

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR

## JUDGMENT

Gajanand **VS.** State of Raj. & Ors.

**D.B. CIVIL SPECIAL APPEAL NO. 1076/1999**  
against the order dt.2.8.1999 passed in  
in S.B. Civil Writ Petition No.2618/99

Date of judgment : 9<sup>th</sup> Nov., 2004

## PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA  
HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. J. Gehlot for the appellant.  
Mr. B.L. Tiwari, Addl. Govt. Advocate.

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BY THE COURT:- (PER HON'BLE MR. RAJESH BALIA), J.

We have heard learned counsel for the parties.

This appeal is arising in the following circumstances:-

The respondent, Mandi Vikas Samiti, Hanumangarh Junction had auctioned the plot No.7 ad-

measuring 10X15 sq. ft. on 10<sup>th</sup> July, 1989. The appellant was the highest bidder at Rs.47,500/- for that plot and he deposited 25% of the bid price immediately as per the auction condition.

The Committee by its order dated 26.9.1989 cancelled the auction by holding that the auction was not in accordance with law.

The petitioner filed a writ petition No.458/90 challenging the order dated 26.9.1989 and asked for a prayer that he being the highest bidder, his bid was liable to be accepted by the respondents and the auction could not have been cancelled without any reason.

The said writ petition was allowed on 19.11.1996 and the order passed by the Chairman of Mandi Development Committee was quashed and the respondents were directed to consider the petitioner's bid and pass a reasoned order in each case within six months from the date of order. Subsequent to that direction, by order dated 19.5.1997 the petitioner's bid was confirmed by the Collector, Sri Ganganagar and the petitioner was directed to deposit 3/4 of the remaining price along with interest thereon within the time allowed under the Rules.

In furtherance of this direction, a demand notice dated 4.6.1989 for Rs.1,10,309/- was sent to the petitioner asking him to deposit that amount which included 3/4 of the bid price and interest thereon with effect from the date of auction. The petitioner protested against charge of interest and did not deposit the amount asked by the respondents as per the demand notice dated 4.6.1998. This led to issuance of notice dated 13.4.1999 calling upon the petitioner to show cause that since he has failed to pay the amount along with interest as per the direction dated 19.5.1997 why the allotment made in his favour may not be cancelled. In pursuance thereof, the petitioner submitted his detailed reply stating that he was for the first time informed about the confirmation of bid in his favour by demand dated 4.6.1989 for Rs.1,10,309/- and in spite of the petitioner having contacted the respondents during the time, he was not satisfactorily informed about the charging of interest. In view of the aforesaid circumstances, he calculated the amount payable by him until the date of filing the reply as under and send a draft for the sum:-

The balance of bid price	35,625.00
Interest @ 18% from the	6,412.50

date of calculation vide order  
Dt.27.4.98 to 22.4.1999

Estimated lease rent from the year 27.4.98 to 26.4.1999	62.50
	<hr/> 42,100.00

The respondents by order Annex.6 dated 7.5.1999 did not accept the draft of Rs.42,100/- and returned the same and ordered cancellation of allotment made in favour of the petitioner by forfeiting  $\frac{1}{4}$  amount of the bid price deposited at the time of auction.

In the aforesaid circumstances, the petitioner filed the second writ petition which was dismissed by learned single Judge vide judgment under appeal inter alia on the ground that the petitioner had a remedy to prefer a suit.

In the special appeal filed against the order dated 2.8.1999, the Court, after hearing all the grounds, on 19.7.2000 while admitting the case and issuing show cause notice, made the following order:-

"There is a dispute with regard to the payment of interest as to whether interest is to be paid from the date of auction or from the date of confirmation. This issue can be resolved at the time of final hearing of this appeal. A demand was

raised against the appellant claiming a sum of Rs.1,10,309/-. Admittedly, the said amount has not been deposited since the matter is pending before this Court.

We now direct the appellant to deposit a sum of Rs.75,000/- without prejudice to his rights and contentions made in this appeal with regard to the payment of interest. This amount shall be deposited with respondent no.2 within one month from today. The appellant is allowed to continue in possession only subject to this condition.

Since the petition has been dismissed in limine, no reply could be filed before the learned Single Judge but reply has been filed in special appeal. It is a specific case of the respondents in the reply that the remaining 75% amount of bid become due and payable from the date of auction.

According to Condition 9(2)(i) of the auction, the successful bidder was to deposit the remaining  $\frac{3}{4}$ <sup>th</sup> amount of the bid **within 30 days from the date of issue of the order of the Chairman of the Committee accepting auction and in case he fails to deposit on his own motion within 30 days, a notice in form III shall be issued to the bidder for depositing the remaining  $\frac{3}{4}$ <sup>th</sup> amount within 30 days from the date of issue of notice.** According to Condition 9(2)(ii) if the bidder fails to deposit the remaining  $\frac{3}{4}$ <sup>th</sup> amount after notice within 30 days or an extended

**period not exceeding 90 days, the Executive Officer shall be free to take action for cancellation of the bid and in that case the amount deposited previously shall be forfeited in favour of the Mandi.**

It has further been averred that by amending the Rule w.e.f. 23.3.1994, the rate of interest chargeable in these circumstances, was increased from 12% to 18% per annum for a period of 12 months and thereafter at the rate of 24% per annum.

