

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**FIRST APPEAL NO. 1004 OF 2015**

VARSHA  
DEEPAK  
GAIKWAD

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Siddivinayak Associates registered }  
 partnership firm, through its }  
 partnership, }

1. Shri. Pawan alias Pravin }  
 Nemchand Bhandari, age-38 years, }  
 occupation-Business, having office at }  
 G-25/2, Chikhali Road, Sambhaji }  
 Nagar, Chinchwad, Pune-411 019. }

2. Shri. Mahavir Zumbarlal }  
 Bedthmutha, Age-43 years, }  
 Occupation – Business, having office }  
 at G-25/2, Chikhali Road, Sambhaji }  
 Nagar, Chinchwad, Pune-411 019. }

Appellants  
(orig. Plaintiffs)

V/s.

1. Pune Metropolitan Region }  
 Authority, Sector No. 24, Nigdi, }  
 Pune-411 044. }

2. The Chief Officer, }  
 Pimpri Chinchwad New Town }  
 Development Authority, }  
 Sector No. 24, Nigdi, Pune-411 044 }

.... Respondents  
(orig. defendants)

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 Mr. Vishwajit P. Sawant, Senior Advocate with Mr. Prabhakar M. Jadhav  
 and Apurva Mahadik, for the Appellants.

Mr. Rajesh More, for Respondent nos. 1 and 2.

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**CORAM : KISHORE C. SANT, J.**

**RESERVED ON : 29TH FEBRUARY, 2024.**

**PRONOUNCED ON : 5TH APRIL 2024.**

**JUDGMENT: (PER KISHORE C. SANT, J)**

1. This is plaintiffs appeal challenging the judgment and order dated 15/04/2015 passed by the learned 7<sup>th</sup> Joint Civil Judge, Senior Division, Pune dismissing the suit bearing Special Civil Suit No. 906 of 2006.

2. The appellant-plaintiff is a partnership firm who had submitted proposal for allotment of a plot to the defendant no. 1 then Pimpri Chinchwad New Town Development Authority ("PCNTDA", in short) an authority established under the Town Planning Act pursuant to offer of defendant.

3. The case in short is that, the respondent-defendant no. 1 published an advertisement in "Newspaper" for allotment of commercial plots on "first come first served basis" on 27/09/2005. An advertisement was again published in another newspaper on the next date. Lastly, a corrected advertisement came to be published on 29/09/2005. As per the scheme and terms and conditions, the plots were to be given on the "first come first served basis". The plaintiffs as per conditions submitted application along with 25% of the amount of the premium on the plot. The conditions were to be fulfilled by the

plaintiffs. The allotment was subject to 'Pradhikaran Bhu Vatap and Development Control Rules, 1973'. In the brochure, information of total 44 plots was given as per the area rate per sq. mtrs. total cost of the land and amount to be deposited along with the application. The appellants-plaintiffs submitted his application along with cheque/pay order dated 31/10/2005 for an amount of Rs.31 lakhs i.e. 25 % of the value of the plot. The authority accepted the deposit and encashed the pay order. Since no communication was received, the plaintiffs wrote a letter to defendant no. 1 and made an enquiry about the status of the application. However, this letter is unanswered. On 18/03/2006 a resolution came to be passed by the respondent no. 1, wherein it was decided to dispose of the suit plots by calling tender process. The appellants-plaintiffs again wrote a letter on 21/03/2006 with a cheque for remaining amount of 75%. Even thereafter, there was no communication. Plaintiffs therefore issued a legal notice on 5/04/2006. Notice was received by respondent no. 1 on 7/04/2006. On 18/04/2006 Defendant no. 1 returned the cheque of balance amount. It is communicated that no process is done in respect of the suit plot and therefore, the cheque for 75% amount of the balance amount was returned. However there is no reference to the amount

was deposited earlier.

4. On these facts, the plaintiffs filed a suit praying for direction to execute the Deed of Assignment/Lease deed and hand over the possession of the suit property. It was further prayed for declaration the meeting dated 28/03/2006 and Resolution passed therein to the effect that the suit property be disposed of by calling tenders, is illegal and not binding upon the plaintiffs and for temporary injunction that the suit plot be not allotted till pendency of the suit.

5. It is the case of the respondents-defendants that the scheme was floated for allotment of the plots.

6. The defendant filed a written statement. It is the case of the defendants that plaintiffs does not have vested right for allotment as there was no concluding contract between the plaintiffs and defendants. The suit is not maintainable against the defendant no. 2./Chief Executive Officer. A letter was issued to the plaintiffs on 18/04/2006. However, the same was refused with ulterior motive. It is further submitted that the defendant received a complaint in respect of the suit property. The said complaint was placed before the Governing Body of then defendant no. 1. On the basis of this complaint, it was resolved to allot the plot only by following tenders process. One notice

was also sent on 05/04/2006 by the advocate of the defendants. Advocate for the plaintiffs refused to the reply for some other reason. The plots are required to be allotted as per the Land Disposal Resolution as per the policy and prayed for dismissal of the suit.

