

G. Ram Vs. Delhi Development Authority

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Court : Delhi

Decided On : Apr-11-2002

Reported in : 2002VIIAD(Delhi)241; AIR2003Delhi120; 98(2002)DLT800; 2002(64)DRJ140

Judge : S.B. Sinha, C.J. and; A.K. Sikri, J.

Acts : [Constitution of India](#) - Article 226; Indian Contract Act - Sections 74; Transfer of Property Act - Sections 54; Indian Registration Act - Sections 17; Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 - Rules 29 and 32

Appeal No. : LPA 229/1996

Appellant : G. Ram

Respondent : Delhi Development Authority

Advocate for Def. : Rajiv Bansal, Adv.

Advocate for Pet/Ap. : R. Venkatramani, Sr. Adv. and; Inderjit Sharma, Adv

Disposition : Appeal dismissed

Judgement :

S.B. Sinha, C.J.

1. This Letters Patent Appeal arises out of a judgment and order dated 30th September 1996 whereby and whereunder the writ petition filed by the appellant herein was dismissed. The factual matrix of the matter is not in dispute.

2. An auction was sought to be held in respect of plot No. 200 at Shankar Road, New Delhi by the respondent herein. The appellant participated in the bid and became the highest bidder. The total amount of the bid was Rs. 29,35,000/-. He deposited the requisite earnest money of Rs. 7,33,750/-. A demand notice asking for deposit of the balance amount of Rs. 22,12,095/- was issued in May 1995.

3. The due date for the payment of the said amount was 1st July 1995. It has been accepted by the petitioner that he was owner of plot in Block No. D-1030, New Friends Colony, New Delhi which was sold by him to one Shri Amar Singh by way of General Power of Attorney and Agreement to Sell dated 9th August 1978. According to him, on the date of acceptance of bid, he was neither the owner nor in possession of the said premises. The appellant, however, was under a mistaken notion that as he owned the afore-mentioned plot, he was not entitled to bid for the said plot No. 200 at Shankar Road. He, therefore, by a letter dated 21st June, 1995 written to the Minister for Urban Affairs and Development alleged:

'At the time participating the bid, I did not know that even after coming into being of the conversion scheme of the government permitting conversion of lease hold property into free hold property, one can own only one residential plot/flat in the Union Territory of Delhi. This mistaken impression exists not only with me but also with everyone else in the country. However, when I enquired from the officials in D.D.A. all of them clearly told me that one could acquire only one residential plot/flat in Delhi. This means that since I already own plot No. D-1030, in The New Friends Co-operative House Building Society Limited, measuring 522 sq. yds. (copy of the lease deed enclosed), I cannot own the new plot in Shanker Road. I was advised by some people that I should pay the balance amount to the D.D.A. and do not disclose the fact of my owning a plot to them. I being an honest citizen cannot afford to do so. I was further advised that I may deposit the balance amount as demanded and as and when D.D.A. comes to know of the fact of my owning the flat, the money deposited by me will be refunded to me. I, however, do

not want to play the games. As I cannot acquire the new plot of land legally, I would earnest request that the money deposited by me may be refunded.'

4. On or about 7th September 1995, his afore-mentioned prayer was rejected stating:

'Subject : Auction of Plot No. 200, Site No. 1, New Rajinder Nagar, (Shankar Road)

Sir/Madam,

Reference your representation made before the Hon'ble Minister of State of Urban Affairs and Employment, Govt. of India, New Delhi, for refund of earnest money deposited on 28.3.95 against the aforesaid plot. I am directed to inform you that your request for refund of earnest money has been rejected. The bid so given in respect of the aforesaid plot has also been rejected and the earnest money stands forfeited as per the terms and conditions of auction.'

5. Allegedly, the appellant consulted the officers of the DDA and explained that as he had already sold the said plot, he could not have been deprived of the allotment of plot No. 200 at Shankar Road where for he had been declared the highest bidder in a public auction. Allegedly, pursuant to or in furtherance of the advice of the officers, he deposited the balance amount of Rs. 22,12,095/- with interest on 7th October 1995. The contention of the petitioner was that in terms of the extant rules, the respondent could extend the time for making payment of the balance amount of bid within a period of 180 days, and having regard to the fact that the said payment was accepted without any demur whatsoever, it was assumed that a lease deed would be executed in his favor. However, on or about 9th April, 1996 the appellant received a communication from the respondent informing him that his bid had been cancelled and his earnest money had been forfeited. He had been asked to hand over the possession of the plot in question.

