2nd July, 1990.

13. After noticing that the 2nd respondent had submitted application for allotment of land for community hall on 30th September, 1988 directly to the Indore Development Authority and to the then Chief Minister of Madhya Pradesh dated 29 th December, 1988 which was erroneously processed in the office of the authority and letter of allotment of land was issued ad-measuring 30,000 sq. ft. in Scheme No. 74-C dated 2nd July, 1990 and later noticing the fact that two separate allotments have been made in the same scheme to two separate trusts of the same community and that being an apparent error, the decision was taken by the authority vide its Resolution No. 21 dated 11th February, 1991 to confirm the allotment of 50,000 sq. ft land in favour of the present appellant at the rate of Rs. 15/- per sq. ft and application of the 2nd respondent seeking allotment of land was rejected.

14. It was not the case of either party that the appellant Trust either failed to fulfil necessary conditions as referred to under the advertisement dated 7th September, 1989 pursuant to which the applications were invited or failed to fulfil necessary requisite conditions for allotment under any statutory enactment or Disposal Regulations, 1987 or there was any error being committed by the authority in its decision making process while the allotment of land was made in favour of the appellant Trust. To the contrary, the emphasis of the 2nd respondent while approaching to the High Court in a writ petition filed

under Article 226 of the Constitution of India was that vide Resolution No. 21 dated 11th February, 1991, the authority has cancelled their allotment of land without affording opportunity of hearing and has failed to comply with the principles of natural justice and that appears to be the reason prevailed upon to the Division Bench of the High Court directing the Indore Development Authority to revisit the matter of allotment of land and take a decision in accordance with law.

15. In the instant facts and circumstances, the facts remain undisputed that the 2nd respondent has not submitted any application for allotment of land pursuant to an advertisement dated 7th September, 1989. In the ordinary course of business, there was no justification for the authority to consider the application of the 2nd respondent which was not in due compliance and in terms of the advertisement in reference to which the applications were invited. That appears to be an apparent error which was committed and indeed such application was not open to scrutiny and for allotment of land as desired by 2nd respondent and taking note of the peculiar fact situation, calling upon the 2nd respondent and affording an opportunity of hearing and for comparative assessment of claim, will remain an empty formality and no purpose was to be served.

16. In addition to it, the 2nd respondent (writ petitioner) despite service, has chosen not to appear and participate in the proceedings before this Court, it appears that he is not interested to pursue and to put its claim for alleged allotment. That apart, the allotment made to the LIC, in any manner, have no nexus to the inter se dispute between the two trusts with regard to allotment of land and thus, there was no justification for the Division Bench at least to call upon respondent no. 4 LIC to be a part of the proceedings which the Indore Development Authority was to undertake in compliance of the impugned judgment in the instant proceedings.

17. After going through the material on record, we are of the considered view that directing the Indore Development Authority to revisit the matter afresh at this stage when the lease deed of the plot has been executed and the appellant has raised construction and is running a community hall for the benefit of the public at large and at the same time, the 2nd respondent has shown complete disinterest in the proceedings, no purpose otherwise will be served if the parties are remitted to the authorities to examine their respective claims in compliance of the impugned judgment of the Division Bench.

18. Consequently, both the appeals succeed and are accordingly allowed. The impugned judgment of the Division Bench of the High Court dated 4th November, 2008 is hereby set aside. No costs.

19. Pending application(s), if any, stand disposed of.