
Before M. M. Kumar, J

RAM SHYAM & OTHERS,—*Petitioners*

versus

M. C. NIGDU,—*Respondent*

C.R. No. 142 of 2002

25th February, 2002

Code of Civil Procedure, 1908—0.39 Rls. 1 & 2—Allotment of plots in an open auction—Delay in payment of instalments on the pretext that M.C. failed to provide various facilities and amenities—Neither any clause in the allotment letter to provide the facilities nor any such condition announced at the time of auction—M.C. not under an obligation to provide various facilities and amenities—An allottee is liable to deposit the balance instalments as stipulated in the allotment letter—Allottee cannot claim that non-providing of amenities would save him from making payment of instalments.

Held, that it is not a case where possession of the land has not been delivered for lack of amenities resulting in disuse of the plot allotted nor it is a case where provision of facilities was a condition precedent. In the absence of any clause to the contrary in the letter of allotment or in the terms and conditions announced at the time of auction, the plaintiff—petitioners cannot claim that payment of instalments be delayed or be rescheduled nor any re-scheduling should be ordered for not providing the amenities which have been claimed by the plaintiff-petitioners.

(Paras 7 & 9)

Puneet Bali, Advocate for the Petitioners.

Rajesh Bindal, Advocate for the caveator respondent.

JUDGMENT

M.M. Kumar, J.

(1) This revision petition is directed against the order dated 25th November, 2001 passed by the Additional District Judge, Karnal accepting the appeal of the defendant—respondent against the order

dated 7th June, 2000 passed by the Civil Judge (Junior Division) Karnal. The Civil Judge has allowed the application of the plaintiff—petitioners filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (for brevity ‘the Code’).

(2) The facts necessary for deciding the controversy in issue are that the plaintiff—petitioners filed a suit for mandatory/permanent injunction seeking a direction to the defendant—respondent to supply pure drinking water for human consumption and for animals at five public places in the New Grain Market and to make available sewerage system, drainage system and also to provide other facilities like street lights in the Grain Market/Additional Grain Market. The further prayer was to get Hadda Rori shifted from the back side of certain shops. Host of other reliefs have also been prayed for with an additional prayer that after the various facilities were provided, the defendant—respondent be directed to re-schedule the payment of six monthly instalments in respect of the shops and booths purchased by the plaintiff—petitioners. Relief of permanent injunction has also been prayed that defendant—respondent be restrained from recovering from the plaintiff—petitioners the first instalment due with effect from 1st January, 2000 and subsequently five instalments alongwith interest @ 15 per cent *plus* 4 percent penal interest p.a. and also restraining the defendant—respondent from cancelling the allotment of the plaintiff—petitioners of their respective shops/booths.

(3) Alongwith the suit an application under Order 39 Rules 1 and 2 of the Code was filed which was allowed by the Civil Judge on 7th June, 2000. On appeal, the order of the Civil Judge was set aside by the Additional District Judge who while allowing the appeal observed that the plaintiff—petitioners were allotted plots in an open auction and they were bound to comply with the terms and conditions of the auction. The plaintiff—petitioners deposited 25 per cent of the auction amount on 13th January, 1999 and agreed to deposit the balance with interest @ 14 per cent per annum in six half yearly instalments. The allotment letters have been issued in the names of the petitioner—plaintiffs and the defendant—respondent had constructed pucca platforms, roads, boundary wall, flood lights over the sheds, four hand pumps etc. It has further been observed that there was no pre-condition contemplated in the terms and conditions of the auction or the allotment letter to provide water works or sewerage

