



\$~55

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 261/2015, CM APPL. 12848/2015 and CM APPL. 17109/2017**

UNION OF INDIA

.....Appellant

Through: Mr.T.P. Singh, Senior Central Govt.
Counsel

versus

HARISH CHANDER NARULA

.....Respondent

Through: Mr.Shivanshu Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER
18.11.2024

%

1. The instant appeal has arisen out of the judgment and decree dated 07.03.2013, passed by Additional District Judge, Central-8, Delhi in RCA No.47/2011, whereby, the first Appellate Court affirmed the judgment and decree dated 23.02.2011, passed by the Trial Court in Suit No.1485/1995, decreeing the suit for specific performance filed by the respondent/plaintiff.
2. The facts of the case would indicate that the respondent/plaintiff instituted a suit for specific performance of contract against the appellant/defendant stating, therein, that the respondent/plaintiff participated in the Government Auction dated 24.01.1973, relating to Plot No.Q-4, Jangpura Extension, New Delhi. The respondent/plaintiff's bid of Rs.60,500/- was accepted and accordingly, he paid 20% of the bid amount



on the plot against the receipt. It appears that thereafter, the Regional Settlement Commissioner, Jamnagar House, New Delhi *vide* letter dated 28.09.1973, confirmed the acceptance of the bid and the respondent/plaintiff was directed to deposit the balance amount of Rs.48,400/-.

3. The respondent/plaintiff was further informed *vide* letter dated 27.03.1974 that the matter related to plot in question was under consideration. The respondent/plaintiff is stated to have taken possession after 1978; however, no formal sale certificate was issued. He, thereafter, came to know about some internal correspondence and eventually, *vide* letter dated 17.01.1992, the decision was taken to refund the money paid by the respondent/plaintiff. It was also stated that on 13.07.1992, the respondent received a letter dated 31.05.1992 on behalf of President of India refusing to perform the contract. The respondent/plaintiff, therefore, prayed for direction for execution and the registration of the valid sale deed/certificate and handing over the legal possession formally to the respondent/plaintiff

4. The appellant/defendant filed a written statement and it was stated that the property was wrongly put to auction. It was the stand taken by the appellant that the plot was not approved as fuel depot but was meant for open space. It was stated that order of cancellation was conveyed to the respondent/plaintiff *vide* letter dated 02.04.1992 and the payment made by the respondent/plaintiff of Rs.48,400/- was not encashed and the earnest money of Rs.12,000/- was refunded to the respondent/plaintiff on 02.04.1992.

5. On completion of pleadings, the Trial Court *vide* order dated 24.03.1998 framed the issue as to whether the respondent/plaintiff is entitled



to the relief of specific performance of the agreement to sell dated 24.01.1973 to sell the suit property bearing Plot No.Q-4, Jangpura Extension, New Delhi. The Trial Court while deciding the issue has considered the material available on record and has found that the respondent/plaintiff has duly proved his case for relief of specific performance and accordingly, the suit was decreed and the appellant/defendant was directed to execute the sale deed with further directions of registration of the same in favour of the respondent/plaintiff.

6. The aforesaid judgment came to be challenged by the appellant/defendant before the First Appellate Court.

7. The first Appellate Court *vide* impugned judgment and decree has affirmed the finding rendered by the Trial Court and has dismissed the appeal. Therefore, the appellant has filed the instant second appeal.

8. Learned counsel appearing on behalf of the appellant contends that the Court during the pendency of the instant second appeal *vide* order dated 22.08.2016, directed for certain alternate arrangement and on instructions, the respondent on 24.11.2016, apprised this Court that none of the alternate arrangement is feasible considering the facts the case. He then contends that when the plot in question was earmarked for fuel depot, the concerned authority at the relevant point of time could not auction the same.

9. With respect to the undertaking rendered by the respondent/plaintiff that he will maintain the plot in question as open space, learned counsel for the appellant contends that even the aforesaid submission is not acceptable in view of the fact that in accordance to the Master Plan, the plot in question has been earmarked as open space to be utilized by general public. He further submits that both the Courts below have gravely erred in decreeing



the civil suit contrary to the use of the plot in question in accordance with the extant regulations.

