

(2001) 05 P&H CK 0183

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 14064 of 2000

R.C. Sood and Co. Ltd., New Delhi

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 15, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Contract Act, 1872 - Section 5

Citation: (2001) 3 RCR(Civil) 822

Hon'ble Judges: N.K. Sud, J; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: Mr. A.M. Punchhi, for the Appellant; Mr. Palika Monga, AAG, Mr. A.R. Takkar and Mr. Vinish Singla, for the Respondent

Final Decision: Allowed

Judgement

Jawahar Lal Gupta, J.

The petitioner is a builder. On April 21, 1999, it had offered to buy land at the rate of Rs. 2.85 crores per gross acre from the Municipal Corporation, Faridabad. The petitioner had deposited an amount of Rs. 40.19 lacs at the spot. Thereafter it made a deposit of an amount of Rs. 60,28,000/- on May 19, 1999. No letter of allotment was given to the petitioner on the deposit of 25% of the price of the land. On May 3, 1999, the petitioner had also requested the second respondent to issue Form No. 37-I, so as to comply with the provisions of the Income Tax Act, 1961. The petitioner's request was declined vide letter dated May 14, 1999. It was informed that till the Government approves the proposal, the certificate in Form No. 37-1 could not be issued. Thus, the Corporation had not accepted the petitioner's offer. On August 9, 1999, the petitioner wrote to the respondents to find out the latest position. A copy of the letter dated August 9, 1999 has been produced as Annexure P8 with the writ petition. The petitioner requested the respondent/Corporation to let it "know immediately the position regarding the acceptance of our bid". It pointed

out that "such large amounts cannot be kept blocked endlessly in suspense". The petitioner alleges that it received no response. Thereafter, on September 18, 1999, the petitioner felt constrained to withdraw its offer. A copy of the letter dated September 18, 1999, has been produced as Annexure P9 with the writ petition. The petitioner pointed out that despite deposit of an amount of Rs. 1,00,47,000/- and the letters dated May 19, 1999 and August 9, 1999, the offer had not been accepted. It was further pointed out that vide letter dated May 14, 1999, the Corporation had informed the petitioner that the bid had not been approved so far by the Government. Even thereafter, no acceptance had been communicated. Therefore, the petitioner had withdrawn the offer "given in the public auction held on April 21, 1999, with immediate effect ". This letter was received in the office of respondent No. 2 on September 20, 1999. Then a notice dated September 27, 1999, was served on the second respondent.

2. It appears that the withdrawal of the offer and the notice moved the respondents. On October 1, 1999, the letter of allotment was issued to the petitioner. It was informed that the State Government had approved the auction proceedings vide memorandum dated September 21, 1999. The petitioner wrote back vide letter dated October 12, 1999 that the offer having been withdrawn the respondents could not have accepted it. The petitioner requested for refund to its money. The Corporation persisted that the petitioner should deposit the installment. On March 14, 2000, the respondent/Corporation also wrote to the State Government that the allottee was pressing for vacant possession of the plots. In fact, according to the petitioner, the Corporation was not in a position to hand over the possession of the land as the Forest Department has refused to grant permission for its sale. Despite repeated requests, the petitioner's money was not refunded. Aggrieved by the action of the respondents, the petitioner has approached this court through the present writ petition. It prays that an appropriate writ be issued to quash the decision of the Government for grant of approval of the auction held on April 21, 1999 in respect of plot No. 1, measuring 1.41 acres of land. It further prays that the respondents be directed to refund the amount of Rs. 1,00,47,000/- along with interest at the rate of 24% per annum.

The respondents were served with the notice of the petitioner in the early part of November, 2000. They had put in appearance on November 24, 2000. The case was adjourned to enable them to file their respective replies and was posted for hearing on January 12, 2001. Thereafter, the case was adjourned for today. Despite opportunity and the lapse of more than six months, the reply has not been filed. Thus, we have no alternative but to proceed to decide the case on the basis of the averments in the writ petition.

3. Counsel for the parties have been heard.

On behalf of the petitioner, it has been contended that the offer having been withdrawn, there was nothing for the respondents to accept. They are bound to

refund the money.

