(1983) 11 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petition No. 85 of 1978

Dwarka Nath Bhasin (through L.R''s.) APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 18-11-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1984 Delhi 304

Hon'ble Judges : Gian Chand Jain, J

Bench : Single Bench

Advocate : P.N. Talwar with P.R. Monga, for the Appellant; C.K. Mahajan, for the Respondent

Judgement

G.C. Jain, J.—Delhi Improvement Trust was the owner of plot No. 2 in Block No. 3, bearing Municipal No. XV/8995 (new), situate on Original Road, Paharganj, New Delhi. It was leased out by the Trust in favour of one Sultan Ahmed. On his migration to Pakistan it vested in the Custodian and was later on acquired u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act (for short ''the Act''). The lease-hold rights were auctioned on October 21, 1959. The petitioner, Dwarka Nath Bhasin, offered the highest bid of Rs. 42,000/-. He tendered his compensation towards the earnest money of the bid price. A sum of Rs. 8,333/- was adjusted out of the compensation payable to the petitioner towards this price.

2. One Sukh Dev Verma was in occupation of the plot and had made some superstructure on it. He filed objections alleging that the plot in question was not an evacuee property. He had raised the superstructure and, therefore, it could not be acquired or sold as an acquired evacuee property, etc It appears that his objections were decided by the Managing Officer but on appeal the case was remanded by the, Assistant Settlement Commissioner vide his order dated February 29, 1960. Thereafter the Managing Officer by means of order dated July 10, 1962 (Annexure P-7) held that the bid in favour of the petitioner has been

confirmed by the Chief Settlement Commissioner who had also ordered to grant Verma ex gratia equivalent to the cost of unauthorised superstructure raised by him and, therefore, nothing remained to be decided in the case. Feeling aggrieved, Varma filed an appeal which was dismissed by the Assistant Settlement Commissioner on October 31, 1962 (Annexure P-8). The revision petition was dismissed by the Assistant Settlement Commissioner on delegated powers of Chief Settlement Commissioner by order dated August 13, 1963 (Annexure P-10). The application of Verma u/s 33 of the Act against the said order was dismissed by the Central Government by order dated September 20, 1963 (Annexure P-11). Verma thereafter filed a writ petition under Articles 226 and 227 of the Constitution of India in the Circuit Bench of the Punjab High Court at Delhi which was dismissed on February 25, 1972 (Annexure P-15). Letters Patent Appeal against the said judgment was dismissed on March 4, 1975 (Annexure P-16). SLP filed by Verma in the Supreme Court was also dismissed on April 7, 1976 (Annexure P-20).

3. The Assistant Settlement Commissioner (Sales) acting for Regional Settlement Commissioner, Delhi, informed the petitioner by letter dated April 4, 1962 (Annexure P-5) that his bid had been accepted by the Regional Settlement Commissioner. The petitioner was asked to deposit the balance amount, i.e. Rs. 42,000/- and produce the treasury challan within fifteen days from the receipt of the intimation. It was made clear that the confirmation of the bid was subject to the decision of appeal, if any, filed by the objector (Sukh Dev Verma). The petitioner made an application dated April 23, 1962 to the Regional Settlement Commissioner requesting for extension of time and the time was extended up to May 26, 1962 by Memo dated April 27, 1962 (Annexure I to the counter-affidavit). The petitioner made another representation dated May 25, 1962 (Annexure P-6) stating that the appeal filed by Verma was still pending and acceptance of the appeal would result in setting aside of the auction and in these circumstances time be extended till the decision of the appeal. With reference to this representation the petitioner was informed by memorandum dated January 20, 1964 (P-12) that sum of Rs. 33,167/- remained due from him towards the purchase price of the property in question and was required to make good the said deficiency within fifteen days from the date of the receipt of the said notice. This memorandum, had thus the effect of extending the time by fifteen days of the receipt of the memorandum. The petitioner on January 29, 1964 made an application (Annexure P-13) stating that Verma had filed a writ petition in the Circuit Bench of the Punjab High Court and he had been served with a notice about it and was pursuing the writ petition. He would suffer great loss in case the writ petition filed by Verma was accepted and consequently time to deposit the balance amount be allowed to him till the disposal of the writ petition by the High Court. No reply appears to have been sent to this representation. The petitioner, through his counsel made a representation dt./- Mar. 12, 1975 (Annex. P-17) stating that the writ petition filed by Verma had been dismissed by the High Court and the Letters Patent Appeal had also been dismissed on March 4, 1975.

