

Vishal Builders (P) Ltd. Vs. Delhi Development Authority

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SooperKanoon Citation : sooperkanoon.com/683075

Court : Delhi

Decided On : Mar-23-1977

Reported in : ILR1977Delhi724; 1977RLR347

Judge : Avadh Behari Rohatgi, J.

Acts : Delhi Development Authorities Act, 1957 - Sections 52; [Indian Contract Act, 1872](#) - Sections 200; [Code of Civil Procedure \(CPC\), 1908](#) - Order 2, Rule 3

Appeal No. : Suit No. 409 of 1973

Appellant : Vishal Builders (P) Ltd.

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : B.M. Singh,; D.R. Gupta,; Amarjit Singh,;

Judgement :

Avadh Behari Rohatgi, J.

(1) This suit raises a text-book question. The conditions of sale at an auction sometimes provide : 'No person shall retract his bidding'. What is the effect of this The facts:

(2) MESSRS. Vishal Builders (P) Ltd., (the Builders) the plaintiff,are a company of engineers and contractors. The defendant Delhi Development Authority (The

Authority) is a statutory corporation constituted under s. 3 of the Delhi Development Act, 1957 (The Act). It is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property both movable and immovable. It can sue and be sued in its name. The objects of this Authority are to promote and secure the development of Delhi according to plan (s. 6).

(3) There is an area in District Centre Kalkaji which has been named by the Authority as Nehru Place. The Authority advertised the sale of perpetual leasehold rights of land in this area by action for building multi-storeyed commercial flats by the purchasers.

(4) On February 6, 1973, the Authority held an auction. The terms and conditions for the sale by auction were the following :

2.BIDDING At Auction And Submission Of Application :

(1)The officer conducting the auction, may without assigning any reason, withdraw all the plots or any one or more of them from the auction at any stage. The bid shall be for the amount of the premium for the perpetual leasehold rights for the plot. The bid shall not be revocable by the bidder.

(2)The highest bidder shall, at the fall of the hammer, pay to the Delhi Development Authority through the officer conducting the auction, 25 per cent of the bid amount as earnest money either in cash or by Bank Draft in favor of the Delhi Development Authority or cheque guaranteed by the Scheduled Bank 'as good for payment for three months' in favor of the Delhi Development Authority. If the earnest money is not paid, the auction held in respect of that plot, will be cancelled.

(3)The highest bid shall be subject to the acceptance of Vice-Chairman Dda or such other officer (s) as may be authorised by him in this behalf. The highest bid may be rejected without assigning any reason.

(4)In case of default, breach or non-compliance of any of the terms and conditions of the auction or misrepresentation by the bidder and/or intending purchaser, the

earnest money shall be forfeited.

(5) The successful bidder shall submit a duly filled in application in the form attached immediately after the close of the auction of the plot in question.

(6) When the bid is accepted by the Dda, the intending purchaser shall be informed of such acceptance in writing and the intending purchaser shall within four months thereof, pay to the Delhi Development Authority the balance 75 per cent amount of the bid in cash or by Bank Draft in favor of the Delhi Development Authority or cheque guaranteed by a scheduled bank as 'good for payment for three months' in favor of the Delhi Development Authority. If the bid is not accepted, the earnest money will be refunded to the intending purchaser without any interest unless the earnest money is forfeited under para 2(4) above.

THE Builders gave bids for five plots. Their number were 35, 36, 39, 40 and 41. There is no dispute about plots 35 and 36. The suit is in respect of only three plots Nos. 39, 40 and 41. The bids for these plots were as follows: Plot No. Bid 25% earnest money _____ 39 Rs. 7,00,000.00 Rs. 1,75,000.00 40 Rs. 7,75,000.00 Rs. 1,93,750.00 41 Rs. 8,00,000.00 Rs. 2,00,000.00 _____
Total: Rs. 5,68,750.00 _____

(5) The Builders paid Rs. 5,68,750.00 . The Authority issued a consolidated provisional receipt for the money paid. So far so good.

(6) On March 2, 1973, the Builders retracted their bids. They wrote a letter to the Authority saying :

'ON going through the details of these three Plots, we find that all these plots are too small to have any proper planning. Total covered area also being very small, we being the promoters do not feel it worth marketing the plots to the public. We therefore, request your goodself to kindly treat our bid for the above plots as withdrawn and refund our money at the earliest possible.'

(7) On March 20, 1973, the executive officer wrote to the Builders that their bids have been accepted by the Authority. The Builders were required to deposit within

120 days the balance amount of 75 per cent in respect of the three plots.

