

(1993) 09 SC CK 0154

In the Supreme Court Of India

Case No : Civil Appeal No. 5035 Of 1993

State of Haryana and Others

APPELLANT

Vs

Radhey Shyam

RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Citation : (1995) 4 SCC 245 Supp

Hon'ble Judges : N. P. Singh, J;K. Ramaswamy, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. WE have heard learned counsel on either side.

2. SPECIAL leave granted. We find great force in the contention of Smt Indu Malhotra, learned counsel for the appellants. The conditions of auction clearly envisage that as soon as the auction is knocked down in favour of the highest bidder he shall deposit 10 per cent of the bid amount at the fall of the hammer on the spot. The authority should communicate the acceptance to the bidder and within 30 days from the date of the receipt of the acceptance letter, the bidder shall deposit 15 per cent of the amount by way of a demand draft drawn in favour of the Estate Officer, HUDA. The balance of 75 per cent shall be paid by lump sum without interest within 60 days from the date of the issue of the allotment letter or in the case of instalments half-yearly 7 equal instalments with the 10 per cent rate of interest, in case of a shop, 8 half-yearly instalments with 10 per cent interest in respect of flat. Thus it would be clear with no manner of doubt that on compliance of these conditions, the bidder acquires a vested right of confirmed sale. Till then, his right is subject to the compliance with the conditions of sale. In this case the auction was held on 3/8/1988, the respondent has become the highest bidder. He deposited 10 per cent of the bid amount on the spot. It was communicated to him on 31/8/1988. He was required to deposit 15 per cent of the bid amount on or before 3/9/1988. He committed default to deposit the amount. The appellant had right to cancel the allotment but

unfortunately no action was taken by the appellants. On the other hand when the respondent sent a draft of 15 per cent on 5/12/1988 with a representation to the Chief Administrator to accept the amount, the Chief Administrator, took one year and six months to take a decision and in his letter dated 11/6/1990 addressed to the appellants (sic respondent) rejecting the offer stating that since the respondent had committed default in the payment of 15 per cent of the bid amount within 30 days of the receipt of allotment letter, his sending the draft cannot be accepted. The office of HUDA by letter dated 23/1/1992 cancelled the allotment apart from forfeiting 10 per cent of the amount deposited by the respondent. When the writ petition was filed, the High court of Punjab and Haryana allowed it and passed the impugned order and directed allotment of the flat. As seen earlier, the right given to the purchaser at the auction is subject to compliance with the conditions of sale referred to hereinbefore. The compliance with those conditions is mandatory and condition precedent to acquire a right to the shop or flat. Violation thereof entails with forfeiture of 10 per cent deposit and cancellation of allotment. The appellants (sic respondent) could not be entitled to the allotment. But in this case, having slept over the matter for three years without cancelling it the appellants contributed for the High court to exercise its power under Article 226. Though the High court was not justified to direct the appellants (sic respondent) for allotment who committed breach of the condition of sale. But on the facts and circumstances of this case we decline to interfere. The appellants themselves are responsible for creating this situation and the blame must be laid at their doors so that in future the officers should be vigilant lest face the peril of misconduct for dereliction of duty. The appellants are directed to communicate immediately to the respondent total balance amount with interest at 15 per cent and within 30 days from the receipt of that order the respondents shall pay the same. In default of the payment, the allotment shall be cancelled. The appeal is disposed of accordingly with no order as to costs.