The petitioner could not pay the balance amount earlier because of the stay granted by the High Court and he was now prepared to pay the balance amount of Rs. 33,667/- and the Managing Officer was requested to send the necessary challans for the purpose. Another letter dated April 29, 1975 (Annexure P-18) was sent by the petitioner through his counsel stating that the petitioner had approached the office of the Managing Officer for deposit of the balance auction price but he was informed that the department had not received copy of the High Court order and that the copy was being forwarded. The Managing Officer was requested to accept the balance amount A third representation in this behalf was made on July 5, 1975 (Annexure P-19) stating the facts that the petitioner was prepared to deposit the balance price and had made a request in this behalf earlier and requesting the Managing Officer to accept the balance amount. With reference to this representation the petitioner was informed by letter dated December 17, 1975 (Annexure P-21) that the sale of the property held in his favour had since been cancelled on forfeiture of earnest money. On December 24, 1975 the petitioner made a representation (Annexure P-23) for re-consideration of the matter. Along with the said representation he sent a bank draft for Rupees 33,667/- (Photocopy P-24). The draft was returned by the Managing Officer along with his letter dated'' January 2, 1976 (Annexure P-25). Petitioner thereafter presented a petition (Annexure P-30) under S. 24 (4) read with Section 33 of the Act to the Central Government The said petition was heard by Smt. Kusum Prasad, Director in the Department of Rehabilitation with delegated powers of Central Government. The petitioner raised objections and requested her to send his petition to the Joint Secretary (W) for disposal as the bid had been cancelled under her orders as Chief Settlement Commissioner. She, however, rejected the petition on the ground that Rule 90(11) of the Rules was a self-contained and complete rule regarding auction of compensation pool properties. Bids could be rejected/accepted under Rule 90(11). There was no provision in the said rule for appeal against rejection of the bid and the appeal was, therefore, not maintainable. The petitioner thereafter filed a civil writ petition in this Court. In reply to the show cause notice the respondents pointed out that the said (bid?) had been cancelled on forfeiture of the earnest money vide order of the Settlement Commissioner dated December 12, 1975 which fact was found correct by the petitioner and, he, therefore, withdrew the said writ petition and applied to the department for supplying him a copy of the order dated December 12, 1975 which was duly supplied. The petitioner thereafter filed a revision petition (Annexure P-35) under. Section 24 of the Act against the order dated December 12, 1975 passed by Shri S.P. Sud, Settlement Commissioner. It was dismissed by the Deputy Chief Settlement Commissioner on January 3, 1977 (Annexure P-36). The petitioner then made a petition (Annexure P-37) u/s 33 of the Act to the Central Government. It was, however, dismissed by Smt. Kusum Prasad, on April 5, 1976 (Annexure P-39). It was observed that notice was issued to the petitioner on April 4, 1962 asking him to deposit the amount in question within fifteen days of the receipt of the notice. Petitioner asked for extension of time which was granted to him up to May 26,

1962. Petitioner was clearly intimated that in case the amount was not deposited within the period specified, ten per cent of the bid price would be forfeited to the Government in accordance with the provisions of Rule 90(4) of the Rules without further reference and no further extension of time would be given. The petitioner admittedly failed to pay the amount within the extended time and, therefore, the sale automatically stood cancelled. No further order canceling the sale was necessary.

4. Feeling aggrieved the petitioner filed the present writ petition under Article 226 of the Constitution on November 9, 1977 for quashing the order of the Central Government dated April 5, 1976 and January 3, 1977 and also the orders of Chief Settlement Commissioner dated December 10, 1975, and of Settlement Commissioner dated December 12, 1975 and for confirming the sale in favour of the petitioner.

5. It was averred that the bid having been accepted and twenty-five per cent of the bid price having been adjusted a binding contract had come into existence between the parties and the auction, therefore, could not be rescinded by the respondents unilaterally without notice to the petitioner. The bid was accepted subject to the decision of the appeal filed by Verma. The objections filed by Verma were finally disposed of by the Supreme Court on April 7, 1975 and the sale, therefore, could not be cancelled prior to that date. Smt. Kusum Prasad, who was exercising the powers of Chief Settlement Commissioner, exceeded jurisdiction in giving directions in her noting dated December 10, 1975 to cancel the sale of the petitioner. She had virtually prevented the Settlement Commissioner, her subordinate, to exercise his independent judgment. Her directions dated December 10, 1975 were illegal and void and the order passed by the Settlement Commissioner in pursuance of the said directions was illegal, inasmuch as be did not exercise his independent judgment. Smt. Kusum Prasad was not competent to hear and decide the petition moved by the petitioner to the Central Government as the petitioner had challenged the order of cancellation which had been passed by her. She could not sit in judgment over her own order in another capacity. Her order was erroneous.

