

(2004) 08 KL CK 0063

High Court Of Kerala

Case No: Writ Petition (C) No. 32863 of 2003 (S)

Mundakkayam Sadasivan and
Another

APPELLANT

Vs

Greater Cochin Development
Authority and Others

RESPONDENT

Date of Decision: Aug. 16, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: AIR 2005 Ker 14 : (2005) 2 CTLJ 103 : (2004) 2 KLJ 595 : (2005) 1 RCR(Civil) 195

Hon'ble Judges: Nauvdip Kumar Sodhi, C.J; P.R. Raman, J

Bench: Division Bench

Advocate: Mohammed Yousuf, P.M. Poulose and Rafeemkottakal, for the Appellant; K.P. Dandapani, (for Nos. 1, 4 and 5), V. Giri, (for Nos. 3) and Ratna Singh, General (for Nos. 2 and 6), for the Respondent

Final Decision: Allowed

Judgement

N.K. Sodhi, C.J.

This is a public Interest litigation filed under Article 226 of the Constitution challenging the sale of plot No. 2 adjacent to the Taj Hotel in the Cochin Marine Drive Scheme in favour of the third respondent. It is alleged that the allotment in favour of this respondent is arbitrary and that the Greater Cochin Development Authority (for short "GCDA") and the State Government have sacrificed public interest in selling the land to this respondent at a ridiculously low price. Facts giving rise to this petition may first be noticed.

2. GCDA had set apart plot No. 2 measuring 59.285 cents of land for the construction of multi storeyed residential flats in the Cochin Marine Drive Scheme. Tenders were invited in the year 1995 for the sale of this plot and one M/s. Prakrithi Nirman (P) Ltd. a Bangalore based Company amongst others submitted its tender for the

purpose of the plot at the rate of Rs. 19.01 lacs per cent. As this was the highest bid, the tender of this Company was accepted and the allotment was made to it. On 14-12-1995, this Company remitted 50% of the purchase price amounting to Rs. 5,63,51,000/- in compliance with the conditions contained in the tender. A public interest litigation (O.P. No. 18097 of 1995 was filed in this Court challenging the allotment. This Court stayed all constructions at Marine Drive on the ground that the proposed constructions were likely to violate the provisions of the Coastal Regulation Zone Laws. On 29-10-1997, this original petition was disposed of without interfering with the tenders floated by GCDA. By this time, M/s. Prakrithi Nirman (P) Ltd. wanted to back out from the tender which was not acceptable to GCDA. Aggrieved by this action, the Company filed O.P. No. 31533 of 1999 in this Court seeking a direction to GCDA to refund the entire amount paid by it with interest at the rate of 21%. This writ petition was disposed of on 16-2-2000 with a direction to the GCDA to refund the amount to the Company after forfeiting the earnest money deposit. The judgment of the learned single Judge was affirmed in writ appeal and GCDA has preferred a SLP in the Supreme Court being SLP No. 4489 of 2003 and we are informed that the same is pending

3. In order to mobilize funds for the discharge of its financial obligations, the GCDA decided to sell all its properties lying in excess with a view to raise funds.

4. Tenders were again invited for the sale of the aforesaid plot No. 2 for the construction of multi storeyed residential flats. This plot is adjacent to Taj Hotel on Shan-mughom Road and is prime property. Its area is 59.285 cents. Notice inviting tenders was published in Malayala Mancrama dally on 24-6-2002 and Chandrika daily on 28-6-2002 but no tenders were received in response to these advertisements. Again, another attempt was made to sell the plot and a notice inviting tenders was published in the daily Mathrubhmi on 29-7-2002 in all its editions and also in the Indian Express daily (southern region) on 31-7-2002. The last date for the receipt of tenders was 12-8-2002. It will be useful to reproduce the notice inviting tenders as was published in the news papers. It reads as under.

"Sealed and competitive tenders are invited in the prescribed form for outright sale of plot No. 2 measuring 59.285 cents adjacent to Taj Hotel of Cochin Marine Drive for construction of residential flats as per the control drawing approved by G.C.D.A.

