

SURESH CHANDRA

A

v.

U.P. AVAS EVAM VIKAS PARISHAD & ORS.

(Civil Appeal No. 11760 of 2018)

DECEMBER 03, 2018

B

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Auction:

Re-auction – Propriety of – First auction of plot by respondent-Parishad – Appellant though the highest bidder, was not given the land by the Parishad and decision taken to re-auction – Decision for re-auction challenged in writ petition by the appellant – Re-auction was allowed by High Court subject to outcome of the writ petition – In second auction respondent No.5 was allotted the land and sale-deed executed in his favour – Writ Petition of appellant was dismissed – Appeal to Supreme Court – Notice issued limited to the question of re-auction (third auction) of the land in question – Respondent-Parishad had no objection to the re-auction – Held: In order to do complete justice between the parties, and to balance the equities, fresh auction can be ordered – Parishad is directed to re-auction the land by giving it wide publicity and after fixing the reserve price on consulting the experts – Sale-deed executed in favour of respondent No.5 has become void.

C

D

E

Allowing the appeal, the Court

HELD: 1. In order to do complete justice between the parties in relation to subject matter of the proceedings in question and to balance the equities and further having regard to all the facts and circumstances of the case, the fresh auction of the land in question can be ordered. [Para 17][989-B-C]

F

2. The 2nd re-auction proceedings conducted by the Parishad were made subject to final outcome of the writ petition by order dated 30.07.2012 passed by the High Court in the appellant's writ petition and, therefore, even if Parishad had proceeded to finalize the sale of the land in question in favour of respondent No.5, it did not affect any of the rights of the appellant

G

H

A while prosecuting the writ petition. It was more so because respondent No.5 was also aware of the order dated 30.07.2012, he being part to the writ petition. [Para 18][989-C-E]

B 3. The Parishad did not give adequate publicity for sale of the land in question while conducting the two auctions keeping in view, the value and the potential of the land, the Parishad should have given adequate publicity in the leading national English, Hindi newspapers having circulation all over the country including any other prescribed mode of publication with a sole object to attract participation of more and more persons in the auction proceedings. [Paras 19 and 20][989-E-F]

C 4. The Parishad committed an error in fixing reserve price of the land at a very less amount. The Parishad should have seen that the land has a tremendous potential in commercial market as is clear from the fact that both the bidders had volunteered to pay much higher price as against their original bid amount. [Para 21][989-F-H]

D 5. Since this Court has directed re-auctioning of the land, the sale deed has now become void. Respondent No.5 is, therefore, entitled to claim refund of entire stamp duty amount paid by him on the sale deed for its execution/registration. The appellant and respondent No. 5 will be free to participate in the auction proceedings as a fresh bidder along with others. [Paras 27 and 28][990-E-F]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11760 of 2018.

F From the Judgment and Order dated 29.01.2018 of the High Court of Judicature at Allahabad, Lucknow Bench in Misc. Bench No. 6198 of 2012.

G Ms. Sonia Mathur, Sr. Adv., Sushil Kumar Dubey, Ms. Noor Rampal, Satya Mitra, Advs. for the Appellant.

S. S. Kulshrestha, Sr. Adv., Vishwajit Singh, Ms. Srishti Khanna, Ajeet Pandey, Danish Zubar Khan, Abhay Kumar, Manish Khandelwal, Saurabh Misra, Himanshu Pal Singh, Advs. for the Respondents.

H

The Judgment of the Court was delivered by A

ABHAY MANOHAR SAPRE, J.

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 29.01.2018 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Writ Petition No. 6198(M/B) of 2012 whereby the Division Bench of the High Court dismissed the writ petition filed by the appellant herein. B

3. In order to appreciate the issue involved in this appeal, which lies in a narrow compass, it is necessary to set out the relevant facts in brief hereinbelow. C

4. While issuing notice of this special leave to appeal on 06.03.2018, this Court passed the following order:

“Application for exemption from filing official translation is allowed. D

Issue notice on the limited question as to why the property in question admeasuring 639 sq.metres land which was auctioned by Uttar Pradesh Avas Evam Vikas Parishad for which market price as of today is quite high, be not put to auction sale again, returnable on 14th March, 2018. E

Status quo as of today in respect of the property in question shall be maintained.

Petitioner is permitted to serve the respondents by way of dasti service within a week.” F

5. Pursuant to the aforesaid order, the respondents have filed their response/counter affidavits.

6. In short, the dispute relates to a plot of land bearing plot No. 4B/CP-03 (Sector 4B) situated at Sikandara Yojna, Agra having total area measuring 639.75 Sq. meter owned by U.P. Avas Vikas Parishad-respondent No. 1 herein (hereinafter referred to as “the Parishad”). G

7. On 12.08.2010, the Parishad in daily Hindi News Papers “Dainik Jagaran” and “Amar Ujala” issued an advertisement inviting applications from interested parties for allotment of the aforementioned land. The reserved rate of the plot was fixed at Rs.17,248/- per sq. mt. The parties were to deposit a token money of Rs.11,03,500/-. H

A 8. It is the case of the appellant that he was one of the bidders, who quoted the rate of the plot at Rs.18050/- per sq. meter which was the highest. The Parishad, however, was of the view that the offers received did not represent the real market price and, therefore, it decided to re-auction the same.

