

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 19th November, 2012

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LPA No.753/2012

VINOD SHARMA

..... Appellant

Through: Mr. R.K. Saini with Mr. Vikram
Saini, Advs.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Arun Birbal, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra court appeal impugns the judgment dated 15th March, 2012 of the learned Single Judge dismissing WP(C) No.2076/2010 preferred by the appellant. Though the appeal is accompanied with applications for condonation of 5 days delay in filing and 143 days delay in refiling the appeal and there does not appear to be any plausible explanation for such delays but we have nevertheless heard the counsel for the appellant on merits also.

2. The appellant was the highest bidder in the auction held by the respondent DDA on 22nd June, 2006 of Commercial Shop bearing Unit F-2, CSC No.2, Preet Vihar, G Block, Delhi. He had made an earnest money deposit of Rs.5,00,004/- and had made a bid of Rs.20,00,016/-. The said bid was accepted and the DDA vide its letter dated 10th August, 2006 demanded the balance total amount of Rs.15,00,057/- within 30 days i.e. by 9th September, 2006 and with interest as provided within 180 days i.e. by 9th March, 2007. Admittedly the petitioner did not deposit the demanded amount by the stipulated date and could pay only a further sum of Rs.10,50,000/-, leading to cancellation of his bid and forfeiture of earnest money deposit in terms of auction/allotment letter and which was also intimated vide letter dated 8th May, 2007 of the DDA.

3. The petitioner then did not challenge the said cancellation/forfeiture. On the contrary he made a representation dated 15th May, 2007 seeking further two months time to pay the balance amount. The said representation having not elicited any response, was followed by representations dated 26th July, 2007 and 26th September, 2007. DDA vide its letter dated 12th November, 2007 rejected the said representations.

4. The petitioner still did not challenge the rejection of his representations and claims to have made further representations in the years 2008 and 2009, which were also rejected vide letter dated 2nd March, 2009 of the respondent DDA.

5. The petitioner however claims to have continued to make representations. It appears that the DDA published advertisements dated 28th February, 2010 and 17th March, 2010 *inter alia* inviting tenders for the said shop, with a reserved price of Rs.77,71,250/-. It was then that the appellant filed the writ petition from which this appeal arises averring that DDA, instead of losing from the default earlier made by him in making payment, was benefiting by earning enhanced price of the shop and seeking the relief of restoration of his allotment of the said shop and grant of one month's time to make the balance payment; alternatively direction to the DDA to share with the appellant 3/4th of the increased price earned from the said shop, was sought. Another alternative prayer, for refund of the entire amount of Rs.15,50,000/- paid by the appellant was also claimed.

6. Notice of the writ petition was issued only on the aspect of that the DDA could have at best forfeited only the earnest money of Rs. 5,00,004/- and not the further payment of Rs.10,00,050/- made by the appellant.

7. DDA contested the writ petition pleading, that in terms of allotment letter, upon the appellant failing to make the payment in the stipulated time, the allotment stood cancelled automatically; that the explanation furnished by the appellant of his inability to make the payment were considered, but not found acceptable by the Competent Authority of the DDA; that the appellant had not come forward to take refund of the amount paid over and above the earnest money and lastly that the matter being contractual was non interferable in exercise of powers under Article 226.

8. It appears that the respondent DDA could not sell the subject shop in the auction advertised in the year 2010 also. The appellant as such renewed his request during the pendency of the writ petition for allotment of the shop to him. The said plea has been rejected by the learned Single Judge in the impugned judgment observing that the notice issued of the petition having been confined only to the right if any of the DDA to forfeit monies paid by the appellant in excess of the earnest money and merely because the shop

had remained unsold was no reason to allow the scope of the writ petition to be expanded.

9. DDA having not opposed the claim for refund of the monies paid by the appellant in excess of earnest money, the writ petition was disposed of giving liberty to the appellant to approach the DDA for refund of the said excess amount and with a direction to the DDA to, upon on the appellant completing all the formalities, refund the same within four weeks.

10. The delay by the appellant in filing and refiling this appeal is consonance with the consistent conduct of the appellant since the year 2006 and delays in making the payment.

11. The counsel for the appellant has before us also contended, that the shop having remained unsold, the allotment of the year 2006, against which the appellant has paid substantial monies, should be restored.

12. As noticed above notice of the writ petition on 25th March, 2010 was issued limited to the prayer of refund of the amount paid in excess of earnest money and the prayers in the writ petition claiming the relief of restoration of allotment and of sharing with the appellant the increase in price of the

shop, were dismissed on that date only. Significantly, the appellant did not challenge that order. Though at the time of disposal of the writ petition the relief for restoration of allotment was again pressed but orally and the learned Single Judge in our opinion rightly refused to expand the scope of the writ petition beyond which the notice had been issued thereon. We put our imprimatur on the finding of the learned Single Judge that merely because the shop has remained unsold is no ground to restore the contract which was breached by the appellant himself and which stood cancelled more than 5 years ago on 9th March, 2007. It cannot be lost sight of that this Court is exercising powers of judicial review, that too in contractual matters and without any error having been found in the decision of the DDA, of cancellation of allotment in terms of the contract and its policy, and of rejection of the request by the Competent Authority of the DDA to grant any extension, this Court cannot make a new contract between the parties.

13. As far as the claim of the appellant for refund of the entire amount is concerned, it is not disputed that the terms of auction as well as allotment provided for forfeiture of the earnest money. Even though the DDA subsequently attempted to sell the shop at a much higher price but as per the appellant himself, has been unsuccessful. The loss thus caused to the DDA

on account of the breach of contract by the appellant is writ large and this Court cannot in exercise of powers under Article 226 interfere. There is yet another aspect to the matter. The forfeiture, as aforesaid, took place on 9th March, 2007. The limitation prescribed for filing a suit for declaration of the forfeiture as bad and for recovery of the earnest money, of three years expired on 8th March, 2010. The writ petition was filed only on 22nd March, 2010. Thus on the date of filing of the writ petition, the suit for recovery of the forfeited amount would have been barred by time. Writ remedy cannot be allowed to be used particularly in the said facts, for realization of time barred claims.

14. Though the counsel for the appellant has not argued but the appellant is also not found entitled to any interest on the excess payment of Rs. 10,50,000/- which has been permitted to be refunded, inasmuch as the appellant never demanded or came forward to collect the said amount; rather the appellant continued to represent for restoration citing the said payments; when the non release of the said amount to the appellant is attributable to the appellant's own action, the appellant cannot be entitled to any interest.

15. We therefore do not find any merit in the appeal which is accordingly dismissed. We refrain from imposing any costs on the appellant.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

NOVEMBER 19, 2012
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