10. The aforesaid submission has strongly opposed by learned counsel for the respondent.

11. I have considered the submissions made by learned counsel appearing for the parties and also perused the record.

12. The Trial Court *vide* its judgment and decree dated 23.02.2011 has found that the respondent/plaintiff's bid was accepted and the respondent/plaintiff deposited the earnest money along with further amount of Rs.48,400/-. The bid was cancelled *vide* letter dated 02.04.1992 and appears to have been received by the respondent/plaintiff on 13.07.1992. It was noted by the Trial Court that no evidence was led by the defendant in the civil suit to justify its stand. Neither the participation of the respondent/plaintiff was disputed nor was the compliance, if any, by the respondent/plaintiff challenged. The only defence taken by the appellant/defendant was with respect to the cancellation of the bid on account of the plot being earmarked for fuel depot and instead the same was earmarked as upon space. In paragraph No.9, the Trial Court has rendered following pertinent findings:-

“9. Issue No.1. Whether the plaintiff is entitled to the relief for specific performance of the agreement to sell dated 24.1.73 to sell the suit property No. Q-4, Jung Pura Extension, New Delhi-OPP:-

In the present suit, the plaintiff seeks the relief of specific performance against the defendant of the auction deed dated 24.1.73 for sale of fuel plot No. Q- 4, Jung Pura Extension, New Delhi. It is admitted case that plaintiffs bid was accepted and contract for sale of the plot was complete in favour of the plaintiff. The plaintiff also deposited the earnest money and further the balance amount as demanded in time. It is further admitted case that the bid was cancelled with respect to the suit property vide letter dated 02.4.92/21.5.92 received by the plaintiff



on 13.7.92. No evidence has been led by the defendant. The participation in the auction by plaintiff is not disputed. The bid was accepted is also not disputed. The deposition of amount of 20% on the plot is duly proved vide receipt PW-1/D. The only defence taken by defendant is that the bid was cancelled because the plot was not approved as fuel depot but was meant for open space. It is admitted by defendant that plaintiff could have been allotted the plot at somewhere else. Thus, the plaintiff has proved his case. The suit is within limitation as already held vide order dated 12.1.2009. There is no fault on the part of defendant and he was ready and willing to perform his obligation under the contract and rather performed the same. The reason for cancellation of the bid have not been justified by the defendant. The rest of the amount was also deposited but the possession of the plot was also given to him as deposed by plaintiff and sale deed was also not executed. The statement of plaintiff has remained unchallenged and rebutted. At the most, the condition could have been put that plot will not be used for fuel depot so that the master plan is not violated but plot could not be rejected altogether. Thus, the plaintiff has fully proved its case and he is entitled to the relief of specific performance. This issue is decided in favour of the plaintiff and against the defendant.”

13. It would also appear from the judgment rendered by the first Appellate Court that in paragraph no.12, the Court has taken into consideration various aspects and has found that no interference is called for in view of the fact that the respondent/plaintiff has been in compliance of all the conditions pursuant to the auction sale. The first Appellate Court has also noted that once the entire amount was deposited, nothing remained to be performed on the part of the respondent/plaintiff. It was the appellant/defendant to perform its part of the contract.

14. With respect to the contention that the plot was put to auction wrongly as it was open space left, the first Appellate Court has noted that there was no evidence adduced by the appellant by way of producing any notification nor there was any mention in the auction sale notification itself. The first Appellate Court found that the onus was upon the appellant to show that the



plot was to be used only as open space which has not been done. The first Appellate Court, therefore, found that the only reason given by the appellant was completely unacceptable and was not proved by the appellant and accordingly, the appeal was dismissed. The findings of the first Appellate Court rendered *vide* paragraph no.12 reads as under:-