7. In the suit the Court allowed application Exhibit-5 and temporarily restraining defendants from making allotment of the plot. During the trial the plaintiffs examined one witness. The defendants also examined one officer. The plaintiffs produced on record copies of advertisements. The form filled in and submitted by the plaintiffs. The communications addressed to the defendants and also the copy of resolution. The respondent-defendants produced on record the copy of RPAD received by the communication sent to the plaintiff dated 18/04/2006. Copy of letter by defendant communication sent by the advocate of the plaintiff expressing inability to reply the notice. Copy of complaints received by the defendant and the resolution etc.

8. The learned trial Court on holding a trial and going through the evidence and the documents dismissed the suit mainly on the ground that the plaintiffs failed to prove that they submitted application. That the plaintiffs failed to prove that entire consideration amount for the suit plot was paid. There is no concluded contract

between the parties. That plaintiff failed to prove that resolution dated 18/02/2006 in respect of allotment of plots through tenders is illegal. It is also held that the plaintiffs failed to prove its entitlement for allotment of the plot.

9. The original plaintiffs are thus before this Court challenging the impugned judgment and order. This Court by order dated 02/09/2016 granted ad-interim relief protecting the interest of the plaintiffs. During the pendency, the original defendant no. 1, is converted into Pune Metropolitan Region Authority (PMRA) and therefore, the amendment was carried out in the title cause and now it is this authority who has stepped in shows of defendant no. 1. For the purpose of convenience, the parties are referred to as per their original status in the trial Court.

10. In the appeal, learned Senior Advocate Mr. Vishwajit Sawant forcefully argued that once the advertisement was issued it was in the nature of offer. The submission of the application was acceptance of the offer by defendant no. 1. As per the scheme, there is no other of the requirement prescribed and the plots were allotted on the 'first come first served basis'. The appellants-plaintiffs had made an application along with deposit of 25% of the amount of the cost of the

plot. Thus after receipt of the application, it was incumbent on the part of the defendant to allot the suit plot to the plaintiffs. The application was submitted well within time. It is defendant's inaction to take steps pursuant to the application filed by the plaintiff to allot the plot. The same defendant has accepted the applications in respect of other plots and also allotted its plots to other persons. For no reason allotment of suit plot only was withheld. The resolution came to be passed taking decision to allot the plots by calling tenders process in April 2006. Subsequent resolution cannot be used to refuse allotment. No resolution can be passed taking away already accrued in favour of plaintiffs with retrospective effect. As per the condition of the allotment deposit of 25% amount was non refundable. Defendant has not even refunded the amount of deposit. It is submitted that thus offer is validly accepted. Only non-acceptance of the amount of 75% of the balance amount will not make a contract as not concluding. The contract is circulate the moment application was submitted along with 25% of the amount. He submits that in any case, it was binding on the plaintiff to allot the plots. The trial Court also wrongly held that the application was filed on 28/10/2005. This is factually incorrect as the application was filed along with D.D. dated 31/10/2005. So the

application was filed on 31/10/2005. The trial Court has accepted all the evidence of the plaintiff, however, only on the ground that there is no concluded contract dismissal the suit is totally illegal. It is submission that the Court has also wrongly held that the resolution is legal. It is prayed for allowing the appeal by decreeing the suit.

11. Learned advocate for the respondent, Mr. Rajesh More submits that the defendant is a Government body constituted under the law. It has to act in fairness and looking to the interest of general public. When the defendant received complaints about illegalities in allotment of the plots those complaints were placed before the body. It is therefore, decided looking to the public policy, to allot the lands by following tenders process. There is no illegality in passing such resolution. The defendant was totally within its right to pass such a resolution. After resolution came to be passed there was no question or allotment of any plot thereafter without calling tenders. He justifies the conclusion of the trial Court that there is no concluded contract and prays for dismissal of the appeal.

12. On the basis of this arguments, evidence and the documents which are proved, this Court has to find out as to whether the conclusion of the trial Court that there is no concluded contract is

corrected and as to whether the plaintiff has made out a case for allotment of the suit plot to the defendant. Whether application was filed on 31/10/2005 and not on 28/10/2005. The question as to whether the resolution is legal or illegal, is not material for decision of this appeal. The question would be assuming that even if the resolution is passed whether it has an application to the present suit as resolution is subsequent to submission of the application by the plaintiff as is clear from the dates which are mentioned in the earlier paragraphs.

