

R.K. Aneja Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Feb-09-1996

Reported in : 1996IAD(Delhi)897; 61(1996)DLT757

Judge : Devinder Gupta, J.

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

Appeal No. : Suit No. 282 of 1977

Appellant : R.K. Aneja

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : Mukul Rohatagi,; Vineta Mahajan and; A. Salwan, Advs

Judgement :

Devinder Gupta, J.

(1) In the suit instituted on 5th March, 1979, the plaintiff prayed for grant of a decree for declaration that the orders of defendant in making a demand of Rs. 47,111.00 with interest in respect of plot No.112, Block No. A/M, (Dakshani) Shalimar Bagh Residential Scheme, New Delhi (hereinafter referred to as 'the plot') and subsequently its cancellation and forfeiture of the amount and reauctioning the same is illegal, without jurisdiction and wrongful. As a consequential relief the plaintiff prayed for the restoration of the allotment of the

plot in question.

(2) There was an office objection as regards Court fee payable on the plaint. Plaintiff sought amendment by moving I.A.785/79, which was allowed ex parte on 12th March, 1979, since defendant had not yet been summoned. In the amended plaint dated 8th March, 1979 the following prayer was made :-

'A declaratory decree be granted in favor of the plaintiff and against the defendant that the re-auction of the plot No.112, Block No. A/M, Residential Scheme, Shalimar Bagh, New Delhi, is illegal, without jurisdiction, void and wrongful, and the plaintiff is the owner allottee of the same.'

(3) Summons were directed to be issued to the defendant of this suit. After the defendant had been served and written statement was filed, I.A. 2198/80 was moved seeking further amendment to the plaint. By this application, plaintiff wanted to convert the suit to a suit for specific performance of the contract. This application was allowed on 1st October, 1980. The plaintiff was permitted to carry out amendment. In the amended plaint, the plaintiff has prayed for the following reliefs:-

'(A) That a declaratory decree be passed in favor of the plaintiff and against the defendant that the act of the defendant in cancelling of the plot auctioned in favor of the plaintiff and of forfeiting the earnest money/part payment of the plaintiff is illegal, and in-operative and that the plaintiff continues to be the valid auction purchaser of the plot in suit; (b) That a declaratory decree be granted in favor of the plaintiff and against the defendant that the re-auction of plot No. 112, block No.A/ M, Residential Scheme, Shalimar Bagh, New Delhi, is illegal, without jurisdiction, void and wrongful; (c) That a decree for specific performance of the agreement to sell effected by the auction of the plot in suit be passed in favor of the plaintiff and against the defendant directing that the defendant to execute the lease deed/ sale deed/another documents in favor of the plaintiff, after receiving the balance amount of the consideration from the plaintiff, so as to fully transfer the plot in suit to the plaintiff and also to deliver possession of the same to the plaintiff; (d) That a perpetual injunction may be granted against the defendant restraining it from re-auctioning it and from transferring/delivering possession of

the plot and also to execute lease deed/sale deed or other document in favor of any other person in any manner whatsoever;'

(4) It is this amended plaint on the basis of which rights of the parties are to be decided.

(5) The plaintiff has averred that public notice was issued for auction of certain residential plots in Shalimar Bagh. On coming to know of the advertisement, the plaintiff made enquiries about the terms and conditions. He was supplied with a copy of the printed form of terms and conditions. The plaintiff inspected the site. Development work was yet at an initial stage. One of the conditions, which the plaintiff read was that the highest bidder will be required to deposit 25% of the bid amount as an earnest money at the fall of hammer. The auction was held on 10th August, 1976 in which the plaintiff participated and was declared to be the highest bidder for the plot in question having made a bid of Rs. 62,800.00 . As per the terms of the auction, the plaintiff deposited 25% of the bid amount. On payment of the amount, the plaintiff was asked to sign printed forms. At the time of auction, the plaintiff made enquiry from the concerned official of defendant, who was conducting the auction, about development of the plots and the mode of balance payment. The plaintiff was informed that plots would be fully developed shortly and balance payment will be demanded only from the highest bidder after the plots are fully developed. The plaintiff thereafter received letter dated 27th August, 1976 from the defendant informing that plaintiff's bid had been confirmed by Lt. Governor. Plaintiff was also asked to deposit Rs. 47,100.00 within two months from the date of issue of the letter. In reply, the plaintiff sought extension of time, under the impression that the plot is fully developed and plaintiff will get possession immediately. Plaintiff's request regarding extension was considered by the defendant through letters dated 1st November, 1976 and 29th December, 1976.

