
(1998) 02 DEL CK 0017
In the Delhi High Court
Case No : Civil Revision No. 839 of 1997

V.K. Khosla

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-02-1998

Acts Referred:

Citation : (1998) 2 AD 15 : (1998) 71 DLT 642 : (1998) 45 DRJ 384

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. Madan Bhatia and Mr. J.K. Singh, for the Appellant; Mr. Ravinder Sethi, Sr.Adv. and Mr. Abhilekh Verma, for the Respondent

Judgement

Manmohan Sarin, J.—The present revision petition is directed against the order dated 23.8.1997 passed by the learned Additional District Judge, dismissing the appeal of the petitioners against the order dated 11.8.1997, by which the application under Order XXXIX Rules 1 & 2 of the CPC was dismissed.

2. The main submission of the petitioner in this revision petition is that the respondent Delhi Development Authority has, in an arbitrary and illegal manner, denied the benefit of restoration of the plot to the petitioners in terms of the guidelines dated 1.5.1991.

3. The facts giving rise to the present revision petition may be briefly noted:

(i) Petitioner was a successful bidder in an auction for plot No.62, Mandakini, new Delhi, held on 18.5.1994. Petitioner's bid for Rs.51,00,000/- was accepted and a sum of Rs.12.75 lakhs (rupees twelve lakhs seventy thousand only) was deposited by the petitioner as earnest money. Petitioner, however, failed to deposit the balance sum of Rs.38.25 lakhs by the stipulated date, i.e. 25.7.1994, as per the demand notice sent on 26.5.1994.

(ii) Petitioner vide his letter dated 25.7.1994, sought extension of time for payment of the balance amount. Respondent Delhi Development Authority

acceded to the request for payment of the balance premium up to 24.9.1994, subject to payment of interest at the rate of 25% per annum on belated payment of the premium.

(iii) Petitioner, again, vide letter dated 7.9.1994 sought extension of time for making the payment up to 24.12.1994, on the ground that payment to be received by the petitioners from their sources had been delayed. Respondent Delhi Development Authority again acceded to the request vide its letter of 22.11.1994 and extended the time for payment of the amount up to 24.12.1994, subject, of course, to payment of interest at the rate of 25% per annum.

(iv) Petitioner again sought extension of time up to 24.2.1995 for making the payment. Extension of time, however, was granted by the respondent Delhi Development Authority only up to 24.1.1995.

(v) Petitioner again addressed a representation dated 23.1.1995 to the respondent Delhi Development Authority as well as the Ministry of Urban Development where, for the first time, grievances with regard to the existence of a garbage bin and the building plans being sanctioned only for 2-1/2 storeys as against 3-1/2 storeys in neighborhood were voiced. Petitioner submitted that it was willing to pay and deposit the balance payment subject to removal of the garbage bin as well as the building plans for construction up to 3-1/2 storeys being sanctioned.

(vi) Respondent Delhi Development Authority vide its letter dated 24.3.1995, cancelled the auction bid/allotment and forfeited the earnest money deposited by the petitioner in accordance with Clause II(7) of the terms and conditions of the auction.

(vii) Petitioner, thereafter, sent a representation against the cancellation order to the Union of India. Further representations were sent on 25.5.1995 to the Secretary, Ministry of Urban Development . Petitioner was informed by the respondent vide its letter dated 30.8.1995 that its representation dated 25.5.1995 for restoration of allotment, had been examined but could not be acceded to. This was followed by further representations made by the petitioner to the Minister of Urban Affairs and Employment, Union of India, for restoration of the allotment.

(viii) Petitioners on 28.11.1996, filed a suit for declaration and injunction. The learned Civil Judge declined to grant the ex- parte injunction vide order dated 3.12.1996.

(ix) Vide another communication dated 29.11.1996, which the petitioners desired to be treated as the requisite statutory notice, also expressed their willingness to pay the balance premium and penalty thereon in accordance with the policy and guidelines dated 20.7.1982 and 1.5.1991.

