

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

+ **RSA No.285/2014**

% **Reserved on: 7th September, 2016**
Pronounced on: 15th September, 2016

SHRI DINESH KALRA AND ANR. Appellants

Through: Mr. Udyan Srivastava, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY AND ORS. Respondents

Through: Mr. Sanjeev Rajpal, Advocate for
DDA.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellants/plaintiffs impugning the concurrent Judgments of the courts below; Trial Court dated 29.8.2011 and the First Appellate Court dated 8.7.2014; by which the suit for injunction filed by the appellants/plaintiffs seeking injunction against the respondent no.1/defendant from cancelling the allotment of the allotted plot no.BA-20, Mangolpuri Industrial Area, Phase-II, Delhi and for not forfeiting the earnest

money amount paid with respect to the allotted plot. Further and consequential relief was claimed for the defendant to execute the lease deed of the allotted plot in favour of the appellants/plaintiffs and to hand over vacant physical possession of the plot to the appellants/plaintiffs.

2. The facts of the case are that appellants/plaintiffs were successful bidders in the auction conducted by respondent no.1/defendant on 19.2.1988 with respect to the suit plot bearing no.BA-20, Mangolpuri Industrial Area, Phase-II, Delhi admeasuring 120 sq. mtrs. Appellants/plaintiffs gave the highest bid of Rs. 4,09,000/-. Appellants/plaintiffs paid a sum of Rs.1,10,000/- on the date of the bid. Confirmation of the bid was given to the appellants/plaintiffs by the respondent no.1/defendant vide Letter dated 10.3.1988. The balance amount payable by the appellants/plaintiffs was Rs.2,99,011/- which included Rs.11/- as documentation charges and which amount was deposited by the appellants/plaintiffs on 8.4.1988 i.e within thirty days of confirmation of the bid. Respondent no.1/defendant vide its Letter dated 16.6.1988 asked the appellants/plaintiffs to receive the possession of the plot on 28.6.1988 as the respondent no.1/defendant had decided to hand over possession of the plot in anticipation of the execution of the lease deed. Appellants/plaintiffs by the

Reply dated 23.6.1988 informed the respondent no.1/defendant that execution of the lease deed be done simultaneously with the handing over of possessing as liability regarding property tax and ground rent would start from the receipt of the possession of the plot by the appellants/plaintiffs but appellants/plaintiffs in the absence of the lease deed would have no title in their favour. Thereafter, there are communications of the respondent no.1/defendant dated 29.9.1988 and 31.10.1988, without the respondent no.1/defendant replying to appellants/plaintiffs Letter dated 23.6.1988 which was received by the respondent no.1/defendant on 27.6.1988, and the respondent no.1/defendant threatened to cancel the allotment in case of possession not being taken by the appellants/plaintiffs by 4.11.1988.

3. The subject suit therefore came to be filed against the impugned action of the respondent no.1/defendant in threatening to cancel the allotment of the plot and forfeit the earnest money amount.

4. Respondent no.1/defendant contested the suit and pleaded that appellants/plaintiffs have committed illegality because they failed to take over possession of the plot. Because possession of the plot was not taken by the appellants/plaintiffs, hence the case of the appellants/plaintiffs could not be processed for execution of lease deed. Respondent no.1/defendant relied

upon Clause 5 of the terms and conditions of auction, Ex.DW1/11, and which according to respondent no.1/defendant provided that possession of the plot has to be taken by the successful bidder prior to execution of the lease deed. Accordingly, it was prayed that the suit be dismissed as the appellants/plaintiffs failed to take over possession of the plot.

5. After pleadings were complete trial court on 4.11.1996 framed the following issues:-

- “1. Whether the suit of the plaintiff is bad for want of notice under section 53-B, DD Act? OPD
2. Whether the plaintiff is entitled to the relief as prayed for? OPP.
3. Relief.”

6. The main issue was issue no. 2 and in this regard both the courts below have held that in view of Clause 5 of the terms and conditions of auction since the appellants/plaintiffs did not take possession of the plot hence the action of the appellants/plaintiffs was in violation of Clause 5 and therefore appellants/plaintiffs are not entitled to the reliefs as prayed for in the suit.

7. For the disposal of this Regular Second Appeal the following substantial questions of law are framed:-

(i) Whether the courts below have committed a complete and gross illegality and perversity in completely misinterpreting Clause 5 of the terms and conditions of auction because the said clause does not require taking over of possession before execution of the lease deed by the respondent no.1/defendant?

(ii) Whether even assuming Clause 5 of the terms and conditions of auction provides for taking over of possession before execution of the lease deed, even then whether the respondent no.1/defendant was not justified in not executing the lease deed although there was no undue benefit to the appellants/plaintiffs on simultaneous execution of the lease deed along with taking possession and that correspondingly there was no undue loss to the respondent no.1/defendant for respondent no.1/defendant not simultaneously executing the lease deed along with handing over possession of the plot?

8. In my opinion, both the above substantial questions of law have to be answered in favour of the appellants/plaintiffs and against the respondent no.1/defendant. The reasons for the same are given hereinafter.

9. At the outset, let me reproduce Clause 5 of the terms and conditions of auction, and which clause is required to be interpreted as to whether the same requires the successful bidder to take possession prior to execution of the lease deed. This Clause 5 of the terms and conditions of auction reads as under:

“After the acceptance of the bid and payment of full amount of premium offered by the bidder, the possession of the plot will be handed over and lease deed executed.”