(8) On March 28, 1973, the executive officer wrote to the Builders :

'KINDLY refer to your letter No. VBPL/Plot No. 35-36, dated the 2nd March, 1973, regarding the withdrawal of your bids in respect of plot Nos. 39, 40 and 41, in Nehru Place, I am to invite your reference to terms and conditions of auction where it is mentioned that 'the bid shall not be revocable by the bidder'. As such your request for the withdrawal of the bids, therefore, cannot be acceded to. You may, however, surrender the plots. However, in case the plots are surrendered within a period of 2 months from the date of the issuance of letter confirming the bid, 2 per cent of the premium or loss in the reauction whichever is more shall be deducted and the balance refunded to you.'

(9) On September 16, 1973, the Builders brought this suit for the recovery of Rs. 5,68,750.00 besides interest. During the pendency of the suit, the Authority refunded a sum of Rs. 2,02,750.00 to the Builders by cheque dated December 3, 1973 and retained the sum of Rs. 3,66,000.00 on the ground that on reauction of the plots that was the loss suffered by them. The Authority treated it as a case of surrender of plots once purchased by the Builders.

(10) The Builders received the cheque in part-payment of their claim and continued with the suit for the balance principal amount of Rs. 3,66,000.00 and interest.

(11) The Authority denied the claim. Their main defense is that the Builders are not entitled to retract their bids under the conditions of auction and they are entitled to retain a sum of Rs. 3,66,000.00 being the loss sustained on the reauction of the plots. Their pleas-in-law are reflected in the following issues :

1. Whether the suit has been properly instituted and the plaint has been signed and verified by a duly authorised person ?

2. Whether the plots purchased by the plaintiff at the auction were (a) Nazul land, (b) Government land, (c) land belonging to the Delhi Development Authority, and what right therein was sold to the plaintiff ?

3. Was the auction of the plots in suit had because no rules had been framed by the Central Government under Section 22 of the Delhi Development Act, 1957, concerning the sale of Nazul Land ?

4. Were the terms and conditions of the auction not binding on the plaintiff as being unreasonable ?

5. Were any of the terms and conditions of the auction illegal and, therefore, not binding on the plaintiff. Especially, was the term and condition for withdrawal of bid before acceptance illegal or unreasonable and, therefore, not binding ?

6. Did the plaintiff accept the terms and conditions of the auction, and if so, what is the effect of such acceptance on the rights of the plaintiff ?

7. Is the plaintiff right in claiming that the contract between the plaintiff and defendant did not come into effect because the bid made by the plaintiff at the auction was never accepted by the defendant ?

8. Is the suit had for misguide of causes of action, and if so, what is its effect ?

9. Is the plaintiff entitled to recover any amount from the defendant and also to what interest ?

10. Is the plaintiff estopped from maintaining this suit on account of having received certain sums back from the defendant after the filing of the suit ?

11. Relief.

QUESTIONS for consideration

(12) Three points arise for decision. These are :

(1) Were the Builders entitled to retract their bids as they did on 2nd March, 1973 ?

(2) What is the nature of the land for which bids were invited at the auction Was it Nazul Land as is the case of the Builders; and if so did the Authority have the right to sell it as they purported to do ?

(3) Was the Vice-Chairman of the Authority entitled to accept the bid as he purported to do on February 8, 1973 which acceptance was communicated to the Builders on March 20, 1973.

THE first question : Law of auction

(13) What is the law of auctions? The public auction sale has long been an established institution. The nature of the contract involved in a sale by auction was much discussed by the Roman lawyers. In England the law was settled long ago.

(14) The public auction means that it is being held in public, all members of the public having a right to attend, and a valuable element being the competition between the persons who are openly bidding for the subject matter of the sale. (Secy. of State v. Sunderji .

(15) In Barlow v. Osborne (1858) 10 E.R. 1412 Lord Cranworth said:

'I believe the word auction has been always understood, to be derived from 'augendo' it means that you are to bid'.

(16) When an auctioneer presents an article for sale at auction and asks for bids, he is ordinarily not making an operative offer. Instead, he is asking for offers to be made to him; and the bids made in response thereto are themselves offers that can be revoked by the bidders prior to an acceptance by the auctioneer. This is true even though the seller or his representative has issued advertisements or made other statements that the article will be sold to the highest bidder. 'Such statements', says Prof. Corbin 'are merely preliminary negotiations, not intended and not reasonably understood to be intended to affect legal relations'. When such is the case, the seller or his representative is as free to reject the bids, highest to lowest, as are the bidders to withdraw them (Corbin on Contracts Vol. I p. 339).

ENGLISH cases

(17) Payne v. Cave (1789) 100 Er 52 is the leading English case on the subject. The plaintiff alleged that the defendant had bought the plaintiff's goods at an auction sale. The defendant had made the highest bid but had withdrawn it before

the hammer fell. Lord Kenyon non-suited the plaintiff and it was held that the non-suit was very proper. The court said :

'EVERY bidding is nothing more than an offer on one side, which is not binding on either side till it is assented to. But according to what is now contended for one party would be bound by the offer, and the other not, which can never be allowed.'

