

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Karnail Singh v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.4156/1993
under Articles 226 and 227 of the
Constitution of India.

Date of order : 24th November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Agarwal, for the petitioner.
Mr. Hemant Choudhary]
Mr. N.L.Joshi] for the respondents.

BY THE COURT :

A bid given by the petitioner was accepted on 7.3.1989 to purchase a commercial plot measuring 60x100 sq.ft. in residential sector, Anupgarh in pursuant to the auction conducted by Executive officer, Mandi Development Committee, Hanumangarh. The petitioner deposited the requisite amount of Rs.1,68,000/- on 16.3.1989 and on the same day submitted an application to hand over possession of the plot concerned.

It is alleged by the petitioner that though he submitted number of applications to the respondents to hand over possession of the plot but no action was taken by the respondents for one or other reason. The petitioner ultimately in the year 1993 again approached to the respondents for delivering possession of the plot but the respondents instead of handing over possession asked the petitioner as to why he has not taken possession of the plot so far.

The petitioner by a communication dated 23.4.1993 communicated to the respondents that there was no error on his part in getting possession of the plot as he deposited entire amount for purchase of the plot on 16.3.1989 itself but no action was taken by the authorities concerned to deliver the possession. It was then informed to the petitioner that the plot of the land which was sought to be sold to him as a consequence of auction taken place on 7.3.1989 was again placed for resale and the same was sold to Shri Rajendra Kumar son of Gauri Shankar resident of Ganganagar on 2.3.1990. The petitioner in the circumstances urged to the respondents to hand over possession of the plot which was sought to be sold to him or in alternative to allot a land of equivalent value.

The Executive Officer of Mandi Development Committee considered request of the petitioner and made a note, abstract of which reads as under:-

“19/एन जहां तक प्रथम क्रेता की स्थिति का प्रश्न है, उसका दोष केवल यह है कि राशि जमा कराते ही उसने भूखण्ड का कब्जा प्राप्त कर निर्माण नहीं किया। पर उससे ज्यादा त्रुटि कार्यालय की है। जिसके कारण एक ही भूखण्ड का दो बार बेचान हो गया। माननीय दृष्टि से तथा कानूनन भी प्रथम क्रेता एवज में भूखण्ड प्राप्त करने का अधिकारी है।

20/एन ऐसी स्थिति में इस प्रकरण में निम्न अग्रिम कार्यवाही की जा सकती है -

(1) दुबारा बेचान किसी की गलती से हुआ उसकी जाँच कर दोषी कर्मचारी के खिलाफ अनुशासनात्मक कार्यवाही अमल में लायी जावे।

(2) प्रथम क्रेता को उसका वाजिब हक दिलाने के लिये भूखण्ड संख्या 11 की एवज में 3 या 4 25x50 आकार के भूखण्ड आवंटित किये जावे। 3 भूखण्ड आवंटन करने की दशा में क्रेता को 250 वर्गज भूमि कम मिलेगी व 4 भूखण्ड दिये जाने की स्थिति में 111.13 वर्ग गज भूमि क्रेता को कम मिलेगी।

(3) जहां तक मंडी शर्तों में इस प्रकार के प्रकरण में निदान का प्रश्न है, कोई प्रावधान मंडी शर्ते 1973 में नहीं है। परन्तु पूर्व में इसी प्रकार के प्रकरण जिनमें नीलाम शुदा भूखण्ड पर दौंगर व्यक्ति के कब्जे होने पर मंडी विकास समिति के द्वारा एवज में दूसरा भूखण्ड दिया गया है। कृपया मंडी विकास समिति की बैठक दिनांक 12/5/89 निर्णय संख्या एक का पृष्ठ 11/सी पर अवलोकन करावे। ऐसी स्थिति में इस प्रकरण को यदि श्रीमान सहमत हो तो आगामी मंडी विकास समिति की बैठक में रखा जा सकता है।

पत्रावली अवलोकनार्थ एवं आदेशार्थ प्रस्तुत है।
ह० 3/4/93”

The recommendation above was placed before the Mandi Development Committee in its meeting held on 28.4.1993. The Mandi Development Committee in its meeting kept three options before the petitioner which are as under:-

(1)A plot pf 60x100 sq.ft. be planned and then be given to the petitioner.

(2)Plot No.52 measuring 25x50 sq.ft. situated at corner in the same plan where the plot earlier sold is situated be given to the petitioner; or

(3)amount deposited by the petitioner be returned with interest.