B 9. The Parishad, therefore, issued a fresh advertisement for allotment of land. The appellant felt aggrieved with the Parishad's decision to re-auction the land in question and issuance of fresh advertisement and filed Writ Petition No.6198/2012 in the High Court at Allahabad. The High Court, by interim order dated 30.07.2012, directed that re-auction may be held but it will be subject to the final outcome of
C the writ petition.

10. In re-auction, respondent No. 5 submitted his bid for Rs.28,000/- per Sq. Meter as against the reserve price of Rs.27,104/- fixed by the Parishad. The appellant in order to show his *bona fide* interest offered to purchase the land for Rs.40,000/- per Sq. Meter and
D later modified his offer at Rs.45,000/- per Sq. Meter in the Court. The appellant also deposited a sum of Rs.1.15 crores out of the total amount of Rs.2.87 crores.

11. The High Court, by impugned order, dismissed the appellant's writ petition essentially on the ground that since he was not the bidder in
E the re-auction proceedings, he cannot be heard in the matter and Secondly; since during the pendency of the writ petition, the Parishad had executed the sale deed of the land in favour of respondent No.5 and hence nothing now survives in the matter.

12. The appellant(writ petitioner) felt aggrieved and filed this appeal
F by way of special leave in this Court. As mentioned above, notice was issued to examine only one limited issue in relation to re-auction of the land.

13. Heard Ms. Sonia Mathur, learned senior counsel for the appellant and Mr. S.S. Kulshrestha, learned senior counsel, Mr. Vishwajit
G Singh and Mr. Abhay Kumar, learned counsel for the respondents.

14. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to dispose of the appeal as mentioned hereinbelow.

H 15. Learned counsel for respondent No.1- Parishad at the outset submitted that the Parishad has no objection if the re-auction of the plot

of the land in question is done because in re-auction proceedings, the Parishad is bound to get more sale price as against the price quoted by the bidders in the earlier two auctions. A

16. Learned Counsel for respondent No.5, however, defended the impugned order and contended that since the sale has already been concluded in his favour and sale deed has also been executed, the appeal deserves dismissal. B

17. We are of the considered opinion that in order to do complete justice between the parties in relation to subject matter of the proceedings in question and to balance the equities and further having regard to all the facts and circumstances of the case, the fresh auction of the land in question can be ordered. It is also necessary for the following reasons. C

18. First, the 2nd re-auction proceedings conducted by the Parishad were made subject to final outcome of the writ petition by order dated 30.07.2012 passed by the High Court in the appellant's writ petition and, therefore, even if Parishad had proceeded to finalize the sale of the land in question in favour of respondent No.5, it did not affect any of the rights of the appellant while prosecuting the writ petition. It was more so because the respondent No.5 was also aware of the order dated 30.07.2012, he being part to the writ petition. D

19. Second, the Parishad did not give adequate publicity for sale of the land in question while conducting two auctions because we find that only two bidders could participate in the auctions. E

20. In our view, the Parishad, keeping in view, the value and the potential of the land, should have given adequate publicity in the leading national English, Hindi newspapers having circulation all over the country including any other prescribed mode of publication with a sole object to attract participation of more and more persons in the auction proceedings. F

21. Third, the Parishad committed an error in fixing reserve price of the land at a very less amount. The Parishad should have seen that the land has a tremendous potential in commercial market as is clear from the fact that both the bidders had volunteered to pay much higher price as against their original bid amount. G

22. In the light of the aforementioned reasons, we are of the view that the land in question deserves to be re-auctioned afresh.

H

A 23. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. Impugned order is set aside. The Parishad is directed to re-auction the land in question by giving wide publicity in various leading national newspapers having circulation all over India in bold letters including giving publicity in local daily newspapers also in the States with a view to enable more and more persons to participate in the auction for allotment of the said land.

B 24. The Parishad is also directed to get the reserve price fixed after consulting experts in the subject.

C 25. The Parishad is also directed to provide adequate conditions so that the auction process becomes transparent and at the same time the bidders are able to submit their bids properly.

D 26. The Parishad is also directed to refund the entire money to the appellant and the respondent No. 5, which they had deposited for purchase of the land in question in auctions with interest payable at the rate of 6% p.a..

E 27. The State will issue a necessary certificate in favour of respondent No.5 to enable him to claim refund of stamp duty amount from the State which he has paid on the sale deed executed by the Parishad in his favour in relation to the land in question. Since this Court has directed re-auctioning of the land, the sale deed has now become void. Respondent No.5 is, therefore, entitled to claim refund of entire stamp duty amount paid by him on the sale deed for its execution/ registration.

F 28. The appellant and respondent No. 5 will be free to participate in the auction proceedings as a fresh bidder along with others. However, they will not be entitled to claim any kind of benefit in re-auction proceedings on the ground that they had earlier participated in the auction proceedings.

G 29. The Parishad would ensure that the auction proceedings are conducted in fair and transparent manner and fetch maximum price of the land.

30. Let the fresh auction proceedings be completed within 6 months from the date of this order.