The tenders in the prescribed form should reach the undersigned before 3 p.m. on 12-8-2002. The tender forms will be available at the G.C.D.A office up to 1 p.m. on 12-8-2002 on payment of Rs. 5,500/- (inclusive of all taxes). The E.M.D. is Rs. Thirty lakhs. After the receipt of the tender there will be a public auction at 3.30 pm. on the same day at the Conference Hall of GCDA. After the auction, the tenders will be opened and the highest amount among the tender/auction will be considered for acceptance.

The E.M.D. of the tenderers, except, the highest bidder will be released on the same day after the auction.

More details can be had from the office of the undersigned during works hours."

The terms and conditions on which the plot was to be sold had been separately laid down by the GCD A and those also clearly stipulated that the plot was meant for the construction of multi storeyed residential flats. Clauses 3, 9, 10, 11 and 20 of the Terms of Conditions are relevant for our purpose and they are reproduced hereunder for facility of reference.

"3. Every tender shall be accompanied by an amount of Rupees THIRTY LAKHS as E.M.D. in the form of D.D. drawn in favour of the SECRETARY GREATER COCHIN DEVELOPMENT AUTHORITY PAYABLE AT KOCHI. Cheques shall not be accepted. The E.M.D. of the successful bidder shall be adjusted towards the cost of land."

"9. The amount quoted for the plot shall be paid by the allottee within 30 days of receipt of allotment letter failing which E.M.D. will be forfeited and alternate arrangements made for the allotment of the plot as the authority deems fit. If the allottee desires to remit the amount by instalments it can be permitted on the following conditions :

"50% of the total bid amount has to be paid within 30 days of the receipt of the allotment letter and the remaining In six equal monthly instalments with 21% interest. Penal interest of 22% will also be charged if the instalment amount is not remitted on the due dates."

"10. No extension of time will be granted for remittance of full cost/50% of the cost of plot as the case may be. The allotment will automatically stand cancelled on failure to remit the full cost/50 percent of the cost as the case may be, within 30 days of receipt of allotment order."

"11. The allottee shall start construction of the building according to the control drawings supplied along with this in the site allotted to him within ONE year from the date of acceptance of tender after making payment of the entire bid amount and shall complete the construction within 3 years subject to the conditions in Clause (8)."

"20. If the allottee violates or fails to perform all or any of the conditions set forth above, G.CDA has the right to cancel the allotment of the plot forfeiting the E.M.D. and 10% of the amount, if any, paid towards the cost of the land and resume possession of the land with improvements and structures, if any, erected thereon from the allottee."

5. In the response to the aforesaid notice, the only tenderer who came forward for the purchase of this plot was respondent No. 3 and it submitted its tender on 12-8-2002 quoting the rate of Rs. 8,01,000/- per cent along with an E.M.D. of Rs. 30

lakhs. This respondent, while submitting its tender, attached a letter dated 12-8-2002 with the tender form laying down the following conditions :

"(1) We are agreeable to pay 25% of the quoted amount instead of 50% stipulated in the tender as the initial payment. Balance shall be paid in 3 equal 6 monthly installments in 18 months from the initial payment.

2) The plans submitted along with the tender form may be altered to accommodate 4 floors commercial (ground + 3). One basement floor instead of two and balance residential with 3-4 flats per floor.

3) The interest and penal interest applicable as shown in the tender document is not acceptable. The current interest rate in the industry is 12 to 14% and penal interest 1 to 2%. The interest clause may be suitably amended to match the current rates.

4) Upon initial payment, permission may be granted to start construction work.

We are agreeable to proceed if the above conditions are accepted. If not, the security deposit may be refunded at the earliest."

The tender submitted by the third respondent was considered by the Executive Committee of GCDA on 4-10-2002 and it resolved to allot the plot to the former accepting the second condition imposed by the tender and refusing all other conditions which the tenderer had promoted. Accordingly, a letter of allotment, was issued to the respondent on 11-10-2002 which reads as under :

"1. Tender application dated 12-8-2002 received from M/s. Excel Properties.

