
Before Jawahar Lal Gupta & K.S. Garewal, JJ

RAM PHAL,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. No. 1688 of 2000

12th October, 2000

Constitution of India, 1950—Art. 226—Market Committee auctioning the sites—Petitioners highest bidders depositing 25% of the amount—At the time of allotment M.C. imposing condition that allotment is subject to the decision of a writ petition pending in the High Court—Respondents failing to give more information regarding the pendency of writ as sought by the petitioners—Petitioners rejecting the offer for allotment—Whether they entitled to the refund of earnest money alongwith interest—Held, yes—Having a right to reject the conditional offer, they are entitled to the refund of the amount deposited by them alongwith interest from the date on which they had rejected the offer.

Held, that the petitioners had participated in the auction. They had made their respective offers to buy the sites at the rate quoted by them. In response to these offers, the respondents had offered the sites to the petitioners with a condition. This condition was that the offer of allotment is subject to the decision of CWP No. 11880 of 1998. The offer made on behalf of the respondents was not unconditional. In the language of law relating to contracts, it was in the nature of a counter-offer. The petitioners under the law had the right to reject it.

(Para 9)

Further held, that each one of the petitioners had deposited a substantial amount of money with the respondents at the time of the auction. The respondents did not convey anything to the petitioners for a period of 8 months and retained the money. It was for the first time on 20th April, 1999 that the offer of the plot was made to the petitioners. At that time the condition regarding the pendency of the writ petition was imposed. The petitioners had immediately requested for more information. The respondents kept quiet. Then the petitioners rejected the offer. After almost four months the respondents had responded and refused to refund the money. In the whole process, the conduct of the respondents had not been fair.

(Para 11)

Further held, that the bids given by the petitioners were accepted. However, a conditional offer was made. This conditional offer was rejected by them. They had a right to do so. Having done that, the petitioners were entitled to the refund of their money. The respondents had no reason to refuse to pay.

(Paras 12 & 14)

Arvind Singh, Advocate for the Petitioner.

Rajbir Sehrawat, Advocate for the Respondents.

Jawahar Lal Gupta, J. (Oral)

(1) Are the petitioners entitled to the refund of the money deposited by them at the time of the auction of the plots along with interest ? This is the short question that arises for consideration in these four petitions. Learned counsel for the parties have referred to the facts in C.W.P. No. 1688 of 2000 (*Ram Phal v. State of Haryana and others*). These may be briefly noticed.

(2) The respondents issued a notice for the auction of various sites at different places in the State of Haryana for use as shops and booths. On 3rd August, 1998 the sites for the construction of booths in the vegetable market at Samalkha were auctioned. The petitioner was the highest bidder for plot No. 230. He had offered a price of Rs. 4,30,000. He had deposited 25% of the amount viz. Rs. 1,07,500 at the spot. About more than 8 months later the Market Committee, Samalkha, issued a letter of allotment in favour of the petitioner. A copy of this letter has been produced as Annexure P2 with the writ petition. In this letter it was *inter alia* mentioned that the "allotment is subject to the outcome of the decision of C.W.P. No. 11880 of 1998". This condition was imposed in pursuance to the communication from the Chief Administrator of the Haryana State Agricultural Marketing Board dated 31st March, 1999. A copy of this communication is at Annexure P-3 with the writ petition. On receipt of the letter the petitioner sent a representation dated 24th May, 1999 by registered post. It was *inter-alia* averred that at the time of auction, no condition regarding the pendency of C.W.P. No. 11880 of 1998 had been announced. The petitioner requested that complete particulars regarding the writ petition may be conveyed. It appears that no reply was sent to this letter by the respondents. The petitioner then sent a communication dated 23rd June, 1999. In this letter he referred to certain earlier communications received/sent by him prior to the representation dated 24th May, 1999. He pointed out that the letter dated 20th April, 1999 had been received by him on 17th May, 1999.

He had received no reply to his letters dated 10th May and 24th May, 1999. Keeping in view the circumstances, the offer made,—*vide* allotment letter dated 20th April, 1999 was not acceptable to him “due to insertion of the new clause at para No. 20 which was not introduced at the time of the auction”. On this basis, he asked for the refund of the earnest money viz. Rs. 1,07,500 along with “prevailing interest at the earliest”. A copy of this communication was also sent to respondent No. 2.