The petition was resisted by the respondents. Shri D.C. Chahal, Settlement Officer, filed the reply affidavit on their behalf. It was admitted that the property in dispute was put to auction on October 21, 1959, the petitioner offered the highest bid of Rupees 42,000/- and that a sum of Rs. 8,333/- was adjusted out of the compensation payable to the petitioner in C.A.F. No. D/GM/58711. It was also not disputed that Sukh Dev Verma was in occupation of the property and had raised objections that the property in question was not an evacuee property and the superstructure belonged to him. It was however, averred that the payment of the balance sale price was not dependent on the final decision of the objections by Verma and that the petitioner was statutorily bound to deposit the balance sale price within the period mentioned in letters dated April 27, 1962 and January 20, 1964 (Annexures R-I and R-II). The sale was cancelled as a consequence of the non-payment of the balance price within the stipulated period. The order of cancellation was made by the Settlement Commissioner who was competent to do so. The said order had been passed on administrative side and not on judicial side. The minutes dated December 10, 1975 of the Chief Settlement Commissioner did not amount to ah order. The order made by Smt. Kusum Prasad, Director, Department of Rehabilitation with delegated powers of the Central Government, rejecting the petition of the petitioner u/s 33 of the Act had been made on merits after giving full hearing and was perfectly legal and valid. Shri P.M. Talwar, learned counsel appearing for the petitioner, at the outset contended that the impugned order dated December 12, 1975 passed by the Settlement Commissioner canceling the sale was volatile of the principles of natural justice inasmuch as no opportunity to show cause against the proposed cancellation of the sale was afforded to the petitioner. On the other hand, Mr. G.K. Mahajan, learned counsel appearing for the respondents urged that the petitioner had failed to deposit the balance sale price required under sub-rule (11) of R. 90 of the Rules and, consequently, the purchase automatically became a nullity and no order of cancellation as such was required. Reliance was placed on a decision of this Court in K.N. Kapoor Vs. Union of India and Others, .

6. In the present case admittedly the petitioner''s was the highest bid. According to the respondents'' case the said bid had been accepted unconditionally. It is admitted that a sum of Rs. 8,333/- had been adjusted from the compensation claim of the petitioner towards the sale price of this property prior to August 1961. It is also clear from Annexure P-3 read with Annexure P-4. The bid having been accepted and the part-payment made, the petitioner acquired an interest in the property and, therefore, the principles of natural justice required that he should have been allowed an opportunity to show cause against the proposed cancellation. It was so held by a Division Bench of this Court in Smt. Hart Dai v. Union of India (ILR (1973) Del 823). The relevant observation at pages 828 and 829 read as under:--

The acceptance of the bid thus brings about a change in the respective status of the parties i.e. the auction purchaser and the Department auctioning the property. Prior to acceptance the highest bidder is merely one of the bidders in the auction who has given the highest bid but after his bid is accepted and he is informed of the same further rights accrue to him. In the eye of law a binding contract comes into existence between the Department and the person whose bid is accepted. * * * * If the Department wanted to rescind or cancel this contract for any reason, principles of natural justice required that the appellant should have been allowed an opportunity to show cause against the proposed revision or cancellation. The learned single Judge in K.N. Kapur''s case (supra) no doubt has taken the view that where the purchaser of a property at a public auction had failed to comply with the conditions imposed by sub-rules (11), (12) and (13) of Rule 90 and failed to deposit the full price the sale becomes a nullity. However, in that case the purchaser-petitioner, Alam Chand, had not deposited a single Paisa towards the sale price. He had withdrawn the entire amount of compensation due to him in his verified claim. That case is, therefore, distinguishable. In any case, I feel bound by the Division Bench decision of this Court. No opportunity having been given to the petitioner the order dated December 12. 1975 passed by the Settlement Commissioner was liable to be quashed.

