

IN THE HIGH COURT OF SINDH, KARACHI  
Suit No.1108 of 1997

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Dated order with signature of Judge

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M/s. International Building  
Industries (Pvt) Ltd.,  
Plaintiffs : through Mr. Wajahat Abbas Rizvi,  
Advocate.

Karachi Development  
Authority (KDA)  
Defendant : Peer Sajad Ali Shah, advocate.

Date of hearing : 15.02.2018

Decided on : 15.02.2018

**ORDER**

**NAZAR AKBAR, J.** The Plaintiff on 01.9.1997 has filed this suit for Specific Performance and damages valued at Rs.60,00,000/- against the sole defendant/KDA.

2. Brief facts of the case are that defendants by public notice published in Daily Dawn dated November, 2<sup>nd</sup>, 1986, invited offers from reputed builders for allotment of land in KDA Scheme No.45, Taiser Town, for an average area of 50 acres. It is contended that defendants selected the plaintiffs amongst other 13 builders and consequently Rs.10 lacs was paid by way of Pay-order dated 15.1.1987. It is further urged that in the meeting it was resolved that approximate area of 25 acres per builder will be allocated and that builders would pay the development cost and the planning for the builders shall be done by KDA according to their requirements.

3. It is averred that after the above cited meeting the defendants, as usual, went into deep slumber inspite of personal visits of the builders to all the concerned departments of defendants and also the DG-KDA. The

plaintiff being discontented with the sluggish conduct of defendants regarding Taiser Town, they by their letter dated **07.7.1994** requested the defendants to expedite completion of the planning of Taiser Town and also further requested for allocation of 25 acres of land in shape of plots of 80 sq.yds in Scheme No.41, Surjani Town, Karachi, expressing willingness to pay the balance price and other dues as per rules of KDA. Subsequently the defendants in response to the letter of the plaintiffs abruptly, without any reason revoked the contract of allocation of the land by their letter dated **04.9.1994** and without remorse advised them to take refund of skeleton of Rs.10 lacs. On receiving the revocation of allocation of the land, the plaintiffs were hard hit and completely smashed in their hopes being cherished from 1987 and ending in September 1994. It is further averred that plaintiffs also submitted representation to the government of Sindh by their letter dated **02.7.1985** but it invoked no response. It is contended that in the compelling circumstances the plaintiffs served legal notice on defendants dated **23.6.1997** under Article 131 of KDA Order of 1957, but no response was received from the defendant regarding legal notice. The plaintiffs after being approved for allocation of 50 acres of land but revised to 25 acres waited in readiness to meet financial obligations of the project of 25 acres from 1987 to 1994 and, therefore, did not undertake any other costly project, suffered loss of profit in the project of 25 acres of Taiser Town and other business not undertaken by them, they are, therefore, entitled to damages estimated at Rs.50 lacs as communicated to the defendants in the legal notice. Then the Plaintiff filed the instant suit and prayed for the following relief(s):-

(a) for specific performance against defendants for allocating 25 acres of land in Taiser Town, KDA Scheme No.45 on same terms and conditions stipulated in Annexure 'A' or in any other scheme of similar features and value on terms as were fixed at the time of its inception.

Alternatively:

(b) i) for refund of earnest money of Rs.10 lakhs with interest at the rate of 12% per annum from 15<sup>th</sup> January 1987 to the date it is paid;

ii) for damages of Rs.50 lacs with interest at 15% per annum from the date of legal notice to the date it is paid.

(c) Cost of the suit.

4. Defendant/KDA had filed written statement wherein they denied all the claim of the plaintiffs and raised the preliminary objections as under:-

- i. That the suit is not maintainable in law.
- ii. That the suit is incompetent and bad in law for want of statutory notice as strictly required under Article 131 of KDA Order No.5 of 1957.
- iii. That no cause of action has accrued to the plaintiff to file the present suit against the defendant (KDA).
- iv. That the suit is hit under Sections 42, 54 and 56 of the Specific Relief Act.
- v. That the suit is otherwise barred and not maintainable under the respective provisions of law.

5. This Court from pleadings of the parties on **16.11.1998**, adopted the following issues proposed by the plaintiff.

1. Whether the defendants are not liable to refund Rs.10 Lacs?

Annexure "F-1" para (1) of the plaint and (7) of W.S.

2. If Issue No.1 is answered in negative; whether the plaintiffs are entitled to compensation/damages (para-15 of the plaint)? If yes what extent.