Apparently, on the respondents' own averments, 75% of the bid amount becomes due and payable to the Mandi Development Committee only on confirmation of the Bid by the Chairman. Before that no amount becomes due and payable to the Mandi Samiti for its own use.

In this case, in the first instance, the bid was made on 10.7.1989 by the petitioner which was never accepted by the respondents. On the contrary, the auction itself was cancelled by order dated 26.9.1989. Therefore, as per the respondents own case, 75% of the bid amount was to become due only on the acceptance of the bid and interest on amount could be charged only if the bidder is required to pay the demand through a challan after the bid is accepted

and he fails to make such payment within presecribed time as noticed above. Admittedly, the bid was not accepted but the bid was cancelled vide order dated 26.9.1989 hence, 3/4 amount of the bid did not become payable so as to treat the petitioner in default.

Thereafter, when the order dated 26.9.1989 was set aside by this Court vide order dated 19.11.1996 in writ petition NO.458/90, the respondents were directed to consider the petitioner's bid and pass reasoned order within 6 months.

It is stated in the order confirming the bid that had the bid is affirmed, the amount would have become due. Therefore, the petitioner should pay interest on the amount which has not been paid by him. Apparently, the authority has no jurisdiction to make this condition for petitioner to pay interest on the balance amount with effect from the date of auction, when the bid was confirmed on 19.6.2000 only and the petitioner did not pay the balance amount thereafter as per the plea taken by the respondents themselves. It is only vide order dated 27<sup>th</sup> April, 1998 the court was informed about the order of Commissioner calling upon him to pay Rs.1,10,309/- as principal sum, interest with effect from the date of auction which the petitioner was not prepared to accept and has

contacted the respondents but without getting any satisfactory answer, the respondents initiated the proceedings for cancelling the bid. He made a detailed reply pointing out this discrepancy and noticing that since 22.4.99, he has not deposited the 75% of the bid amount, he calculated the interest payable in respect thereof on the basis of the Rule as amended in 1994 for calculating the interest at the rate of 12% per annum on the balance amount from the date of failing to make the payment within time from the date of receipt of order confirming the bid and offered the total amount immediately for acceptance which was also not accepted by the respondents and the bid was again cancelled.

Apparently, on the respondents own showing in the first instance while sending a challan to the petitioner for making a deposit in terms of the auction dated 10.7.1989 and in respect of which the approval was accorded by the Collector on 19.11.1997 and no interest from the earlier date on the balance of bid amount was chargeable. The order of approval shows that direction was only to charge interest in accordance with the rules.

In these circumstances demand of interest prior to 27.4.1998 on the 75% of bid money was not

sustainable under the Rules. Consequently, the calculation of interest with effect from the date of auction cannot be sustained on any ground whatsoever.

As a result, the contention of the petitioner-appellant merits acceptance.

So far as the order of learned Single Judge is concerned, we are of the opinion that the matter of interest is governed by the Rules and the respondents being State within the meaning of Article 12 if they act contrary to the Rules, the petitioner cannot be relegated to the remedy of suit and he is entitled to a mandamus if breach of statutory obligation is made out. It was apparent that the petitioner has been made to know in the first instance that the bid was cancelled for no reason without giving any opportunity of hearing to the petitioner. At the second time also, the claim to interest has been raised by the respondents wholly de hors the rules which make it clear that it is only after the service of notice after confirming the bid the bidder fails pay or deposit the balance amount within the time allowed, then only interest become chargeable on such amount but not otherwise.

Therefore, the charging of interest prior to

the expiry of period from notice dated 27.4.1998 was wholly without jurisdiction and contrary to the rules and could not have been sustained on any ground. The learned Single Judge has clearly made an error in not appreciating that it was not a case of contractual dispute but was a case of infraction of the statutory Rules by the respondents, which is State within the meaning of Article 12, and was obligated to act in accordance with the Rules.

Consequently, the appeal is allowed. The judgment under appeal is set aside. The writ petition is allowed. The order dated 7.5.1999 (Annex.6) is quashed and set aside and it is declared that the respondents are entitled to charge interest only as per the amended rule w.e.f. from the expiry of 30 days from the date of notice of approval of bid and calling to pay the balance bid money on the principal amount which remain due to be paid. It may further be observed that the petitioner is in possession of the plot in question. However, since when the same has not come on record. Thus, liability to pay lease amount for the plot in question for the entire period during which he has remained in possession arises and the petitioner shall be liable to pay the lease money in respect of the plot with effect from the date he is continuously in possession and if amount has not been

already paid, the same amount shall also be paid with interest at the rate of 12%.

The bid amount outrightly submitted by the petitioner vide Annex.5 and demand draft which was rejected by the respondents shall not give the respondents any right to claim penal interest at the rate of 24% for the period during which 75% of the amount of bid remained unpaid. On calculating, if any amount is found due to be paid by the petitioner in pursuance of this order, the same shall be deposited within a period of three months and if any amount is found to be refundable, the same shall be refunded to the petitioner within three months.

There shall be no order as to costs.

[DINESH MAHESHWARI], J.

[RAJESH BALIA], J.

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