(3) More than 5 months later, on 8th October, 1999 the 3rd respondent sent a communication informing the petitioner that the bidders do not have the “right to claim refund of the bid cost deposited.....along with interest”. On receipt of this letter, the petitioner served a legal notice on the respondents for the refund of the money along with interest. Having received no reply, he has approached this Court through the present writ petition.

(4) A written statement has been filed on behalf of the respondents by the Executive Officer-cum-Secretary of respondent No. 3. It has been averred that C.W.P. No. 11880 of 1998 had come up for hearing before the Court on 30th July, 1998. An interim order was passed by which the respondents were allowed to hold the auction but they were restrained from finalising it. The order was modified on 12th November, 1998 in pursuance to the directions given by their Lordships of the Supreme Court,—*vide* order dated 28th August, 1998 in S.L.P. No. 11432 of 1998. The respondents allege that the petitioner is guilty of concealing the factual position with regard to the petition. It has been further averred that C.W.P. No. 11619 of 1999 which involved a similar claim has already been dismissed by a Bench of this Court,—*vide* order dated 19th August, 1999. On these preliminary objections, the respondents claim that the writ petition deserves to be dismissed. On merits, it has been stated that the petitioner is under an obligation to “deposit the balance amount of the auction money as per the terms of auction, failing which his *money already deposited is liable to be forfeited* (emphasis supplied). The factum regarding the submission of representations by the petitioner has been admitted. It has further been stated that the condition had been imposed in pursuance to the directions given by the Court and that the petitioner was not entitled to claim refund.

(5) An additional affidavit has been filed with an application on 9th October, 2000 in which it has been averred that C.W.P. 11880 of 1998 has been dismissed as withdrawn.

(6) The factual position in the remaining three cases is identical except to the extent that the size of the plot and the price thereof differ.

(7) Learned counsel for the parties have been heard.

(8) Mr. Arvind Singh, learned counsel for the petitioners, has contended that the respondents had made a conditional offer. The petitioners were entitled to reject it. They had done so. The offer having been rejected, the respondents are bound to refund the money which had been deposited by the petitioners. Since the money has been retained despite the rejection, the petitioners are also entitled to the payment of interest on the amount at the same rate at which the respondents charge from the allottees. On the other hand, Mr. Rajbir Sehrawat, learned counsel for the respondents, has contended that in view of the decision of the Division Bench in the case of *M/s Ganesh Dass Dinesh Kumar and others v. Haryana State Agricultural Marketing Board and another* (C.W.P. No. 11619 of 1999 decided on 19th August, 1999) the writ petition deserves to be dismissed.

(9) It is undoubtedly correct that the petitioners had participated in the auction. They had made their respective offers to buy the sites at the rate quoted by them. In response to these offers, the respondents had offered the sites to the petitioners with a condition. This condition was that the offer of allotment is subject to the decision of C.W.P. No. 11880 of 1998. The offer made on behalf of the respondents was not unconditional. In the language of law relating to contracts, it was in the nature of a counter-offer. The petitioners under the law had the right to reject it. They had done so. The admitted position is that the petitioners,—*vide* their letters, which have been produced on record had initially asked for information regarding the pending writ petition. These representations were not even acknowledged. Having failed to get any reply from the respondents, the petitioners had informed the authority that the offer made by it was not acceptable to them. Thus, the offer for allotment of sites was rejected. That having happened, the petitioners claimed the refund of the amount deposited by them. This request was rejected by the respondents,—*vide* letter dated 8th October, 1999. Why? The communication assigned no reason.

(10) The question that arises is—Did the authority act fairly in refusing to refund the money?

