

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION(CIVIL) NO. 4764/2006

Date of decision: 7th March, 2008

HARI SINGH BUILDERS AND PROMOTORS LTD Petitioner

Through Mr. Sudhir Chandra Aggarwal, Sr. Advocate with Mr. C.P. Sharma,
Advocate.

versus

D.D.A. & ANR. Respondents

Through Mr. Ajay Verma, Standing Counsel & Mr. Amit Mehra, Advocate for
the DDA.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

%07.03.2008

1. Whether Reporters of local papers may be
allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The petitioner, M/s Hari Singh Builders and Promoters Limited, pursuant to an advertisement published by the respondent-DDA, participated in an auction held on 12th January, 2006 for purchase of plot No. 3 admeasuring 2120 square metres, having permissible ground coverage of 1065 square metres (hereinafter referred to as the property, for short). The reserve price of the plot was Rs.24,07,00,000/-. The petitioner was the only bidder for the said property and gave a bid of Rs.24,07,10,000/-. The petitioner also deposited 25% bid amount of Rs. 6,02,00,000/- at the fall of the hammer on 12th January, 2006. The Vice-Chairman, DDA did not accept the highest bid and by letter dated 19th March, 2006, the petitioner was informed. The petitioner has accordingly approached this Court praying for direction that the respondent should be directed to confirm the bid of the petitioner and allot the property.

2. Learned counsel for the petitioner submitted that refusal of the Vice-Chairman, DDA to confirm the bid is contrary to DDA (Disposal of Developed Nazul Land) Rules, 1981 (hereinafter referred to as the Nazul Rules). He made specific reference to Rules 26, 32, 39 and 40 to urge that confirmation or acceptance should have been made within fifteen days. He also referred to

the fact that petitioner had deposited Rs.6,02,00,000/- with the respondent-DDA. In the alternative, it is submitted that confirmation of the bid should have been made within reasonable time and it is a case of deemed acceptance of the bid. Reliance in this regard was placed upon **Lucky Star Estates (India) Pvt Ltd. Versus Delhi Development Authority** reported in (2004) AD (Delhi) 325 (DB) and **Food Corporation of India versus Arosan Enterprises** reported in ILR (1996) 1 Del 185. Another contention raised by the petitioner was that the rejection of the bid was completely arbitrary and, therefore, can be made subject matter of judicial review. Judgment of this Court in **Aman Hospitality Private Limited versus Delhi Development Authority**, reported in 135 (2006) DLT 214 (DB) was referred to.

3. Learned counsel for the respondent, on the other hand, submitted that terms and conditions of auction were clear that bids received were required to be confirmed by the Vice-Chairman and in the present case there was no confirmation. It was submitted that DDA had acted within reasonable time and there was no deemed confirmation. Reasons given by the Vice-Chairman for not accepting the bid were highlighted and it was submitted that no case for judicial review was made out.

4. At the outset, I may mention that the learned counsel for the petitioner had tried to submit on the basis of file noting obtained under the Right to

Information Act that Vice-Chairman had accepted the bid on 2nd February, 2006. This is factually incorrect as pointed out by the learned counsel for the respondent-DDA. On 2nd February, 2006, the file was cleared by the Finance Member, DDA . On the other hand, Vice-Chairman had asked the officers to examine the matter and put up the case urgently with certain suggestions with respect to possible non-acceptance of the bid of the petitioner herein. Vice Chairman had not accepted the bid of the petitioner.

5. Reliance placed by the learned counsel for the petitioner on the Nazul Rules is also misconceived. Chapter III of the Nazul Rules deals with allotment by auction. Rule 28 states that auction can be conducted by an officer appointed by the Vice-Chairman and the auction will be held under the supervision of a committee consisting of not less than two senior officers of the authority. Rule 29 reads as under:-

“29. Sale to the highest bidder.