(x) The plot in question was re-auctioned by the respondent Delhi Development Authority on 4.12.1996 at a bid of Rs. One crore sixty two lakhs as against

petitioner's bid of Rs. Fifty one lakhs was received. The successful bidder deposited the earnest money.

(xi) Petitioners, in the meanwhile, challenged the order dated 3.12.1996, declining the ex-parte restraint order in MCA.12/96. The said appeal was allowed by the learned Additional District Judge by order dated 13.12.1996, by which the respondent was restrained from proceeding further with the auction held on 4.12.1996, subject to the condition that petitioners deposited the balance amount of auction bid plus interest at the rate of 25% per annum on belated payment and also penalty at the rate of Rs.100/- per sq.mtr., in terms of the policy guidelines dated 1.5.1991.

In pursuance of the appellate aforesaid order, petitioners deposited the sum of Rs.55,14,800/- in the form of FDR in the name of the Trial Court.

The order of the Appellate Court dated 13.12.1996 was to be operative till the disposal of the injunction application under Order XXXIX Rules 1 & 2, CPC, by the learned Civil Judge.

(xii) After completion of the pleadings and the amendment of the pleadings, as sought by the petitioners, the trial court, as noticed earlier, dismissed the application of the petitioners under Order XXXIX Rules 1 & 2, CPC, on 11.8.1997 against which the appeal was preferred before the learned Additional District Judge, which was dismissed by the impugned order dated 23.8.1997.

4. Learned counsel for the petitioner has assailed the impugned order and the order of the Trial Court, dismissing the injunction application on the ground that the said orders are vitiated by consideration of irrelevant and extraneous factors and have set up a case for the respondent which was not there in the pleadings. It is submitted that petitioners having applied for restoration and indicated their willingness and readiness to make the payment of the charges, as per guidelines of 1991, are entitled to the restoration of the plot in terms of the said guidelines. The trial court has taken into consideration irrelevant factors, such as plot having fetched a price of Rs.1.62 crores on re-auction. It is urged that the petitioner has indicated his willingness and readiness to pay the requisite charges before the re-auction, respondent Delhi Development Authority was bound to accept the request for restoration of plot. It is further urged that the directions and guidelines of 1982 and 1991, are issued u/s 22(3) of the Delhi Development Act, the rules and guidelines have statutory force. Learned counsel also relies on Rule 45 of Nazul Land Rules, which reads as under:

45. Rules to be supplementary to the directions of the Central Government:-

(1) The provisions of these rules shall be supplementary to, but not in the derogation of the directions given, from time to time, by the Central Government under sub-section (3) Section 22 of the Act, for dealing with the Nazul Land.

(2) In particular and with prejudice to the generality of the foregoing provisions, such directions may be given_

(a) for removing any doubt or dispute or difficulty arising in giving effect to the provisions of these rules, or

(b) for dispensing with or relaxing the requirement of any rule to such extent and subject to such exceptions and conditions as may be specified in the direction, in any particular case where the Central Government, for reasons to be recorded by it, is satisfied that the operation of any rule in that case causes undue hardship having regard to the objects of the Act."

It was, Therefore, urged that the Nazul Land Rules are only supplementary and not in derogation of the directions given. In short, the submission is that the benefit provided in the directions or guidelines issued u/s 22 of the Delhi Development Act would be operative as the same supplements the rules, in the form of relaxation from the rigours of the said rules. Therefore, the maximum period of 180 days prescribed in Rule 29 for payment of the bid money would stand extended by virtue of the said directions/guidelines.

5. It would be appropriate at this stage to take note of the guidelines dated 20.7.1982 and 1.5.1991, which read as under: Is1

I. 1982 Guidelines

DELHI DEVELOPMENT AUTHORITY

(Lease Administration)

No.F. (30)/64-LAB

Dt.the 20th July, 1982.

The Lt.Governor (Lessor) has been pleased to order that the penalty on account of restoration of allotment/auction bid/lease deed relating to both residential and industrial plots shall henceforth be charged at the following rates:

R A T E S If the plot was If the plot was purchased within purchased earl- the last 5 yrs. ier than 5 yrs.