“12. After hearing the arguments and going through the record, I found that most of the facts are admitted such as the appellant auctioned the suit property. Plaintiff/respondent was the highest bidder. He deposited 20% amount on the spot receipt of which is proved as Ex. PW1/D. The acceptance of bid was finally confirmed by the Settlement Commissioner. Though, it was for the Settlement Commissioner to accept it or not as mentioned in the Terms and Conditions Ex. PW1/B but it was finally confirmed and after it was confirmed by the Settlement Commissioner. In my opinion, the sale was complete. The only claim which remains with the appellant was to ask for the consideration amount which they have done vide letter Ex. PW1/C while conveying the confirmation of the acceptance of the bid and also demanding the balance amount of Rs. 48,400/-. The amount of Rs. 48,400/- was also paid vide cheque no. 094901 dated 13.7.1973. The receipt to this effect is Ex. PW1/E. Once the entire amount was received nothing remains to be performed on the part of the plaintiff/respondent. Thereafter, it was for the appellant to perform its part of contract. The contention of the appellant is that the plot was put to auction wrongly as it was open space left but there is no such mention either in the notification for government auction Ex. PW1/A or any other document placed on record by the appellant /defendant showing that this plot was meant to be left as open space. The onus was upon them to show that this plot was to be used only as open space which has not been done. The other defence taken is that they have called the plaintiff/respondent to take alternative plot as fuel depot could not be run from this plot. There is one such letter that fuel depot cannot be turned out or cannot be operated from this plot but this could have been the condition still put to him that this plot cannot be used for fuel depot. I found that according to the plaintiff and according to the terms and conditions land could be used in accordance with Delhi Master Plan of Delhi Master Plan, does not permit the use of this land for fuel depot certainly plaintiff/respondent cannot put this land for use as fuel depot but this cannot be a ground for cancellation of the bid itself. So far as the question of limitation is concerned, though, the plaintiff has alleged that the cancellation of the bid was already communicated in 1992 but there is nothing on



record to show that this communication was ever sent or delivered to the plaintiff/respondent. Plaintiff/respondent stated on oath that he received the letter about cancellation which was also addressed to him on 13.07.1992. The limitation started running from that date. Three years completed on 12.07.1995 but as notice u/S 80 CPC mandatorily required to be served upon the Secretary Government of India before the Union of India could be sued, the plaintiff/respondent served the notice Ex. PW1/1 upon the Secretary Government of India. Thereafter he has to mandatorily wait for 60 days which period has to be exclude in that eventuality the limitation expired on 12.9.1995 and the suit had been filed on 12.09.1995 itself, therefore, it cannot be said that the suit is barred by the limitation as argued.”

15. It would thus be seen that the sole reason for non-execution of the sale deed has been that the plot in question was earmarked as open space. The said aspect has admittedly been not established by way of adducing sufficient evidence by the appellant before the Courts below.

16. Nevertheless, the Court takes note of the order dated 22.08.2016, whereby, this Court has made the following observations:-

"1. The issue in the present case is as to whether the plot which the respondent/plaintiff purchased in the auction can or cannot be allotted to the respondent, and which is because the case of the appellant/defendant is that the suit plot was auctioned for a fuel depot but by its very nature the fuel depot cannot be allotted without the plot being earmarked as a fuel depot in the local area plan or the zonal plan or the sub zonal plan as the case may be.

2. The fact of the matter is that the respondent/plaintiff was the successful bidder in the auction for plot no.Q-4, Jangpura Extension, New Delhi and which the appellant states that cannot be provided to the successful bidder on account of the fact that plot has been sold by mistake because there cannot be a fuel depot at the site and which was the purpose of the auction sale of the plot.

3. Counsel for the respondent/plaintiff, on instructions, states that he would maintain the plot only as an open plot in accordance with the specified user of the same as per the local area plan or zonal plan or sub zonal plan if the sale deed is finalized in favour of the respondent/plaintiff. It is also seen that at one point of time the appellant possibly wanted to offer an alternative plot to the respondent and therefore this can possibly be one other method to



resolve the controversy between the parties.

4. Accordingly without prejudice to the respective rights and contentions, let the appellant take instructions if the respondent can be given an alternative plot in lieu of plot purchased by the respondent/plaintiff in the auction or if the respondent/plaintiff can be allowed to retain the plot as an open plot without making any constructions thereon and without using the same as a fuel depot. In pursuance to the directions passed by this Court on 24.11.2016, the following response on behalf of the appellant was placed on record.

