
(iii) During the pendency of the writ petitions, interim orders had been passed directing the release of the goods and the vehicles of the petitioners on furnishing of sureties/bank guarantees. Now the concerned authority shall be free to pass appropriate orders under section 14-B(7) (iii) and the persons aggrieved by such order shall be entitled to avail appropriate legal remedies by filing appeals etc.

R.N.R.

Before Jawahar Lal Gupta & N.K. Sud, JJ

BHUPINDER SINGH—*Petitioner*

versus

U.T. CHANDIGARH & OTHERS—*Respondents*

C.W.P. NO. 1365 OF 2000

4th January, 2001

Constitution of India, 1950—Art. 226—Chandigarh Lease Hold of Sites and Buildings Rules, 1973—Rls. 9 & 10—Allotment of plot on lease hold basis after paying 25% of the total amount—Delay of more than 2 years in handing over the physical possession of the site—Rules provide that auction purchaser becomes entitled to possession of the property on payment of 25% of bid money—petitioner failing to raise construction and utilize the property—Whether the petitioner liable to pay the instalments on the dates as fixed in the letter of allotment—Held, no—Once the respondents failed to carry out their part of the obligation, they are not legitimately entitled to enforce the obligation against the purchaser.

Held, that the auction purchaser becomes entitled to possession of the property on payment of the 25% of bid money. He can raise construction and utilize the property. It can be a source of income for him. He has then to pay the balance amount in three equal instalments. The respondents had themselves failed to carry out their part of the obligation. Once that happens, they are not legitimately entitled to enforce the obligation to pay instalments against the purchaser.

(Para 9)

Further held, that when a citizen purchases property from the Government or any of its instrumentalities, he is entitled to presume that the possession shall be delivered to him without any delay or demur. In the present case, the respondents have themselves taken more than two years to remove the encumbrances and to deliver the possession. As a result, the interests of the citizen and the State have suffered. In future, the Administration should take care to first see the site and ensure that it is free from encumbrances before it is actually auctioned. This would avoid litigation and inconvenience.

(Para 12)

S.K. Jain, Advocate, *for the Petitioner*

Subhash Goyal, Advocate, *for the respondents.*

JUDGMENT

Jawahar Lal Gupta, J (O).

(1) On 19th November, 1997, the petitioner purchased the lease hold rights in Plot No. 411, sector 38-A, Chandigarh at a premium of Rs. 27,50,000. He had paid 25% of the total amount within 30 days. A letter of allotment was issued to him on March 20, 1998. It was *inter alia* provided that the petitioner shall pay the remaining 75% in three annual equated instalments alongwith interest. The petitioner was also required to pay a ground rent of Rs. 68,750 per annum. Despite the lapse of more than three years, the respondents have not delivered the actual physical possession of the site to the petitioner because a peepal tree was standing at the site. The second impediment were the high tension wires going over the plot. Irrespective of the admitted position, proceedings for resumption of the site and forfeiture of the amount already paid by the petitioner were initiated. The petitioner prays that the respondents be restrained from recovering the instalments of the premium and charging interest as well as ground rent till the date they hand over the actual physical possession to him.

(2) A written statement has been filed on behalf of the respondents. The factual position has not been disputed. It is admitted that the peepal tree was removed on 25th April, 2000. Thereafter, the high tension wires were removed on 4th May, 2000. In view of this position, it has been admitted in the written satement that the "ground

rent and the interest on instalment would not be payable by the allottee upto 4th May, 2000 whereas the instalments are to be paid by the allottee as stipulated in the letter of allotment”.

(3) Counsel for the parties have been heard.

(4) Mr. S.K. Jain, learned counsel for the petitioner contends that the possession having not been handed over by the respondents, they were not entitled to charge the instalments which fell due in December 1998, 1999 and 2000. According to the counsel, the instalments shall become due only from the expiry of a period of one year from the date of handing over of the actual physical possession. Mr. Subhash Goyal, counsel for the respondents contests this.