(1) If the application is Rs.5/- per Rs.10/- per made within 30 days of sq.mtr. sq.mtr. the receipt of notice of cancellation. (2) More than 30 days but Rs.10/- per Rs.20/- per before the expiry of sq.mtr. sq.mtr. 60 days. (3) More than 60 days but Rs.15/- per Rs.30/- per before the expiry of sq.mtr. sq.mtr. 90 days. (4) If the request for Rs.25/- per Rs.50/- per restoration is recd. sq.mtr. sq.mtr. before the re-auction of the plot. Sd/- (R.K. GUHTA) Deputy Director (L.A.)

II. 1991 Guidelines: DELHI DEVELOPMENT AUTHORITY (LANDS DEPARTMENT) SUB: COMPOSITION CHARGES FOR THE LATE EXECUTION OF TITLE DEEDS AND DELAY IN CONSTRUCTION OVER RESIDENTIAL, INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL PLOTS AND RESTORATION. In supersession to all previous instructions on the subject, the Lt.Governor, Delhi is pleased to revise the guidelines for recovery of composition fee for extension of period of construction on plots and other allied matters as follows: 1. COMPOSITION

CHARGES FOR THE BELATED CONSTRUCTION: 1.1 Rates for residential/ industrial/commercial/ institutional plots: 1.2 Rates for institutional plots: 1.3 Rates for Group Housing Societies: 1.4 Exemptions: 2. LATE EXECUTION OF LEASE/SUB LEASE DEED: 3. RESTORATION CHARGES: Penalties for restoration of plots would be as follows: i) If the application is made/ : Rs.20/- per sq. received in DDA within 30 mtr. days of the receipt of the cancellation notice. ii) More than 30 days but before : Rs.40/- per sq. expiry of 60 days mtr. iii) More than 60 days but before : Rs.60/- per sq. expiry of 90 days. mtr. If the application is not made for restoration within a period of 90 days, the plot will be reaucted. However, if before realotment/reauction of the plot the application is received then penalty @Rs.100/- per sq.mtr. is to be charged before restoration is allowed. Further in case where allotments are cancelled on account of breach of the terms and conditions of allotment/misuse, the date of receipt of application for restoration should be reckoned from the date of removal of breach/stoppage.

Sd/-

(Rakesh Behari)

Commissioner (Lands)

No.100(56)86/Impl./CL/Pt./

Dated: 1.5.91."

6. Having noticed the 1982 guidelines and the relevant extract from the 1991 guidelines, it would be appropriate to notice the rival submissions of the parties as regards the applicability of the said guidelines.

7. Learned counsel for the respondent Delhi Development Authority contends that the said guidelines do not apply to the case in hand. It is claimed that in the 1982 guidelines, the restoration of allotment/auction bid/Lease Deed has been specifically mentioned, but the same is subject to the condition that the plot has been purchased. This is evident from the notation under rates. "If the plot was purchased within the last 5 years" "If the plot was purchased earlier than 5 years."

8. The purchase would come into effect only upon the entire payment having been tendered. The terms and conditions of the auction bid provide for the contingencies under which the auction bid is cancelled. If the auction bid is cancelled on the happening of the contingencies and in accordance with the terms and conditions of the bid, the purchaser can apply to the Delhi Development Authority for restoration of the auction bid in terms of the 1982 guidelines. It is urged that in the instant case, since the purchase price was not paid, the case would not fall under the 1982 guidelines. Moreover, it is contended that the 1991, policy supercedes all the earlier policies. Relying on the 1991 guidelines, it is argued that while providing for restoration, "auction bid" has been consciously and deliberately deleted. This was pursuant to the amendment

to the proviso of Rule 29 of the DDA (Disposal of Developed Nazul Land) Rules, 1981. By the said amendment, the following proviso was added:

"Provided that the ViceChairman may extend the last date of payment where he is satisfied that sufficient reason exists for doing so, up to a maximum of 180 days, subject to payment of interest on the balance amount at the rate of 18 per cent per annum where the delay is 30 days or less and 25 per cent per annum for the period exceeding 30 days."