(18) In *Routledge v. Grant* (1828) 29 Rr 672 this question again arose. The defendant offered to buy the plaintiff's house for a certain sum, a definitive answer to be given within six weeks from March 18, 1825. On April 9, the defendant withdrew his offer and on April 29, the plaintiff purported to accept it. The Court of Common Pleas held that the defendant could withdraw at any moment before acceptance even though the time limit had not expired. It was ruled that there was no contract. Best CJ said :

'HERE is a proposal by the defendant to take property on certain terms; namely, that he should be let into possession in July. In that proposal he gives the plaintiff six weeks to consider; but if six weeks are given on one side to accept an offer, the other has six weeks to put an end to it. One party cannot be bound without the other.'

(19) A third decision to which I may helpfully refer is *Cooke v. Oxley* (1790) 100 E.R. 785. A tobacco merchant offered to sell a quantity of tobacco to the plaintiff at a certain price. The plaintiff asked the tobacco merchant for time in which to decide whether he should buy the goods or not. The time for consideration was granted; but before it expired, the tobacco merchant sold the goods to a third party. In a suit for damages by the plaintiff, it was held that the action did not lie, as at the time of entering into the contract the engagement was all on one side. No consideration had passed to bind the seller by his promise to give time and consequently he was entitled to ignore it. Lord Kenyon put it on the true ground by saying :

'AT the time of entering into this contract the engagement was all on one side; the other party was not bound.'

(20) It has been established ever since the case of *Payne v. Cave* in 1789 (3) that revocation is possible and effective at any time before acceptance : up to this moment *ex hypothesi* no legal obligation exists. The offeree to bind the offerer has to prove the formation of contract. He must prove all the elements of a valid contract, including assent and consideration. Unless there is unanimity of mind or meeting of the minds there is no contract. Consideration, offer and acceptance are an indivisible trinity, different facets of the phenomena of agreement.

(21) It is indisputable that a mere advertisement of an auction, without further qualifications, is 'invitation to treat' and not an offer. The auction need not be held and prospective purchasers have no legal complaint if they have wasted their time and money in coming to the sale rooms. An advertisement that specified goods will be sold by auction on a certain day does not constitute a promise to potential bidders that sale will actually be held. This was decided in *Harris v. Nickerson*, (1873) Lr 8 Q.B. 286 . in that case the plaintiff failed to recover damages for loss suffered in traveling to the advertised place of sale which was ultimately cancelled. His claim was condemned as 'attempt to make a mere declaration of intention a binding contract [*Cundy v. Lindsay* (1878) 3 A.C. 459.

'THIS is certainly a startling proposition and would be excessively inconvenient if carried out. It amounts to saying that any one who advertises a sale by publishing an advertisement becomes responsible to everybody who attends the sale for his cab hire or traveling expenses,'

(22) A contract is formed by offer and acceptance. It is a combination of two ideas of agreement and obligation. Agreement is necessarily the outcome of consenting minds. As Lord Cairns said in a famous case, there must be a 'consensus of mind' to lead to a contract [*Cundy v. Lindsay* (1878) 3 A.C. 459 (7).

(23) Two well-established principles of auction sale therefore are these. In the first place it was decided as long ago as 1789 that when an auction sale is held, a bid is only an offer which can be retracted at any time before the fall of the hammer. This rule has now been given statutory force. The Sale of Goods Act, 1930 provides that a sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and that

until such announcement is made any bid may be retracted. Section 64).

(24) Secondly, an advertisement by an auctioneer that a sale of certain articles will take place on a certain day does not bind the auctioneer to sell the goods, nor does it make him liable upon a contract to indemnify persons who have been put to expense in order to attend the sale. Such an advertisement is not an offer but merely an invitation to invite offers and do business. An invitation of this nature is not intended to be binding and is known as an invitation to treat.

(25) Until the auctioneer announces his acceptance by the fall of the hammer, no contract of sale is concluded with the buyer. If, therefore, the auctioneer withdraws the goods prematurely refusing to knock them down to the highest bidder, there can be no possible action on any contract of sale because none has yet come into existence.

(26) Take this very case. The executive officer was the auctioneer. He invited offers. The bidders gave offers. The auctioneer placed them before the Vice-Chairman of the Authority for acceptance. On February 8, 1973, the Vice-Chairman accepted the bid of the Builders. The acceptance was communicated to the Builders on March 20, 1973. But before that the Builders had withdrawn the bid by letter dated March 2, 1973.

