

Manju Gupta and anr. Vs. Delhi Development Authority

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Court : Delhi

Decided On : Feb-28-2003

Reported in : 2003IIIAD(Delhi)645; 103(2003)DLT776; (2003)134PLR9

Judge : Sanjay Kishan Kaul, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Petition No. 3491 of 2000

Appellant : Manju Gupta and anr.

Respondent : Delhi Development Authority

Advocate for Def. : Sangeeta Chandra, Adv.

Advocate for Pet/Ap. : A.P. Dhamija and; J.P. Singh, Adv

Disposition : Writ petition allowed

Judgement :

ORDER

CW 3491/2000:

Rule.

1. With the consent of learned Counsels for the parties the petition is taken for final disposal.
2. The respondent issued a public advertisement for auction of shops/stalls, kiosks, restaurants, etc. in November, 1996 including for auction of the same at CSC Rajdhani Enclave, Pitam Pura for which auction was scheduled on 28.11.1996. The petitioner participated in the said auction and was the successful bidder for shop No. 1 being the vegetable stall for a consideration of Rs. 2,62,000/- . The petitioner deposited 25% of the earnest money amounting to Rs. 65,500/- at the fall of the hammer.
3. The petitioner addressed letter dated 3.12.1996 informing the respondent that on inspection at the site he found that the area of the stall in question was comparatively much less than the area scheduled for auction. It may be noticed that the area scheduled for auction given on the date of the auction was 9.88 square metres. The petitioners sought confirmation that the area was same and stated that in case the area was less the petitioner was not in a position to accept the same. This communication was thus addressed within a week of the said auction.
4. The petitioner did not receive the reply to the same and received a demand notice dated 18.12.1996 demanding the balance amount from the petitioner to be paid within thirty days. The petitioner once again addressed a reminder dated 16.1.1997 and seeking refund of the amount in case the shop area was less than the specified area. The petitioner simultaneously issued another letter on the same date stating that till the representation of the petitioner was decided, the petitioner would not be able to deposit the balance amount the time period for which may be suitably extended. Reminder was again sent on 17.2.1997 and finally the respondent replied vide letter dated 24.2.1997 only dealing with the request of the petitioner for extension of time and agreed to extend the period by one month up to 17.2.1997. thus the date of extension had expired when the said letter was issued.
5. The petitioner continued to send reminders and the respondent finally sent a letter dated 18.3.1997 intimating that the actual area of the stall was 9.88 square

metres details of which are as under:

'Ex.Enggr. N.D.-9.DDA Sizeof Veg. Stall No. 1.= 3.115Mx2.115 M. = 6.588 sqm.Addfor 50% area forfeited BasementConsideration= 3.294 sqm.Totalarea= 9.882 sqm. i.e.9.88 sqm.

6. The petitioner was not willing to accept the said shop and sought refund of the same and sent reminders to this effect. Respondent wide their letter dated 3.6.1997 cancelled the allotment and forfeited the earnest money.

7. The petitioner initially filed a complaint before the District Consumer Forum in October, 1997 but the said Forum was of the view that it was not a matter to consider by the Forum being the case of auction /purchase and thus disposed of the complaint vide the order dated 1st February, 2000.

8. The petitioner filed the present petition seeking quashing of the letter dated 3.6.1997 forfeiting the earnest money and sought direction against respondent to refund the amount of Rs. 65,500/- along with interest @ 18% per annum. Learned Counsel for the petitioner contends that respondent was duty-bound to have communicated that the areas specified in the auction includes 50% of the basement which was not done. Thus the actual ground area was only about 75% of the total area. It is further contended that respondent does indicate wherever the auction includes any basement area and in this behalf reference has been made to details of the auction held on 9.8.1996 and 13.2.1997 where while referring to the relevant shop it has been stated that it is inclusive of basement or inclusive of open terrace as the case may be. Learned Counsel for the petitioner has referred to the judgment of the learned Single Judge of this Court in Anis-ur-Reluna and Anr. v. DDA, : 88(2000)DLT814 , where it was held that DDA should allot a shop of the size for which the auction was held and must take an action on representation of the allottee. In the said case it was held that the allottee be handed over the refund of the money along with interest.

