

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

% Date of decision : 24.04.2009

+ LPA No.1635 of 2006

PURSHOTTAM KUMAR ...APPELLANT

Through: Ms.Richa Kapoor, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY ...RESPONDENT

Through: Mr. Rajiv Bansal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The appellant, a person belonging to the scheduled tribe, applied to the DDA for allotment of a shop under the SC/ST category in Zone E-6, Dilshad Garden, New Delhi. A draw of lots was held by the DDA on 08.05.2003 and shop no.18, LSC, Block O & P, Dilshad Garden, New Delhi was allotted to the appellant in terms of the allotment letter dated 30.05.2003. The allotment letter stated that as per the terms and conditions of allotment, 25 per cent of the premium was to be paid within 60 days while balance 75

per cent had to be paid in 24 equated monthly instalments inclusive of interest at the rate of 6 per cent per annum. The cost of the shop was stated to be Rs.11,59,500/- and the monthly instalments were quantified at Rs.38,550/-.

2. The appellant did not pay any amount, but approached the DDA stating that the price of the shop was not within his means.
3. It is the case of the appellant that on an enquiry, he found that a similar shop bearing no.19 in the same locality had been put in the tender at Rs. 10,43,550/- for the general category.
4. The appellant filed a WP(C) No.262/2004 before this Court stating the aforesaid facts and claiming that for reserve category candidates, there is a reduction of 10 per cent given over the average auction rate of commercially built up properties in the immediate preceding year and since the reserve price was Rs.40,000/- per square metre, the same was liable to be reduced by 10 per cent for fixing the price of the shop of the appellant.
5. The appellant claims that the basis for determination of the price was a Resolution No. 28 dated 12.03.1992 of the DDA relating to disposal of commercial properties. The appellant also claimed that the size of the unit to be allotted to the appellant was 27.60 metres whereas the shops to be allotted to the reserve category should not be more than 20 square metres. The action of the respondent is stated to be illegal on these two accounts and with these

averments, the writ petition was filed making the following prayers:

“ a) Issue a writ of mandamus thereby directing the Respondent-Authority to allot the shop to the Petitioner on the basis of Resolution contained in item No.28 dated 12.03.1992, and
b) A writ of Declaration declaring the act of the Respondent-Authority demanding from the Petitioner higher rate than the rate which has been worked out on the basis of the resolution contained in item No.28 dated 12.03.1992 as being arbitrary and illegal.”

6. The respondent-DDA resisted the writ petition. It was stated that the reserve price, size and locality was available as per annexure to the application and the appellant applied for a big shop by ticking the relevant column and thus the appellant sought a large size shop. In this behalf, it was stated that the appellant had also made a choice for a kiosk near Safdarjung Bus Terminal of which the reserve price was Rs.61,72,000/- and thus it has been pleaded that the claim of the appellant that the commercial space in question is too expensive for him is clearly an afterthought. Insofar as the Resolution No.28 dated 12.03.1992 was concerned, it was pointed out that the same stood superseded by the Resolution No.69 of 2002 dated 18.06.2002 and that the reserve price was fixed by the Price Fixation Committee as per that Resolution. In terms of the Resolution No.69 of 2002, it had been resolved that for a relevant financial year, the price would be fixed by taking the average rate of auction fetched by the DDA in the previous calendar year to ensure that the reserve price is fixed by 1st April. The application of the appellant was

deposited on 11.03.2003 and thus it was in the financial year 01.04.2002 to 31.03.2003. The price had to be fixed as per the calendar year 01.01.2001 to 31.12.2001. The differential in price with Shop No.19 is stated to be on account of the fact that the tender for the same was floated in October, 2003 and thus it came in the financial year 01.04.2003 to 31.03.2004 and thus the price fixation had to be done on the basis of the calendar year 01.01.2002 to 31.12.2002. There was thus a differential in the average auction rate for the two calendar years which were the reckoning years for determining the prices in the relevant financial years.

7. The writ petition filed by the appellant has been dismissed as per the impugned order dated 16.05.2006. The learned Single Judge has accepted the contentions of the DDA as made aforesaid. It has been pointed out that the appellant had the option for various properties and had given his options taking into consideration the price notified which could not be questioned. The third option given by the appellant was for two kiosks near Safdarjung Bus Terminal for the notified prices of Rs.61,72,000/- and Rs. 29,34,000/- respectively for kiosk no.1 and kiosk no.5. The appellant, thus, could not have made such an option without having the means for the same. The price of the shop in question was only Rs. 11,59,500/- which was known to the appellant. The learned Single Judge has concluded that the appellant could not predicate his claim on the reserve price fixed for a subsequent year. In the facts of the case, the prices had

fallen and if the prices had increased, the appellant would not have come to the Court claiming that he wanted to pay more. This is apart from the fact that the prices were notified to all.