2. E.C. Resolution No. 212/2002/03/ dated 4-10-2002.

ORDER

Tenders were invited for allotment of Plot No. 2 at C.M.D.S. having an area of 59.285 cents and M/s. Excel Properties vide their application 1st cited have offered an amount of Rs. 8,01,000/- per cent.

The Executive Committee of the Authority in its meeting held on 4-10-2002 have resolved to allot the above said plot No. 2 adjacent to the Taj Hotel at CMOS vide referenced 2nd cited subject to the following conditions.

1) 50% of the total cost of the land should be remitted as 1st instalment and the balance amount shall be remitted in 6 equal bimonthly instalments together with 15% interest.

2) The land shall be handed over to the allottee only after the remittance of the entire cost.

3) The construction should be made as per the control drawings issued by GCDA with the following modifications.

The 4 floors in the lower level can be used for commercial purpose. Only one basement floor shall be provided instead of two. The remaining floors can be used for residential purpose with 3-4 flats per floor.

All other terms and conditions in the tender application are applicable."

This letter was handed over to the bidder personally on 11-10-2002. It is common case of the parties that on receipt of the letter of allotment, the third respondent remitted the following amounts till 26-11-2002 :

" 29-10-2002	-	-	-	Rs. 90,00,000/-
15-11-2002	-	-	-	Rs. 55,00,000/-
26-11-2002	-	-	-	Rs. 62,43,643/-"

It is, thus, evident that the total amount paid by the third respondent up to 26-11-2002 was less than 50% of the cost and the said target could be achieved only if the earnest money deposited along with the tender was also included. In other words, the third respondent did not deposit 50% of the total cost within 30 days as was the condition stipulated for the sale of the plot.

6. On 17-12-2002, the third respondent submitted a representation to the Chairman of the GCDA requesting him to hand over possession of the plot. This request and its entertainment by GCDA was in gross violation of condition No. 2 of the order of allotment. By this time, the third respondent had not even deposited 50% of the total costs. On receipt of this representation, the then Chairman sent for the entire file and after examining the same observed on 28-12-2002 that the Secretary who had taken the file to him had informed him that he (Secretary) was under instructions from higher-ups in Government to hand over possession of the plot to the third respondent since 50% of the amount had been remitted by then. It may be mentioned that the Secretary of GCDA had on his own allowed the third respondent to deposit a sum of Rs. 55,00,000/- on 15-11-2002 even though the period for depositing 50% of the price had expired. The Chairman found that the allotment made in favour of the third respondent was irregular/illegal because publication of the tender was not done in a proper manner. He was also of the view that the only tender quoted by the third respondent should not have been accepted with conditions attached to that and the earnest money deposited should not have been adjusted towards part payment. The Chairman was also of the view that the allotment made in favour of the third respondent should have been revoked because it had failed to make the payments towards instalments as stipulated in the tender. It may be mentioned that one Shri. V. Joseph Thomas, IPS (Retd.) had been appointed on 5-12-2002 as Chairman of GCDA and it was he who dealt with the file on 28-12-2002. Shri V. Joseph, however, tendered his resignation on 31-12-2002 which was accepted by the State Government as per order dated 10-1-2003. Shri. Elias George, Secretary (UD), was given the additional charge of Chairman of GCDA till the alternative arrangements were made. Thereafter, Prof. Antony Issac was

appointed on 4-7-2003 as Chairman in place of Shri. V. Joesph Thomas.