etc. to the plaintiff-petitioners. The plaintiff-petitioners have deliberately violated the terms and conditions of the allotment letter. It was further observed that an amount of Rs.16,91,000 has already been deposited by the defendant-respondent with the department of Public Health for sewerage purposes and the work has already commenced. The sheds constructed by the defendant-respondent are being used for doing business of marketing of crops. The Additional District Judge has referred to the terms and conditions of the allotment letter and observed that there was no pre-condition in the allotment letter that Market Committee shall provide various facilities claimed by the allottees in the suit. On the contrary clause 4 of the allotment letter requires that the balance sale consideration of 75 per cent be paid in six half-yearly instalments alongwith interest @ 15 per cent per annum and compound interest in case of failure to deposit the instalment by 10th of every month @ 15 per cent per annum has been provided. The question whether an allottee can delay the payment of instalment of the price with interest on the pretext that amenities have not been provided in the area allotted to the allottee has been answered in the negative relying on a judgment of this Court in the case of **Ram Kishan Gulati and others** versus **State of Haryana and others (1)**. Against the aforementioned order passed by the Additional District Judge, the plaintiff-petitioners have filed the present revision petition.

(4) I have heard Shri Puneet Bali, Advocate for the plaintiff-petitioners and Shri Rajesh Bindal, Advocate for the respondent-caveator.

(5) Shri Puneet Bali has vehemently argued that before the auction, the respondent had issued hand bills wherein a promise was made that all the modern facilities would be provided at the New Grain Market and the Additional New Grain Market. He has shown me those pamphlets. According to the learned counsel, the respondent-committee should act as a Model State and perform its promises held out to the general public. To the Court's question, as to whether there was anything in the terms and conditions of the auction, no satisfactory answer was given nor any answer was available. The learned counsel further submitted that hand bills which were issued before the auction were in fact an offer which matured into acceptance at the time of auction and therefore a binding agreement between the parties on the

basis of terms and conditions mentioned in the hand bill has come into existence. The conditions referred in the pamphlets stood incorporated in the agreement despite the fact that there was no terms and conditions announced at the time of auction nor any such condition has been imposed/undertaken by the defendant-respondent in their letter of allotment.

(6) On the contrary, Shri Rajesh Bindal, learned counsel for the respondent has argued that there was neither any stipulation in the allotment letter nor any such condition was announced at the time of auction which may warrant the assumption that defendant-respondent was under an obligation to provide various facilities and amenities. According to Shri Bindal, the Market Committee has already constructed sheds and have made arrangements for drinking water. Huge amount of Rs, 16,91,000 has been deposited with the Department of Public Health for sewerage purposes which work has already started in the area. The sheds which were constructed by the defendant-respondent are being used for doing business of marketing of crops by the plaintiff-petitioners and therefore, it cannot be claimed that the land which was allotted to them is not generating any income. He has referred to the Division Bench Judgement of this Court in *Ram Kishan Gulati's case* (supra) relied upon in the order passed by the Additional District Judge.

(7) I have thoughtfully considered the respective submissions made by the learned counsel for the parties and have perused the record with their assistance. In my considered opinion, this petition is devoid of merit because it is not a case where possession of the land has not been delivered for lack of amenities resulting in disuse of the plot allotted nor it is a case where provision of facilities was condition precedent. To provide amenities claimed in the suit by virtue of terms and conditions of auction or in the letter of allotment it might have been possible to grant the relief of delayed payment of instalment or passing further orders for fixation of instalment from the date the amenities are provided. Therefore, once there is no obligation undertaken, it cannot be claimed that payment of instalments is to be delayed for the period the amenities are not provided. The argument of the learned counsel that hand bills constitute an offer also does not require serious consideration because it is well known that such hand bills can at best be regarded as an invitation to offer. At the time of

auction, the bidder by giving bid makes an offer which fructifies into a contract when the same is accepted. Therefore, it cannot be said that the hand bills constitute an offer. There, it cannot be claimed that by virtue of the concept of welfare State, the defendant-respondent is under an obligation to provide those facilities. In the allotment letter there is a clear stipulation by virtue of clause 4 that the plaintiff-petitioners would be liable to deposit the balance sale consideration of 75 per cent in six half yearly instalments alongwith interest @ 15 per cent per annum. It has further been provided that if there is failure to deposit the instalment by 10th of every month a compound interest @ 15 per cent per annum would be levied. The judgment in the case of *Ram Kishan Gulati (supra)* is fully applicable where a Division Bench of this Court was seized of a similar situation. In that case, the question posed was whether an allottee could delay the payment of instalment on the pretext that the area is not fully developed or particular amenities have not been provided. The answer given is in the negative. The Division Bench placed reliance on an earlier judgement rendered in C.W.P. No. 9503 of 1996 decided on 29th August, 1996 titled as *Ajit Singh and others versus Chandigarh Administration through its Administrator* and also on the case of *Sukhpal Singh Kang and another versus Chandigarh Administration (2)*. The Division Bench judgement in Ajit Singh's case reads as under :

