

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 17th OF FEBRUARY, 2024

WRIT PETITION No. 16120 of 2023

BETWEEN:-

1. DEVENDRA S/O SHRI RAMLAL, AGED ABOUT 28 YEARS, OCCUPATION: AGRICULTURIST AND SERVICE 12 NYAY NAGAR, SUKHLIYA DISTRICT INDORE (MADHYA PRADESH)
2. GAURAV SINGH JADAUN S/O SHRI RAJVEER SINGH, AGED ABOUT 42 YEARS, OCCUPATION: BUSINESS 55, SILVER SPRINGS PHASE 1, BYPASS ROAD, MUNDLA NAYTA INDORE (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI PRADYUMNA KIBE – ADVOCATE)

AND

1. INDORE DEVELOPMENT AUTHORITY ITS CHIEF EXECUTIVE OFFICER 07 RACE COURSE ROAD, DISTRICT INDORE. (MADHYA PRADESH)
2. THE ESTATE OFFICER, CLASS II, INDORE DEVELOPMENT AUTHORITY 7, RACE COURSE ROAD, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SAHIL JAIN – ADVOCATE)

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This petition coming on for admission this day, the court passed the following:

ORDER

Heard finally, with the consent of the parties.

2] This writ petition has been filed by the petitioners under Article 226 of the Constitution of India, seeking the following reliefs:-

“7.1 Refund of amount to the tune of Rs. 41,98,634/- along with interest @ 8% p.a. to petitioner no. 1;

7.2 Issuance of fresh demand note to petitioner no.1 with respect of payment of first installment of premium amount for Shop no.3, RCM-13 according to reservation letter dated 19.12.2019;

7.3 Not to charge any penal interest on the subsequent demand notes being the petitioner no.1 not at fault;

7.4 Cost be awarded to the petitioners; &

7.5 Any other directions as this Hon'ble court in the interest of justice may deem fit;

7.6 Quash and set aside notice dated 07.12.2023 (Annexure P/11).

7.7. Alternatively, direct the respondents to further grant time to the petitioner no.1 to deposit the alleged unpaid amount in terms of Rule 12 of the Vyayan Niyam, 2018 and revoke notice dated 07.12.2023 and direct respondents refund the amount paid by petitioner no.2 with interest.”

3] Admittedly, the reliefs as claimed in paras 7.6 and 7.7 have been sought subsequent to the filing of this petition, as the order dated 07.12.2023 was passed subsequent to the date of filing of the petition on 10.07.2023.

4] In brief, the facts of the case are that a tender was floated by the respondents/IDA for the auction of Shop No.3, RCM -13, Scheme No.140 through advertisement dated 08.08.2019. In the aforesaid advertisement, it was provided that the successful bidder is required to deposit 10% of the amount as EMD, and later on which was to be

adjusted with first installment of 25% of premium. Since the petitioner No.1 was successful in the aforesaid bid, reservation letter was issued to him on 19.12.2019, according to which, the petitioner was required to deposit rest of the 25% as first installment by 17.01.2020, however, as the petitioner No.1 could not manage the aforesaid amount, he sought for the extension of time and thus, on 09.03.2020 the time was extended till 17.03.2020. However, as the petitioner No.1 was not able to deposit the amount by that time also, he again sought an extension on 17.03.2020, and vide letter dated 01.07.2020, the time was extended by the IDA upto 16.07.2020.

5] The case of the petitioner No.1 is that although the time was extended upto 16.07.2020, however, since the order was not passed on 30.06.2020, the amount of Rs.41,98,634/- was deposited by the petitioner No.1 through the petitioner No.2 on 01.07.2020, who deposited the same from his own account directly into the account of IDA.