10. I do not find anything whatsoever in Cause 5 of the terms and conditions of auction which requires that possession of the plot has to be handed over before execution of the lease deed. All that this clause requires is that on payment of the full amount the possession of the plot will be handed over and lease deed executed, i.e, in fact possession of the plot and execution of the lease deed has to be simultaneously done as per this Clause 5.

11. A reading of this Clause 5 of the terms and conditions of auction in any other manner would be not only a gross perversity but really supporting the harassment by a public body of the common man of this country. I fail to understand as to how the respondent no.1/defendant can read Clause 5 of the terms and conditions of auction that the said Clause in any manner provides that taking over of possession of the plot by successful bidder is to be prior to execution of the lease deed.

12. I, therefore, hold that the respondent no.1/defendant acted completely illegally and perversely in insisting on handing over possession of the plot prior to execution of the lease deed and that the appellants/plaintiffs were justified in seeking simultaneous execution of the lease deed and taking

over possession of the plot for which appellants/plaintiffs had bid successfully and had paid the entire price on time.

13. Another relevant clause which is required to be discussed is Clause 3(ii) of the terms and conditions of auction as to whether this clause supports the stand of the respondent no.1/defendant of the successful bidder first having to take possession and that there is to be no simultaneous execution of the lease deed along with taking possession of the plot. This Clause 3(ii) of the terms and conditions of auction reads as under:-

“Clause 3 (ii) provides that allottee (plaintiff herein) shall execute a lease deed on the prescribed form within six months from the date of offer of possession of the plot to him or within six months from the date the allottee, demands possession after payment of the requisite premium payable by him whichever is earlier.”

14. In my opinion, all that this clause provides is that lease deed has to be executed within six months from the date of offer of possession and not that lease deed cannot be executed simultaneously with the actual handing over of possession of the plot. The second part of Clause 3(ii) of the terms and conditions of auction also only provides of execution of the lease deed within six months of the allottee demanding the possession. The two parts of Clause 3 (ii) operate in the manner that whichever event is earlier will be complied with, however, even this clause does not in any manner provide that

taking over of possession by the allottee is a pre-condition and a prior event to execution of the lease deed, and this clause does not provide that there cannot be simultaneous execution of the lease deed and taking over of possession by the allottee.

15. In my opinion, besides the interpretation of Clauses 5 and 3(ii) of the terms and conditions of auction being in favour of the appellants/plaintiffs that these clauses do not provide that there cannot be simultaneous execution of the lease deed and handing over of possession, appellants/plaintiffs were justified in seeking reasonable interpretation of such clauses because appellants/plaintiffs rightly pointed that on taking over of possession they would be liable to pay house tax and ground rent, although they would not become title-holders unless the lease deed is executed in their favour.

16. I also fail to understand the action of the respondent no.1/defendant as to what does it loose by not executing the lease deed simultaneously along with handing over of possession, and which aspect is now hereinafter being discussed with respect to second substantial question of law which has been framed.

17. I may note that insistence of a person on compliance of a contractual term, can only be if on failure of the same there is undue loss to a person who seeks compliance of a clause or undue benefit to the other side. No loss has been pleaded which can be caused to the respondent no.1/defendant unless the appellants/plaintiffs/successful bidders take possession first and only thereafter get executed the lease deed. If Clauses 5 and 3(ii) of the terms and conditions of auction are interpreted as sought to be done on behalf of the respondent no.1/defendant the same would become arbitrary and in fact violative of public policy. If the clauses are void and violative of public policy they may have to be struck down as per Section 23 of the Indian Contract Act, 1872, however, I need not do so because there cannot be under any circumstances interpretation of Clauses 5 and 3(ii) of the terms and conditions of auction as per which the language of these clauses is interpreted that taking over of possession by the successful bidder is a pre-condition and lease deed cannot be executed simultaneously and that the lease deed can only be executed later on after the successful bidder has taken over possession. The second substantial question of law is therefore answered in favour of the appellants/plaintiffs and against the respondent no.1/defendant.

18. The present is a classic case of much ado about nothing. One is really left scratching over head as to after all what the respondent no.1/defendant is seeking to achieve by perverse interpretation of Clauses 5 and 3(ii) of the terms and conditions of auction, and which interpretation is not being made by the respondent no.1/defendant because any other interpretation will cause grave loss to the respondent no.1/defendant and undue benefit to the appellants/plaintiffs. The present is a classic case of harassment of a common citizen and common man of this country by public authorities such as the respondent no.1/defendant/Delhi Development Authority.

19. In view of the above, the substantial questions of law being answered in favour of the appellants/plaintiffs and against the respondent no.1/defendant, the present second appeal is allowed with costs of Rs.50,000/- to be paid by respondent no.1/defendant to the appellants/plaintiffs and which costs shall be paid within a period of four weeks from today. This Court is forced to impose costs as the discussion in the present judgment shows the total unreasonable stand of the respondent no.1/defendant and the harassment which the appellants/plaintiffs have faced

for having initiate this litigation which has reached the stage of the present second appeal under Section 100 CPC.

20. The Regular Second Appeal is, accordingly, allowed and disposed of and respondent no.1/defendant is restrained from cancelling the allotment of the plot no.BA-20, Mangolpuri Industrial Area, Phase-II, Delhi and that respondent no.1/defendant should execute the lease deed of the suit property in favour of the appellants/plaintiffs simultaneously with handing over possession to the appellants/plaintiffs. Respondent no.1/defendant will do the needful of execution of the lease deed and simultaneously handing over of possession of the suit plot to the appellants/plaintiffs within a period of four weeks from today.

SEPTEMBER 15, 2016

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VALMIKI J. MEHTA, J