

The Hon'ble Supreme Court in a case titled as Municipal Corporation, Chandigarh & Ors. Versus Vipin Kumar Jain decided on 20.9.2007 has delivered an important judgment, ratio of which is as under:-

“Auction is a price-discovery mechanism which falls in the contractual realm. In the present case, we are concerned with commercial sites. Auction is basically an exercise in raising revenues for the Government. When the price is not paid within time, it results in loss of revenue to the State. Time is the essence of the contract in matters concerning auction. Property prices rise by the day.

In the present case there was no illegality in the holding of auction. Despite repeated notices issued to the respondent calling upon him to make payment, respondent failed to pay within the stipulated period. Despite repeated indulgence being shown to the respondent by the competent authorities payments were not made. Property prices increase by the day and if within stipulated period contractual obligations are not fulfilled then in that event the State suffers losses which cannot be compensated in terms of interest or penalty after four years. Ultimately auction is an exercise for detecting or discovering the price prevalent in the particular area in a particular year and if time overruns are to be allowed on flimsy excuses for not paying the money in time then the entire exercise would fail. We are, therefore, of the view that the High Court should not have interfered in the process in which the Corporation was fully justified and entitled to forfeit 10% of the amount and to invite fresh offers on new terms and conditions”.

It has also been seen that the judgment of the Hon'ble Supreme Court in Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh & Ors. Reported in 2004 (2) SCC 130 is often quoted by some of the allottees before the Courts in which it was reportedly held that site should be resumed as a measure of last resort. The Hon'ble Supreme Court in this case of Municipal Corporation Chandigarh & Ors. has dealt with this judgment and stated as under:-

“Even in the orders cited we have a judgment of this Court in the case of Teri Oat Estates (P) Ltd. Vs. UT, Chandigarh & Ors. reported in 2004 (2) SCC 130 in which Sinha J. speaking on behalf of the Division Bench has observed vide para 57 as follows:

We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8-A can be taken recourse to.”

Therefore, now we have every right to resume a property for non-payment of instalments as has been upheld by the Hon'ble Supreme Court. Accordingly, instructions may be issued to all the Estate Officers/Administrators and panel Advocates alongwith copy of the judgment. Same should also be hosted on the website of HUDA alongwith this note.

(T.C. GUPTA)
C.A., HUDA
17.06.2008

LC

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ITEM NO.3

COURT NO.7

SECTION IVB

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12968/2006

(From the judgement and order dated 28/04/2006 in CWP No. 4434/2005 of
the
HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

MUNICIPAL CORPN. CHANDIGARH & ORS.
Petitioner(s)

VERSUS

VIPIN KUMAR JAIN

Respondent(s)

(With prayer for interim relief)(FOR FINAL DISPOSAL)

WITH SLP(C) NO. 13141 of 2006

(With prayer for interim relief and office report)(FOR FINAL DISPOSAL)

Date: 20/09/2007 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s)

Ms. Kamini Jaiswal,Adv.

For Respondent(s) Mr. M.N.Krishnamani,Sr.Adv.

Mrs. Amita Gupta,Adv.

Mr. Sunil Malhotra,Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

The civil appeals herein are allowed with no
order as to
costs.

(Suman Wadhwa)
Court Master

(Madhu Saxena)

Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4450 OF 2007

(Arising out of SLP (C) 12968/2006)

APPELLANTS MUNICIPAL CORPN. CHANDIGARH & ORS.

..

vs.

RESPONDENT VIPIN KUMAR JAIN

..

WITH
CIVIL APPEAL NO.4451 OF 2007
(Arising out of SLP (C) No. 13141/2006)

ORDER

Leave granted.

Both the civil appeals raise common question of law & fact hence taken up together. For sake of convenience facts in the first matter are as follows:

Respondent was allotted commercial site S.C.F. (shop-cum-flat)

No.24 in Motor Market and Commercial Complex Manimajra, in an open auction held on 4.9.1996 for Rs.26.50 lakhs, excluding interest.

The said allotment was governed by the provisions of Capital of Punjab

(Development and Regulation) Act 1952 and Rules framed thereunder.

As per the terms and conditions of the auction respondent was required

to pay 25% of the cost of the site upfront within 30 days of auction and

balance 75% was to be paid in three annual equal instalments of

Rs.9.10 lakhs each together with interest at the contractual rate.

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Respondent herein paid 25% amounting to Rs.6,62,500/- on 9th October 1996. Under the terms and conditions of auction, possession had to be given on deposit of 25%. When Rs.6,62,500/- was paid on 9th October 1996 allotment letter with possession was also

issued to the respondent by the Corporation vide memo No.

MC/AC/96/5125.

On 19th September 1997 the Corporation intimated the revised figure of the equated instalment vide letter dated 19.9.1997. By the

said letter the respondent was required to make payment of annual instalment at the rate of Rs.9,14,099/- interest of Rs.901,000/-.

The respondent was required to make payment of annual instalments on 4.9.1997, 4.9.1998 and 4.9.1999. The respondent failed to pay the first instalment due on 4.9.1997. He also defaulted in

making payment of second and third instalments due on 4.9.1998 and

4.9.1999. Thereafter the Corporation called upon the respondent vide

27 separate notices issued from time to time, requesting him for

payment of the balance instalments. The particulars of the said notices are given in synopsis "D". The Corporation

also gave notices to the respondent to appear and explain the reason for

not making payments. Ultimately vide order dated 1st June 2002 the

Estate Officer under Sec.8A of the said 1952 Act cancelled the allotment

and forfeited 10% of the amount of consideration vide order dated 1st

June 2000. We quote herein below the relevant portion of the said

Order dated 1/6/2002 which reads as under:

"The allottee did not respond to any notice nor did he deposit any amount. The allottee was also given notices for personal appearance so as to afford him opportunity of hearing but he did not appear before the undersigned. The undersigned finds that the allottee is not inclined to clear the outstanding amount of instalments, interest etc."

