

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
W.P.No.4284 of 2013

ORDER:

Heard the learned counsel for the petitioner and Sri T.Bheemanna, learned Standing Counsel for respondent Nos.2 and 3.

Petitioner was a highest bidder in an auction conducted on 28-11-1996 for plot No.2 in Georgepet, 5th Road Extension in Sy. No.2148/11 to L.P.No.358/79, near H.No.1/182-B5A5 of Ananthapur town conducted by 2nd respondent Municipality. Petitioner paid only 20% of the total amount of Rs.1,21,000/- quoted by him at the time of auction on 28-11-1996. It appears that there was a writ petition filed in this Court vide W.P.No.30992 of 1996 questioning the said auction. The said Writ Petition was dismissed, and on 05-07-1997, a notice was issued to the petitioner to pay the rest of the consideration.

Petitioner claims not to have received the said notice since he was away from Anantapur on job purpose. He contends that in 2006, he paid the balance sale consideration of Rs.1,01,000/- by way of demand draft drawn on Andhra Bank, that 2nd respondent received it through registered post, but it did not register the plot in his name. Petitioner contends that in 2010, he was informed that the demand draft sent by him in 2006 was misplaced and that he again sent another demand draft for the same amount along with a letter dt.30-03-2010. He contends that 2nd respondent received the said demand draft but did not register the plot in his name. Thereafter, petitioner submitted a representation dt.17-01-2013 to 2nd respondent to register the said plot in his name. When no action was taken thereupon, this Writ Petition is filed.

The learned counsel for the petitioner contends that similar plots of other purchasers had been registered in 2004 and 2005 and since

2nd respondent has received the entire sale consideration in respect of the subject plot, a direction should be given to 2nd respondent to register the petitioner's plot also.

The learned Standing Counsel for 2nd respondent contends that the subject plot is, in fact, an open reserved space in L.P.No.358/79; that 2nd respondent-municipality did auction the said plot which was questioned in W.P.No.30992 of 1996 in this Court; after dismissal of the said Writ Petition, a further notice was issued on 05-07-1997 asking him to pay the balance consideration. The learned counsel for 2nd respondent further contends that the petitioner has not responded till 07-12-2010 i.e. for over 13 years and it is only on 30-03-2010 the demand draft for the balance amount was received in the office of 2nd respondent. It is further submitted that in view of the several decisions of this Court and of the Apex Court prohibiting use of sites reserved for parks, playgrounds and open spaces in layouts from being constructed upon in the interest of health, sanitation, environment, a G.O.Ms.No.72 MA dt.20-02-2002 was issued directing municipalities in the State not to propose the utilization of reserved open places in layout for the purposes other than the intended original use such as park, playground, community structure, urban forestry and similar eco-conservation programmes. The 2nd respondent therefore prays that the Writ Petition be dismissed.

From the above facts narrated, it is clear that the petitioner had bid Rs.1,21,000/- for the subject plot and paid only Rs.20,000/- including deposit amount of Rs.5,000/- to 2nd respondent-Municipality immediately thereafter. It is not disputed by the petitioner that the balance consideration was also to be made shortly thereafter and that he did not pay the same. His case is that because of filing of

W.P.No.30992 of 1996 questioning the said auction, he did not pay the amount immediately. Admittedly, the said Writ Petition was dismissed in the year 1997 and shortly thereafter, a notice dt.05-07-1997 was issued to the petitioner to pay the balance amount within three days. It is difficult to believe that the petitioner was not aware of the same till 2006/2010. It is the duty of the petitioner to ascertain when the balance amount is payable and if he was interested to pay the balance consideration, he should pay the balance amount when the notice was issued. But he did not make such effort till 2010 when he sent demand draft for the balance amount of Rs.1,01,000/-. The 2nd respondent has also not admitted the alleged payment in 2006 by petitioner.

The market value of the plot in question would have increased abnormally between 1997 and 2010. This Court can take judicial notice of it. So any transfer of title of the said plot to the petitioner in 2010 at the rate prevalent in 1996 would be contrary to public interest.

In any event, the petitioner has not refuted contention of 2nd respondent that the subject plot is earmarked as an open space in L.P.No.358 of 1979 and that open spaces of such nature are prohibited from alienation by G.O.Ms.No.72 dt.20-02-2002 and several judgments of this Court and of the Apex Court.

In this view of the matter, I am of the opinion that the petitioner cannot obtain any direction to 2nd or 3rd respondent to register the subject plot to him in this Writ Petition filed under Article 226 of the Constitution of India. Therefore leaving it open to the petitioner to approach competent Civil Court to seek refund of amount paid by him, this Writ Petition is dismissed. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand

disposed of.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-10-2014
kvr