4. Learned counsel for respondent No. 2 submits that the State Government having approved the auction held on April 21, 1999, the petitioner is not entitled to the refund of any amount.

5. Admittedly, the petitioner had deposited an amount of Rs. 40,19,000 on April 21, 1999. Thereafter it deposited another amount of Rs. 60,28,000/- on May 19, 1999. These deposits conformed to the conditions laid down by the Corporation. Despite this, no letter of allotment of land was given to the petitioner. It waited patiently till August 9, 1999 and requested the respondent/Corporation to do the needful. There was no response. After waiting for more than a month thereafter, the petitioner had withdrawn the offer on September 18, 1999. The second respondent had received this letter on September 20, 1999.

6. It is the admitted position that the Corporation and the State Government had not accepted the petitioner's offer till September 20, 1999. It is also not disputed that the Corporation had received the petitioner's letter regarding withdrawal on September 20, 1999. The petitioner having withdrawn the offer, there was no offer which may have been accepted by the respondent/Corporation.

7. Mr. Punchhi has rightly referred to the provision of Section 5 of the Indian Contract Act, 1872, to contend that the revocation of the offer was complete on September 20, 1999.

8. The petitioner's offer at the auction was a proposal. The deposit of the money was an act in furtherance of the proposal. This proposal could be revoked at any time before its acceptance by the Corporation. In the present case, it has not been disputed that the petitioner had withdrawn the offer on September 18, 1999 and this communication was received by the Corporation on September 20, 1999. Since the petitioner had revoked the proposal, there was nothing which could have been accepted by the respondent-Corporation.

9. There is another aspect of the matter. A copy of the notice, published by the respondent/Corporation in The Hindustan Times on April 15, 1999 has been produced as Annexure P1 with the writ petition. The terms and conditions have been appended as Annexure P2. In para 8, it was specifically provided that the "Bid offer will be received subject to the reserve price fixed and to the right of the Commissioner, Municipal Corporation, Faridabad or his nominee or the State Government through the Local Govt. to accept the bid bey one such reserve price. " In para 9, it was provided that "The Presiding Officer shall reserve to himself the right to accept any bid subject to the approval of the Commissioner, Municipal Corporation, Faridabad or the State Government through the Local Government or to reject any bid or withdraw any property from auction on the spot without assigning any reasons". It is, thus, clear that the respondent/Corporation had merely reserved the right to reject any offer. However, no condition was laid down

by which the Corporation may have been authorised to keep the money for any length of time or to refuse to return it, even after the proposal was withdrawn by a party. In the absence of a specific condition authorising the Corporation to decline the request for withdrawal, we find that the action in not refunding the money for a period of more than a year and 8 months is wholly arbitrary and unfair. Despite opportunity, no explanation has even been offered to justify the inaction on the part of the respondents.

10. It also deserves notice that according to the petitioner, the Corporation had proceeded to auction the land without getting clearance from the Forest Department. It was unable to hand over possession. The respondents have not controverted the claim. Despite opportunity, the respondents have filed no reply. The inaction is symbolic of the totally lackadaisical approach. Firstly, no decision was taken for a long time, Then no explanation for the delay in question has been given. Will the persons who are paid by the tax- payer ever realise their responsibility and become responsible to the call of duty ? We cannot compliment the officers responsible for the hardship caused to the petitioner.

11. No other point has been raised.

In view of the above, we hold that the petitioner had withdrawn its offer on September 20, 1999. On that day, the factum of revocation had come to the notice of the second respondent. Thereafter, there was no proposal before respondent No. 1. Thus, there was no offer which could have been accepted. Still further, the respondent/Corporation had no authority to retain the petitioner's money. It is, thus, liable to refund it to the petitioner. We direct the second respondent to refund the money within two weeks from the date of receipt of a copy of this order. The petitioner shall also be entitled to payment of interest at the rate of 12 per cent per annum w.e.f. September 20,1999, till the date of actual payment. The Government may consider the desirability of recovering the amount of loss, if any, from the concerned officer.

The writ petition is accordingly allowed.

The petitioner shall also be entitled to its costs, which are assessed at Rs. 10,000/-.

12. Petition allowed