(5) The grant of lease hold rights is governed by the provisions of ‘the Chandigarh Lease Hold of Sites and Buildings Rules, 1973. Rule 9 governs the lease by auction. It is *inter alia* provided that 25% of the bid money has to be deposited within 30 days of the auction. Rule 10 relates to the delivery of possession. It reads as follows :—

“Delivery of possession—Actual possession of the site/building shall be delivered to the lessee on payment of 25 per cent of the premium in accordance with rule 8 or rule 9 as the case may be :

Provided that no ground rent payable under rule 13 and interest on the instalments of premium payable under sub-rule (2) of the Rule 12 shall be paid by the lessee till the actual and physical possession of the site/building is delivered or offered to be delivered to him, whichever is earlier”.

(6) A perusal of the above provision shows that actual physical possession of the site has to be delivered to the lessee on payment of 25% of the premium. In the present case, it is the admitted position that the petitioner had paid 25% of the premium within 30 days of the auction which was held on 19th November, 1997. Thus, the possession should have been handed over to the petitioner on or before 19th January 1998. However, it was not so done. The site was actually cleared of the encumbrances on 4th May, 2000. It is only on that date the physical possession could have been actually delivered to the petitioner. That being so, the respondents have rightly conceded that they are not entitled to charge any ground rent and interest till that date. However, despite this, the question that survives is—was the

petitioner liable to pay the instalment at the expiry of a period of one year from the date of auction ?

(7) Mr. Jain contends that the petitioner was deprived of the use of the property by the delay caused by the respondents. In fact, his money was blocked. Thus, no instalment can be said to have fallen due for one year after the possession was actually delivered. Mr. Subhash Goyal, counsel for the respondents contests this.

(8) On a perusal of the rules, it appears clear to us that when a site is given by auction, the purchaser has to deposit 25% of the bid money within the prescribed time of 30 days. Thereafter, the possession has to be delivered to him within 30 days. Thus, the possession had to be delivered to the petitioner on or before 19th January, 1998. It was actually delivered on 4th May, 2000. Thus, the petitioner was deprived of the use of the property for a period of more than two years. Should he still be burdened with the liability to pay the instalment on the date as fixed in the letter of allotment ?

(9) In our view, the provision of the rules and the conditions laid down in the letter of allotment have to be harmoniously construed. The scheme of the rules appears to be that the auction purchaser becomes entitled to possession of the property on payment of the 25% of bid money. He can raise construction and utilise the property. It can be a source of income for him. He has then to pay the balance amount in three equal instalments. In the present case, the respondents had themselves failed to carry out their part of the obligation. Once that happens, they are not legitimately entitled to enforce the obligation to pay instalments against the purchaser.

(10) The provision in Rule 10 that no ground rent or interest shall be payable till the actual physical possession of the site is given, is also indicative of the legislative intent that the money on account of instalment is not deemed to be due till after the actual possession is delivered. Consequently, it can be inferred that even the liability to pay the instalment would not arise..

(11) There is another aspect of the matter. It is well known that the cost of construction is rising by the day. If the possession had been delivered to the petitioner in January 1998, he could have undertaken construction. He has suffered a loss for a period of more than two years for no fault of his. Still further, Rs. 6,87,500 paid by him in November-December, 1997 has remained totally blocked. It is not disputed that on account of delay in payment, the Administration

charges interest @ 24% per annum. The petitioner has suffered a substantial loss from the year 1997 onwards. There should be a way to compensate him for that loss.

(12) When a citizen purchases property from the Government or any of its instrumentalities, he is entitled to presume that the possession shall be delivered to him without any delay or demur. In the present case, the respondents have themselves taken more than two years to remove the encumbrances and to deliver the possession. As a result, the interests of the citizen and the State have suffered. In future, the Administration should take care to first see the site and ensure that it is free from encumbrances before it is actually auctioned. This would avoid litigation and inconvenience.

(13) Taking the totality of circumstances into consideration, we consider it appropriate to direct that the instalments shall become due at the expiry of one year from the date of handing over of possession viz. 4th May, 2001, May, 2002 and 4th May, 2003. We direct accordingly.

(14) No other point has been raised.

(15) In view of the above, the writ petition is allowed. It is held that the petitioner shall not be liable to pay the instalments or ground rent or any interest or extension fee on account of the delay in the handing over the possession to him. The first instalment shall fall due at the expiry of one year from the date of handing over the possession. No costs.

R.N.R.