

Delhi Development Authority Vs. H. Dohil Construction Co.

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Court : Delhi

Decided On : Jan-23-1984

Reported in : ILR1984Delhi710; 1984RLR585

Judge : A.B. Rohatgi and; G.C. Jain, JJ.

Acts : [Delhi Development Act, 1957](#) - Sections 53B(2)

Appeal No. : Regular First (OS) Appeal No. 5 of 1983

Appellant : Delhi Development Authority

Respondent : H. Dohil Construction Co.

Advocate for Pet/Ap. : N.S. Sistani,; Swantantar Kumar and; Geeta Mittal, Advs

Judgement :

Avadh Behari Rohtagi, J.

(1) (ORAL) This is an appeal from the. decree of a learned single judge of this Court dated F 17-11-1982. The plaintiff-respondent M/s. H. Dohil Construction Co. Pvt. Ltd. (the purchaser) instated a suit turn specific performance against the Delhi Development Authority (DDA) appellant-defendant, on 28-9-1976. A plot of land measuring 677.24 sq. metres bearing No. li situated at Rajindra Place, District Centre, Pusa Road, New Delhi belonged to the DDA. The perpetual leasehold rights in the said plot were auctioned by them on 29-5-1972. The purchaser was

the highest bidder. His bid was for Rs. 12,02,000. At the fall of the hammer he paid a sum of Rs. 3,00,500 to the DDA. Subsequently on 1-7-1972 the Dda conveyed the acceptance of the bid to the purchaser. The terms and conditions of the auction required the intending purchaser to deposit the balance price of 75 per cent within 120 days of the acceptance of the bid. This means that the purchaser was required to deposit the balance amount by 1-11-1972.

(2) There is one important fact. This was mentioned at the auction. In a part of the plot there was a gurdwara. It was verbally announced at the auction that within a period of 3 months from the date of the acceptance of the bid the Dda will get the site vacated from the gurdwara and will deliver vacant possession of the land to the purchaser after he has deposited the balance price of 75 per cent.

(3) The Dda could not get the sits vacated by the gurdwara. A suit was filed by some people against the DDA. They obtained an injunction from the court restraining the Dda from evicting them. The Dda, therefore, was unable to evict the persons in occupation of the gurdwara. This change the complexion of the transaction. The purchaser wrote to the Dda that since they, the Dda are not able to get the gurdwara removed from the land, the purchaser should not be required to deposit the balance price by 1-11-1972. This letter the purchaser wrote on 21-10-1972. Ultimately it was agreed between the parties that the purchaser will not deposit the balance amount of 75 per cent within 120 days as was contemplated by the terms and conditions of the auction. But he will do so within a period of two months from the date the gurdwara is removed. The gurdwara was not removed for a Inn' time. Injunction continued. 1972 passed. 1973 passed. 1974 passed. 1975 passed. Eventually in 1976 the purchaser issued a notice to the DDA. requiring them to perform the contract or to pay to him compensation amounting to Rs. 25,00,000. The purchaser then brought the suit on 28-9-1976 for specific performance and in the alternative damages.

(4) During the pendency of the suit the plot was got vacated by the Dda from the persons who were in occupation of the gurdwara. So the gurdwara was removed. The purchaser made an application to the court that the land has been vacated and that he was prepared to pay the balance price and that vacant possession of

the plot should be given to him. The Dda did not admit that the plot was vacant or that the purchaser was entitled to its possession. The suit went on. On evidence the trial judge found that the purchaser was entitled to a decree for specific performance. He found as a fact that the purchaser was ready and willing to perform his part of the contract. He further found that the Dda had allotted an alternative site to the gurdwara and the encroachers had vacated the plot. On the whole case he held that there was no good reason why the Dda should not be ordered to perform the contract of sale specifically. So he granted a decree for specific performance. From his decree the Dda appeals to this court.

(5) The principal contention raised by Mr. N. S. Sistani, learned counsel for the Dda was that the purchaser was guilty of the breach of contract and was, therefore, not entitled to a decree for specific performance. For this contention he relied on the terms and condition? of the auction. According to the terms, counsel says, the purchaser ought to have deposited the balance price by 1-11-1972 and as he did not do so he is not entitled to the specific performance of the contract to sell. A short answer to this contention is that there was a subsequent agreement between the parties that the purchaser will pay the balance price after two months or the removal of the gurdwara. This subsequent agreement is contained in one of the letters of the Dda dated 21-11-1972. In paragraph 7 and of the water, statement the Dda admitted explicitly that the balance 75 per cent of the bid amount was required to be paid by the purchaser within two months from the date of the removal of the encroachment/unauthorised structure. The Dda has said this in so many words. The position at the time of the filling of the written statement in 1977 was this. A civil litigation was pending between the encroachers and the DDA. There was a stay order against the DDA. the Dda pleaded its inability to convey the property to the purchaser. They pleaded that they were restrained by an order of the court from performing their agreement. They said that they were even prepared to refund the earnest money with 7 per cent interest in the circumstances in which they were placed.

(6) Once it is admitted that the purchaser can pay the balance 75 per cent within 2 months after the removal of the encroachment that is the end of the matter. This being the admitted defense we do not see why the purchaser should not be

granted a decree for specific performance when it is clear from the record that plot was vacated long after the filing of the suit. During the pendency of the suit the gurdwara was removed. Once the encroachers were expelled from the land, the subject matter of the suit, there is no hitch or hurdle in the way of DDA. They must be held to their contract to sell. They must perform the contract. The purchaser throughout insisted that he should be given the vacant plot. It is true that at one stage he made an offer to the Dda that he was prepared to accept compensation or a cinema plot in lieu of the plot in question. But the Dda did not accept his proposal. So he was driven to file a suit. In the suit he averred that he was ready and willing to perform his part of the contract. The essential term of the contract was that the gurdwara will be removed. It was removed in 1979. So the learned judge took the view that the plaintiff is entitled to a decree for specific performance and that the property must be conveyed to the purchaser on his depositing the balance sale price. The plea of impossibility of performance he rejected outright.

(7) Mr. Sistani next contended that the suit was barred by reason of section 53B(2) of the [Delhi Development Act, 1957](#). That section provides that:

'NO suit such as is described in sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be 'instituted after the expiry of six months from the date on which the cause of action arises.'

(8) Section 53B provides for giving of notice to the DDA. The suit against Dda according to sub-section , cannot be instituted after the expiry of six months from the date on which the cause of action arises. But a suit for recovery of immovable property or for a declaration of title thereto are excluded from the operation of sub-section (2). In our opinion a suit for specific performance of contract to sell land is essentially a suit for recovery of immovable property. We, therefore, hold that sub-section (2) does not operate as a bar to the plaintiff's suit for specific performance.

(9) For these reasons the appeal is dismissed with costs. The purchaser will deposit a sum of Rs. 9,01,500 within two weeks. The Dda is ordered to execute the conveyance of perpetual leasehold rights in accordance with the agreement within six weeks of the deposit of the money. The purchaser will inform the Dda of

the date of deposit of the purchase price. If the Dda fails to execute the conveyance the Registrar of this Court will do so on behalf of the DDA.

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