The officer conducting the auction shall normally accept, subject to confirmation by the Vice-Chairman, the highest bid offered at the fall of the hammer at the auction and the person whose bid had been accepted shall pay as earnest money, a sum equivalent to 25 per cent of his bid and he shall pay the balance amount to the Authority within fifteen days of acceptance of the bid or within such period as the Vice-Chairman may specify in the public notice under rule 27 or in another public notice.”

6. The said Rule stipulates that normally the officer conducting the auction shall accept the highest bid but the same will be subject to confirmation by the Vice-Chairman. It also stipulates that 25% of the bid amount shall be deposited at the fall of hammer. For the balance amount, the Rule provides that it shall be paid within fifteen days of the acceptance of the bid or within such period as the Vice-Chairman may specify in the public notice under Rule 27 or any other public notice. The period of fifteen days specified in Rule 27 for payment of the balance 75% of the bid amount is not mandatory. The said period can be modified by the Vice-Chairman and specified in the public notice. The terms and conditions of auction in the present case specifically stipulated that 25% of the bid amount would be deposited as earnest money on the fall of the hammer on the same day and the balance 75% of the premium amount or the bid amount would be deposited within 90 days of the issue of allotment-cum-demand letter.

7. On the question of acceptance or rejection of bid by the competent authority, the terms and conditions of auction specifically stipulated as under:-

**“3. ACCEPTANCE/REJECTION OF THE BID BY
THE COMPETENT AUTHORITY:**

i) The confirmation of the highest auction bid shall be the sole discretion of the Vice Chairman, DDA who does not bind himself to confirm to the highest bid and reserve to himself the right to reject all or any of the bid without assigning any reasons. Whatsoever and

the decision of the competent authority in this regard shall be final and binding and shall not be called into question in any proceedings. The Earnest Money Deposit (EMD) paid at the time of auction, shall be returned within 15 days of the rejection of the bid by the competent authority, without any interest if the bid offered is not accepted by the competent Authority and shall not be adjusted against any other scheme.”

8. Thus, the terms and conditions of auction left no doubt and were explicit that the Vice-Chairman had the right to reject or accept the highest auction bid and on the rejection of the bid by the Vice-Chairman, the earnest money paid at the time of the auction shall be returned within 15 days of the rejection of the bid but without interest. Rules 39 and 40 of the Nazul Rules are under Chapter IV and relate to allotment by tender. These Rules are not applicable to allotment by auction, which falls under Chapter III. I cannot read condition of fifteen days as stipulated in Rule 40 for final acceptance of tenders into Rule 29 for allotment by way of auction. In fact, the draftsmen while framing the Rules have specifically drawn a distinction between allotment by way of auction and allotment by way of tenders. In Rule 40, period of fifteen days has been specified for allotment by way of tender, but in Rule 29, which relates to allotment by way of auction, no time period has been deliberately specified.

9. Confirmation/rejection of the highest auction bid by the Vice-Chairman when no time period is specified, should be within reasonable time. The said

proposition is accepted and correct but, what is reasonable time, will depend upon facts and circumstances of each case. No specific period in form of number of days can be fixed by the Court and read into Rule 29. The Judgment relied upon by the learned counsel for the petitioner in ***Aman Hospitality Private Limited*** (supra) also states that where no time period is specified for an authority to act, the authority must act within reasonable time. This is accepted as being the desirable practice, both in respect of contractual matters and statutory enactments when no period of limitation is prescribed but period of limitation cannot be legislated by courts. In ***CCE versus Raghuvar (India) Ltd.*** reported in (2000) 5 SCC 308 it was observed:

“13. Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the courts to import any specific period of limitation by implication, where there is really none, though courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period.
“

10. The question is, whether the Vice Chairman had rejected the bid within reasonable time? The auction was held on 12th January, 2006 but the Vice-Chairman refused to accept/confirm the bid and this was informed to the

petitioner by letter dated 9th March, 2006. The time difference is not substantial or abnormal. We are all aware that governmental decisions take a little time as the files have to pass through several officers and a considered decision has to be taken. The file noting have been filed before me. These do not indicate any deliberate attempt to delay the file or not to process the case. I may note that several properties were put to auction and, therefore, each case was processed and examined after passing through several hands before the matter was put up before the Vice-Chairman. Vice-Chairman raised specific questions for examination of the case and on the basis of the material then produced before him, refused to confirm the bid. All this required time. I do not think that rejection of the bid by the Vice-Chairman can be regarded as being done beyond reasonable time.