(6) It is further averred that Clause 6 of terms and conditions provided that after payment of the balance premium/50% of the premium and other amounts payable, possession of the plot will be handed over to the intending purchaser and thereafter lease deed will be executed and duly registered. Defendant through

letter dated 11th March, 1977, again made a demand of full amount. The plaintiff on receipt of the letter visited the site and found that there was no development of the plot and there were no amenities such as roads, electricity, water, drainage and the development work was at stand still. The plaintiff was shocked as a fraud had been played on the plaintiff and on public at large by the defendant. Since the plaintiff was upset, he wrote a letter that the payment demanded from him of the balance amount was not justified since plots had not been developed. Defendant was not entitled to recover full price till the plots were fully developed and immediate possession was deliverable of the developed plots.

(7) It is further alleged that the plaintiff again on 29th July, 1977 wrote a letter for developing the plot and also informed that unless and until plot is fully developed, and a specific date is given for delivery of possession, no payment can be demanded. On 17th August, 1977, it is alleged that plaintiff was informed about difficulties experienced by him, which had been passed on to the concerned officer. Thus according to the plaintiff, the defendant virtually agreed with the stand of the plaintiff that payment of the balance amount cannot be asked for unless and until the plot is developed. Against, through letter dated 16th November, 1977, the plaintiff informed that demand of Rs. 47,111.00 was un-warranted and called upon the defendant to pay interest on the amount already deposited. Plaintiff also asked the defendant that in case the defendant was not in a position to develop the plot with all essential amenities within three months, the deposit of the plaintiff may be refunded with interest. No reply was received to this letter. Reminder was given on 10th November, 1978 that fixed date be given for handing over of possession so that balance amount could be deposited. No reply was received. On 12th January, 1979, the plaintiff visited the office of the defendant and came to know that allotment had been cancelled, without informing the plaintiff. Plaintiff asked the defendant to restore the allotment. Plaintiff was thereafter informed that since allotment had been cancelled, earnest money also stood forfeited and the plot was being put to re-auction on 23rd February, 1979. In this background the plaintiff has averred that he has been ready and willing to perform his part of contract and thus was entitled to allotment and claimed decree that the act of cancelling the plot and forfeiting earnest money was illegal and in-operative. The plaintiff continued to be the auction purchaser and that the re-auction of the plot is also illegal. A decree

for specific performance has also been prayed directing the defendant to execute lease deed after receiving the balance amount of consideration and to deliver vacant possession of the plot to the plaintiff.

(8) The defendant in the written statement pleaded that in the public auction, the plaintiff was declared to be the highest bidder, who deposited 25% of the earnest money, according to the terms and conditions. Plaintiff also signed the terms and conditions, after fully appreciating the contents thereof. As per the terms and conditions, the plaintiff was required to deposit the balance 75% of the amount within 15 days from the date of issue of letter of demand. Defendant has denied the plaintiff's version that at the time of auction, the plaintiff made an enquiry about development of the plot or that he was informed by an official that the plot would be fully developed soon and that the balance payment would be demanded only after the plot is fully developed. It has specifically been pleaded (that no assurance of any kind was held out to the plaintiff by any person authorised to make such an assurance on behalf of the defendant that the balance payment would be asked for only on the plot being made fully developed, as alleged by the plaintiff. According to the defendants, the terms and conditions of auction form part of the contract. Plaintiff accepted those terms. In accordance with the terms of auction, the plaintiff was asked to pay the balance amount. Despite repeated reminders, the plaintiff failed to make the payment though sufficient indulgence was shown and further opportunity was also allowed. Plaintiff was also informed that in case balance amount is not paid within the time mentioned in the letter, the bid would stand cancelled and earnest money forfeited without further notice. Despite such letters, plaintiff did not bother, who was also informed of the fact that number of persons had already got plans sanctioned and had commenced construction work. As per terms and conditions of the auction, the defendant was justified in cancelling the allotment and forfeiting the amount. Defendant has denied that plaintiff was ever ready and willing to perform his part of the contract. The defendant has denied that plaintiff is entitled to any indulgence much less the decree, as prayed for in the suit. The parties were taken to trial on the following issues :- -

1. Whether the suit is not maintainable for want of notice under Section 53-B of the [Delhi Development Act, 1957](#)? O.P.D. 2. Whether the suit as framed is not maintainable O.P.P. (Note: The plaintiff has also made allegation that defendant No. 1 was not competent to re-auction the plot in question. This question in my view would be dependent on the result of issue No. 1 and I therefore, need not frame any specific issue on this.) 4. Whether the suit is properly valued for the purpose of Court-fee and jurisdiction? O.P.P. 5. Whether the suit is within limitation? O.P.P. 6. To what relief plaintiff is entitled?