6. Questioning the said order, the writ petition was filed and a learned single Judge of this Court, by reason of the impugned judgment rejected the aforementioned contention of the petitioner holding:

'I am sorry and I am unable to agree with the submissions made by the learned counsel for the petitioner. The said plot was cancelled at the instance of the petitioner himself. The petitioner even went to the extent of asking for the refund of the earnest money which according to the respondent stood forfeited.

I do not see any justification to interfere under Article 226 of the [Constitution of India](#). Dismissed.'

7. Mr. Venkatramani, learned senior counsel appearing on behalf of the appellant had raised two-fold submissions in support of this appeal. The learned counsel would contend that a forfeiture clause must be strictly construed keeping in view the provisions of Section 74 of the Indian Contract Act. The learned counsel would contend that at a later stage the plot in question was auctioned for a much higher amount and in any event, the first respondent herein had derived advantage by enjoying the interest of the amount deposited by the appellant for a long time and as such it is a fit case where the amount should be directed to be refunded.

8. The learned counsel would contend that it is not a case where the contract entered into by the parties was vitiated by fraud inasmuch as the appellant had placed all his cards before the said authority in making a categorical statement to the effect that he might not be entitled to allocation of the said plot and in that view of the matter, there was absolutely no reason as to why the respondent should not be directed to refund the amount of earnest money.

9. In any event, Mr. Venkatramani, would contend, as the respondents had accepted the balance amount, they are now estopped and precluded from raising the plea that the appellant being the owner of a property, could not have taken part in the bid in relation to the land in question.

10. The learned counsel in support of his contention has strongly relied upon *Fateh Chand v. Balkishan Dass*, : [1964]1SCR515 and *Maula Bux v. Union of India*, : [1970]1SCR928 .

11. Mr. Rajiv Bansal, learned counsel for the respondents, on the other hand, would contend that in this case the appellant had accepted that he being the

owner of another plot, was not entitled to participate in the bid. The learned counsel would urge that there is nothing on record to show that the respondent demanded the balance 75% of the bid amount despite receipt of his letter dated 21st June 1995. It was submitted that the appellant was bound by the terms and conditions of the advertisement. According to the learned counsel, forfeiture of earnest money which was deposited being a reasonable amount, was liable to be forfeited, as has been held by a Division Bench of this court in *Ashwani Kapoor and Anr. v. Union of India v. Anr.* : 73(1998)DLT843 .

12. It is not in dispute that the terms and conditions of the sale were laid down in the advertisement. The relevant clauses thereof read thus:

'1. PURCHASE

1. (A) any individual who is not a minor and is a citizen of India may purchase lease hold rights in any one plot by bid or the auction if he/she his wife/her husband or nay of his minor and or dependent children or dependent parents or dependent minor sisters and brothers, ordinarily residing with him/her do not own in full or in part on lease hold or free hold basis any residential plot or flat or house or have been allotted on hire-purchase basis a residential plot or house in Union Territory of Delhi, and neither he has transferred any residential plot/house or flat to any one in the past nor has transferred his/her membership in any Co-operative House Building Society/C.G.H.S. in Delhi.'

3. No person whose bid has been accepted by the officer conducting the auction, shall be entitled to withdraw his bid.

4. The officer conducting the auction shall normally accept the bids subject to confirmation by the Competent Authority the highest bid offered at the auction and the person whose bid has been accepted shall pay, at the fall of hammer, earnest money, a sum equivalent to 25% of his bid either in cash or by bank draft in favor of the DDA.

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

intending purchaser shall submit an affidavit and undertaking in the form attached, while depositing the challenge of balance payment Along with other documents.

7. The highest bidder is required to collect the allotment-cum-demand letter not later than the second working day after the date of auction from the special counter, Main Reception, Ground floor Vikas Sadan, INA, New Delhi between 4.00 PM to 5.00 PM. The highest bidder is required to make the payment of the balance 75% amount demanded vide said demand letter referred to above, within 60 days from the date of issue of the demand letter by Bank Draft only in the branches of Central Bank of India/State Bank of India, Vikas Sadan, I.N.A., New Delhi. In case the bidder fails to collect the demand letter as stipulated above the earnest money shall stand forfeited. If the bid is not accepted the earnest money will be refunded to the bidder without any interest.

