



The M.C.D. says that the site in question has been handed over to the M.C.D and as such D.D.A . has no authority to hand over the site/land sell without their consent as it is M.C.D. property now.

Kindly look into the matter and issue necessary instruction to the concerned department of MCD "

The appellant on 13.4.1994 lodged a complaint with the SHO against M.C.D. On 15.4.1994 appellant sent a communication to the Horticulture Department, second respondent, for the return of the material of the appellant at site. On 16.4.1994 the appellant sent a letter to the DDA in the following terms:

"This is in continuation of our letter of even number dated 13.4.1994 (DDA Dy. No.12066 dated 13.4.94). Subsequently, we discussed the matter personally with you in this regard.

The CSC Site at Pocket-B, Nand Nagri (Guru Teg Bahadur Enclave) was auctioned in public on 31.3.94. Our bid for Rs.30,00,000/- has been accepted by D.D.A on deposit of 25% of the bid value i.e. Rs.7,50,000/- vide your confirmed Demand Notice No.790, File No.15(01)94/CL dated 7.4.94. The date for payment of final premium has been fixed by D.D.A as on 22.5.94 i.e. 45 days from 7.4.94. However, the DDA has not replied to our letter dated 13.4.94 as yet.

As informed you earlier, on 11.4.94 evening we erected our board 20' x 10' at site on 18' high rails, publicizing the project. To our surprise the next day morning i.e. 12.4.94 the board was removed. On inquiry we came to know that the Horticulture Department of M.C.D. has removed the board after damaging it, along with rails and other fittings. On inquiry we are told by the concerned staff that the site in question is handed over to MCD on 21.4.93.

We made further inquiries from M.C.D. & D.D.A. Horticulture Department and as per record maintained at both the offices the plot which was auctioned by the DDA as a CSC is handed over to MCD on 21.4.93 and since then the whole area is maintained by the M.C.D.

We are, therefore, put to a loss by this act on the part of M.C.D. & D.D.A. and mental torture and sentimental value of our company which the public has a great regards for our achievement as Promoters & Builder in this area has suffered a lot.

The D.D.A has fixed 22.5.94 for payment of final premium. The plot in question seems to be in dispute between M.C.D. & D.D.A.

Therefore, before we make final payment to DDA, we require a confirmation in writing that the plot in question is free from dispute, encumbrances and will be handed over to us peacefully without any hitch. As the DDA is at fault which has put us in trouble therefore, the payment of the final premium would be made only after 45 days from the fresh confirmation."

On 18.4.94 the appellant wrote another letter to the DDA to look into the matter and restore the site to enable the appellant to pay the final premium in time. On 19.4.94 the appellant wrote to the M.C.D. another letter. The contents of the same are reproduced below:

"This is in continuation of our letter dated 15.4.94. As you are aware that we are the successful bidders for the whole site-CSC, Pocket-B, Guru Teg Bahadur Enclave, Nand Nagri auctioned by the DDA on 31.3.94. As per intimation given by the DDA, we erected one Board at site indicating among other things our intention to construct a shopping center. Our board has been removed from the site for the reason known to you.

At present, the site is covered from all the sides and there is no entry point as the MCD has put a boundary wall, according to the plan circulated by the DDA the main entrance to the site is from the Main Road Sides. This areas has been blocked by a wall.

We are removing a part of the wall to get an entry into site and will arrange to erect our board there on 28.4.94. You are, therefore, kindly requested to intimate us if you have got any objection in the matter so that necessary steps are taken in this matter."

As the dispute continued between the parties without any solution in sight the appellant filed the Writ Petition 2388 of 1994. It was alleged in the petition that MCD, Respondent No. 2, was claiming title to the plot which had been auctioned by the DDA in favour of the appellant. That DDA did not inform the intending buyers about the dispute between DDA and the MCD. That the appellant was justified in his expectation that the property which had been auctioned by th

e DDA would be free from encumbrances. In view of the dispute between the MCD and the DDA the DDA could not hand over the vacant possession of the property to the appellant. It was further stated that since the DDA was not in a position to hand over the peaceful possession of the plot, the auction held by the DDA could not be implemented. The appellant in addition to the other reliefs claimed that he was entitled to refund of the earnest money.