It is urged that since the maximum period up to which extension of time could be granted for payment had been provided and incorporated in the Nazul Land Rules, there was no question of making a provision for restoration of the auction bid in the 1991 policy/guidelines as the same would have been in contravention of the intent of the legislature, as manifested in the rules. It is, thus, argued that the policy framed cannot be in contravention of the statutory provision under the Nazul Land Rules. The policy cannot contravene or override the statutory rules and regulations in the same manner, in which a rule cannot contravene the law under which it is framed. It is further argued that the policies of 1982 and 1991 are not the instructions or directions issued by the Central Government under the Rules. Another limb of the submission of the respondent DDA is that the policy of 1991, does not apply to the cases of default. Learned counsel for the respondent DDA submitted that the said policy would apply only to cases where the party had made full payment, but had failed to get the lease deed executed or failed to deposit the stamp duty charges etc.

9. Learned counsel for the petitioners has refuted the submissions of learned counsel for the DDA and submitted that there is nothing in the guidelines which excludes a defaulter from making payment or receiving the benefit there under. The cancellation notice covered allotment, lease and auction bids in 1982 Guidelines. In the 1991 guidelines, it is clear that no period is fixed between the date of auction and the application for restoration except that it should be before the reauction. He submitted that the earlier conduct of the defaulter is irrelevant for the purposes of application of the guidelines, since the same caters only to a default situation. The rules providing for extension of time for payment up to 180 days, is on a different plane. It applies to payment before cancellation. The guidelines come into operation after the rules have exhausted and ceased to be operative and the case is for restoration after cancellation of the auction bid/allotment. Mr. Bhatia, learned senior counsel for the petitioner, urged that any other interpretation, would render the guidelines nugatory.

10. A perusal of the directions and guidelines, as issued in 1982 and 1991, clearly shows that these have not been issued by the Central Government or under the authority of the Central Government, as is required in terms of Section 22 of the Delhi Development Act. The said instructions are issued in the name of the Lt.Governor by the Dy.Director (Lease Administration) of Delhi Development Authority. Similarly, the instructions dated 1.5.1991 are also issued in the name of the Lt.Governor by the Commissioner (Lands). These, Therefore, do not

partake the character of the directions issued by the Central Government, which is normally done by a notification issued by the Ministry of Urban Development and Employment. Recourse, Therefore, cannot be had to Rule 45 of the Nazul Land Rules to advance the argument that the Rules are supplementary to the directions of the Central government and not in derogation thereof. The submission that these directions and instructions are statutory in nature and will hold the field even if they are in conflict with the provisions of Rule 29 of the Nazul Land Rules is devoid of merit.

11. As regards the guidelines not applying to the default cases, the language of the 1991 guidelines, does not exclude cases of default per se and there is nothing in the text of the guidelines to support the contention of the respondent that the guidelines exclude, default cases. However, in the instant case, there has, admittedly, been an amendment in Rule 29, whereby the proviso was added which prescribed the period of 180 days within which restoration could be granted on payment of interest and other charges. Presumably, it is for this reason that the guidelines do not specifically provide for restoration of auction bid as was provided in the 1982 guidelines. In any case, the respondents are correct in their submission that the Executive Instructions or Guidelines, which are not issued by the Central Government u/s 22 of the Delhi Development Act cannot override the provisions of the Nazul Land Rules, which are operative and binding. It would be seen that in the instant case also, extension for deposit was granted up to the maximum period of 180 days from the stipulated date of payment i.e. from 25.7.1994 to 24.1.1995.

12. In case, the 1991 guidelines are held to entitle a party to seek restoration of the auction bid at any time prior to the reauction, it would be in conflict with the provisions of Rule 29 of the Delhi Nazul Land Rules and, accordingly, cannot hold the field. In the instant case, there has been admitted breach of the terms and conditions of the auction bid. Petitioner failed to make the payment within the time extended in accordance with the Nazul Land Rules. Petitioner, accordingly, does not have a prima facie case to challenge the cancellation of the auction bid or for restoration of the same. In these circumstances, the action of the respondent Delhi Development Authority in reauctioning the plot cannot be said to be arbitrary or illegal.

