

CASE NO.:
Appeal (civil) 2490 of 2001

PETITIONER:
R. K. SAXENA

Vs.

RESPONDENT:
DELHI DEVELOPMENT AUTHORITY

DATE OF JUDGMENT: 30/03/2001

BENCH:
M.B. Shah & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

Heard parties.

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This Appeal is against an Order dated 29th February, 2000 by which the Writ Petition filed by the Appellant has been dismissed. Briefly stated the facts are as follows:

The Respondent held an auction sale on 28th November, 1995. At this auction sale the Appellant was the highest bidder. In terms of the conditions of the auction sale the Appellant, on the same day, deposited a sum of Rs. 6,54,500/-. As per the terms of the auction sale the balance 75% of the amount had to be paid within 60 days from the issue of the Demand Letter. However, if sufficient cause was shown then the Chairman could extend time up to a maximum period of 180 days, subject to payment of interest on the balance amount at the rate of 18% per annum. The Demand Letter was issued on 3rd January, 1996. The balance sum of Rs. 19,63,545/- had to be paid, in terms of the auction sale, within 60 days of the said letter. The Appellant deposited a sum of Rs. 5,50,000/- on 19th February, 1996. The Appellant then asked for extension of time to make the balance payment. By a letter dated 29th March, 1996 the Appellant was granted extension of time subject to payment of interest at the rate of 18% per annum. Thereafter the Appellant again asked for extension of time by a letter dated 2nd July, 1996. The extension was granted by a letter dated 8th August, 1996. It must be mentioned that by this date the Appellant had deposited sums of Rs. 1,50,000/- on 25th June, 1996, Rs. 4,00,000/- on 29th August, 1996 and Rs. 1,40,000/- on 29th August, 1996.

By a letter dated 2nd September, 1996 the Appellant again sought an extension of time. To this letter there was no reply. The Appellant thereafter paid sums of Rs. 1,40,000/- on 17th September, 1996, Rs. 3,10,000/- on 20th September, 1996, Rs. 1,39,000/- on 27th September, 1996 and

Rs. 1,34,500/- on 27th September, 1996. All these payments, even though, made beyond time were accepted by the Respondent. The Appellant had now paid the entire amount payable in respect of that plot. Thereafter the Appellant also paid interest on the delayed amounts at the rate of 25% per annum. This amount was also accepted by the Respondent.

In spite of having accepted the delayed payments the plot was not delivered to the Appellant. The Appellant, therefore, sent legal notices on 22nd June, 1999 and on 29th June, 1999. Only after receipt of the legal notices the Respondent by letter dated 1st July, 1999 cancel the allotment and forfeit the earnest money of Rs. 6,54,500/-. The Appellant filed a Writ Petition which came to be dismissed by the impugned Order dated 29th February, 2000. The High Court held that after the expiry of the period the Appellant could not have deposited the balance amount unilaterally and without any demand being issued to him. The High Court held that payments made after the extended date were not valid and legal tender of money in accordance with law. On this basis the High Court refused to grant any relief to the Appellant.

In our view, the Order of the High Court cannot be sustained. To be noted that by 27th September, 1996 the entire amount payable for the plot had been deposited and delay in payment was less than 30 days. Thereafter in January 1997 interest at the rate of 25% per annum, on delayed payments, was also paid. Both the delayed payments and the interest amount were accepted by the Respondent. The moment those payments were accepted there was deemed extension of time. It is only after 1-1/2 years i.e. after the legal notices were served by the Appellant that the allotment is cancelled by the letter dated 1st July, 1999, in our view, on the facts of this case, i.e. after accepting the delayed payments and interest Respondent could not have cancelled the allotment.

In the circumstances of this case, the impugned Order is set aside. The letter of cancellation is quashed. The Respondent is directed to allot, to the Appellant, the plot purchased by him. The Appeal stands disposed of accordingly. There will be no Order as to costs.

J. (M. B. SHAH)

J. (S. N. VARIAVA)

March 30, 2001.