9. Learned Counsel for the respondent however contends that it was the duty of the petitioner to have inspected the premises before participating in the auction or could have sought clarification at the stage of the auction and it is not open to the

petitioner to thereafter resile from the auction. A reference was made to the advertisement issued by the respondent wherein it is stated that the details of terms and conditions of the auction and the details of the shops/office can be obtained on payment of Rs. 5/- from the Form Sales Counter. Learned Counsel has referred to the terms and conditions, more specifically Clause 2(i) which is as under:

'2. BIDDING AT AUCTION AND SUBMISSION OF DOCUMENTS: (i) The officer concluding the auction may without assigning any reasons withdraw all or any of the shops from the auction at any stage. The bid shall be for the amount of auction at premium for the conveyance-cum-perpetual lease-hold rights of the shop. The office/built up units are being auctioned on as is where is basis, it is presumed that the bidder has inspected the property before giving bid.'

Learned Counsel for the respondent thus contends that the office/built up units have been so auctioned on 'as is where is basis' and it was clearly stipulated that the bidder would be presumed to have inspected the property before participating in the bid.

10. Learned Counsel has also referred to orders passed by learned Single Judge in CW No. 1649/2001; M/s. Vardhman Properties Limited v. DDA, decided on 16.5.2002. In the said case also the area was subsequently found to be less. The petitioner therein deposited the initial 25% bid amount and on the demand deposited the balance amount and it was about two months thereafter that the petitioner made a complaint of the area in question and filed the writ petition seeking refund of 50% of the amount paid for the shop as a consequence thereof.

11. I have considered the submissions advanced by learned Counsel for the parties.

12. There is no doubt that as per the general terms and conditions the shops and stalls were auctioned on as is where is basis and it was stipulated that the petitioner shall be presumed to have inspected the shop in question. There was thus an obligation on the part of the petitioner to verify the position of the shop before participating in the bid. However, there is simultaneously an obligation on

the part of the respondent to have given the correct description in question. Thus if there is some minor defect in the shop the auction purchaser should not wriggle out of the auction on the said ground since he is presumed to have inspected the shop in question. However, the area of the shop in question is certainly an aspect which cannot fall within the said category. An auction purchaser must know correctly the space sought to be auctioned. The details given by the respondent will be presumed to be correct. Thus it is not permissible for the respondent to contend that even if there is such a large difference in area the respondent is not concerned with the same. The respondent is a public body and must act in a fair and reasonable manner. This forms the basis of the judgment in *Anis-ur-Reluna* and *Anr.v. DDA* (supra), In the case of *Vardhman Properties Limited* (supra), the auction purchaser had not only paid the bid amount but also deposited the balance amount and it is two months later that the issue of the areas was raised. It was in these circumstances that the observations were made by the learned Single Judge of this Court that the auction purchaser should have verified the correct facts at site specially when the bid is on as is where is basis. The petitioner in the present case immediately after the successful bid inspected the shop and even addressed a letter to the respondent to confirm the exact area of the shop. It took more than three months for the respondent to respond to the same and justify the same on ground of inclusion of 50% of the basement. I am unable to accept the contention of learned Counsel for the respondent that there is no obligation on the part of the respondent in this behalf and that such details which are given in certain other auctions would have no material bearing. It is relevant to note that one of the auctions held on 9.8.1996 which is prior to the auction in question while the other auction dated 13.2.1999 which is subsequent to the said auction, details have been given wherever the basement has been included or terrace has been so included. Thus it is necessary to give correct description before an auction takes place.

13. The auction purchaser must know what is sought to be auctioned. The expression 'as is where is' cannot be extended to include even large discrepancies area which is sought to-be made good by inclusion of the basement area. It was obligatory on the part of the respondent to have specified that the area includes the basement area.

14. In view of the aforesaid, I am of the considered view that the decision taken by the respondent vide letter dated 3.6.1997 forfeiting the earnest money of petitioner cannot be sustained and the same is consequently quashed. The petition is thus entitled to refund of the earnest money along with interest @ 10% per annum. Since the petitioner had made the representation on 3.12.1996 itself the interest should be paid from 1.1.1997 till the date of payment. The amount be so refunded within a period of two months from today.

15. Writ petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

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