(27) The auctioneer acted as a mere conduit pipe. He was the agent of the seller. The auction was an invitation to the public to make offers. It was an attempt to ascertain whether an acceptable offer can be obtained. The auctioneer in his report dated February 6, 1973 said that the Builder's bids should be accepted as they were much higher than the reserve price of the plots in question. The Vice-Chairman agreed. But then it was too late. The bid had already been retracted. The bidder was entitled to retract till the Authority communicated the acceptance of the offer. It was open to the Authority to accept or reject the bid. Similarly, the bidder cannot be bound when the seller remains free. Otherwise, as English judges have said, it will be a one-sided engagement. The law therefore insists that one party cannot be bound without the other.

(28) By the acceptance of the bid the contract comes into existence. After such an acceptance the sale is consummated. Neither party can withdraw and the auctioneer has no power to accept a higher or different bid.

(29) Indian law is no different. S. 5 of the Contract Act says : 'A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.....'

(30) A bid before it is accepted can be withdrawn. In an auction sale a condition stipulating that a bid shall not be retracted has no force unless it is supported by consideration or is founded on a statutory authority. It was so held in *Linga Gowder v. State* Air 1971 Mad. 28 . Similarly a bench of the Madras High Court in *Somasundaram Pillai v. Prov. Govt.* Air 1947 Mad 366 held that the prohibition against the withdrawal of bids before acceptance had not the force of law and there was no consideration to bind a bidder down to this condition. *Payne v. Cave* and *Cooke v. Oxley* (supra) have been followed in this country.

(31) In another bench decision the High Court of Andhra Pradesh (*Raghunandhan v. State of Hyderabad*, : AIR 1963 AP110 has held that if the approval of the auction is not binding on the Government within the stipulated period it is certainly not binding on the bidder also. This decision was overruled by the full bench of that High Court in *G. Srinivasa Reddy v. Commr., Excise Board of Revenue*, : AIR 1973 AP178 . But on the point with which we are concerned there is no difference of opinion in the two rulings. The full bench did not agree with the interpretation placed on clause 8 of auction sale by the division bench in *Raghunandhan's* case (supra). But the general principles of contract were not doubted.

(32) In *G. Srinivasa Reddy's* case (supra) it was said :

'THERE are, however, cases where final bids in the auction are made subject to the confirmation by another superior authority. In other words, unless that superior authority approves or confirms the final bid the offer would not be deemed to have been accepted. In such cases, the auctioning authority acts as a conduit pipe. As agent of the superior authority he receives the offer and transmits to the confirming or approving authority. It is only when the bid in such a case is approved or

confirmed by the : higher authority that the contract of sale would be deemed to be complete, and until such confirmation or approval is made, the person whose bid has been sent for confirmation to such higher authority is entitled to withdraw his bid. When the bid is so withdrawn before it is accepted by such authority, there would be no concluded contract and as a result, the bidder will not be liable for damages on account of any breach of contract or for the shortfall on the resale.'

THIS is exactly the present case. These observations of the full bench squarely apply here.

(33) As long ago as 1891 *Muttusami Ayyar and Best JJ. in Agra Bank v. Hamlin*, Mad. 235 12 held that it was competent for a bidder at a court auction to withdraw his bid. In *Union of India v. S. Narain Singh*, the same principle was applied.

(34) Counsel for the Authority relied on *Secy. of State v. Bhaskar Krishnaji* Air 1925 Bom 485 . That ruling has no application as that was a case of a statutory condition. In our case the terms of auction were not framed under any statute. The general law applies. The Authority cannot lay down conditions opposed to the general law. S. 6 of the Act says :

'NOTHING contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force.'

(35) Section 5 of the Contract Act is a law in force. It permits the bidder to retract his bid before his offer is accepted. There can be no lawful condition in the auction sale prohibiting the bidder from exercising such a right. Any prohibition against withdrawal has no legal force and there is no consideration to bind the bidder down to this condition. [See *Somasundaram Pillai's case (supra)*].

(36) *Pollock and Mulla on the Indian Contract Act* 9th edition at page 75 have this to say :

'IT is common to insert in conditions of sale a proviso that biddings shall not be retracted, but it seems that such a condition is inoperative in law for a one-sided declaration cannot alter the bidder's rights under the general law, nor is there any consideration turn his assenting to it, even if he could be supposed to assent by

attending the sale with notice of the conditions.'

(37) Counsel for the Authority argued that the Builders were estopped from retracting the bid. This was a term of the auction sale, he said. It was said that a collateral contract had come into being by the application of the doctrine of promissory estoppel. Let me examine this argument.

(38) Of recent years there has grown up a doctrine sometimes known as 'promissory estoppel' or 'quasi-estoppel', the limits of which are not yet well defined. Under the doctrine, where one party says or implies to the other that their existing legal relations shall be effected in some way, with the intent that the other should act and the result that he does act upon the supposed change in legal relations, the first party must accept those relations subject to the qualifications which he himself has introduced. He is not allowed, except on reasonable notice to the other party, to revert to their previous relationship. It must be noted clearly that the representation does not operate as a contract unless it is duly supported by consideration.