7. In the meantime the matter regarding the sale of the plot came up for consideration on 5-2-2003 before the Executive Committee of GCDA. After detailed discussions, it was resolved by majority to cancel the allotment on account of non compliance of the tender conditions and it was decided to forfeit the amount in accordance with law and return the balance amount to the tenderer (third respondent). This decision of the Executive Committee was communicated to the third respondent by letter dated 13-3-2003. Even before this letter could reach the third respondent, a news item had appeared in the press that the allotment made in favour of this respondent had been cancelled. On coming to know of the cancellation through the press, the third respondent approached this Court and filed O.P.No. 6091 of 2003 with a prayer that the order of cancellation be quashed and that GCDA be directed to receive the balance amount from the third respondent and complete the sale. It was urged before the learned single Judge that no notice had been issued to the third respondent before cancelling the allotment and, therefore, the order of cancellation deserved to be quashed. On a consideration of Clause (10) of the terms and conditions of allotment, the learned single Judge held that if payment of 50% or the full cost as the case may be, of the plot had not been made within 30 days of the receipt of allotment, order, the allotment stood automatically cancelled and no order of cancellation was required to be passed for which any notice was required to be issued. It was also contended before the learned single Judge that GCDA had accepted belated payments and, therefore, the period for depositing the amount will be deemed to have been extended. This contention too was not accepted and it was held that merely because an official in the Accounts Department had accepted the payment did not mean that the time for depositing the amount had been extended by the competent authority. It was left open to the third respondent (petitioner therein) to approach GCDA with a request for extension of time and a direction was issued to GCDA to take a decision within a month of the receipt of such a request. The writ petition was disposed of accordingly. It appears that after the decision of the writ petition, the third respondent approached GCDA with a request to revoke the order of cancellation and to allow it to deposit the delayed payments with interest. The State Government had also been approached simultaneously which issued directions to GCDA "to permit the tenderer (Excel Properties - Cochin) to remit 50% of the total and land value (to be remitted before 10-11-2002 without adjusting EMD before 10-4-2003 with 15% interest and the amounts which were to be remitted bi-monthly due on 10-1-2003 and 10-3-2003 remitted with 15% interest before 10-4-2003." This direction was issued by letter dated 26-3-2003, copy of which is Ext. P. 10.

8. The General Council of GCDA held its meeting on 11-4-2003 and considered the question regarding sale of land in the Marine Drive Project area. After long discussions, the General Council ratified the decision of the Executive Committee dated 5-2-2003 whereby the allotment of land to the third respondent had been

cancelled. The General Council also requested the Government to reconsider its directions issued as per its letter dated 26-3-2003 (Ext. P10). The decision of the General Council had been forwarded to the State Government but no reply was received by GCDA.

9. The third respondent again filed an application dated 23-7-2003 requesting GCDA to allow it to remit the balance amount with interest. This application was placed before the Executive Committee in its meeting held on 16-8-2003. The Executive Committee authorised the Chairman to take a decision in the matter and place the same before it. The matter was again placed before the Executive Committee in its meeting held on 25-9-2003 and it resolved to cancel its earlier decision dated 5-2-2003 whereby the allotment made in favour of the third respondent had been cancelled. It also resolved to obtain sanction from the Government for realising the balance cost of the land and hand over the plot to the third respondent. The decision of the Executive Committee was reported to the State Government for further follow up action. Since the Executive Committee decided to cancel its earlier decision dated 5-2-2003 and decided by majority to go ahead with the tender process, the third respondent remitted a sum of Rs. 76,18,715/- on 9-4-2003. Both the decisions of the Executive Committee and also that of the General Council were sent to the State Government where the matter was still pending when the present writ petition came to be filed.

10. We have heard the learned counsel for the parties. It was strenuously urged by the learned counsel for the petitioners that the land sold to the third respondent was in contravention of the terms and conditions laid down by GCDA and that the conditions were relaxed and altered to suit the said respondent after the tender submitted by it had been accepted. It was also contended that GCDA and the State Government sacrificed public interest in selling the land to the third respondent at a price which was highly inadequate. According to the learned counsel for the petitioners, the third respondent did not deposit 50% of the sale price within 30 days from the receipt of the order of allotment and, therefore, the allotment stood automatically cancelled in terms of Clause (10) of the terms and conditions of the tender. It was also contended that the Government had no jurisdiction to interfere with the allotment of the plot and that it acted arbitrarily and without jurisdiction in issuing directions to GCDA to receive belated payments from the allottee. It was also submitted on behalf of the petitioners that the State Government was wanted to favour the third respondent and that the then Chairman of GCDA did not toe the Government line and therefore he was made to resign and it was thereafter that the State Government issued directions as per letter dated 26-3-2003 directing GCDA to accept the payments from the third respondent. The petitioners also challenged the jurisdiction of the Executive Council of GCDA to pass the resolution dated 25-9-2003 whereby it cancelled its earlier decision to cancel the allotment in favour of the third respondent on the ground that its earlier decision had been ratified by the General Council and, therefore, it could not cancel the same.

