

Kulshashi Raj and Others Vs. Vice Chairman, Delhi Development Authority

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Feb-22-1990

Judge : Prithvi Raj, President, the Honourable Mr. B.L. Anand, Member & the Honourable Dr. (Mrs.) Avtar Pennathur, Member

Appeal No. : Appeal No. A-18 of 1989

Appellant : Kulshashi Raj and Others

Respondent : Vice Chairman, Delhi Development Authority

Judgement :

Dr. (Mrs.) Avtar Pennathur, Member:

(1) This is an appeal against the orders of the Consumer Disputes Redressal Forum (District Forum) dated April 28, 1989 in Case No. 1 of 1989.

(2) Brief facts of the case are that the appellants S/Sh. Kulshashi Raj and Ajay Kumar had in an open auction held by D.D.A. on 22.5.87 made a bid of Rs. 6,22,000/- for an industrial plot No. A-90 located at Mangolpuri Industrial Area II, measuring 253.5 sq. mts. They deposited Rs. 1,55,500/-, 25% of the bid money, at the fall of the hammer and signed documents setting out the terms and conditions of the plot auctioned by DDA on perpetual lease. The balance amount 75% of the bid money, Rs. 4,66,500/- was to be paid by cash or Demand Draft in favour of DDA within a month of the issue of demand letter by DDA after the confirmation of

the bid by the Vice Chairman DDA.

(3) The demand-cum-allotment letter was issued to the appellants on 9.6.87 and sent by registered post. This registered letter was returned to the DDA on 18.6.87 after the postman had made six attempts to deliver it between 11 June and 17 June, 1987 and after endorsing the remarks on the envelope "In spite of repeated visits the addressee was not available. Hence returned."

(4) The appellants have conceded that they were out of town in the month of June 1987 and admitted vide their letter dated 19.10.87 to DDA (Enclosure 45 on DDA file) that they came to know through the servant of undelivered letter and approached DDA on 5.7.87. In their letter dated 5.7.1987 they pressed for issue of fresh demand letter by DDA, in lieu of demand letter of 9.6.87. The due date of payment was 9.7.87. On the registered envelop, returned to DDA, there is a nothing "received today 10/7" and initialled by the dealing hand in DDA.

(5) The appellants appeared before AC(L) on 28.7.87 and 30.7.87. The insistant request of the appellants for the issue of fresh demand-cum-allotment letter was not entertained by DDA as under the rules DDA had no authority to do so. On the other hand DDA had to get the late payment of 75% of the bid money Rs. 4,66,500/- regularised before possession of the plot could be handed over.

(6) The appellants made payment of Rs. 4,66,500/- the balance bid money, vide cheque No. 796082 dated 7.8.87 drawn on Punjab National Bank. As payment is accepted by DDA only in cash or demand draft the appellants deposited the amount in question by demand draft on 21.8.87 vide challan No. 181694. Thereafter they started pressing for handing over the possession of the plot by DDA to the appellants knowing fully well that payment due from them by 9.7.87 was made only on 21.8.87. This delay of one month and twelve days in payment of 75% of bid money had to be regularised by DDA.

(7) DDA informed the appellants after the appellants had made the full payment of Rs. 6,22,000/- (Rupees six lacs and twenty two thousand) Rs. 1,55,000/- at the time of auction on 25.5.87 and Rs. 4,66,500/- on 21.8.87 vide their letter No. F. 22(71)/87/LSB(1) 2333 dated 24.4.89 that the delayed payment of 1 months would

be regularised subject to the payment of interest of Rs. 11,856.90 (18% for 1st 30 days and 25% for rest of the period and Rs. 11/- as short documentation charges. The appellants were required to make this payment within 15 days of the issue of the letter.

(8) The appellants deposited, under protest, the amount demanded by DDA as interest towards delayed payment by the appellants of 1- months on 5.5.89. DDA handed over the possession of the plot to the appellants three months after the payment on 8.8.1989. /

(9) From the resume of the facts noted above, it is fully established that the unfortunate situation in which the appellants landed was brought about by their own volition. The demand-cum-allotment letter was issued to the appellants on 9.6.87 by registered post which was returned to the DDA on 18.6.87 with the remarks by the postman on the envelope "Inspite of repeated visits the addressee not available. Hence returned". It need hardly be emphasised that the postman made six attempts to deliver the said letter between June 11 and June 17, 1987. The auction was held on 22.5.87 and the appellants knew that the balance 3/4th amount of the bid money had to be paid within thirty days of the demand notice. The appellants contend that they were out of town during the month of June 1987, and came to know of the undelivered letter from their servant. The appellants further contend that on coming to know of it they approached the DDA on 5.7.87.

(10) The appellants knew that according to the terms of the auction the remaining bid amount had to be deposited in cash or by Demand Draft of the requisite amount. If the appellants had the ready cash with them which they claim they had and expressed their readiness and willingness to deposit the entire amount of the price of the plot on the day of the bid itself i.e. 22.5.87 the least that they could do was to obtain Demand Draft for the remaining amount and deposit the same on 5.7.87 when they approached the DDA. Demand notice was issued on 9.6.87 and even counting thirty days from the date of issuing of the letter, though normally thirty days were to be counted from the date of the receipt of the letter, the period of thirty days would expire on 8.7.87. Instead the appellants requested for the issuing of a fresh Demand Notice.

(11) From this a legitimate inference can be drawn that the appellants did not have ready cash with them and tried to gain time for procuring the requisite balance amount towards the purchase price of the plot in question. The attempt of the appellants to deposit cheque for the balance amount on 8.7.87 reinforces this inference. Even if we accept the averment of the appellants that they had ready cash with them, we fail to appreciate why the balance amount was not deposited in cash by them or by Demand Draft but instead chose to issue cheque for the balance amount. Clearly the appellants were in default in payment of the balance amount.

(12) The appellants having defaulted in making the payment of the balance amount in time disentitled themselves for obtaining the plot. The DDA was thus within its right to cancel the allotment of the plot in favour of the appellants and forfeit the bid money deposited on the day of the bid. The DDA instead of resorting to this method came to the rescue of the appellants by getting the late payment of 75% of the bid money regularised under the Rules of Payment of interest in the sum of Rs. 11,256.90 and Rs. 11 as short documentation charges.

(13) The above noted glaring facts knock the bottom out of the misconceived and untenable grievance of the appellants that they could not be saddled with the burden of interest demanded from them. As such there was no question of depositing the same under demur. It is well settled principle of law that no one can take advantage of one's own wrong.

(14) For the reasons stated above we do not find any ground for interfering with the impugned order. The appeal is accordingly rejected.

(15) Before parting with this case we cannot help placing on record our strong disapproval of the crass lethargy shown by the DDA in finalising the case of the appellants. Having elected to regularise the default committed by the appellants no discernible reason is forthcoming on the record and none was offered at the bar for the inordinate delay of twenty months in regularising the default. With a little despatch in dealing with the matter, the DDA could have avoided the subsequent harrasment and agony caused to the appellants by pending the matter over a period of twenty months. We do hope that the DDA would have due regard to the

avoidable harrasment to the consumers. Appeal rejected.

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