(39) The doctrine of promissory estoppel is associated with the name of Lord Denning. Sitting as a judge of the High Court he expounded it in *Central London Property Trust Ltd. v. High Trees House Ltd.* (1947) K. B. 130 . The doctrine was foreshadowed in the judgment of Lord Cairns in *Hughes v. Metropolitan Rail Co.* (1877) 3 A.C. 439. Denning J. tapped this stream of authority which had flowed in equity since 1877. He brought the doctrine into being in its present form; other judges have nourished it. Our Supreme Court applied it in *Turner Morrison & Co. Ltd. v. Hungerford Investment Trust Ltd.* : [1972]85ITR607(SC) .

(40) The facts of *Central London Property Trust* case were that in September 1939 the plaintiffs leased a block of flats to the defendants at a ground rent of pound 2,500 per annum. In January 1940 the plaintiffs agreed in writing to reduce the rent to pound 1250 plainly because of war conditions, which had caused many vacancies in the flats. No express time limit was set for the operation of this reduction. From 1940 to 1945 the defendants paid the reduced rent. In 1945 the flats were again full, and the receiver of the plaintiff company then claimed the full rent both retrospectively and for the future. He tested his claim by suing for rent at

the original rate for the last two quarters of 1945.

(41) Denning, J. was of opinion that the agreement of January 1940 was intended as a temporary expedient only and had ceased to operate early in 1945. The rent originally fixed by the contract was therefore payable, and the plaintiffs were entitled to judgment. But he was also of opinion that had the plaintiffs sued for arrears for the period 1940 to 1945, the agreement made in 1940 would have operated to defeat their claim.

(42) As Denning, J. has himself said, promissory estoppel does not do away with the necessity of consideration which is an essential part of the cause of action. In a later case he said :

'THE doctrine of consideration is too firmly fixed to be overthrown by a side wind---. It shall remain a cardinal necessity of the formation of a contract.' [Comb v. Comb (1951) 1 All E.R. 767 (18).

(43) What the Central case decided was that when a promise is given which (1) is intended to create legal relations (2) is intended to be acted upon by the promisee and (3) is in fact acted upon, the promiser cannot bring an action against the promisee which involves the repudiation of his promise or is inconsistent with it.

(44) The court thought that it will be 'inequitable' to allow the promiser to sue on the original contract.

(45) In the present case there is no equity in favor of the Authority. They were free not to accept the bid. The auctioneer is not bound to accept any bid, and conversely a bidder is entitled to withdraw his bid at any time before acceptance. The Builders were perfectly entitled to retract their bid. The question is not of equity. It is one of law.

(46) The doctrine of promissory estoppel applies only to suspend and not to abrogate the promiser's legal rights. The equitable doctrine has been applied when the promisee has been led to suppose that strict legal rights will not be enforced or will be kept in suspense or held in abeyance.

(47) This equitable doctrine of promissory estoppel is a judicial invention devised on the analogy of estoppel. It affords a defense against the enforcement of otherwise enforceable rights.

(48) About the principle Lord Denning has said :

'It should not be stretched too far, lest it should be endangered It only prevents a party from insisting upon his strict legal rights, when it would be unjust to allow to enforce them, having regard to the dealings that have taken place between the parties'. (Comb v. Comb, supra).

(49) I do not quite see how promissory estoppel has anything to do with this case. Promissory estoppel presupposes that there is a concluded contract supported by consideration. Then there is a promise or word not to enforce strict legal rights. In the Central case the right to recover full rent under the lease remained suspended during the war. The principle was only suspensory.

(50) The noticeable feature of the present case is that there is no contract of sale on which the Authority can bank. There is none which it can enforce. Estoppel cannot override the statute law contained in s. 5 of the Contract Act.

(51) Counsel for the Authority then argued that the Builders had also purchased plots 35 and 36 and therefore they are estopped from raising objections with regard to plots 39, 40 and 41. I do not agree. The Builders for all we know may be prepared to take risk with regard to plots 35 and 36 if there is any defect in title. That will not prevent them from challenging the action of the Authority in respect of the three plots in question. The second question : Nature of the land

(52) The case of the Builders is that three plots 39, 40 and 41 form part of Nazul land and the Authority have no right to sell them. This is their additional ground of attack. It is proved in evidence that by a gazette notification dated August 30, 1963 (Ex. D-37) in pursuance of the provisions of sub-section (1) of s. 22 of the Act and by virtue of the power of the Central Government delegated to him by the President, the Chief Commissioner, Delhi placed at the disposal of the Authority for the purpose of development in accordance with the provisions of the said Act,

the Nazul lands described in the schedule on the terms and conditions agreed to by the Authority in its Resolution No. 114 dated May 10, 1961. The land covered by the three plots forms a part of the land mentioned in the schedule to the said notification.