(11) It is the admitted position that the condition regarding the pendency of the writ petition was not disclosed at the time of the auction on 3rd August, 1998. Mr. Sehrawat points out that even the respondents were not aware of the order. Assuming it to be so, the fact remains that the petitioners were not made aware of the pendency of

the writ petition. It is also not disputed that each one of the petitioners had deposited a substantial amount of money with the respondents at the time of the auction on 3rd August, 1998. The respondents did not convey anything to the petitioners for a period of 8 months and retained the money. It was for the first time on 20th April, 1999 that the offer of the plot was made to the petitioners. At that time the aforesaid condition was imposed. The petitioners had immediately requested for more information. The respondents kept quiet. Then the petitioners rejected the offer. After almost four months the respondents had responded and refused to refund the money. In the whole process, the conduct of the respondents had not been fair.

(12) Mr Sehrawat submits that various other bidders have accepted the offer and have even raised construction at the site. It may be so. Some people may be bold. They may be inclined to bear with litigation. The petitioners had chosen not to. They cannot be blamed for it. When a conditional offer was made, they had a right to reject it. Having done that, the petitioners were entitled to the refund of their money. The respondents had no reason to refuse to pay.

(13) Mr. Sehrawat points out that in the notice regarding auction, it has been specifically provided that "in case the earnest money is refunded due to non-approval, no interest will be payable". In view of this provision he submits that the petitioners are not entitled to the payment of any interest.

(14) First of all, we are concerned with the action of the authority in refusing to refund even the earnest money. *Vide* letter dated 8th October, 1999 the petitioners were informed that they had no right to claim refund. Secondly, the abovenoted provision in the notice only contemplates a situation where the respondent-authority disapproves the auction. It is only when the auction proceedings are not confirmed by the competent authority that the question of refund without interest would arise. Such is not the situation in the present case. The bids given by the petitioners were accepted. However, a conditional offer was made. This conditional offer was rejected by the petitioners. As already observed, they had a right to do so. They did not act contrary to any stipulation in the notice or the terms of auction.

(15) Mr. Sehrawat has looked for crutches and relied upon the decision in *M/s Ganesh Dass Dinesh Kumar's case (supra)*. The factual

position in this case was totally different. On a perusal of the judgment we find that the petition had been filed "to seek nullification of condition No. 20 embodied in the letter dated 19th February, 1999 issued by the Chairman/Administrator, Market Committee, Karnal". Such is not the position in the present case. The petitioners have not approached the Court with the prayer that any of the conditions imposed in the offer of allotment be annulled. On the contrary, they are asserting their right to the refund of money paid by them on 3rd August, 1998 or thereafter along with interest. The factual position being different, the decision has no application to the facts of the present case. At this stage, we may also notice that Mr. Arvind Singh has seriously contested the correctness of the view taken by the Division Bench. However, keeping in view the difference in the factual position, it is not necessary for us to examine this aspect as sought to be raised by the counsel for the petitioners.

(16) Mr. Arvind Singh has been at pains to point out that the respondents had acted unfairly in dealing with the matter. He submits that they were guilty of delay at every stage. Mr. Rajbir Sehrawat, on the other hand, points out that the Board had not imposed the condition voluntarily. It had merely obeyed the mandate of the Court.

(17) Admittedly, there was no challenge to the auction regarding booths. Still further, it is the case of the respondents that the sites for which bid had been given by the petitioners in these cases were not at all involved in C.W.P. No. 11880 of 1998. Despite that, the Board had imposed the condition. Still further, when the petitioners sought information from the Board, none was given. In this situation, the petitioners cannot be blamed for entertaining an apprehension. The fault, if any, lay with the Board. If it was of the opinion that the petitioners are not likely to be affected by the ultimate decision, it should have conveyed the factual position to the petitioners. The respondents having failed to do so, they cannot now blame the petitioners for rejecting the offer or claiming the refund.

(18) No other point has been raised.

(19) In view of the above, we allow the writ petition. We quash the order/communication dated 8th October, 1999 issued by the respondents. We hold that the petitioners are entitled to the refund of

the amount deposited by them. It is true that the petitioners had made the deposit in August 1998, However, they had rejected the offer on 23rd June, 1999. They shall be entitled to the refund along with interest at the rate of 12% per annum from 1st July, 1999. The respondents shall refund the money within one month from the date of receipt of a copy of this order. It is a fit case for the award of costs. However, keeping in view the fact that the respondents are public authorities, we leave the parties to bear their own costs.

R.N.R.