3. Whether the suit is incompetent for want of notice under Article 131 of KDA Order V of 1957? (para-13 Annexures I & J to the plaint and para-10 of WS).
  4. What relief the plaintiffs are entitled to?
  5. What should the decree be and cost of the suit?
6. The evidence was recorded through commissioner. The plaintiff examined one witness namely: Agha Badar Hussain as Ex.P/1 who produced relevant documents as Exh. P/3 to P/13 and relevant exhibits are as follows.
- i. Photostat copy of public notice published in daily dawn dated 2.11.1986 s Ex.P/3.
  - ii. Photostat copy of the receipt of Rs.10,00,000/- paid to KDA on 15.1.1987 as Ex.P/4.
  - iii. Photostat copy of covering letter of Annexure-B dated 14.1.1987 as Ex.P/5.
  - iv. Photostat copy of Notice of meeting dated 15.07.1992 as Ex.P/6.
  - v. Photostat copy of Minutes (4 pages) of meeting held on 22.7.1992 as Ex.P/7/1.
  - vi. Photostat copy of letter of plaintiffs to KDA dated 7.7.1994 as Ex.P/8.
  - vii. Photostat copy of letter of revocation dated 4.9.1994 as Ex.P/9.
  - viii. Photostat copy of protest of Plaintiffs dated 25.9.1994 as Ex.P/10.
  - ix. Photostat copy of representation of Plaintiffs to Sindh Government dated 2.7.1995 as Ex.P/11.
  - x. Photostat copy of notice under Article 131 KDA Order of 1957 as Ex.P/12.
  - xi. Photostat copy of postal ack/due dated 29.06.1997 as Ex.P/13.
7. One S. Muhammad Shah Asstt: Director on behalf of the Defendant/KDA filed affidavit-in-evidence as Ex.DW-2

who produced relevant documents as Exh. D/3 to P/5 and relevant exhibits are as follows.

- i. Photostat copy of Sindh Govt. Gazette dated 11.4.1994 as Ex.D/3.
- ii. Photostat copy of Memorandum of Transfer (M.O.T) dated 23.11.196 as Ex.D/4.
- iii. Photostat copy of Govt. Gazette dated 11.1.1996 as Ex.D/5.

8. I have heard learned counsel for the plaintiff and perused the record. As usual learned counsel for KDA has sought adjournment and did not utter a single word in defense except that if ordered the KDA will refund Rs.10,00,000/- to the plaintiff.

9. Precisely, it is admitted position on record that KDA had issued a tender notice dated **02.11.1986** for sale of the property by auction and most import clause of notice is reproduced below:-

3) The application should be accompanied by a pay order amounting to **Rs.20 lacs** for a unit of 50 acres applied for as Earnest Money. Those builders who want to apply for bigger parcels should enclose the pay order on proportionate basis.

10. The plaintiff has produced tender notice as Ex.P/3. Only Rs.10,00,000/- were paid by the plaintiff to the defendant through pay-order dated 15.1.1987. The plaintiff had not complied with the terms and condition of the tender notice and yet he claims that under tender notice he has acquired a legitimate right in the form of offer and acceptance of sale of immovable property. The said pay-order was not in accordance with the auction notice published in Ex.P/3. The contention of plaintiff that he entered into some negotiation with KDA and wanted to purchase only 25 acres

of land does not mean any conclusive agreement was entered into by the parties. All those negotiation were beyond the mandate of the Tender Notice since these negotiations had no reference to the public notice Ex.P/3 and therefore, not binding by and between the parties to be enforced through the Court. It is also interesting to note that the plaint has not identified the immoveable property proposed to be sold by defendant nor final price of the property was settled. Learned counsel for the plaintiff has conceded that there was no agreement in writing. The KDA has already advised the plaintiff on **04.9.1994** to take refund amount of Rs.10 lacs deposited by the plaintiff. To a direct question learned counsel for the plaintiff admits that since the offer of refund the plaintiff has never approached the KDA for refund and instead after sending statutory notice to KDA in 1997 the plaintiff has filed the instant suit.

11. In view of the above facts and the evidence on record, issues No.1 to 3 are decided in negative. Only issue No.4 is decided in affirmative as the plaintiff is entitled to refund of Rs.10 lacs since the defendant has admitted that they have received Rs.10 lacs from the plaintiff and offered to refund it to the plaintiff. Ex.P/9 is admitted document wherein the defendant/KDA has advised the plaintiff to take refund. Counsel for the defendant has also conceded to the right of the plaintiff to take refund of Rs.10,00,000/-. Since the defendant has never refused to refund the amount of Rs.10,00,000/- to the plaintiff and it was the plaintiff who first choose to file this frivolous suit and then dragged it for 21 years. Therefore, the contention of learned counsel that

the plaintiff is also entitled to the interest on Rs.10,00,000/- is misconceived.

12. In view of above discussion, the suit is decreed only to the extent of refund of **Rs.10 lacs** only by the defendant to the plaintiff with 10% markup per annum from the date of judgment till realization.

*JUDGE*