(9) Plaintiff besides examining himself as Public Witness .4 has placed reliance upon the statement of Public Witness .1 Shri S.S. Mago, Assistant Executive Engineer, Construction Division, North-11, Office of the Desu, Public Witness .2 Shri S.P.Jain, Executive Engineer, Northern Division VIII, Office of D.D.A, Public Witness .3 and Shri S.K. Ahuja, Chief Engineer (North) D.D.A. Defendants have examined Shri Ram Singhar, U.D.C. Delhi Development Authority also as D.W.1 and closed their case. Both the parties have placed reliance upon a number of documents. I have heard learned Counsel for the parties, who have taken me through the entire record. Issue No. 1

(10) As noticed above, the suit initially was instituted on 5th March, 1979. The first amendment was allowed on 12th March, 1979, when defendant had not yet been summoned. The second amendment was allowed on 1st October, 1980. There is substantial difference in the prayers made in the two plaints. Before the institution of the suit, the plaintiff had sent notice Ex. P.6 dated 3rd January, 1979 to the defendant. The notice is short and the contents thereof are quoted as under :--

'PLEASE refer to my letter No. RKA/E/Shalimar Bagh/457 dated 10.11.1978 wherein you requested to let me know at the earliest as to whom you will be in a position to handover to me the developed plot so that the balance payment be deposited. When no reply was received from your office, I personally visited the office on 2.1.79 and have come to know that my allotment has been cancelled even without informing me. If this fact is correct, please restore the allotment of the plot in question and hand over me the possession of the same as has been requested me from time to time to enable me to make the balance payments. In

case nothing is heard from you within 15 days of this receipt of this letter, I shall have no alternative but to move the Court for appropriate relief.'

(11) The question would be whether this notice complies with the requirements of Section 53B of the Delhi Development Act, (hereinafter referred to as 'the Act'). Section 53B is couched almost in similar terms to Section 80 of the Code of Civil Procedure. A bare reading of the provisions would show that the requirement of serving of notice is mandatory. Section 53B of the Delhi Development Act reads:-

'NOTICE to be given of suits :-(1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made there under until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered. (2) 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. (3) Nothing contained in Sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit.'

(12) The contention of learned Counsel for the plaintiff has been that notice Ex. P.6 meets the requirement of law. In any case this requirement of serving notice will be deemed to have been fully met in case plaint, as originally instituted or which was amended by virtue of an order passed on 12th March, 1979 are treated as equivalent to serving notice upon the defendant.

(13) I am afraid that the contention of learned Counsel for the plaintiff cannot be accepted. Neither in the notice Ex.P.6, nor in the plaint, as originally instituted or in

the plaint as amended by order dated 12th March, 1979, the plaintiff disclosed the cause of action and nature of relief as are sought in the amended plaint. Section 53B of the Act does not say that it is necessary that notice should be in any particular or technical form. Notice also need not be strictly construed as if it were a pleading. It is also not necessary that notice must set out all the details and facts of the case. What is necessary is that the notice must substantially fulfill its object in informing the party concerned generally of the nature of the suit, intended to be filed. If it does say of the nature of the suit intended to be filed, it will be sufficient compliance of the provisions of law. One of the essential requirement of the notice is that it should state the cause of action and the relief claimed. Neither in the notice Ex.P.6, nor in the plaint, as originally filed or amended by order dated 12th March, 1979, the cause of action for the relief of specific performance is stated. It is also not stated that such a relief is to be claimed by the plaintiff. Section 53B of the Act prescribes a condition precedent for the institution of suit against the Delhi Development Authority. Section is mandatory in nature. The Court will be debarred from entert aining a suit instituted without complying with the provisions of mandatory notice, on the analogy of similar provision of Section 80 Civil Procedure Code ., as noticed by the Supreme Court in *Bihari Chowdhary and Another v. State of Bihar and Others*, : [1984]3SCR309 . It was held that when language used in the Statute is clear and unambiguous, it is the duty of the Court to give effect to it and considerations of hardship will not be a legitimate ground for not faithfully implementing the mandate of the Legislature. The notice Ex. P.6 does not comply with the provisions of Section 53B of the Act. In view of the above, issue No.1 is held in the affirmative. 764 Issue No. 2