DDA contested the writ petition and inter alia pleaded that the auction conditions provided for forfeiture of the earnest money in case the bidder did not act in consonance with the terms and conditions of the auction notice. DDA was always ready to hand over possession of the property and, as a matter of fact, the appellant by letter dated 16.4.1994 asked for extension of time by 45 days for the payment of the balance amount. The possession of the plot was always with the DDA and in terms of clause 2 (viii) of the terms and conditions of the auction, the auction was liable to be cancelled and the DDA was entitled to pass an order forfeiting the earnest money.

The High Court dismissed the writ petition by observing:

"In the instant case, the petitioner Aggarwal Associates must have inspected the site before bidding at the auction. The DDA was bound to deliver possession of the property only on the petitioner's depositing the balance 75% of the bid money. Admittedly, the petitioner had not deposited the amount. The petitioner wanted to project a case that the DDA was not in a position to put the petitioner in possession. It is merely a made believe affair. The case of the petitioner cannot be accepted. Therefore, the reliefs prayed for by the petitioner cannot be granted in law. The writ petition, accordingly, stands dismissed. There shall be no order as to costs."

To hold that the appellant was not entitled to the refund of the earnest money the High Court placed reliance on two judgments of this Court, namely, Delhi Development Authority Vs. Grisht hapana Cooperative Group Housing Society Ltd., 1995 Suppl (1) SCC 751 and Chandigarh Housing Board Vs. Avtar Singh & Anr., 1995 (5) SCC 313.

We agree with the view taken by the High Court. Before complying with the terms and conditions provided in the auction notice the appellant tried to take possession of the property by putting up his board at the site. The appellant could claim possession of the property only after collecting the allotment-cum-demand letter and on deposit of 75% of the balance bid money. Admittedly, the appellant had not deposited the amount and instead started projecting the case as if the DDA was not in a position to deliver the possession of the auctioned property to him as the DDA had already transferred the possession of the auctioned property to the MCD. Appellant could take all these pleas only after performing his part of the obligation under the terms and conditions of the auction notice. DDA in its written statement before the High Court had taken a categorical stand that the appellant did not act in consonance with the terms and conditions of the auction notice. That the DDA was in possession of the plot and was always ready to hand over possession of the property provided appellant complied with the terms and conditions of the auction notice. We are of the considered view that since the appellant had failed to comply with the terms and conditions of auction, he had no right to claim either the possession or the allotment of the plot in his favour. The plot was sold to him "as is where is basis". It had been made clear in the terms and conditions of the auction that it would be presumed that the intending purchaser has inspected the site and had familiarised himself with the prevalent site conditions in all respect before giving the bid. The appellant cannot be heard to say that he did not familiarise himself with the prevalent conditions which existed on the site. Instead of collecting allotment-cum-demand letter and pay the balance amount the appellant tried to enter into possession of the property by erecting its board at the site. The appellant did not have the right to enter into possession of the property before collecting the allotment-cum-demand letter and the payment of the balance amount. Since the appellant failed to comply with the terms and conditions of the auction notice there was no concluded contract between the parties.

Counsel in the end prayed that in equity and fairness the earnest money deposited by him should be refunded to him. We do not find any merit in this submission. As the transaction fell through by reason of the default or failure of the purchaser the earnest money could be forfeited as per terms and conditions of the auction notice. The terms agreed between the parties have to be considered while considering the question of the forfeiture of the earnest money. On facts we find that the appellant tried to play smart to take possession of the property without getting the letter-cum-allotment letter in his favour and the payment of the balance bid money. A person who pleads for equity has to act fairly. Since the appellant did not act fairly, he is not entitled to any sympathetic consideration of his demand for refund of the earnest money. The prayer is rejected.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same with

h costs.

.....J.  
( Ashok Bhan )

.....J.  
( S.H. Kapadia )

New Delhi  
July 28, 2004

ITEM No.101

Court No.10

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No.2314/1999

M/s. Aggarwal Associates (Promoters) Ltd.

Appellant (s)

VERSUS

Delhi Development Authority & Anr.

Respondent (s)

(With office report)

Date : 28/07/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN  
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)

Mr. N.S. Vashisht, Adv.  
Mr. Pradeep Misra, Adv.  
Mr. Daleep Dhayani, Adv.

For Respondent (s)

Ms. Indu Malhotra, Adv.  
Ms. Ruchi Khurana, Adv.  
Ms. Moni Malika Chaudhuri, Adv.  
Ms. Binu Tamta, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order with costs.

( Satish K. Yadav )                      ( Kanwal Singh )  
Court Master                                      Court Master

( Signed order is placed on the file )