8. We have heard learned counsel for the appellants at length.
9. Learned counsel for respondent-DDA has pointed out that to some extent the appellant has tried to make out a new case in the appeal other than what was pleaded in the writ petition.
10. The appellant has sought to challenge the prices fixed by the Price Fixation Committee. It is the case of the appellant that the relevant date would be the date of allotment and since the draw was held on 08.05.2003, the relevant financial year should be 2003-04.
11. The appellant has also sought to place reliance on an Order passed on 14.12.2004 in the same writ proceedings by the same learned Single Judge pointing out the discrepancy in the pricing. It is pleaded that the learned Single Judge ought to have considered that even a big shop meant only of 15-20 square metres.
12. We have examined the contentions of the learned counsel for the appellant on the basis of the record and find no force in the same.
13. The first and foremost fact which cannot be lost sight of is that the shop in question is a commercial one in which the reserve price was indicated in the brochure itself. The appellant had full knowledge of the price before he sought allotment. It was not a case of tender, but of allotment.

The allotment to a SC/ST category applicant has to be made at current reserve price. It is no doubt true that in the form the appellant had opted for a big shop and a big shop is defined to be one which is between 15-20 square metres while a small shop is less than 15 square metres.

14. The real grievance of the appellant before the learned Single Judge, as is apparent from the prayer clause, was that the pricing for the shop allotted to the appellant should be on the basis of the Resolution No.28 dated 12.03.1992. This plea stands negated in view of the documents filed with the affidavits of the respondent which show that the said Resolution stands superseded by a subsequent Resolution no.69 of 2002. The Price Fixation Committee determined the pricing as per Resolution No.69 of 2002 dated 18.06.2002. The Resolution No.69 of 2002 undoubtedly had prospective effect. The application of the appellant was deposited on 11.03.2003 which was much after Resolution No.69 of 2002 came into force. Thus, it cannot really be disputed that it is the Resolution 69 of 2002 which would be applicable to the case of the appellant.

15. The Resolution No.69 of 2002 resolved that for the relevant financial year, the price would be fixed by taking the average rate of auction fetched by the DDA in the previous calendar year to ensure that reserve price is fixed by 1st April. Since the Resolution No.69 of 2002 came into force in June, 2002, the period for which it would be applicable would only be post the date of the Resolution dated

18.06.2002. The price fixation would have to be on the basis of the average auction rate for the previous calendar year which would be the year 2001 as the financial year in question in which the application was made was 01.04.2002 to 31.03.2003. The application of the appellant was, in fact, made towards the tail end of the financial year. The reduction of price by 10% for SC/ST has been done away with.

16. The result of the aforesaid is that the very substratum of the challenge by the appellant does not exist as the price fixation is governed by different Resolution i.e. Resolution No.69 of 2002 and the price has been properly fixed as per the said Resolution by the Price Fixation Committee.
17. The plea of discrimination is not sustainable for the reason that the differential in price occurred on account of the fact that the tender for shop no.19 was floated in October, 2003 and thus the relevant financial year became 01.04.2003 to 31.03.2004 making the year 2002 as the relevant calendar year. There were thus two different calendar years applicable in respect of the shops and the average auction rates varied for the two calendar years. It so happened that the average auction rate for the subsequent calendar year was less and thus the reserve price for shop no.19 was lower than the price of shop no.18 of the appellant. We thus find no infirmity in the same.
18. We also find force in the conclusion of the learned Single Judge that the appellant considered himself monetarily capable of bidding for the kiosks nos. 1 and 5 at the

Safdarjung Bus Terminal for which the notified prices were Rs.61,72,000/- and Rs.29,34,000/- which were much higher than the price for shop no.18 of Rs.11,59,500/-. It is not in dispute that the shop in question is a new unit and thus the pricing policy for the new units would have to be made applicable to shop no.18 and not the policy relating to old and undisposed units. The principles applicable to old and undisposed units including the date of draw forming the basis of pricing would also thus not *ipso facto* apply to new units. The Resolution No.69 of 2002 is also quite clear as to how the pricing has to take place for the new units on one hand and for old & undisposed units on the other.

19. The reliance placed by learned counsel for the appellant on an earlier order passed by the learned Single Judge in the same proceedings is of no assistance as the learned Single Judge was only stating what appeared from the pleadings and it called upon the DDA to explain the stand better. The correct stand was put forth before the learned Single Judge and he came to a final conclusion on the basis of the impugned order. It is not as if the writ petition had been disposed of vide order dated 14.12.2004, relied upon by the learned counsel for the appellant, but the Vice Chairman, DDA had been asked to look into the matter. The final order passed dismissing the writ petition is the impugned order.
20. We may notice that the appellant has not deposited a penny, as informed to us, over the last six years, but kept

on challenging the pricing when he had applied for the shop with his eyes open knowing fully well the pricing thereof.

21. The pricing has been found to be correctly calculated as per Resolution applicable i.e. Resolution No.69 of 2002 dated 18.06.2002 and not Resolution No. 28 dated 12.03.1992 which stood specifically superseded. The only basis of the writ petition was this Resolution no.28 dated 12.03.1992 as is apparent from the prayer clause. The appellant has, in fact, kept the shop blocked for all these six years.
22. We find no merit in the appeal and the same is dismissed with costs quantified at Rs.11,000/-.

SANJAY KISHAN KAUL, J.

April 24, 2009
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SUDERSHAN KUMAR MISRA, J.