

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 22.09.2009

+ **LPA 695/2008**

RITNAND BALVED EDUCATION FOUNDATION Appellant

- versus-

DDA Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Yadav with Mr. Rajan
Chawla and Mr. A.P. Singh, Advocates.
For the Respondent : Mr. Rajiv Bansal, Advocate.

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the 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 Digest?

BADAR DURREZ AHMED, J (oral)

1. The appellant is aggrieved by the judgment/order dated 02.09.2008 passed by a learned Single Judge of this court in W.P.(C) No. 6394/2008 whereby the petitioner's writ petition was dismissed on the ground of delay and laches. The appellant had filed the said writ petition, inter alia, seeking a writ, order or direction for quashing two letters both dated 03.04.2006 whereby the respondent-DDA had rejected the bids of the petitioner in respect of two institutional plots at Sector-12 and Sector-17, Dwarka, New Delhi, both measuring 12141 sq. mts.

2. The brief facts are that an auction notice was taken out by the DDA in respect of 12 plots which were to be auctioned on 06.03.2006. The appellant participated in the auction in respect of three plots which found mention at serial nos. 4, 5 and 7 of the said auction notice. The reserve price in respect of two plots both measuring 12141 sq. mts. at Sector-12 and Sector-17, Dwarka was fixed at Rs 26,83,88,946/- each. The third plot was also in Sector-17, Dwarka but was of a smaller size. It had an area of 2,000 sq. mts. and the reserve price for the same was Rs 4,42,12,000/-. As per the condition of the auction, the successful bidder was required to deposit, at the fall of the hammer, 25% of the bid amount as Earnest Money Deposit (EMD) through Demand Draft or Pay Order with the Central Bank of India or State Bank of India, Vikas Sadan, INA, New Delhi. It is an admitted position that insofar as the aforesaid three plots are concerned, the appellant was the highest bidder. It is also an admitted position that immediately on the conclusion of the auction on 06.03.2006, the appellant submitted a total amount of Rs 19,07,25,000/- representing 25% of the bid amount in respect of all the three plots. Insofar as the smaller plot at Sector-17, Dwarka is concerned, the appellant gave a bid of Rs 14,28,00,000/- and submitted 25% of the bid amount of Rs 3,57,00,000/-. Insofar as the Sector-12 plot at Dwarka is concerned, the appellant's bid amount was Rs 33,01,00,000/- and he furnished an EMD of Rs 8,25,25,000/-. With regard to the other Sector-17 plot at Dwarka, the appellant made a bid of Rs 29,00,00,000/- for which he deposited an EMD amounting to Rs 7,25,00,000/-.

3. By a letter dated 28.03.2006, the respondent-DDA confirmed the appellant's bid in respect of the smaller plot at Sector-17, Dwarka. Through

the same letter, the respondent-DDA requested that the balance amount of Rs 10,71,00,050/- be paid within 90 days from the date of issue of the said demand-cum-allotment letter. We are told by the counsel for the parties that the said balance amount has not yet been paid. Insofar as the other two plots are concerned, the appellant received the two impugned letters, both dated 03.04.2006, informing the appellant that the competent authority, after due examination, had rejected the bids for the said plots and that the earnest money was being refunded at the earliest. It is an admitted position that immediately thereafter, the entire earnest money deposited by the appellant in respect of both plots was refunded to the appellant and the same had been accepted by the appellant without any demur.

4. On 17.04.2006, a learned Single Judge of this court decided a batch of writ petitions which included W.P.(C) No. 16691-92/2004 entitled ***Society for Employment and Career Counselling vs. Chairman, DDA and Others.*** Before the learned Single Judge, in the said batch of writ petitions, the main issue that arose for consideration was whether the 'policy decision' of 15.12.2003 taken by the DDA to allot land for establishing technical/higher education institutes 'only' through the process of tender/auction would apply to societies also. The contention that was raised before the learned Single Judge was that Rule 5 of the DDA (Disposal of Developed Nazul Lands) Rules, 1981 as amended up to date did not include societies within its ambit and, therefore, land to societies could be allotted by the DDA as per its earlier policy of going through the institutional committee recommendation and not through auction 'alone'.

5. The learned Single Judge accepted this plea. The operative portion of the judgment dated 17.04.2006 in the said batch of writ petitions reads as under:-

“46. Writ petitions stand disposed of declaring that the petitioners would be entitled to be considered for allotment of Nazul Land under Rule 5 of the DDA (Disposal of Developed Nazul Lands) Rules, 1981 for setting up higher/technical institutes at a premium determined by the Central Government. Policy decision dated 15.12.2003 in so far it requires allotment of Nazul land to societies for setting up higher/technical institutes at a premium determined through auction is quashed. Mandamus is issued to DDA to identify available plots for setting up higher/technical institutes and apportion the same for allotment to societies (falling in one class) and companies, firms and trusts (falling in second class); simultaneously, DDA would identify the societies whose entitlement has been cleared. If plots to be allotted to societies are more than the number of eligible societies, specific plot be allotted within a period of 3 months from today and premium charged as determined by the Central Government. If number of societies exceed the number of available plots, DDA is directed to evolve a reasonable criteria and as per criteria allot the specified listed plots to the eligible societies within 3 months.”