5. List for further proceedings on 24th November, 2016”

17. In pursuance to the directions passed by this Court on 24.11.2016, the following response on behalf of the appellant was placed on record.

1. *“Learned counsel for the appellant/UOI has placed on record the instructions received by him on the subject as directed by this Court vide order dated 22nd August, 2016.*

2. *The instructions received in the matter are as under:-*

“The undersigned is directed to refer to your letter dated 06/10/2016 on the above mention subject wherein Hon'ble Justice HMJ Valmiki J Mehta has observed that without prejudice to the respective rights and contentions, let the appellant take instructions if the respondent can be given an alternative plot in lieu of plot purchased by the respondent/plaintiff in the auction or if the respondent/plaintiff can be allowed to retain the plot as an open plot without making any constructions thereon and without using the same as a fuel depot.

2. The first possibility raised by the Hon'ble Court is whether Shri Harish Chander Narula can be given an alternative plot in lieu of plot purchased by the respondent/plaintiff in the auction. In this regard it is submitted that Shri Harish Chander Narula failed to avail the opportunity for allotment of an alternative plot in lieu of plot No.Q-4, Jangpura Ext. that was extended to him by the Chief Settlement Commissioner way back in 1976. The situation now has considerably changed as this office is left with no/little hand to allot in lieu of a plot in a Central/prime locality such as Jungpura.

3. The Hon'ble Court has alternatively proposed ‘if the respondent/plaintiff can be allowed to retain the plot as an open plot without making any constructions thereon and without using the same as a fuel depot’. In this regard this office took the opinion of ADG(Arch), CPWD and it was observed by them that as per layout plan the plot was to be kept as an ‘Open Space’ in



residential pocket. This open space may be utilized for common/public use/green areas/play area. As such the 'Open Space' is for use of the general public and cannot be allotted to an individual. Further, it would be violation of the master plan of Delhi 2021 that clearly demarcates the plot as 'Open space'.

4. In view of the above, it is decided with the approval of the Competent Authority that it is not feasible to accede to any of the above-mentioned conditions."

3. Since the controversy could not be resolved for the reasons that even if the respondent/plaintiff wants to keep the said plot as open space it is not permissible for the reason that it is meant for use by general public.

4. Both the parties are directed to file their brief written synopsis by referring to the page no. of TCR and citing relevant case law, if any, before the next date of hearing with advance copy to the other side.

5. Renotify for 8th February, 2017."

18. It be noted that till date, nothing has been placed on record to justify the submission that the plot in question, either was earmarked for open space or for general public etc. However, the respondent/plaintiff since has undertaken that he will abide by his undertaking. The Court, at this stage, is not required to dwell on the aforesaid issue any further.

19. In any case, the instant appeal can only be admitted on substantial question of law which has not been found to have arisen under the facts of the instant case. The appellant has miserably failed to place to record any evidence to establish that the plot in question was earmarked for open space to be utilised by the public. If that be so, as to under what circumstances the same was put to auction. The record shows that the same plot was put up for auction on earlier occasion as well, however, the action was not finalised. The Government authority is vested with great responsibilities and cannot adopt a callous approach in discharging of such responsibilities. It is evident on the perusal of the case at hand that the Government authority had



conducted the auctions with due process and notifying the same to be an inadvertent mistake after an inordinate delay showcases reckless action on part of the Government. Moreover, no evidence has been adduced to justify the stand taken by the appellant. Such a callous approach cannot be countenanced.

20. However, the respondent/plaintiff shall make payment, if the same has been returned by the appellant alongwith simple interest at the rate of Rs. 6 % per annum.

21. The Court, therefore, finds that the appeal can be disposed of by binding the respondent/plaintiff to their statement placed on record in order dated 22.08.2016 and 24.11.2016. Failure to comply with the undertaking shall result in cancellation of allotment.

22. Accordingly, the appeal stands disposed of along with all pending applications.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 18, 2024

Nc/dp