8. In case the payment is not received within the stipulated period indicated in the demand letter the auction bid shall automatically stand cancelled and the 25% earnest money shall stand forfeited, without any notice.'

13. The appellant in this case has been approbating and reprobating at the same time. By reason of his afore-mentioned letter dated 21st June 1995, he portrayed himself to be an honest citizen and sought for refund of the deposited amount, inter alia, on the ground that as he had already owned plot No. D-1030 in the New Friends Cooperative House Building Society Limited, he was not entitled to allotment of the new plot. He accepted the fact that the purported transfer was effected by reason of an agreement of sale coupled with a power of attorney.

14. An agreement of sale is not a document of transfer nor by reason of execution of a power of attorney, the right, title or interest of an immovable property can be transferred. Such a transfer can only be effected by executing a registered document as provided for under Section 54 of the Transfer of property Act read with Section 17 of the Indian Registration Act.

15. In terms of the conditions of the bid, only in the event the bid is not accepted, the earnest money would be refunded. The common case of both the parties is that such a bid had been accepted.

16. The appellant did not ask for any extension for depositing the amount. Although an allegation has been made by him to the effect that he had consulted the authorities of the respondent and was advised to deposit the balance amount with interest pursuant where to he did so, no proof in this behalf has been furnished.

17. No document has been annexed by the petitioner to show that at any point of time any such assurance, as has been alleged in para 9 of the writ petition, had been made by any officer of the respondent who had the requisite authority therefore.

18. Furthermore, the question of giving such an assurance would not arise inasmuch as, as noticed hereinabove, the representation of the petitioner was immediately replied to by the DDA on 7th September 1995 by reason whereof he was informed that as per terms and conditions of the auction, the earnest money deposited by him could not be refunded and the same had been forfeited. He was further informed that his bid in respect of the plot in question had been rejected. Thereafter, no demand had been made by the respondent from the appellant. He suo moto deposited the balance amount and premium amount on 17th October 1995. The same was accepted under protest.

19. The said amount had also been refunded to him. We, therefore, are of the opinion that it is not a case where the contention of the petitioner to the effect that the respondents are estopped from cancelling the bid, can be accepted. So far as contention of the petitioner to the effect that in a case of this nature, Section 74 of the Indian Contract Act would apply, we are of the opinion that such a contention need not be gone into keeping in view the fact that the forfeiture had been made by the respondent in terms of provisions of the contract.

20. A writ petition, as is well known, is not maintainable for enforcement of a contract qua contract. It is not a case where the petitioner in the writ petition has raised a question involving public law character.

21. What should be the reasonable amount in terms of the provisions of Section 74 of the Indian Contract Act, in our opinion, is essentially a question of fact.

22. In *Shree Hanuman Cotton Mills v. Tata Air Craft Limited*, : [1970]3SCR127 , the apex court noted what is meant by earnest money and what is the consequence of deposit of such money as also when the same can be forfeited.

23. This aspect of the matter has been considered by a Division Bench of this court in *Ashwani Kapoor and Anr. v. Union of India and Anr.* : 73(1998)DLT843 wherein it was held:

'16. In the present case the deposit of 25% of the auction price was as per the terms of the contract and was to form part of the total auction price because the buyer, i.e., the petitioner had only to deposit the balance 75% price. As per the ratio of the aforesaid decisions of the Supreme Court, the forfeiture of the 25% deposit by way of earnest money, therefore, cannot be called in question.

