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Sanju Sinha Vs. Vice-chairman, Patna Regional Development Authority and ors.

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Court : Patna

Decided On : Jul-04-2002

Judge : R.S. Garg, J.

Acts : Bihar Regional Development Authority Act, 1982 - Sections 79

Appeal No. : C.W.J.C. No. 735 of 2002

Appellant : Sanju Sinha

Respondent : Vice-chairman, Patna Regional Development Authority and ors.

Advocate for Def. : H.S. Himkar, Adv. (for Board) and Ganesh Prasad Singh, Sr. Counsel for Respondent No. 3

Advocate for Pet/Ap. : Gopal Krishna, Adv.

Disposition : Application dismissed

Prior history : R.S. Garg, J. 1. By this petition under Article 226 of the Constitution of India the petitioner seeks a mandamus against the respondents No. 1 and 2 that they be required to allot Flat No. 305 of Block No. 11/93 situate at P. I. T. Colony, Kankarbagh, Patna belonging to the respondent Patna Regional Development Authority (in short 'the PEDA'). 2. The facts necessary for disposal of the present petition are that on 15-7-2001 in dainik Jagran, a hindi daily news

paper, the respondent PRDA adv

Judgement :

R.S. Garg, J.

1. By this petition under Article 226 of the Constitution of India the petitioner seeks a mandamus against the respondents No. 1 and 2 that they be required to allot Flat No. 305 of Block No. 11/93 situate at P. I. T. Colony, Kankarbagh, Patna belonging to the respondent Patna Regional Development Authority (in short 'the PEDDA').

2. The facts necessary for disposal of the present petition are that on 15-7-2001 in dainik Jagran, a hindi daily news paper, the respondent PRDA advertised a public notice that on submission of requisite applications flats under the Self Financing Scheme shall be allotted on the principle of 'First Come first Served.' The petitioner submits that in response to the said advertisement (Annexure-1) he purchased the brochure from the PRDA and submitted his duly filled application with a Banker's cheque for a sum of Rs. 15,000/- to the PRDA at 11.10 A. M. According to the petitioner he being the first was entitled to the allotment but the respondents No. 1 and 2 made the allotment order on 22-12-2001 under Order No. 4812 in favour of the respondent No. 3 which is not only contrary to law but smacks of mala fide.

3. On the strength of the aforesaid it was contended before the Court that the petitioner was entitled to the allotment order but as the respondents No. 1 and 2 have acted illegally the order dated 22-12-2001 passed in favour of the respondent No. 3 be quashed and the PRDA be directed to allot the fiat in favour of the petitioner.

4. In the writ petition it has been contended that from Annexure-3 it would appear that an application for allotment should be accompanied by deposit of Rs. 15,000/ through a cross Bank Draft but from Annexure-4, yet another mode of allotment, such an amount could be deposited either by cross Bank Draft or Bankier's cheque, therefore, the petitioner even if had accompanied his application with the

Banker's cheque, no fault can be found with the petitioner nor her application could be rejected on a technical ground.

5. The respondent No. 3 in its counter had stated that if the application were to be accompanied with Bank Drafts then all concerned were required to file their applications along with the Bank Drafts and no other mode of deposit could be observed. It is further contended that there is no scope to argue that instead of a Bank Draft if a Banker's cheque is submitted then too the requirement is complied with. It is contended that if deposit simpliciter was the condition then alike annexure-4 such a provision could be made in Annexure-3, and if Annexure-3 is conspicuously silent about such a relaxation of the condition then the parties are bound by the terms of the allotment or the conditions for allotment. It is also contended that there is a marked distinction between a Banker's Cheque and a Bank Draft. According to respondent No. 3 the pay orders/Banker's Cheque are not covered by Section 85A and 131A of the Negotiable Instruments Act, 1881 as the same are not Bank Draft. It is also contended that pay Orders and Banker's Cheque are also not covered under Section 85 and 131 of the Negotiable Instruments Act. Respondent No. 3 has contended that if deposit simpliciter was the condition then anybody could make the cash deposit without awaiting the opening of the Bank for depositing the money with the Bank and obtain a Bank Draft. It is contended by the respondent No. 3 that the deposit made by the present petitioner was not in accordance with law, therefore, her application was rightly rejected.

6. On 15-4-2002 the counsel for the PRDA stated in the open Court that the Vice Chairman of the PRDA sought the opinion of the Chief Accounts Officer of the PRDA and after realising that there was no difference between the Bank Draft and the Banker's Cheque, he was proposing to issue notice to the erring Officers. It was also contended in the Court that the Vice Chairman. PRDA was proposing to issue notice to the respondent No. 3 to show cause as to why the allotment made in her favour be not cancelled.