7. The petitioner has filed on record copy of the minutes (Annexure P-29) recorded in this behalf. These minutes show that on July 24, 1975 Mr. Goswami, Assistant Settlement Commissioner (P) recorded that the auction purchaser, i.e. the petitioner, should have paid the balance price immediately after the decision of the High Court in March 1975, which he had failed to do and he was of the opinion that the sale of the property be cancelled on forfeiture of the earnest money and issuing of another notice would tantamount to allow him unauthorised extension. The Settlement Commissioner agreed with this view. He. however, sent the file to Chief Settlement Commissioner for orders. Mrs. Kusum Prasad, Chief Settlement Commissioner, on August 7, 1975 made a note that if stay had been given by the High Court then it was incumbent to give a notice for payment of balance amount within fifteen days without any further extension. If there was no stay, then she be intimated whether any action was taken under the rules to recover the money. The minutes do not contain any reply to this query. However, on December 1975 she agreed with the views of Assistant Settlement Commissioner (P) and the Settlement Commissioner. The Settlement Commissioner, Mr. S.P. Sud passed the impugned order of cancellation of sale on December 12, 1975. If the impugned order was examined in the light of the minutes recorded by the Chief Settlement Commissioner then there cannot be any doubt that the impugned order had at least the approval of the Chief Settlement Commissioner. It is a pity that the same Chief Settlement Commissioner, Smt. Kusum Prasad, who happened to be the Director in the Department of Rehabilitation, Jaiselmer House New Delhi, with delegated powers of the Central Government u/s 33 of the Act, heard the petitioner''s petition u/s 33 of the Act against the impugned order in spite of petitioner''s objections. In a way she heard the revision petition against her own order. This was against the principles of natural justice. Her order dated April 5, 1976 (Annexure P-39) was liable to be quashed on this short ground alone.

8. Mr. Mahajan, learned counsel for the respondents, referred to the observations made by Smt. Kusum Prasad that there was no officer hearing matters u/s 33 of the Act in the Department of Rehabilitation and that she handled this matter in a different capacity and in different context and there could be no presumption of prejudice. These observations would not help the respondents at all. The fact remains that justice should not only be done but must appear to have been done. The petitioner made a specific request that his petition be heard by another officer. This in itself was sufficient for her not to hear the said petition, in case there was no other officer in the Department bearing matters u/s 33 the powers, in my view, could easily be delegated to any other officer.

9. Shri P.N. Talwar, learned counsel for the petitioners then contended that acceptance of the bid by the Regional Settlement Com-missioner, Delhi, by letter dated April 4, 1962 was subject to the decision of the objections filed by the objector, Sukh Dev Verma. His objections were finally decided on April 7, 1976 when his SLP against the Division Bench judgment of this Court, dated March 4, 1973, was dismissed by the Supreme Court. The petitioner had sent a bank draft for Rs. 33,667/- dated December 26, 1975, i.e. long before the decision of the Supreme Court and consequently there was no violation of sub-rule (11) of Rule 90 of the Rules inviting cancellation of the sale and forfeiture of the deposit. I find merit in this contention. Sub-rules (11) to (14) of R. 90 of the Rules read as under:--

(11) Intimation of the approval of the bid or its rejection shall be given to the highest bidder (hereinafter referred to as auction-purchaser) by registered post acknowledgment due and the auction-purchaser shall where the bid has been accepted be required within fifteen days of the receipt of such intimation to send by registered post acknowledgment due or to produce before the Settlement Commissioner or any other officer appointed by him for the purpose a Treasury Challan in respect of the deposit of the balance of the purchase money:

Provided that the Settlement Commissioner or other officer appointed by him in this behalf may, for reasons to be recorded in writing, extend the aforesaid period of fifteen days by such period, not exceeding fifteen days, as the Settlement Commissioner or such other officer may think fit;

Provided further that the period extended under the preceding proviso may further be extended (without any limit of time) by the Chief Settlement Commissioner.

(12) The balance of the purchase money may, subject to the other provisions of these, rules, be adjusted against the compensation payable to the auction-purchaser in respect of any verified claim held by him. In any such case the auction-purchaser shall be required to furnish within seven days of the receipt of intimation about the approval of bid, particulars of the compensation application filed by him :

Provided that the Settlement Commissioner or any officer appointed by him in this behalf may, for reasons to be recorded in writing, extend the aforesaid period of seven days by such further period not exceeding fifteen days as the Settlement Commissioner or such other officer may deem fit:

Provided further that the period extended under the preceding provisions may further be extended (without any limit of time) by the Chief Settlement Commissioner;

(13) If the Regional Settlement Commissioner, on scrutiny of the compensation application of the auction-purchaser finds that a further sum is due to make up the purchase price, he shall send an intimation to that effect to the auction-

purchaser calling upon him to deposit the balance in cash within fifteen days of the receipt of such intimation;

(14) If the auction purchaser does not deposit the balance of the purchase money within the period specified in sub-rule (11), or does not furnish particulars of his compensation application as specified in sub-rule (12), or if the net compensation admissible to the auction purchaser is found to be less than the balance of the purchase money and the auction purchaser does not make up the deficiency as provided in sub-rule (13), the initial deposit made by the auction purchaser in sub-rule (8) shall be liable to forfeiture and he shall not have any claim to the property.