(14) No arguments were addressed on this issue. Otherwise also no infirmity has been brought to my notice that how the suit, as laid, is not maintainable in the form in which it has been filed. This issue is decided against the defendant. Issue No. 4

(15) During the course of arguments, it was fairly conceded by learned Counsel for the defendant that the suit has properly been valued for purposes of Court fees and jurisdiction. Otherwise also, from the averments made in the plaint, for each relief, the plaintiff has separately valued the suit. There is nothing wrong in valuation. It is held that the suit has been properly valued for Court fee and

jurisdiction. Issue No. 5

(16) The suit for grant of decree of declaration, as regards cancellation and forfeiture, the same admittedly is within the period of limitation, namely, three years from the date of cancellation and forfeiture. For the relief of specific performance, the period of limitation for filing suit would be three years from 10th August, 1976, the date of auction. Plaint originally was presented within a period of three years from the said date. The decree for specific relief was not prayed for. It was prayed that by way of amendment, which was sought in the year 1980, after the expiry of the period of three years. Since amendment was allowed on 1st October, 1980, the same will relate back to the date of institution of the suit and thus the suit will be within period of limitation. The issue accordingly is held in the affirmative. Issue Nos. 3 & 6

(17) PLAINTIFF'S case, as revealed from the averments made in the plaint and the evidence led, is that on enquiry from the concerned officer conducting the auction, he was informed that plots will be fully developed very soon and the balance payment will be demanded only from the highest bidders, after the plots are fully developed. Terms and conditions, which he had obtained before making bid prescribed that 50% of the payment is to be made within 60 days and remaining 25% within an year from the date of handing over the possession or within a period of two months from the date on which electricity and water was to be made available. According to the plaintiff, fraud was played by the defendant on him and on the public at large that plots are fully developed. The plaintiff was misled by deception and was induced to accept the terms and conditions. The act of the defendant in calling upon the plaintiff to make payment of the balance amount was unwarranted and for that defendant had no right either to cancel the plot or to forfeit the amount. According to the plaintiff sufficient evidence has been brought on record that even on the date when his statement was recorded plots had not been fully developed and thus there was no question of either cancelling the allotment or forfeiting the amount. Unless and until the plots were made fully developed, the defendant was not entitled to call upon to make payment of the balance price. Plaintiff has always been ready and willing to perform his part of the contract, namely, making payment of the balance amount, provided the plot was

made ready for delivery of possession on its development. It was the defendant, who failed to perform its part of the contract. Thus the plaintiff is entitled to a decree for specific performance.

(18) In a suit for specific performance, the onus of proof of being ready and willing to perform his part of the contract at all relevant period, namely, from the date of the contract to the date of the filing of the suit is on the plaintiff. The words 'ready and willing' implies that the plaintiff was prepared to carry out those part of the contract to the logical end so far as it depends upon his performance. As far as the question of readiness and willingness of the plaintiff to perform his part of the contract is concerned, the substance of the matter and surrounding circumstances have to be considered, namely, entirety of the facts and surrounding circumstances and the conduct of the party seeking for specific performance; whether at any stage he was not ready and willing to perform his part of the contract. The Supreme Court in a number of decisions has reiterated that if the purchaser claims specific performance of contract, he must show that he was, since the date of contract, up to the date of hearing continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail. The granting or refusing of a decree for specific performance is essentially a discretionary matter and the Court acts on equitable principle with an eye to substantial justice of the case. Where a person seeking specific performance satisfies the Court that he is ready and willing to perform his future obligations under the contract and has been ready and willing to perform his obligations at all relevant time, he is entitled in equity to a decree for specific performance. Reference need not be made to all the decisions on the point. Reference to one of such decision will be sufficient, which is N.P. Thirugnanam (D) by Lrs. v. Dr. R. Jagan Mohan Rao & Ors Jt 1995 (5) S.C.533.

(19) Judging in the light of the above principles, it is a case in which decree for specific performance of contract cannot be granted in plaintiff's favour, in the facts and circumstances of the case, which may now be noticed. The contention of the plaintiff that he had made enquiry at the time of auction and he was assured that demand for balance amount would not be made till the plots are made fully developed has remained not only un-corroborated but has also remained un-

substantiated. It is plaintiff's own ipsi dixit and cannot be accepted in the light of the surrounding circumstances.

