

(1915) 08 AHC CK 0009
In the Allahabad High Court

The Municipal Board of Allahabad

APPELLANT

Vs

Tikandar Jang

RESPONDENT

Date of Decision : 02-08-1915

Acts Referred:

Citation : (1916) ILR (All) 52

Hon'ble Judges : Pramada Charan Banerj, J; Muhammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pramada Charan Banerji and Muhammad Rafiq, JJ.—The suit out of which this appeal has arisen was brought by the Allahabad Improvement Trust, represented by the Municipal Board of Allahabad, under the following circumstances. For the improvement of the town of Allahabad a road called the Hewett Road was opened out and land was acquired under the Land Acquisition Act. Portions of the land so acquired, not used for the road, were sold by auction under certain conditions set forth in a document which was signed by the Chairman of the Municipal Board and the persons bidding at the auction sales. The defendant purchased a plot of land for Rs. 3,900 j he made a deposit of Re, 1 only and did not pay the balance of the price. The Municipal Board, after issuing notice to the defendant, resold the land. The amount realized at the resale was Rs. 875. The present suit was accordingly brought to recover the difference, namely, Rs. 3,024 from the defendant. The court of first instance decreed the suit. Upon appeal, the learned District Judge modified the decree of that court and passed a decree in the plaintiff's favour for the amount of deposit which the defendant was bound to make under the terms of the contract. In our opinion the whole case turns upon the true construction of the provisions of the instrument called, "the Conditions of Sale," which was the contract between the parties to which we have referred above. Clause 4 of this document provides that each purchaser shall, immediately after the sale, pay into "the Municipal Office, Allahabad, to the credit of the Allahabad Improvement Trust, a deposit of 10 percent, of his purchase

money and shall sign an agreement in the form subjoined and shall pay the residue of the purchase money to the vendors within a period of nine months from the date of the sale, and on payment of the said amount the purchase shall be completed." Clause 8 provides that "if any purchaser fail to comply with any of these conditions, his deposit shall be forfeited and the vendor shall be at liberty to resell the lot or lots sold to him either by public auction or by contract." As we have stated above, the deposit required by Clause 4 was not made, nor was the residue of the purchase money paid within the term fixed. There was thus a failure to comply with the conditions laid down in the document, and the provisions of Clause 8 could be enforced. As we understand that clause, it gives the vendor the right to resell the lot; but the penalty which it provides is the forfeiture of the deposit which the purchaser was bound to make. The Municipal Board, upon the purchase being made by the defendant, was entitled to obtain from the defendant the deposit of 10 per cent, of the purchase money. This amount they were entitled to recover under Clause 8, as soon as a breach of the conditions of the document was committed. They also acquired the right to resell the property; but under Clause 8 the right to resale did not carry with it a right to recover damages sustained by reason of any deficiency arising in the amount of purchase money realized by the resale. The parties must be bound by the contract which they entered into, and we have to consider what their intention was when Clause 8 was inserted in the document. If it had been intended that upon failure to perform any of the conditions of the sale, the vendee would be liable to pay damages arising upon a resale, one would have expected that such a condition would find place in the document. The absence of such a condition leads to the inference that the only penalty incurred by the vendee is the forfeiture of the 10 per cent, of the purchase money which he was bound to deposit. In this view the English cases and other authorities cited before us have no bearing on this case and need not be considered. In our opinion the decision of the lower appellate court is right and this appeal must fail. We accordingly dismiss it with costs.