6] However, despite such deposit, as no allotment letter was issued to the petitioner No.1, he submitted his representation on 15.12.2020, asking for the allotment letter and also the dues in respect of the same along with issuance of demand note for the next payment. However, as no reply was given by the respondents, the second representation was submitted by the petitioner No.1 on 08.11.2021 (Annexure P/7); third representation on 27.04.2023 (Annexure P/8), and thereafter, fourth representation on 13.06.2023 (Annexure P/9), in which, as the petitioner No.1 was already informed by the officers of the IDA that on account of the payment of his first installment by the petitioner

No.2, his allotment letter is not being issued, the petitioner No.1 gave an explanation as to how the aforesaid amount has come to be deposited by the petitioner No.2 on his behalf. It was specifically stated by the petitioner No.1 that on account of the Covid-19 pandemic, he was not able to arrange the amount, hence, he had requested his co-worker to lend him the money, which was erroneously directly deposited by him in the IDA's account, instead of making the payment to him. However, as no reply was given by the respondents of this last representation also, the petition was filed on **10.07.2023**.

7] After the petition was filed, the respondents were issued notices and after seeking three adjournments, the respondents have filed the reply on **14.12.2023**, in which the order dated 07.12.2023 was also filed informing that the allotment of the petitioner No.1 has been cancelled as per the Board Resolution dated 13.07.2023 of the I.D.A. which has also been challenged by amending the petition.

8] Shri Pradyumna Kibe, learned counsel for the petitioners has submitted that the petitioner No.1 had made the payment to the IDA through petitioner No.2, which could not have been objected to by the respondents as there was no such condition enumerated in the advertisement that such amount of premium by a third party shall not be accepted. Otherwise also, it is submitted that the order passed by the IDA on 07.12.2023 runs contrary to the provisions of rules of *Madhya Pradesh Vikas Pradhikarano Ki Sampatiyon Ka Prabandhan Tatha Vyayan Niyam, 2018* (hereinafter referred to as '*Niyam of 2018*'). It is submitted that the aforesaid order has been

passed under Rule 12 of Niyam of 2018. However, the petitioner No.1 was never given any opportunity to deposit the amount as no notice was ever served to the petitioner No.1 that the payment made by him is erroneous in any nature. Counsel has submitted that despite four representations submitted by the petitioner No.1, the respondents have kept mum and have passed the final order dated 07.12.2023, just before filing reply in this petition and without even intimating it to the petitioner No.1.

9] In support of his submissions, Shri Kibe has relied upon a decision rendered by the co-ordinate Bench of this Court in *Writ Petition No.99 of 2023 dated 18.04.2023* in the case of *Nitin Mishra & another Vs. Indore Development Authority & another*, and it is submitted that in that case also the amount was deposited by the petitioner No.2 on behalf of petitioner No.1 and this Court has allowed the petition directing the respondents to refund the amount deposited by the petitioner No.2 and allowed the petitioner No.1 to make the payment, and it was also directed that the respondent No.1 to issue the allotment letter.

10] On the other hand, in the reply filed by the respondents opposing the reliefs it is stated that the action of the petitioner No.1 in depositing the amount of first installment towards purchase of the plot through petitioner No.2 runs contrary to the conditions of the advertisement, (at page 66 of the petition) which clearly provides that the amount has to be deposited by the allottee only.

11] **Shri Sahil Jain, learned** counsel for the respondents has also referred to condition No.3 of the advertisement to buttress his

arguments that the amount was required to be paid by the petitioner No.1 himself, which was, with a view to discourage the *Benami* transactions, and since the entire amount of first installment has been paid by the petitioner No.2, it was clearly a *Benami* transaction, which is also mentioned in the impugned order dated 07.12.2023.

12] In the alternative, Shri Jain has also submitted that even if this Court allows the petitioner to deposit the amount, in that case the amount of penalty be also directed to be paid by the petitioner No.1 as it was the petitioner No.1's fault in not making the payment in time, in accordance with the advertisement and also not informing the department that the payment is being made through the petitioner No.2 on his behalf.

13] It is also submitted that even as on 1st of July, 2020, the amount which was required to be deposited by the petitioner was Rs.42,31,261 by 16.07.2020, and not Rs.41,98,634/-, which has been deposited by the petitioner No.2 on 30.06.2020. Thus, it is submitted that the petitioner was also required to pay an additional amount of Rs.32,627/- with interest.