(20) Admittedly, the plaintiff after having participated in the auction was declared to be the highest bidder and duly signed document Ex.D-1, the notice of auction containing the terms and conditions of the auction. According to the evidence. Clause 6 of the printed terms has some cuttings which are duly authenticated by the plaintiff under his signatures. Clause 6 as amended and authenticated by the plaintiff in Ex.D1 reads as under :-

'WHEN the bid is accepted by the Lt. Governor of Delhi, the intending purchaser shall be informed of such acceptance in writing and the intending purchaser shall, within 15 days from the date of issue of the letter communicating the approval of the bid, pay to the Delhi Development Authority the balance amount of the bid in cash or by bank draft or cheque 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 li (4) above. If the last date on which the amount of premium falls due happens to be a Sunday or a holiday, the amount will become payable on the next working day.'

(21) The auction took place on 19th August, 1976. On 27th August, 1976, letter Ex. D.4 was duly sent by the defendant to the plaintiff, receipt of which is not disputed by the plaintiff. This letter informed the plaintiff that his bid for Rs. 62,800.00 for the plot in question had been confirmed by the Lt. Governor of Delhi. Plaintiff accordingly was asked to deposit, within two months from the date of issue of letter, the balance amount of Rs. 47,111.00 . Clause 4 of the letter clearly informed the plaintiff that if the amount is not paid within the period specified, it will be treated as a breach of condition No. 11(6) of the conditions of auction and the earnest money already deposited will stand forfeited, as provided under condition No.11(4) of the conditions. Admittedly, reply to this letter of demand was sent by the plaintiff on 30th November, 1976 (Ex.D.5). In no part of the reply, the plaintiff ever raised an objection that the demand could not have been raised before making the plot developed. Plaintiff also raised no objection that he was not liable to pay the balance amount since plot had not been fully developed or the demand

was not in accordance with the terms and conditions. The reply reads as under :-

'I am to invite a reference to your letter No. F/13(73)/76LSD(R), dated 27th August, 1976, directing me to deposit a sum of Rs. 47,100 (Rupees forty-seven thousand and one hundred only) as per balance payment of the above noted plot and to state that due to some unforeseen and unpredictable circumstances, I am at the moment unable to make the requisite payment. Accordingly, I pray that I may be granted further extension of time for making the payment up to 7th February, 1977, together with interest as required. I shall be making complete payment even before the stipulated time limit, namely, 7th February, 1977.'

(22) On 1st December, 1976, another demand notice (Ex.D.6) was served upon the plaintiff by which the plaintiff was called upon to make a deposit of the balance amount within a week along with interest @ 9% from the due date. Plaintiff was also informed that if the payment is not made within the period mentioned in the notice, the allotment of the plot shall be liable to be cancelled and earnest money for feited- without further information. Receipt of this letter is also not disputed by the plaintiff. Similar notice of demand was again sent to the plaintiff on 29th December, 1976 (Ex.P.11). On 11th March, 1977, another notice of demand (Ex.D.7) was served upon the plaintiff and it was again reiterated that if the payment of the dues is not made, allotment shall be cancelled and earnest money stand for feited. Till 11th March, 1977, no objection was raised by the plaintiff that he was not liable to pay the amount or that it was obligatory on the part of the defendant to first develop the plot and then offer the same or that it was only on development that plaintiff was liable to pay the amount demanded.

(23) For the first time in his letter dated 1st June, 1977 (Ex.P.2), which was sent by the plaintiff in response to letter Ex.D.7 that an objection was raised that insistence for payment of the balance amount was not justified. The plaintiff sent a similar representation (Ex.P.3) on 29th July, 1977. On 30th July, 1977, communication Ex.D-8 was addressed on behalf of the defendant to the plaintiff reiterating defendant's stand that plaintiff was liable to make the payment and that only by way of indulgence time for payment was extended. Final opportunity was given by the defendant for making the balance payment. The contents of this letter Ex. D-8

deserves to be reproduced :-

'PLEASE refer to the correspondence resting with your letter dated 1.6.77 where you have raised an object on to the recovery of Rs. 47,111.00 in respect of the balance amount payable by you for plot No.112 Block A/M (Dak) in Shalimar Bagh, Residential Scheme. In this connection, attention is invited to your own letter dated 28.11.76 wherein you have promised to pay the amount of Rs. 47,100.00 by 7.2.77. It is on this account that you had been allowed time for deposit of the balance amount although as per terms and conditions of the auction you were required to deposit this amount within 15 days of the issue of the demand letter i.e. by 12.9.76. Kindly note that in case the amount is not deposited through bank draft by 1.8.77 the allotment will be cancelled without any further reference to you. Kindly note that this letter is in the nature of affording of a final opportunity for making the balance payment.'