11. Though the terms and conditions of auction gave absolute right to the Vice-Chairman to reject or accept the bid without assigning any reason, mandate of Article 14 of the Constitution of India requires the Vice-Chairman to act in a fair and just manner without any discrimination or arbitrariness. This Court while examining the question whether Vice-Chairman has acted arbitrarily, cannot reappraise the decision taken by the Vice-Chairman as an appellate authority and/or substitute its own opinion for that of the Vice-Chairman. Scope of judicial review in such matters is now well settled and I

need not increase the length of this judgment by reproducing the said decisions, except reproduce the six parameters or principles propounded by the Supreme Court in the case of ***Tata Cellular versus Union of India***, reported in AIR 1996 SC 11, which read as under:-

“94. The principles deducible from the above are :

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

12. The same principle have been reiterated by this Court in ***Aman Hospitality Private Limited*** (supra). The Rules give wide discretion, for which presently there are no guidelines. Exercise of power of judicial review in appropriate cases prevents mis-use and arbitrary use of power.

13. The Vice-Chairman while rejecting the bid has given the following reasons:-

“The reserve price was revised in the middle of 2005-06 and fixed to Rs.24.07 crore @ Rs.33,018/- per sq.mtr. On the basis of overall average auction rate of Pitampura for 2004-05 keeping in view the overall increase trend in market. Only single bid has been received of Rs.24,07,10,000/- Rs.33,019/- per sq.mtr. and is marginally above the approved reserve price. It is further noticed that auction of a plot in LSC at Deeplali(sic) Pitampura on outer Ring Road has fetched Bid at the rate of Rs.87022/- per sq.mtr. in the month of September, 2005. As such, the present bid rate through single bid @ Rs.33019/- per sq.mtr. is quite low of the market rates and does not seems [sic] to the worth considerable for acceptance.”

14. The above note can be now examined within the parameters of judicial review. It is an admitted case that only one bid was given and the bid price is just marginally above the reserve price and works out to Rs.33,019/- per square meter of the floor area ratio, i.e. the total area which can be constructed upon. It is admitted that the plot at Deepali, Pitampura is located about three kilometers away from the property in question and was sold in the

auction @ Rs.87,022/- per square meter for the Floor Area Ratio, which is almost 2.7 times the bid offered by the petitioner. No doubt that the plot at Deepali, Pitampura is located at the main road and, therefore, commanded better market value, but it cannot be said that the decision of the Vice Chairman was arbitrary or based on irrelevant considerations or was so irrational as to vitiate the decision. Some reduction in the market value can be visualized but the difference in the bids for the two plots was substantial 2.7% times and certainly a cause for concern. It is not the case where there was only marginal difference in the two prices. Further, only one bid was received. In the case of ***Aman Hospitality Private Limited*** (supra), the Finance Member had compared the bid price received for a hotel plot with commercial plots measuring 66 square metres to 121.05 square meters. The comparison was between two different types of properties. An important factor, which weighed on the mind of the Court was that during the pendency of the writ petition, the plot was put to re-auction but DDA was not able to fetch even the bid price that the petitioner therein had offered. This is not so in the present case as DDA in the counter affidavit has pointed out that another plot adjacent to the property was sold for Rs.32,04,30,000/- on 24th August, 2006. The said sale had taken place within a gap of about seven months and the bid price received is almost 25% more than the bid amount of the petitioner.

15. Learned counsel for the petitioner, during the course of hearing, submitted that the adjacent plot sold in August, 2006 cannot be compared with the property in question and in fact as the same was a freehold property and the plot size was 2677 square metres, whereas the plot in question is 2120 square meters. On this basis, it was submitted that price per square meter in the case of petitioner's bid works out to Rs.1,13,542/- per square meter and in the case of the adjacent freehold plot, Rs.1,19,698/- per square meter.