(53) It is the case of the Authority that they paid Rs. 1.20 crores on October 19, 1968 on account of the purchase price of the land to the Delhi Administration and thereforee they are entitled to sell it.

(54) Now when we turn to the Act we find that Chapter V deals with the 'acquisition and disposal of land'. Section 15 empowers the Central Government to acquire land under the Land Acquisition Act, 1894. Ours is not a case of acquisition. thereforee, section 15 does not apply.

(55) Section 21 gives to the Authority power of disposal of land. In so far as it is material, it reads :

'21.(1) Subject to any directions given by the Central Government under this Act, the Authority or, as the case may be, the local authority concerned may dispose of - (a) any land acquired by the Central Government and transferred to it, without undertaking or carrying out any development thereon ; or (b) any such land after undertaking or carrying out such development as it thinks fit; to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan. '(3) Nothing in this Act shall be construed as enabling the Authority or the local authority concerned to dispose of land by way of gift, mortgage or charge, but subject as aforesaid reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.' Section 22 deals with Nazul lands. It reads : '22.

(1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and the Authority all or any developed and undeveloped and undeveloped lands in Delhi

vested in the Union (known and hereinafter referred to as 'Nazul lands') for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except by, or under the control and supervision of, the Authority after such land has been placed at the disposal of the Authority under sub-section (1).

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the Authority under sub-section

(1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that Government upon such terms and conditions as may be agreed upon between that Government and the Authority.'

(56) The gazette of August 30, 1963, clearly proves that the land in dispute is Nazul land. The notification says so. Under section 22 the Central Government can place at the disposal of the Authority land vested in it and known as Nazul land for the purpose of development in accordance with the provisions of this Act. If any Nazul land has been developed by the Authority 'it shall be dealt with by the Authority in accordance with the rules made and directions given by the Central Government in this behalf.' if the Nazul land placed at the disposal of the Authority is required by the Central Government the Authority shall replace it at the disposal of the Government on such terms and conditions as may be agreed upon.

(57) One thing is clear. The Authority has no power to deal with the land except 'in accordance with the rules made and directions given by the Central Government in this behalf'. Under s. 56(2)(g) the Central Government may make rules with regard to 'the manner in which Nazul lands shall be dealt with after development'. Admittedly no rules have been made. No direction of the Central Government has been produced asking the Authority to sell the land by public auction. Plainly the Authority has no power to sell this land.

(58)

(59) Under s. 21 the Authority has the power to sell land as would be clear from sub-s. (3). But s. 21 does not apply to Nazul land. Nazul lands are Crown or Government lands. The literal meaning of the word 'Nazul' is descending, alighting, escheated property or land. (Dictionary of Urdu, Classical Hindi and English by John T. Pletts). The characteristic of this land is, as the section shows, that it is vested in the Union. thereforee, the property vested in the Union cannot be dealt with by the Authority except in accordance with the rules made and direction gen by the Central Government. That the Central Government has directed the Authority to sell the land has not been proved. The notification dated August 30, 1963 refers to a resolution No. 114 dated May 10, 1961. That resolution has not been produced. We do not know the terms and conditions on which the Central Government placed the land at the disposal of the Authority.

(60) Nazul land is the property of the State. It cannot be disposed of except in the manner indicated by the legislature. The Central Government is the owner. Under s. 22 the final word is with the owner, s. 21 is, however, differently worded. Under it the Authority have the power to sell, exchange or lease, subject to such direction as may be given by the Central Government. But if no direction is given the Authority can sell. Under s. 22, on the other hand, the act of the Authority is null and void if it is not shown that the Nazul land was sold in accordance with the rules framed for the purpose or a positive direction was given by the Central Government.

(61) In process of time feudal ideas of social order give way to commercial ideas; land is regarded as a form of property to be used, and disposed of at the discretion of its owner. So here. The sale of plots is a commercial deal. But owners consent either in the form of rules or direction must be taken before the land can be sold by auction.

(62) A statutory body, however powerful, cannot do what it likes. It is subject to law. Maxwell says :

'A corporate body constituted by statute for certain purposes is regarded as so entirely the creature of the statute, that acts done by it without the prescribed formalities or for objects foreign to those for which it was formed would be in general, null and void.'

(Interpretation of Statutes, 11th ed. p. 290). The third question : Power to accept bid

(63) The third question is about the validity of the acceptance of the bid. The auction took place on February 6, 1973. The executive officer submitted his report on that very day. He recommended that since the bids were far higher than the reserve price they may be accepted. Vice-Chairman agreed with this proposal on February 8, 1973. (D-34).