7. However, in the counter affidavit dated 27-6-2002 it is contended by the PRDA that because of some confusion the counsel for the PRDA could not understand

the instructions issued by the authority and made wrong statement in the Court. It is contended that while issuing brochure for allotment of the flat a specific condition was made that the security money be deposited by a crossed Bank Draft and as the amount was not so deposited, the application of the petitioner was rightly cancelled. It is also contended in the counter that the deponent of the affidavit had discussed the issue in question with the Chief Accounts Officer of the PRDA but for confirmation, a letter of request was issued to the State Bank of India seeking certain guidance in the matter. According to the counter the chief Manager of the State Bank of India, Norya Lik complex, Patna opined that there is a marked distinction between the Banker's cheque and a Bank Draft. In view of the said submissions the respondents No. 1 and 2 have also contended that the petition deserves to be dismissed.

8. Sections 85, 85A, 131 and 131A of the Negotiable Instruments Act, 1881 upon which strong reliance has been placed by the respondents read as under :--

'85. Cheque payable to order :-- (1) Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course,

(2) where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.'

'85. A Draft drawn by one branch of a bank on another payable to order :--

Where any draft that is an order to pay money drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.'

'131. Non-liability of banker receiving payment of cheque :--

A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case

the title to the cheque proves defective, incur any liability to the owner of the cheque by reason only of having received such payment.

Explanation.-- A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.'

'131 A. Application of Chapter to drafts.--The provisions of this chapter shall apply to any draft, as defined in Section 85A, as if the draft were a cheque.'

9. Section 85 relates to the cheque payable to the order while Section 85A relates to the draft drawn by one branch of the Bank upon another payable to order. Section 131 simply relates to non-liability of the banker receiving payment of cheque while Section 131A says that the provisions of Chapter XIV shall apply to any draft as defined in Section 85A as if the draft were a cheque.

10. From a perusal of these provisions of law it would clearly appear that a Bank after receiving money and on charging commission may issue a Bank Draft. Such a Bank Draft may be payable to the order or may be treated as a cheque.

11. Where a cheque payable to the order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course. Similar would be the position of a draft. In case of a Bank Draft the same is almost an order to pay money but it is drawn by one office of a bank another office of the same Bank for a sum of money payable to order on demand. On payment of the amount in due course the Bank would be discharged. Under the Negotiable Instruments Act the maker of a Bill of Exchange or Cheque is called the 'drawer' while the person directed therein to pay is called the 'drawee'. A Bill of Exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument. In the case of Bill of Exchange the amount may be paid to the holder or to a certain person. It may be paid to the order of a certain person or to the bearer of the instrument. Under the Act the person named in the Instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the 'payee'.

12. I have given the details of 'Drawer'. 'Drawee' 'Bill of Exchange' and 'Payee' so that a distinction may be appreciated between the authority of the holder or of the drawer or of the certain person. According to Section 131A, provisions of chapter XIV would apply to any draft as if the draft was a cheque. The basic distinction between the draft and a Banker's cheque is that a Banker's cheque is issued by a particular branch of the Bank and it can be encashed in the said branch only, while a Bank Draft is issued by one branch of the Bank upon another branch of the same Bank. In case of a Bank draft the amount is to be paid to a particular person, if there is such a condition. Similar would be the position in case of a Banker's cheque or a cheque issued by the drawer, if there is a direction to pay the amount to particular, certain person.

13. The question for consideration is that can a condition which is condition precedent for bringing into existence a valid agreement and thereafter a legal and enforceable contract into existence between the parties such a condition can be relaxed.

14. Learned counsel for the petitioner however, contended that as there was no distinction between the amount and the mode of deposit, simply because one was making the deposit under the draft and another person was making the deposit under the Banker's cheque, the petitioner's application could not be rejected. Learned counsel for the respondents, however, contended that deposit by means of a Bank Draft was a condition precedent and when a condition clearly says that a particular thing is to be done in a particular way then the same is to be done accordingly or not at all. It is contended that a comparison between Annexure-3 and Annexure-4 would make it clear that the respondent PRDA was itself making a distinction between a draft and a Banker's cheque.

15. A fair perusal of Annexure-3 and Annexure-4 would make it clear that under Annexure-3, that is, for the present flat, the deposits were to be made under a crossed Bank draft. No other option was given, no other alternative was proposed. Deposits by crossed Bank drafts were the only mods provided. In Annexure-4 the alternative was provided that is the amount could be deposited by Banker's cheque or by a crossed Bank draft. As Annexure-3 and Annexure-4 were providing

different modes of deposits, Annexure-4 cannot be read for Annexure-3. The parties would be bound by the condition of the allotment and for the allotment. If the requirement was to make the deposits by a Bank draft then the amount was to be deposited by a Bank draft.

16. For making above observation I have also taken into consideration that for obtaining a bank draft certain formalities are required to be observed. While for obtaining a Banker's cheque lesser formalities are required. If a latitude is to be given in favour of the petitioner then a third man may come and say that he could be allowed to deposit the amount in cash. In a case like present, if the options are inserted under the permission of the Court then it would lead to a condition which would be impossible to meet.

17. In the opinion of this Court the PRDA was certainly justified in rejecting the petitioner's application as the same was not in accordance with the conditions proposed under the Brochure.

18. For the reasons aforesaid I find no reason to interfere in the matter. The writ application deserves to and is accordingly dismissed. The parties are directed to bear their own costs.

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