Learned counsel for the respondent was asked to take instructions on this aspect as the said figures were certainly glaring and a cause for concern. The respondent DDA has clarified and submitted a written note, photocopy of which was made available to the learned counsel for the petitioner that it is not the plot area alone but the FAR and the total built up area which determines the price of the plot. The plot sold in August, 2006 had total built up area of 7324.13 square meters and the rate per square meter on the bid amount of Rs.32,04,30,000/- comes to Rs.43,750/- per square meter. In the case of the petitioner the total permissible built up area was 7290 square meters and as per the bid of the petitioner of Rs.24,07,10,000/-, per square meter price works out to Rs.33,019/-. It has also been clarified in the said note that the reserve price is calculated by reducing the average auction price in the immediate preceding financial year by 10%. Normally, therefore, when there is an upward trend in the market, the bid amounts received should be higher

than the reserve price. This Court cannot also be oblivious to the fact that Rohini is a prestigious area that has been attracting investments and where land prices have been escalating.

16. Learned counsel for the petitioner had also drawn my attention to order dated 28th February, 2007 in this Writ Petition passed by a Division Bench of which I was also a member. The relevant portion of the order reads as under:-

“We also find a surprising variation in the bids in respect of plot numbers A-1 and B-1 at District Center, Netaji Subhash Place, Wazirpur held on 24th January, 2005. Though both the plots had the same reserve price i.e. Rs.34,10,00,000/- but one was auctioned at a price of Rs.100.2 crores and the other, for Rs.65 crores. The price difference of Rs.35 crores between the two plots seems to us, is rather substantial. DDA shall also explain this aspect in the affidavit to be filed.”

17. The above facts were noticed in view of the earlier detailed order dated 20th April, 2006 passed by the learned Single Judge referring the matter to the Division Bench on a wider issue relating to ground reality of acute shortage of commercial space in Delhi, which has led to violation of the zonal development plans and use of residential properties for non-residential purposes. The learned Single Judge noticed that there were almost 3.5 lacs commercial shops operating in Delhi from residential properties and thus DDA had completely failed to create necessary infrastructure and provide

commercial space as per needs and requirements of the society. It was observed that DDA is certainly entitled to augment its financial resources but this should not be by sacrificing its primary objective of providing adequate land for setting up commercial establishments. The learned Single Judge also noticed that this was the seventh attempt to sell plot and in the first five attempts, no bids were received. The observations made above are for the Government, Lieutenant Governor and the DDA to consider and take remedial steps. Difference in sale price of the two plots at Wazirpur and quoted in the Order dated 28th February, 2007 are startling and perhaps require a detailed study and examination by the respondents. In the additional affidavit filed by DDA it has been explained as under:-

“As regards the disparity between the prices of plot nos. A-1 and B-1 at District Centre, Netaji Subhash Place, Wazirpur, it is stated that the location of plot no. A-1 was superior to that of Plot No. B-1. Plot A-1 is on the cross-section of two main roads. One road is Ring Road and the other is a major road going to Madhuban Chowk, parallel to which is the Metro corridor at a short distance. On the other hand, Plot No. B-1 is on the back side of the District Centre and is opposite Shakurpur Colony. Also, the approach to Metro is not accessible from this plot.”

18. The reasons may require deeper examination, but I am not inclined to examine confirmation of bid in the said case of a third party, in the present case. These facts by itself would not justify allowing the present writ petition.

Wrong confirmation of auction in other cases, does not nullify right rejection of the bid in the present case. Article 14 has to be interpreted in a positive manner and cannot be a ground to allow a writ petition by holding that the wrong done in another case, should be followed. It is trite law that no equality can be claimed in an illegality.

19. In view of the above, I do not find any merit in the present writ petition and the same is dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)

JUDGE

MARCH 07, 2008.

VKR/P