(64) Counsel for the Builders submits that this is not a proper acceptance. According to condition No. 6 the bid is to be accepted by the Authority. Under s. 21 it is the Authority which, can dispose of the land 'to such persons in such manner and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan.'

(65) The principal contention is that it is the Authority which has to accept the bid. The Vice-Chairman is not the Authority, though he is a member thereof appointed by Central Government. The composition of the Authority is laid down in s. 3. The Chairman as the Administrator of the Union territory of Delhi is an ex-officio member. Then comes the Vice-Chairman in the order of precedence. Then there are other members. The Authority is a body corporate. therefore, it is the Authority which has to accept or reject the bid. The Vice-Chairman cannot do it all alone and by himself unless power has been delegated to him. S. 52 provides :

'(1).The Authority may, by notification in the Official Gazette, direct that any power exercisable by it under this Act except the power to make regulations may also be exercised by such officer or local authority or committee constituted under section 5A as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.'

(66) Similarly the section empowers the Central Government and the Administrator to delegate powers to other officers.

(67) Counsel for the Authority relies on an extract from file No. F. 1(63)/67-LSR(R) which relates to auction of residential plots in Friends Colony at Mathura Road. (D 32). From this document it appears that the Lt. Governor delegated the power to the Vice- Chairman to accept bids if the rates obtained were higher than the reserve price. This document does not assist the Authority. This was a delegation of powers to the Vice-Chairman only for purposes of acceptance of bid given at the auction of Friends Colony plots on April 22, 1967 and April 23, 1967. The entire document relates to those auctions. It cannot be pressed into service for different localities and for different auctions.

(68) Faced with this difficulty the Authority passed a resolution No. 32 dated April 20, 1976 (D 26). The resolution says :

'RESOLVED that the powers to confirm, reject or accept bids on behalf of the Delhi Development Authority be delegated to the Vice-Chairman and Finance Member. Further resolved that all acts done by these officers relating to auction of shops and plots, including acceptance or rejection of the bids and other ancillary functions thereto, are ratified.'

(69) This resolution was passed during the pendency of this suit. The resolution records that 'in connection with a case, a point has been raised that no formal delegation has been done. Although this point is of doubtful validity and the party concerned should have raised the point at the first opportunity, yet, to be on the safe side, it is necessary to formally pass a resolution regarding delegation. This will prevent any party from raising any point and will obviate any litigation that may be raised by some vested interests.'

(70) This resolution also is of no help to the Authority. The resolution delegates power to the Vice-Chairman. But it had to be notified in the official gazette as is the requirement of s. 52. It is not the case of the Authority that there was any gazette notification of this delegation of power. The delegation is therefore not in accord with s. 52 of the Act. It must therefore be held to be invalid. The upshot of the

discussion is that there is no acceptance of the bid till today.

(71) There is yet another point. In my opinion there cannot be any ratification by reason of s. 200 of the Contract Act. The ratification will prejudice a third party. 'In such a case the so-called ratification would merely be an acceptance of the offer of the other party, which may be withdrawn at any time before the so-called ratification takes place.' (See *Watson v. Davies* 1931 (1) Ch. 455 and *Warehousing and Forwarding Co. of East Africa Ltd. v. Jafferli and Sons Ltd.* 1964 A.C. 1. (See Anson's Law of Contract 24th edition page 573). Powers of statutory corporations

(72) Counsel for the Authority maintained that the Builders cannot question the power of the Vice-Chairman to accept the bid or the power of the Authority to sell Nazul land. It is a matter between the Authority and the Central Government, he said. I cannot accept this argument. The Builders whose money is sought to be forfeited can certainly show that the Authority is acting illegally. The Authority is a statutory body. Its powers are derived from the statute under which it was created. It is a well known principle of law that statutory powers can only be exercised for the purposes for which they are granted. Equally well known is the principle that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. (*Nazir Ahmed v. Emperor* (21).

(73) The capacity of a corporation incorporated by statute is limited by the fact that any act done by the corporation outside its statutory powers is ultra virus and void. Since the corporation has no existence independent of the Act of Parliament which creates the Corporation or authorised its creation, it follows that its capacity is limited to the exercise of such powers as are actually conferred by, or may reasonably be deduced from, the language of the statute. In the words of Bowen LJ :

'WHAT you have to do is to find out what this statutory creature is and what it is meant to do; and to find out what this statutory creature is you must look at the statute only, because there, and there only, is found the definition of this new creature.'

(Baroness Warlock v. River Dee Co. (1877) 36 Ch. D. 674 . Conclusions

(74) My conclusion on the first question is that the Builders were entitled to retract their bids before acceptance as they did. They are entitled to the refund of the money paid by them at auction. This alone is sufficient to dispose of the suit.