13. Let me at this stage, notice the authorities cited on behalf of the petitioner and the respondent in support of their respective contentions.

Learned counsel for the petitioner relied on *State of Maharashtra and Another and A.W. Dhope and Others Vs. Sanjay Thakre and Others*, wherein the Apex Court repelled the contention of the appellant that the provisions concerned being executive instructions having no statutory force, could be deviated from by the State. The Court held that it does not lie in the mouth of the State to contend that the instructions have no statutory force and can be deviated from. Learned counsel also referred to *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, in support of his contention that the

administration was bound by policy guidelines even though relatable to exercise of executive powers and even if the same were not having statutory force.

These decisions would not help the petitioner's case as in the instant case, the case of the respondent is that the guidelines/instructions are not those issued u/s 22 of the Delhi Development Act and the relief the petitioner is seeking is in contravention of statutory rules, i.e. the Nazul Land Rule.

Learned counsel next relied on *Dimpy Fashions (India) Vs. Delhi Development Authority*, wherein a Single Bench of this Court had allowed the writ petition for setting aside the cancellation of the auction bid and forfeiture of earnest money. The petitioner in the cited case being the highest bidder paid the earnest money and sought extension of time to deposit the balance amount being a 1984 riot victim. The petitioner out of a total sum of Rs.7,40,000/- had paid a sum of Rs.4,75,000/- by 5.3.1985 and sought time to deposit the balance amount of Rs.2,90,011/- by April end. The Delhi Development Authority had recommended the petitioner's case to the Central Government for relaxation. However, since the Central Government had not taken a decision, Delhi Development Authority cancelled the auction bid and forfeited the earnest money. It was also the admitted position before the Court that the Central Government in deserving cases extended the time. The petitioner agreed to pay the interest @ 25% p.a.

It would be seen that the facts of the cited case are completely distinguishable from the present case, where there are no extenuating circumstance, like the inability to pay arising from 1984 riots. The petitioner in the present case had initially sought extension of time on account of financial constraints but later sought to raise dispute with regard to the obstructions at site and the non sanction of a greater number of stories on totally untenable grounds. The petitioner in the instant case also failed to take any steps for a period of nearly one year after the rejection of his representation and forfeiture.

Learned counsel also relied on *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, in support of his contention that where wide powers are conferred by the statute on public functionaries, the same must be exercised in a just, fair and reasonable manner. There is no dispute with the propositions laid down by this authority. The petitioner had also relied on *Dalpat Kumar and Another Vs. Prahlad Singh and Others*, in support of his contention that for the grant of an interim injunction, the petitioner was required only to make out a prima facie case, which was not to be confused with prima facie title and on weighing of possibilities and probabilities, if the balance of convenience was in preservation of status quo, then injunction should follow. In the instant case, we have reached the conclusion that the petitioner does not have a prima facie case and balance of convenience is also not in favor of the petitioner as third party interest have come into being.

The respondent on the other hand has relied on *Laxmikant and others Vs. Satyawan and others*, . The Apex Court in this case held that the right of the

highest bidder was governed by statutory rules and conditions of auction. The Improvement trust was not bound to award it to trust the highest bidder. The bidder after participating in the auction on the auctions terms and conditions cannot question the same. The auction terms and conditions were considered to be in the nature of supplementary provisions, which could not be questioned. Reliance has been placed by the respondent on this authority in support of his contention that the petitioner being in breach of the terms and conditions of the auction and having failed to pay the amount cannot now question the said terms and conditions.