11. According to the notice inviting tenders plot No. 2 was to be sold for the construction of residential flats as per the drawings approved by GCDA. The terms and conditions laid down by GCDA also made it clear that the plot was meant for the construction of multi-storeyed residential flats in the Cochin Marine Drive Scheme. The plot was so advertised and in response thereto the third respondent was the only tenderer who submitted its tender. Along with the tender the third respondent had amongst others proposed a condition that the plans be altered and that it be allowed to use four floors" in the lower level for commercial purposes and that it should be permitted to have only one basement floor instead of two as was envisaged in the original drawings. This condition was accepted by the Executive Committee of GCDA while accepting the tender submitted by the third respondent. Thus, the allotment made to the third respondent was contrary to the notice inviting tenders. As already observed, the tenders were invited for the sale of a plot for the construction of multi-storeyed residential flats. It was never advertised that the plot could be used for commercial purposes as well. Had it been so advertised, it is possible that several other parties might have come forward to submit their tenders for the purchase of the plot who now stand deprived of a fair opportunity. The size of the plot is 59.285 cents and is adjacent to Taj Hotel on Shanmughom Road which is prime property in Cochin. The primary condition regarding the nature of the building in the notice inviting tenders could not be altered at the time of accepting the tenders. We are clearly of the view that GCDA could not have allotted the plot to the third respondent with permission to use four floors in the lower level for commercial purposes. If such a permission had to be granted the tenders should have been floated afresh giving an opportunity to other parties as well to compete for the same. It is possible that GCDA might have got a higher price for the plot. Not having done so, GCDA allowed public interest to be sacrificed. We have, therefore, no hesitation in quashing the allotment made in favour of the third respondent.

12. There is yet another reason why the allotment made in favour of the third respondent should be quashed. In the facts and circumstances of the case, we are satisfied that GCDA did not act as a prudent seller in selling the plot in question. This plot was advertised for sale in the year 1995 and the tender submitted by M/s. Prakrithi Nirman (P) Ltd. - A Bangalore based Company which was the highest was accepted and the allotment was made at the rate of Rs. 19.01 lacs per cent. The plot was again advertised in June 2002. The notice inviting tenders was published in Malayala Manorama and Chandrika dailies. It is common case of the parties that no tenders were received in response to these advertisements. The plot was again advertised and the notice was published in daily Mathrubhumi on 29-7-2002 and also in the Indian Express daily (southern region) on 31-7-2002. This time the third respondent was only the tenderer who submitted its tender. The rate quoted was Rs. 8.01 lacs per cent. Such a mercurial drop in prices does not seem either probable or palatable. GCDA was aware of the fact that this plot had fetched a price of Rs. 19.01 lacs per cent in the year 1995. It was also aware that in response to the notices