17. Even the question of reasonableness of the amount sought to be forfeited cannot be challenged in the facts of the present case. Firstly the 25% deposit by way of earnest money in matters relating to immovable properties cannot be said to be an unreasonable amount. This has been upheld by the Courts in various cases. The Supreme Court upheld the forfeiture of 25% of the price of goods in the case of *Shree Hanuman cotton Mills v. Tata Air Craft Limited*, : [1970]3SCR127 . This Court has upheld forfeiture of similar 25% deposit in *Aggarwal Associates (Promoters) Limited v. Delhi Development Authority and Anr.*, : 69(1997)DLT716 . Secondly, the learned Counsel for DDA has relied on the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 to contend that the 25% deposit by way of earnest money and its forfeiture on account of non-payment of the balance 75% price has statutory force. Rules 29 and 32 of the aforesaid Rules provide for deposit of 25% amount as earnest money at the time of fall of hammer by the successful bidder. These Rules further lay down the time frame within which the balance 75% amount of the auction price is to be paid. Rule 32 lays down the consequence of failure to pay the balance price within the specified period. According to this Rule, the 25% amount which already stands deposited by way of earnest money is liable to be forfeited in such a case. The submission of the learned Counsel for the DDA in this behalf is that these Rules have been framed under statutory powers and, therefore, have the force of law.

Because of this it does not remain merely a case of terms of contract. These terms of contract (auction) have statutory force and, therefore, cannot be called in question. This is especially so because there is no challenge to these Rules in the present case. The learned Counsel for the petitioner tried to meet his argument by saying that the Rules contain enabling provisions and are merely by way of guidelines for the Department. When we consider the question of reasonability of the amount being forfeited, this cannot be the answer to the argument advanced on behalf of the DDA in view of the fact that the relevant terms of the auction find force from the statutory Rules, at least the question of their being reasonable or not cannot be raised.'

24. An argument, similar to that has been made by Mr. Venkatramani that the DDA did not suffer any loss, was also rejected by the Division Bench holding:

'23. In the result, we find no merit in the contention raised on behalf of the petitioner that the respondent is not entitled to forfeit the 25% of the auction price deposited by the petitioner as earnest money in view of the failure of the petitioner to pay the balance 75% price. In the earlier part of this judgment, we have given facts leading to the filing of the writ petition. Those facts show that right from the beginning the petitioner has been dilly-dallying on the aspect of payment of 75% auction money. He has been trying to find excuses for not paying the amount. He has been all along trying to gain time in this behalf and even the indulgence shown by this Court in granting him further time to pay the balance amount was not utilized. First he tried to gain time regarding payment of balance price. When he failed to avail of the opportunity granted by way of extension of time, he started challenging the forfeiture of the 25% amount which he had deposited by way of earnest money. In fact there is merit in the contention raised by the learned Counsel for the respondent that the conduct of the petitioner in the present case totally disentitles him from seeking any relief under Article 226 of the [Constitution of India](#).'

25. In *Fateh Chand v. Balkishan Dass*, : [1964]1SCR515 , the Supreme Court was concerned with the case where no legal injury at all has been resulted as no damage arose in usual course or which the parties knew when they made the

contract to be likely to result from the breach.

26. In *Maula Bux v. Union of India*, : [1970]1SCR928 , the decision in *Fateh Chand* (supra) was followed. Therein it was held that if the amount is reasonable, the forfeiture thereof would be permissible.

27. In the instant case, the bid had been accepted by the respondent only as the appellant herein was the highest bidder. At that point of time, they did not know that a fraud or a misrepresentation had been made.

28. The acceptance of the said bid itself was contrary to the terms and conditions laid down thereforee. The appellant knew the same very well and as such made a vain attempt to get the earnest money refunded. He although failed in his attempt to do so, still went on to deposit the amount in the bank, although as indicated hereinbefore, no assurance on the part of the authorities of the DDA in this behalf was given to him, he did so on a specious premise.

29. He, as indicated hereinbefore, took contrary and inconsistent stand which was not tenable in law.

30. Such a provision of forfeiture evidently has been inserted in the bid-document and in a case of this nature where the auction is required to be cancelled, a fresh auction may be required to be held, as a result whereof extra expenditure is to be incurred.

31. In *State of Karnataka and Ors. v. Saveen Kumar Shetty* reported in : 2002(80)ECC255 it has been that when a statutory power is exercised, even the principle of natural justice need not be complied with.

32. It is, thereforee, a case where the learned Single Judger cannot be said to have committed a manifest error in refusing to exercise his discretion in the matter of grant of relief under Article 226 of the [Constitution of India](#).

33. For the reasons afore-mentioned, the appeal is dismissed without any orders as to costs.