13. The facts are admitted. There is no dispute that the advertisement was issued calling for applications for sale / assignment of the 44 plots. The plots were to be allotted on “first come first served basis”. No other conditions were attached. The application was received on 31/10/2005.

14. Learned Senior Advocate pointed out that this observations is factually incorrect and it is on record and in fact the application was submitted on 29/09/2005 which normally before the date 28/09/2005. This Court has seen the application which is seen have been submitted on 31/10/2005. It is specific case of the plaintiff that the appellants-plaintiffs in fact submitted application on 31/10/2005 as the sale of the application from its started after 29/09/2005. The

challan which was filed along with application shows the date as 31/10/2005.

15. This Court finds that the application was submitted on 31/10/2005. So far as the question as to whether the contract is concluded or not it is clear that by giving an advertisement the defendant gave an offer to the public at large. After submitting of the application, its acceptance of offer 25% of the amount of plot. Though the defendant did not accept the balance amount of 75%, it has retained the 25% of the amount deposited by the appellants-plaintiffs. Once the offer is accepted and the amount came to be paid it is naturally the contract is concluded.

16. Looking to the evidence of the defendant, it is the case that by communication dated 18/04/2006 a letter was issued to the plaintiff. In the cross, the witness of the defendant has accepted that 'PCNTDA' had decided to allot 43 plots along with suit plot in the year 2001. However, there was no response and therefore, the process of allotment of plot was again undertaken in the year 2005. For the period from 2001 till 2005 not a single plot was allotted though various public publications were made. She accepted that except the present plaintiff no one applied for allotment of the suit plot. There

were no shortcoming in the application of the plaintiff. It is specifically accepted that the application of the plaintiff was accepted. However, it is stated that plaintiff still is not entitled to seek allotment as of right. She also accepted that there was no complaint of corruption in respect of allotment process and there is no *mal practice* adopted in the process. She accepted that the price was fixed and the decision to allot the plot at a fixed price was taken by the Governing body.

17. Taking the documentary evidence as well as oral evidence into consideration, it is clearly seen that there was open offer by the defendant, pursuant to which the appellants-plaintiffs had submitted application / proposal showing acceptance of the offer and deposited the amount. Having made the plaintiffs to act on the offer of the defendant and further coupled with the fact of the acceptance of 25% amount it was not permissible for the defendants to retract from the offer. Defendant is a Government body and is supposed to act fairly. In this case principle of estoppel also needs to be invoked. Action of not allotting the plot is clearly hit by the principle of estoppel. The appellants-plaintiffs also relied upon the judgment of Supreme Court in the case of ***“Meerut Development Authority V/s. Association of Management Studies and Anr”***<sup>1</sup>, the Hon’ble Supreme Court has held

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1 (2009) 6 SCC 171

as under:

*“26. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor made to suit the convenience of any particular person with a view to eliminate all others from participating in the bidding process”.*

18. This Court has also considered the judgment of “**Meerut Development Authority V/s. Association of Management Studies and Anr**” (supra), the Hon’ble Apex Court has held that by tender inviting the acceptance unconditionally, must be in proper form. It is further held that the person by whom tender is made must be willing to perform his obligations.

19. In the present case, the appellants-plaintiffs has accepted the offer and also deposited the amount. Subsequently they also sent the amount of balance consideration. However, the said was not accepted by the defendants. This Court by order dated 2<sup>nd</sup> September 2015 had recorded that the appellant do not want to take refund of the

amount in view of clause 3 of the decree. The appellant had deposited the amount of Rs. 86,88,800/-, during the course of the trial. The said amount was directed to be invested along with the interest accrued, if any, in Fixed Deposit with any Nationalised Bank till the disposal of the Appeal. The said amount along with the interest accrued, if any, thereof be given towards balance amount of consideration of plot and the defendants to execute the necessary documents as per the offer.

20. In view of the above, this Court finds that the suit deserves to be allowed. Hence, the following order:

**ORDER**

- (a) Appeal stands allowed.
- (b) Judgment and Decree passed by the 7<sup>th</sup> Joint Civil Judge, Senior Division, Pune in Special Civil Suit No. 906 of 2006 is set aside.
- (c) Suit is decreed in terms of prayer clauses (i) and (ia). No order as to costs. The trial Court to pay the amount that was deposited in the trial Court of Rs. 86,88,800/- and re-invested as per the order dated 2<sup>nd</sup> September 2015 passed by this Court along with interest if any, accrued thereon on execution of the document.

(d) Decree be drawn up accordingly.

**(KISHORE C. SANT, J)**