The next authority relied on is State of Haryana and others Vs . Radhey Shyam . In the cited case, the high court had directed the allotment of a flat to the respondent. The respondent who was the highest bidder had deposited the requisite 10% of the bid amount on spot but the next Installment of 15% was deposited after delay of about 3 months. The appellantState rejected the respondent's offer after about 1- 1/2 year and cancelled the allotment after a further period of 1-1/2 years. In view of the long delay of 3 years in cancellation of the allotment, the Apex Court in the peculiar facts did not interfere with the exercise of discretion by the High Court in directing allotment but directed the balance amount to be received with interest. The Apex Court held that the right given to the purchaser at auction is subject to compliance with conditions of sale. The compliance with conditions is mandatory and a condition precedent to acquiring a right to the shop or flat. Violation of these entails forfeiture of 10% deposit and cancellation of allotment. The High Court was not justified to direct the appellant for allotment, who committed breach of the conditions of sale.

Learned counsel for the respondent had also relied on D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, , Shri M.L. Sethi Vs. Shri R.P. Kapur, and Masjid Kacha Tank, Nahan Vs. Tuffail Mohammed, , regarding the limited scope of interference in revision. It was urged that the appellate court normally would not interfere with the exercise of discretion except where the discretion is shown to have been arbitrarily, capriciously exercised. Reliance was placed on Wander Ltd. and Another Vs. Antox India P. Ltd., wherein it was held, " The appellate Court would not interfere with the exercise of discretion of the Court of the first instance and substitute its own discretion except where discretion is shown to have been exercised arbitrarily, capriciously or where the Court has ignored certain principles of law regulating grant or refusal of interlocutory orders. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

14. Learned counsel for the petitioner as noted earlier submitted that the Trial Court and the Appellate Court had acted with material irregularity in considering irrelevant factors, such as reauction price as well as taking into account the earlier defaults of the petitioner. Learned counsel for the petitioner relied on Full word Vs. Full word 1878 9 LRCD 176 in support of his contention that when an injunction is sought in aid of a legal right, the Court is bound to grant it if the legal right is established. Therefore, mere lapse of time will not be a bar to the granting of injunction unless it would be a bar to the legal right. In the cited case, the plaintiff had filed an action against the defendant on account of wrappers being used by the defendant which had the effect of representing that the business and the product of the defendant was the same as that of the plaintiff. The plaintiff had asserted that the defendant was liable for an action for deceit. It is in this context that the aforesaid observations were made. The case is completely distinguishable on facts. In the cited case itself it was recognised, that the rule that the plaintiff must be prompt, applies to discretionary jurisdiction of the Court. In the instant case although the cancellation had taken as far back as March 1995, petitioner had chosen to file the suit only on 28.11.1996 when the auction was rescheduled for 4.12.1996. Further in the instant case, we have reached the conclusion that the petitioner did not have a prima facie case against the cancellation or for restoration. In the exercise of discretionary and equitable jurisdiction for grant of injunction, the question of delay, Therefore, cannot be said to be of no consequence or irrelevant.

15. I am also in agreement with the observations of the Trial Court and the Appellate Court that the petitioner, who all through sought extension of time on the ground of delay for arrangement of funds, sought to raise a controversy with regard to the existence of garbage bin as well as reduction in the number of storeys being sanctioned from 3-1/2 to 2-1/2 storeys. As regards the garbage bin, one of the terms and conditions of the auction bid itself records that the petitioner has inspected the site and satisfied himself about its actual condition. It is stated that the garbage bin, in any case, was at a distance of 160 ft. or so from the plot in question. As regards the reduction in number of storeys, there is nothing on record to show that any assurance or representation was made by the respondent that 3-1/2 storeys would be sanctioned. Petitioner, Therefore, does not have any legitimate case in this regard. In any case, this would not justify nonpayment of the bid amount. The learned Trial Court and the Appellate Court have also rightly noticed the element of public interest in the case wherein the plot has been reauctioned at Rs.One Crore and sixty two lakhs as against petitioner's bid for Rs. Fifty one lakhs. Third party interest have already come into being, prior to any injunction being granted to the petitioner. The new auction purchaser is said to have deposited the entire bid money.

In view of the foregoing discussion, I find no ground to interfere in the exercise of revisional jurisdiction. The impugned orders are not vitiated by any material irregularity or error of jurisdiction warranting interference in revisional jurisdiction.

The revision petition has no merit and is dismissed.