Against the said order the respondent moved by way of Appeal before the Chief Administrator. That appeal was also filed after two years i.e. on 3rd June 2003. The Chief Administrator vide order dated 22nd April 2003 granted relief by directing payment of 25% of the outstanding dues within one month. However, that amount was not paid and therefore the Chief Administrator dismissed the appeal.

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The above circumstances show that this is the case where the creditor had to chase the debtor for payment and despite latitude being shown from time to time there was non-payment in flagrant violation of the orders passed by the Competent Authorities.

Be that as it may, the above resumption order attained finality.

No revision was filed against the above order of the Chief

Administrator. However, when the site was scheduled for Auction (re-

auction) on 21.1.2004, respondent herein moved the High Court on

20.1.2004 vide CWP No. 938/2004, seeking stay of the confirmation

of sale. Consequent upon depositing Rs. 10 lakhs by 21.1.2004, the

High Court however directed the respondent to deposit another 15

lakhs within one month. Once again the respondent committed the

default. This time he deposited Rs.10 lakhs but failed to deposit the

balance of Rs.15 lakhs within one month as directed by the High Court vide its order dated 20.1.2004. On 19.2.2004 when the respondent realized that his writ petition was being dismissed for non-payment of Rs. 15 lakhs as he had failed to comply with the order dated 21.1.2004, the respondent

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withdrew the writ petition with liberty to file a revision petition to the Financial Advisor.

Vide order dated 20th October 2004 the Financial Advisor showed indulgence to the respondent allowing him one month's time to pay the amount. However, despite the said indulgence once again the respondent failed to pay the amount. On the contrary the respondent moved the High Court once again vide another writ petition No. 4434/2005, inter alia, seeking to challenge the order of resumption. By interim order dated 18.3.2005 High Court directed stay of dispossession subject to the respondent depositing rupees forty lakhs within six weeks. The writ petition was contested by the Corporation. The petitioner-Corporation referred to the above facts and submitted that the respondent was a persistent defaulter, habitual litigant and in the circumstances he should not be given an opportunity to clear the outstanding dues.

By impugned judgment the High Court without recording any finding on the alleged illegality in the order of resumption gave two months' time to the respondent to deposit the entire outstanding amount with interest. Hence these civil appeals.

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Auction is a price-discovery mechanism which falls in the contractual realm. In the present case we are concerned with commercial sites. Auction is basically an exercise in raising revenues for the Government. When the price is not paid within time it results in loss of revenue to the State. Time is the essence of the contract in matters concerning auction. Property prices rise by the day.

In the present case there was no illegality in the holding of

auction. Despite repeated notices issued to the respondent calling upon him to make payment, respondent failed to pay within the stipulated period. Despite repeated indulgence being shown to the respondent by the competent authorities payments were not made. Property prices increase by the day and if within stipulated period contractual obligations are not fulfilled then in that event the State suffers losses which cannot be compensated in terms of interest or penalty after four years. Ultimately auction is an exercise for detecting or discovering the price prevalent in the particular area in a particular year and if time overruns are to be allowed on flimsy excuses for not

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paying the money in time then the entire exercise would fail. We are therefore of the view that the High Court should not have interfered in the process in which the Corporation was fully justified and entitled to forfeit 10% of the amount and to invite fresh offers on new terms and conditions.

It has been submitted on behalf of the respondent that during the aforesaid period he had to undergo bypass operation and financial difficulties and therefore delay in depositing be condoned. In our view ample opportunities were given to the respondent to make payment and therefore there was no question of condoning the delay. It is important to bear in mind that when the respondent offers to pay interest and principal after years it amounts to pegging of the price which cannot be allowed.

Lastly, number of orders of this Court were shown to us where delay in payment has been condoned. We find no merit in the said contention. Firstly, the said orders were on

facts of each case. Secondly, even in the Orders cited we have a judgment

of this Court in the case of Teri Oat Estates (P) Ltd. vs. U.T.Chandigarh

& Ors. reported in 2004 (2) SCC 130 in which Sinha J. speaking on behalf of the Division Bench has observed vide para 57 as follows:

" We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8-A can be taken recourse to."

Accordingly, for the above reasons we set aside the impugned judgment and allow the civil appeals filed by the Corporation. The Corporation will invite fresh bids and hold the Auction afresh at the earliest. In that auction the

respondent herein would be entitled to offer his bid. There is some doubt as to whether Corporation is in possession as of date. The

Corporation would be entitled to take steps for recovery of possession before a fresh auction is held, if it is not in possession as of date. If the

possession is with the respondent herein, he shall handover possession to the Corporation on or before 31st October 2007. On getting back

possession the Corporation will refund the amounts which the respondent has paid to the Corporation after deducting 10% as per the Auction Conditions. Balance if any shall be refunded by the Corporation with interest at the rate of 12% from the date of the filing of the writ petition in which the impugned judgment is passed by the High Court.

Accordingly, the civil appeals herein are allowed with no order as to costs.

(S.H. KAPADIA)

.....J.

.....J.
(B.SUDERSHAN REDDY)

NEW DELHI;
SEPTEMBER 20, 2007.