14] Heard. Having heard the learned counsel for the parties and perused the record, it is found that in the advertisement dated 08.08.2019, it is nowhere mentioned that the amount has to be paid by the person from his own account only, and so far as the tender document is concerned, the condition on which the respondents have relied upon reads as under:-

“XXXXXXXXXXXXXX

3. आवेदक द्वारा कुल अधिमूल्य० (प्रीमियम) की 25 प्रतिशत
(आवेदन पंजीयन राशि के समायोजन पश्चात् शेष) राशि तथा

अनुबंध-पत्र की प्रति प्राधिकरण कार्यालय में जमा करने के बाद ही आवंटन पत्र (Allotment Letter) जारी किया जाएगा।

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5. उपरोक्त अनुसार दी गई निर्दिष्ट समयवृद्धि के भीतर आवेदन प्रस्तुतकर्ता भुगतान जमा करने में असफल रहता है वहां प्राधिकरण आरक्षण को रद्द तथा आवेदन पंजीयन राशि को समपह्त कर सकेगा।

XXXXXXXXXXXXXXXXXX”

15] It is also found that after the reservation letter issued to the petitioner No.1 on 19.12.2019, he was not able to deposit the first installment by 17.03.2020 and thereafter he sought two extensions and before the second extension could be allowed, he deposited the amount of Rs.41,98,634/- through the petitioner No.2 in the account of the respondent No.1 on 30.06.2020. It is also found that on 01.07.2020 the time was extended by the respondents to deposit the amount till 16.07.2020, and after submitting as many as four representations, as there was no response or intimation by the respondents that the amount so deposited by the petitioner No.1 through the petitioner No.2 cannot be accepted by them, it is only after the writ petition was filed, , that the respondents have passed the impugned order dated 07.12.2023, which was filed along with their reply dated 14.12.2023. A perusal of the impugned order also reveals that the respondents have relied upon Rule 12 of the Niyam of 2018, which reads as under:-

“12. Penalty and cancellation of allotment for non-payment.-

(1) In the event of non-payment of installments by the allottee, as per the prescribed schedule or at the end of the period extended as per rule 11(3), a notice for revocation of allotment will be given to the allottee, at the end of the period extended as per rule 11(3).

(2) However, on receiving the notice for revocation of allotment if the allottee deposits the entire outstanding balance amount, as per the schedule along with the interest and penal Interest (at the rate of 5%, from the due date of the respective installment) within one month

from the date of receiving the revocation notice then the Development Authority shall withdraw its notice for revocation of allotment.

(3) However, if the payment is not made as mentioned in sub rule 2 herein above, then the Development Authority will revoke the allotment. In case of cancellation of allotment due to non-payment of installments the Development Authority will forfeit the sum equivalent to the 10% of the premium amount and will return the remaining amount to the allottee. The allottee will have no right to claim interest on the forfeited amount.”

(emphasis supplied)

16] A perusal of the aforesaid Rule 12 clearly reveals that even before the allotment is revoked, the allottee has an opportunity to deposit the balance amount with interest and penal interest at the rate of 5% from the due date of the respective installment within one month from the date of receiving the revocation notice, and in case if the allottee makes the payment, in that case, the Development Authority shall withdraw the notice for revocation of allotment.

17] A perusal of the documents filed on record, clearly reveals that no such notice was ever issued to the petitioner No.1 informing him that his allotment shall stand cancelled or that the first installment which was paid through the petitioner No.2 shall be treated as non-payment or that he is required to pay the fresh payment as per Rule 12 of Niyam of 2018. In such circumstances, this Court is of the considered opinion that the impugned order dated 07.12.2023 cannot be countenanced in the eyes of Rule 12 of Niyam of 2018 and the cancellation of allotment is liable to be set aside.

18] Considering the fact that the amount is already lying with the respondents, which have been paid by the petitioner No.2 on behalf of petitioner No.1, it is directed that the amount of Rs.41,98,634/- be returned to the petitioner No.2 along with 6% interest, and within seven days therefrom, the petitioner No.1 shall be allowed to deposit

the entire amount along with 6% interest, as also the amount of Rs.32,627/- which the petitioner did not deposit as per the demand letter dated 01.07.2020 issued by the respondents with interest @ 6% per annum.

19] With the aforesaid direction, the petition stands *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Pankaj