(75) On the second question my conclusion is that the land in question is Nazul land. The Authority have no power to sell it unless rules have been framed for this purpose or the Central Government has directed it to sell. In the absence of a positive direction or rules the Authority will be acting ultra vires.

(76) On the third question my conclusion is that the Vice-Chairman has no power to accept the bid unless power is duly delegated to him by a Gazette notification as laid down in s. 52.

(77) I now take up the issues. Issue No. 1 The suit has been instituted by the managing director S. P. Aggarwal. He was authorised by the company. The resolution dated September 3, 1973, passed by the company in this behalf has been filed (P 10). The memorandum and the articles of the Association of the company have also been filed (P 11). The certificate of incorporation is P 12.

(78) Counsel for the Authority argued that in the resolution there are no signatures of the members present at the meeting at the end of the minutes. All the members present at the meeting signed at the commencement of the proceedings. This is enough. Development Authority

(79) Issue No. 2 On issue No. 2 I have already held that the plots sold at the auction were Nazul land and the Authority had no right to sell the same to the Builders.

(80) Issue No. 3 The auction of the plots was had because no rules have been framed by the Central Government under s. 52(2)(g) of the Act providing the manner in which Nazul lands are to be dealt with after development. A sale of Nazul land can be made only if rules are framed or under a direction of the Central Government (s. 22).

(81) Issues 4 and 5 The condition of the auction sale, namely, that 'the bid shall not be revocable by the bidder' is inoperative in law and therefore not binding on the Builders.

(82) Issues 6 and 7 The acceptance of the terms and conditions of the auction does not mean a concluded contract. The principles of auction sales can conveniently be summarised as follows :

1. The bid itself constitutes the offer which the auctioneer is free to accept or reject.
2. An intending bidder may retract his offer before acceptance. The auctioneer has no right of action. Conversely when the auctioneer withdraws the goods from sale the intending bidder has no right of action.
3. At an auction sale the general rule is that the offer is made by the bidder and accepted by the auctioneer when he signifies his acceptance in the customary manner, e.g. by the fall of the hammer. Before acceptance the bidder may withdraw his bid and the auctioneer may withdraw his goods.
- * 4. Where a bid is accepted by the auctioneer subject to the approval of the vendor the contract becomes binding only when the vendor signifies his assent.

(83) Issue No 8 Counsel for the Authority argued that as there were three separate and distinct commercial transactions three separate suits should have been filed. He referred me to Sheokumar Singh v. Bachan Singh : AIR1940 Pat76 . I do not think this objection is well founded. The terms and conditions of sale in all the three cases are the same. The point arising in the three transactions is the same. The defendant is the same in all the three causes of action. The plaintiff can unite several causes of action under Order II rule 3, Code of Civil Procedure.

(84) Issue No. 9 The Builders claim interest. In my opinion they are not entitled to interest for the period prior to the institution of the suit. Term 2(6) of the auction sale provides :

'If the bid is not accepted, the earnest money will be refunded to intending purchaser without any interest.....'

(85) The expression 'earnest money' used in the conditions of sale is both inaccurate and misleading. If 25 per cent of the bid amount were really earnest money the Authority is entitled to forfeit it in the event of the intending bidder backing out of the bargain. But we have seen that this is not the nature of an auction sale. A bid is a mere offer, and can be retracted by the bidder before the acceptance of the bid. Until the bid is accepted there is no complete contract of sale. It is on this ground that the bidder can withdraw the bid. This is why I have held that the Builders are entitled to the refund of the bid amount. The bid amount cannot be termed 'earnest money'. A sale at public auction is different from a sale by private treaty.

(86) But what about interest In my opinion the Builders cannot claim interest in view of the above term. The method of bidding is usually regulated by the conditions of sale.

(87) This term is binding on the intending purchaser. The result of the withdrawal is that the Builders' bid cannot be accepted. In that case the bid amount must be refunded. The intending purchaser cannot claim interest. Such is the term of the conditions of sale.

(88) I would, thereforee, award interest to the Builders at the rate of 6 per cent from the dats of the suit till payment. I would disallow interest prior to the date of the suit.

(89) Issue No. 10 During the pendency of the suit the Authority sent a cheque of Rs. 2,02,750 dated December 3, 1973. The suit had already been filed. thereforee, there is no question of estoppel. By letter dated December 8, 1973, the Builders informed that the amount of cheque has been adjusted against the amount of suit. The plaintiffs were entitled to go on with the suit for the balance amount. This is what was asserted in the replication.

(90) Issue No. 11 For these reasons I would pass a decree for Rs. 3,66,000.00 with interest at 6 per cent per annum from the date of the suit till payment in plaintiff's favor- The plaintiff shall also have costs of the suit on the sum of Rs. 5,68,750.00 .

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