“There is another important reason why no indulgence should be shown to the petitioners. The allotment letter, Annexure P.1 contains a clear stipulation regarding the schedule of payment. Para 8 of the allotment letter postulates cancellation of lease on account of non-payment of instalment money. Para 8-A empowers the Estate Officer to allow payment of instalments with penalty upto 100 per cent of the amount due and interest at the rate of 12 per cent for the delayed period. Duty to pay fee and taxes etc. was also of the petitioners. In addition to the conditions incorporated in the letter of allotment, the petitioners were bound to abide by the provisions of the Act and the Rules. The general terms and conditions laid down by the Administration

from part of the contract entered into between the petitioners and the respondents. Paras 11, 12 and 21 of the general conditions also contemplate payment of 25 per cent amount as a condition precedent to the acceptance of bid; remaining 75 per cent in three equated instalments alongwith interest; and cancellation of the lease as well as forfeiture of the whole or part of the premium already paid. The petitioners took possession of the property and raised construction thereon after having accepted the conditions incorporated in Annexures P.1 and R.1. They did so knowing fully the implications and consequences of their failure to pay the instalment money. After having accepted those conditions and taken public property on an assurance that they would faithfully comply with the conditions of payment laid down by the Administration, the petitioners are not entitled to plead that they were not bound to make payment of instalments on the ground that basic amenities were not provided by the Administration. We may add that payment of instalments was not subject to the Administration's providing basic amenities to the petitioner. Rather the conditions incorporated in Annexures P.1 and R.1 made it obligatory for the petitioners to pay their dues. Thus, the petitioner cannot wriggle out of the contract which they had entered into with the respondents. In matters like the present one, writ jurisdiction cannot be exercised by the High Court to permit a party to commit a breach of the terms and conditions of contract of allotment."

(8) The observations in *Sukhpal Singh Kang's case* (supra) reads as under :

"We also do not find anything in the rules from which it can be inferred that the administration of Union Territory is under an implied obligation to auction fully developed sites. The auction notices and the general terms and conditions, which were made known to the bidders at the time of auction did not postulate transfer of sites

with all amenities. As a matter of fact, by virtue of clause 12 of the general terms and conditions of auction and clause 20 of the letter of allotment, it was made clear to the protective lessees that the Government does not own the responsibility for levelling the uneven sites. It is, thus, clear that the respondents did not invite bids for the sites by making representations to the public that fully developed sites will be auctioned. The petitioners have not disputed the factum of physical transfer of sites to them after the payment of 25% premium. The averments made in the writ petitions and the uncontested assertion made in the affidavits of the Assistant Estate Officer show that the petitioners have not only erected multi storeyed buildings on the site but most of them have also leased out the same to third parties. Therefore, it is not possible to accept the argument of the learned counsel that possession of the sites cannot be treated to have been transferred to them.”

(9) The principles enunciated in the judgments mentioned in the paras above clearly show that in the absence of any clause to the contrary in the letter of allotment or in the terms and conditions announced at the time of auction, the plaintiff-petitioners cannot claim that payment of instalments be delayed or be rescheduled nor any re-scheduling should be ordered for not providing the amenities which have been claimed by the plaintiff-petitioners. Applying the aforementioned principles to the facts of the present case, no doubt is left that this revision petition is devoid of merit and the same is liable to be dismissed.

(10) For the reasons recorded above, this revision petition fails and the same is dismissed. However, it is made clear that the views expressed in the paras above are based on first blush. The evidence in the suit is yet to be recorded and any expression of opinion shall not affect nor shall be taken into consideration by the trial Court at the time of final hearing of the suit.

R.N.R.