published in June 2002 no tenders had been received. As a prudent seller, it should have given wider publicity and the notices inviting tenders should have been published at least in the major national dailies having circulation throughout the country because the price of the plot was likely to run into crores of rupees. It was all the more necessary to give extensive publicity because the price now quoted in the year 2002 by the third respondent was less than 50% of the price for which the plot had been sold in the year 1995. The notice was published only in the daily Mathrubhumi on 29-7-2002 in all its editions. This newspaper may have a large circulation but its distribution is confined to the State of Kerala. Similarly, the Indian Express (southern region) has circulation only in some of the southern States in the country. The then Chairman of GCDA had also observed in his note dated 28-12-2002 that the notice inviting tenders had not been widely published. Moreover, when the third respondent quoted a price which was less than half the price which the plot had fetched in the year 1995, the least that was expected from GCDA as a prudent seller was either to re-advertise the plot after giving wide publicity or at least send for the third respondent and enter into negotiations with it for raising the price. Neither of the two alternatives was adopted by GCDA. Surely, as a prudent seller, there should have been a desire on its part to fetch the maximum price for the plot but there is nothing on the record to show that it ever exhibited any such desire by its actions. On the other hand, it not only accepted the tender submitted by the third respondent at a price which was less than half the price for which it had been sold in the year 1995 but also meekly accepted the conditions proposed by the tenderer, thereby altering the primary condition of the tender. The third respondent was allowed permission to use four floors for commercial purposes and also construct one basement floor instead of two. This was obviously meant to benefit the third respondent. It may be mentioned that plot No. 6 having an area of 43.26 cents in the Cochin Marine Drive area had been offered for sale in October 2003 after giving wide publicity in the National and International dailies (of India, Gulf, New York editions). It so happened that only one tender application was received quoting the rate of Rs. 10.01 lacs per cent. GCDA thought that the price was low and it decided to re-tender the plot. There is no answer as to why it did not think it necessary to re-tender plot No. 2 which is the one in question before us, particularly when the rate quoted by the third respondent was less than 50% of the price which it had fetched in the year 1995. Again, notice inviting tenders for plot No. 6 was given wide publicity in all India and International newspapers but no such publicity was given when plot No. 2 was sought to be sold. In the peculiar facts of this case it is clear that GCDA did not act as a prudent seller. We are, therefore, satisfied that the allotment of the plot in favour of the third respondent was detrimental to public interest and that the then Chairman of GCDA was right in observing that notice inviting tenders had not been widely/properly published.

13. It was strenuously contended by Mr. Youseff, the learned counsel for the petitioners that the price quoted by the third respondent was highly inadequate and, therefore, GCDA should not have accepted the solitary tender submitted by the said respondent. He drew our attention to the earlier tender floated in the year 1995 when the same plot fetched a price of Rs. 19.01 lacs per cent. The learned counsel appearing for GCDA and also for the third respondent were equally emphatic in submitting that the prices of land in Cochin have been on the decline and, therefore, the price quoted by the third respondent which was accepted by GCDA was the proper price for the land in question and this Court would not be justified in interfering with the allotment merely because the plot had earlier fetched higher price. Since we have already held that the allotment made in favour of the third respondent is contrary to the advertisement issued by GCDA and that the said respondent could not be allowed to use the same for commercial purposes without re-advertising the plot and that GCDA did not act as a prudent seller, it is not necessary for us to decide this contention raised by the learned counsel for the petitioners. It is true that the plot in question had been sold in the year 1995 at the rate of Rs. 19.01 lacs per cent and that the price now quoted by the third respondent was only Rs. 8.01 lacs per cent and, therefore, one may raise one's eyebrows but whether the prices of land have really fallen in Cochin, particularly in the Marine Drive area to such an extent is a disputed issue which may require a detailed enquiry. Similarly, some other contentions raised by the learned counsel for the petitioners need not be gone into in view of our aforesaid findings so also the judgments cited at the Bar are not essential for deciding the issue at hand. We may, however, notice one objection raised by the respondents. It was urged that the petitioners are pro bono publico and that the writ petition lacks bona fides and that the same is not maintainable at their instance. We do not think so. The prime land which has been sold by GCDA is public property and if it is sold at a throw away price or in contravention of the notice inviting tenders whereby public interest is allowed to be sacrificed it will be open to any member of the public to approach this Court and bring the fact, to its notice. It is true that the petitioners are not the competitors of the third respondent but that would not prevent them from filing the Public Interest Litigation pointing out that a public body has thrown public interest to the winds in selling its properties. There is no merit in this objection and we have no hesitation in rejecting the same.

14. Before concluding, it may be mentioned that during the course of arguments, we had asked GCDA whether it was willing to re-advertise the plot to see as to whether it could fetch a higher price than the one for which it has now been sold to the third respondent. It was also suggested that the petition could be kept pending and the plot be re-advertised to find out its market price. GCDA and the State Government did not accept the offer and they insisted that the case be heard and disposed of on merits.

In the result, the writ petition is allowed and the order of allotment dated 11-10-2002 made in favour of the third respondent quashed. GCDA will be at liberty to re-advertise the plot after giving wide publicity in accordance with law. The amount deposited by the third respondent shall be refunded in accordance with Rules. There is no order as to costs.