The petitioner by communication dated 3.8.1993 requested the respondents that the plot which was sought to be sold to him is of 60x100 sq.ft., therefore, the allotment of a plot in the same plan measuring 25x50 sq.ft. is not justified. He made a request to allot him four plots in the same plan.

The request made by the petitioner was not accepted by the respondents hence present petition is preferred by him seeking a direction for respondents to give atleast four plots measuring 25x50 sq.ft. in the same plan wherein the plot measuring 60x100 sq.ft. which was put on auction is situated.

A reply to the writ petition is filed on behalf of the respondents stating therein that the plot measuring 60x100 sq.ft. was put for auction in accordance with the Rajasthan Colonisation (Sale and Allotment of Land in Mandis in Bhakra and Rajasthan

Canal Project Colony Areas) Condition, 1973 and the petitioner being the highest bidder was declared entitled to purchase the plot by way of auction. However, the respondents denied that the possession of the plot was not given to the petitioner due to inaction on their part. It is contended that no efforts were made by the petitioner to take possession of the plot which was sought to be sold to the petitioner.

During pendency of writ petition the Mandi Area was handed over to the Municipal Board, Anupgarh by Mandi Development Committee, Anupgarh and, therefore, the Municipal Board, Anupgarh was substituted as a respondent No.2 in place of Mandi Development Committee.

Heard counsel for the parties.

It is not at all disputed between the parties that the petitioner participated in the auction and being highest bidder a tentative decision was taken to sale the plot concerned to him. The petitioner also deposited the entire amount of consideration on 16.3.1989. It is also not in dispute that without cancelling the earlier auction proceedings the same plot was subjected for resale by way of auction and was sold on 2.3.1990 to one Shri Rajendra Kumar.

On basis of above admitted fact it is clear that the authorities of Mandi Development Committee, Anupgarh either ignored the fact pertaining to earlier auction proceedings or the above fact was slipped out from their mind due to inadvertence and proceeded for resale of the same plot. Be that as it may, the resultant is that the possession of the plot was not given to the petitioner though he deposited the entire amount of consideration on 16.3.1989, as such it can be very safely said that no effort was made by the respondents to give possession of the plot to the petitioner. The petitioner by no stretch of imagination can be held responsible for not getting the possession of the plot in dispute. The notings made by the Executive Officer of the Mandi Development Committee also make it clear that it was the basic responsibility of the respondents to hand over possession of the plot to the petitioner. The Executive Officer in his notings recommended for allotting four plots of 25x50 sq.ft. in the same plan to the petitioner to compensate him for not handing over possession of the plot measuring 60x100 sq.ft. The Mandi Development Committee without any just and valid reason offered plot No.52 measuring 25x50 sq.ft. as a compensation in lieu of plot measuring 60x100 sq.ft. A blue print of the plan wherein the plot No.52 and the plot measuring 60x100 sq.ft. which was put on auction are situated is placed on record, from perusal

of which it is clear that both the plots are situated on a same road. This fact clearly shows that the value of the land in the area concerned shall be the same. The respondents, therefore, are required to compensate the petitioner by giving a land of equivalent value to the value of the plot of 60x100 sq.ft. The value of the plot No.52 measuring 25x50 sq.ft. shall certainly be very less than the total value of the land measuring 60x100 sq.ft. I found force in the contention of learned counsel for the petitioner that if the respondents allot four plots of the measurement of 25x50 sq.ft. then the total land shall be of 100x50 sq.ft. which can be treated as nearby to the value of the plot of 60x100 sq.ft. At the cost of repetition I consider it appropriate to mention that the plot in lieu of which compensation is required to be given by way of giving alternative land is situated on the same road on which plot No.52 is situated.

The injustice met by the petitioner can be redressed if the respondents allot land to the petitioner having equivalent value or approximately equivalent value to the value of the plot measuring 60x100 sq.ft. which was put for sale by way of auction in the month of March, 1989. This object can be achieved if the respondents allot plots No.49, 50, 51 and 52 in the same plan in which the plot which was put on auction in the month of March, 1989 is situated. I consider it necessary to vanish the

injustice faced by the petitioner to direct the respondents to allot the plots above to the petitioner.

Accordingly this writ petition is disposed of with a direction to the respondents to allot the plots No.49, 50, 51 and 52 in residential sector, Anupgarh Mandi which is now under the control of Municipal Board, Anupgarh, to the petitioner.

No order as to costs.

(GOVIND MATHUR), J.

kkm/ps.