10. Sub-rule (11) can be divided into two parts. Under the first part the Settlement Commissioner has to intimate the auction purchaser about the acceptance of the bid The second part imposes a liability on the auction-purchaser to deposit the balance of the purchase money in the treasury and produce the challan in respect of the deposit before the Settlement Commissioner within fifteen days of the receipt of intimation. There cannot be any doubt that unless intimation of approval is served on the auction purchaser he is not required to deposit the balance of the purchase money. The term ''intimation of approval of the bid* in sub-rule (11), in my view, means intimation of unconditional approval of the bid. If the acceptance is conditional then the auction purchaser would be required to deposit the balance money only when that condition is satisfied He cannot be required to deposit the purchase money so long as the condition attached to the acceptance of the bid remains. The obligation to deposit the amount would arise only after the satisfaction of the condition.

11. Now it has to be seen whether the acceptance of the bid in this case was unconditional. The relevant portions of letter dated April 4, 1962 (Annexure P-5) by which the bid was accepted read as under:--

This is to inform you that your above mentioned bid has been accepted by the Regional Settlement Commissioner. You Should deposit the balance, amount viz. Rs. 42,000/- into the State Bank of India, New Delhi under the Head ''XLVI-Misc. Receipts forming part of compensation pool-Receipts on account of acquired Evacuee Property'' and produce the receipted copy of the Treasury Chalan to the undersigned within 15 days from the date of receipt of this intimation.

* * *

The confirmation of the bid is subject to a decision of appeal if any filed by the objector.

* * *

12. The first part of the letter gives an impression as if the acceptance was unconditional. But the later part reproduced above makes it very clear that the confirmation of the bid was subject to the decision of the objections filed by the

objector. Admittedly, Sukh Dev Verma was the objector. His main contention was that the leasehold rights in the property in question never vested in the Central Government under the Act. In other words he was challenging the acquisition of the property under the Act. Such objections had an effect on the auction in favour of the Petitioner. In case his objections were allowed then the auction would have become, illegal and a nullity. With this background the provisions in the letter of acceptance that it was subject to the decision of appeal filed by the objector makes it clear that the acceptance of the bid was not unconditional. The words "subject to" according to Webster''s Dictionary means: "being dependent or conditional upon something". That "something" in this case was the objections of Verma. Therefore, the acceptance was conditional. It became final only when the objections of Verma were ultimately decided by the Supreme Court when his SLP against the Division Bench judgment of this Court was dismissed on April 7, 1976. The petitioner had sent the entire balance sale price long before that date and, therefore, there was no noncompliance of sub-rule (11) and consequently auction could not be cancelled under sub-rule'' (14). Admittedly, there was no violation of sub-rule (12) or (13).

13. Soon after receipt of letter dated April 4, 1962 the petitioner wrote a letter dated Apr. 27, 1962 staring that the price may not be demanded from him until dispute regarding the property which had been raised by Verma was finally decided. He was allowed extension of time up to May 26, 1962 (Annexure R-I). Petitioner made another application dated May 5, 1962 for the same purpose and the time was extended by letter dated January 20, 1964 (Annexure P-12) whereby he was directed to deposit the balance amount within fifteen days. He made another application on January 29, 1964 i.e. within the extended time stating that Verma had filed a writ petition in the High Court in which he had received a notice and he may be allowed time for depositing the amount till the disposal of the writ petition. No reply was however given to this representation at any time. This conduct of the respondents was sufficient to induce the petitioner to believe that he could pay the balance amount after the final decision of the dispute raised by Verma. Consequently there could be no justification for suddenly canceling the sale.

14. For all these reasons the impugned orders were liable to be quashed.

15. In conclusion, I accept the petition, set aside the impugned orders. The petitioners are directed to deposit the balance amount of Rs. 33,667/- within two weeks from the date of this order. On receipt of the amount the respondents are directed to issue a certificate in favour of the legal representatives of the petitioner as required under Rule 90 (15) of the Rules. No order as to costs.