(24) Plaintiff has placed reliance upon the communication addressed by him to the Land (Sales) Officer on 17th August, 1977 (Ex.P.4) that his contention was accepted by the defendant that the defendant was required to first develop the plot and then ask for the payment of the balance amount. This version of the plaintiff cannot be accepted in case reference is made to the contents of letter Ex.P.4 dated 17th August, 1977 read with letters Ex.D9 and Ex.D.10. Ex.D. 10 is a letter dated 28th September, 1977 from the Executive Engineer addressed to the Land (Sales) Officer in response to communication dated 17th August, 1977 pointing out that road, water supply and sewerage line in four plots of pocket M, in block-A are ready and it was not correct that no approach road existed. Regarding electricity, it was stated that it may take some time. Ex.D.9 is another communication from the Executive Officer addressed to the plaintiff dated 29th October, 1977 in continuation of the earlier letter Ex.P.4 that road, water supply and sewerage had been provided, plaintiff was asked to deposit the amount of Rs. 47,111.00 . The plaintiff was also informed that the question of handing over possession will arise only after payment is made in full and in case payment is not made, bid was likely to be cancelled without reference to the plaintiff.

(25) Thus from no part of the communication produced on record, it can be inferred that there was any understanding between the plaintiff and the defendant that balance amount could not be demanded till the plot was made ready for delivery.

(26) Reference has been made by the plaintiff to the original scheme under which the plots were auctioned. Copy of the scheme was filed along with I.A.7286/ 93. The scheme was for the development and disposal of land by the Delhi Development Authority and was known as Large Scale Acquisition, Development and Disposal of land in Delhi. It provided that on large acquisition the land will be handed over to Delhi Development Authority for developing. Thereafter it was to be allotted to the general public.

(27) May be that the scheme provided for developing plots and then putting the same for auction. In the instant suit, rights of the parties will not be governed by the scheme, but by the actual contract, which came into being, namely, notice calling upon the persons to bid at auction, offering bids in consequence to the terms and conditions (Ex.D.I) and acceptance of the offer of the plaintiff. No part of the terms and conditions (Ex.D.I) point out that the balance payment was to be deferred to such time till plots were made ready for delivery of possession on development. Terms and conditions required the balance payment to be made on service of notice by the defendant informing the plaintiff of the acceptance of bid. The terms and conditions also provide for forfeiture of the earnest money on breach of the conditions. It is a case in which the plaintiff was not willing to make payment of the balance amount within the stipulated period without fulfillment of some conditions, which are not contained in the contract, the same would be governed by a decision of the Supreme Court in Smt. Chand Rani (dead) by L.Rs. v. Smt. Kamal Rani (dead) by L.Rs., : AIR 1993 SC1742 .

(28) The act of the plaintiff in seeking extension of time in making deposit of the balance amount through communication Ex. D.5 dated 30th November, 1976 and in not responding to demand notice Ex. D.6 and Ex. P.11 and as is averred in the plaint by addressing communication dated 16th November, 1977 calling upon the defendant to pay back the amount of earnest deposit with interest are such acts

and conduct which alone are sufficient to draw an inference that plaintiff has not been ready and willing to perform his part of the contract. The contract being the terms and conditions confined in Ex. D-1. Otherwise also till the date of filing of the suit or even till the date of addressing arguments, plaintiff's contention has been that he was and is under no legal obligation to make the deposit of the balance amount, as demanded by the defendant since plot had not been developed. In other words, there is no material on record to justify a conclusion that plaintiff was ever ready and willing to deposit the balance bid amount within the stipulated period, from the date of acceptance of bid by the Lt. Governor. In view of above, having failed to prove the essential ingredients and prerequisites, the plaintiff is not entitled to a decree for specific performance. As per terms and conditions of Ex. D. 1 contained in Clause II(a) and (16), the defendant was justified in having forfeited the earnest money and cancelled the allotment. Both the issues are decided accordingly. In view of the above discussion, the plaintiff's suit is dismissed with costs.

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