

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1843 of 2018

Plaintiff : Syed Nasir Ali, through Dr. Shahnwaz Memon, Advocate.

Defendants Nos. 1&2 : Government Teachers Co-Operative Housing Society and another, through Mr. Khalil Ahmed Siddiqui, Advocate.

Defendant No. 3 : Ameet Kumar, through Mr. Irfan Ahmed Memon, Advocate.

Dates of hearing : 21.10.2019 and 05.12.19.

ORDER

YOUSUF ALI SAYEED, J – The Plaintiff participated in an auction conducted by the Defendant No.1 in respect of Commercial Plot No.01 measuring 3072 square yards, situated in Government Teacher Society, Sector 16A, Karachi (the “**Subject Plot**”), and made a bid of Rs.61,500/- per square yard, with numerous higher bids being made and the Defendant No.3 making the highest bid of Rs.95,500/- per square yards, thus being declared by the Defendant No.1 to be the successful bidder.

2. Broadly stated, the basis of the Plaintiff’s case is that the Defendant No. 3 did not abide by the terms and conditions of the auction in as much as failed to pay the third and fourth installment that fell due on 25.02.2018 and 25.08.2018 respectively as per the specified payment schedule but rather than cancelling the bid of the Defendant No.3, the Managing Committee of the Defendant No. 1 wrongly allowed further time.

3. Per the Plaintiff, such conduct on the part of the Defendants Nos. 1 and 3 confers upon him the right “to sue the Defendant Nos.1 and 3 to cancel the bid/auction in favour of the Defendant No.3”. The cause of action is stated to have arisen on 19.03.2017, when the Plaintiff participated in the auction and deposited a Pay Order of two million rupees and obtained Token No.6 for participation. It is stated to have arisen once again when the Defendant No.3 did not meet the payment schedule as per the terms and conditions of the auction, and when the plaintiff allegedly wrote an application to the Defendants No.1 & 2 to cancel the bid and forfeit 25% of the amount deposited by the Defendant No.3.

4. It is on this basis that the Plaintiff has filed the Suit, with it being prayed that this Court be pleased:

“01. To declare and direct the Defendant No.1 to cancel the bid given by the Defendant No.3 in respect of Commercial Plot No.1 measuring 3072 square yards in Government Teachers Society Sector 16A, Karachi on account of default in payment as per terms and conditions of auction;

02. To grant permanent injunction restraining the Defendants No.1 and 3 from transferring the title and possession of the Plot Commercial Plot No.1 measuring 3072 square yards in Government Teachers Society Sector 16A, Karachi in favour of the Defendant No.3. In the meanwhile, to restrain the Defendant No.1 from transferring the title and handing over possession or from creating third party interest in the plot.

03. To award cost of the suit.

04. Any other relief, which this Hon’ble Court deems fit in the circumstances of the case.”

5. It is in this backdrop that an Application has also been filed by the Plaintiff under Order 39, Rules 1 and 2 CPC, being CMA No. 13956/18, seeking that the Defendants be restrained from handing over possession of the Subject and creating any third party interest therein, with an interim order having been made on 16.01.2019 directing the parties to maintain status quo, whereas Applications under Order 7, Rule 11 CPC, bearing CMA Nos. 15383/18 and 14463/18 respectively have been filed by the Defendants Nos. 1 and 3, seeking rejection of the Plaint on the ground that (a) the Plaintiff lacks *locus standi*, (b) the Suit being barred under Section 70-A of the Co-Operative Societies Act, 1925 in the absence of notice, and (c) that the declaration sought is not in relation to the legal character of the Plaintiff and cannot be granted under Section 42 of the Specific Relief Act. It is these Applications that have been proceeded on and are the subject of consideration.

6. Learned counsel for the Plaintiff submitted that the auction was subject to the prescribed terms and conditions, as per which payments was to be made in accordance with a specified timeline, and the consequence of default was cancellation of the bid and forfeiture of 25% of the amount paid, as per Clause 5(C) thereof. It was submitted that the condition of making timely payment and the consequence of default were mandatory in nature and the Plaintiff and other persons who had come forward as bidders had this in mind at the time of making their bids. It was contended that had they known that the Defendant No.1 would grant indulgence in allowing further time, the Plaintiff would have made a higher bid. It was contended that such indulgence was beyond the competence of the Managing Committee and required the approval of the General Body.

7. It was contended with reference to Paragraph 14 of the Counter-Affidavit submitted by the Plaintiff to CMA Nos. 15383/18, that the Plaintiff had *locus standi* as he was one of the bidders in the auction and had the right to not be discriminated against, as he had been told that the payment schedule was to be strictly followed. It was submitted that as the Plaintiff was the attorney of his wife, who was a member of the Defendant No.1 Society, he had the right to question the conduct of the Defendant No.1 in granting time to the Defendant No.3 rather than cancelling the bid, which, per the Plaintiff, had resulted in loss to the Defendant No.1 as the current value of the property was much higher than what had been offered by the Defendant No.3, and that under such circumstances the Defendant No.1 was liable to be restrained from transferring the title or handing over possession of the Subject Plot to the Defendant No.3 or from creating any third party interest.

8. On the other hand, learned counsel for the Defendants Nos. 1 and 3 submitted that the Plaintiff did not have any legal character to seek a declaration in the given terms and lacked *locus standi* in the matter as he had no title or interest in the Subject Plot and was not even a member of the Defendant No.1 society. It was submitted that the Plaintiff had no prima facie case for the grant of an injunction and the Suit was mala fide and misconceived, and liable to be dismissed accordingly.

9. Having considered the matter, it is apparent that the Plaintiff's entire case is presumptive, being based on the premise that he would have made a higher bid had he allegedly not been given to understand that the payment schedule was inflexible. However, this hardly constitutes

a legal basis for a claim, as it can be assumed that all bidders may have upped their bids accordingly, hence it can scarcely be assumed that the Plaintiff would have fared any better in the final analysis. The contention as to alleged loss having been caused to the Defendant No.1 and its affording a cause of action to the Plaintiff is also fallacious as the Plaintiff is not even a member of the Defendant No.1 society, and his contention of being the attorney of a member is also of no avail as it is evident that the suit has not been filed in a representative capacity. Even otherwise, the appropriate remedy for a member of the Defendant No.1 to give vent to a grievance touching upon the business of the Defendant No.1 society would be at a meeting of the General Body through the forum of the Registrar. Under the given circumstances, it is apparent from the pleadings that the Plaintiff has merely come forward as an unsuccessful bidder and has no *locus standi* in the matter, it being well settled in terms of the judgment of the Honourable Supreme Court in the case reported as Haji Dher Wali and others v. Haji Ahmad Din and others 1986 SCMR 771 that a potential bidder can neither compete with a person who has acquired a vested right nor can compel the authority to bring the properties to auction.

10. As such, it is apparent that the Suit is misconceived and is not maintainable. Needless to say, where the Plaintiff lacks *locus standi*, no cause of action arises in his favour, hence CMA Nos. 15383/18 and 14463/18 are allowed and the Plaint stands rejected accordingly, whereas CMA No. 13956/18 consequently stands dismissed.

JUDGE

Karachi.
Dated _____