6. Counsel for the parties inform us that cross Letters Patent Appeals have been filed against the said judgment dated 17.04.2006 and are pending before a Division Bench of this court.

7. Two days after the said decision dated 17.04.2006, the said Rules were amended on 19.04.2006. By virtue of the amendment brought about on 19.04.2006, societies were also included insofar as disposal of lands through auction are concerned. The appellant has challenged the said amendment by way of a writ petition being W.P.(C) No. 2826/2008 which is pending before a Division Bench of this court.

8. The learned counsel for the appellant submitted that on 05.06.2006, the appellant had addressed a letter to the DDA seeking certain clarifications. In particular, the appellant sought a clarification as to what would be the fate of the auction dated 06.03.2006 in view of the “*quashing of the policy decision for allotment by auction dated 15.12.2003 by the Hon’ble High Court in the aforesaid judgment.*” In response to this, the DDA sent a letter dated 08.06.2006. The stand taken by the DDA was that the directions given in the judgment dated 17.04.2006 were in respect of the parties before the court in that batch of writ petitions. The DDA also took the stand that subsequent to the said judgment, the Government of India had issued a notification dated 19.04.2006 clearly notifying that the mode of disposal of higher/technical institutions was through auctions. In the said letter, the DDA also informed the appellant that the DDA had conducted the auction with the permission of the High Court as per its order dated 03.03.2006 in the same batch of writ petitions. The DDA also took a clear stand that the auction conducted was valid and that the judgment dated 17.04.2006 related only to the parties in those writ petitions and not to the appellant.

9. Thereafter, there is no further correspondence till the filing of another writ petition [W.P.(C) No. 10896/2006] by the appellant on 11.07.2006. The main prayer in the said writ petition was as follows:-

“(a) a writ of Mandamus or any other appropriate writ, order or direction in the nature thereof thereby directing the Respondent to refund with interest at 12% per annum, the amount of Rs.3,57,00,000/- (Rupees Three Crores and Fifty Seven Lacs), deposited as an earnest money, in respect of the plot of land for construction of Technical and Higher Educational Institute at Sector-17, Dwarka,

measuring 2000 sq. meters, in the auction;”

10. It is clear from the said prayer that the appellant, in W.P.(C) No. 10896/2006, is seeking refund of the earnest money deposit of Rs 3,57,00,000/- in respect of the smaller plot, contending that the auction held on 06.03.2006 was not valid. It also sought a declaration that the auction be declared to be null and void in respect of the smaller plot measuring 2000 sq. mts. in Sector-17, Dwarka. No prayer was made with respect to the two plots which are the subject matter of the present appeal. The learned counsel for the appellant drew our attention to three orders passed by the learned Single Judge hearing W.P.(C) No. 10896/2006 on three dates – 01.09.2006, 04.10.2006 and 14.05.2008 in an attempt to submit that there was confusion in the matter and it is for this reason that the appellant had not challenged the rejection of the bids in respect of the two plots which form the subject matter of the present appeal. It is clear upon reading the said orders that they pertain only to the subject matter of W.P.(C) No. 10896/2006 and which, as has been pointed out above, relates only to the smaller plot in Sector-17, Dwarka, which had been confirmed in favour of the appellant but, in respect of which, the appellant has, till date, not paid the balance amount.

11. The learned counsel for the appellant also drew our attention to a letter dated 30.03.2007 which was addressed to the Union Minister for Urban Development, Government of India in which the appellant raised all issues with regard to the three plots including the two plots which are in question in the present appeal.

12. We now return to the impugned order passed by the learned Single Judge. The appellant's writ petition [W.P.(C) No. 6394/2008] was

dismissed by the learned Single Judge on the ground of delay and laches as also on the ground that it was clear from the conduct of the petitioner itself that it was not interested in securing the two plots in question. We have gone through the entire impugned judgment and we may say straightaway that we do not find any infirmity in the same. We have also given a detailed resume of the facts to clearly indicate that when the appellant received the two rejection letters both dated 03.04.2006, the appellant did not protest against the same. On the contrary, the appellant accepted the rejection as also the refund of the earnest money deposited by it in respect of the said plots without any demur. We have also seen that from 03.04.2006 right up to 30.03.2007 when the letter was written to the Union Minister, there is no protest with regard to the rejection of the bids in respect of the two plots. When the petitioner was able to file a petition on 11.07.2006 requesting for refund of the earnest money deposited in respect of the smaller plot in Sector-17, Dwarka, nothing prevented the appellant from also filing a writ petition challenging the rejection of its bids in respect of the other two plots. Perhaps the appellant felt that such a petition challenging the rejection of the bids would be construed as being clearly contrary to W.P.(C) No. 10896/2006 in which the appellant sought a refund of the EMD of Rs 3.57 crores and also sought a declaration that the auction dated 06.03.2006 be declared as null and void. In fact, if the prayers in the present writ petition [W.P.(C) No. 6394/2008] were to be placed alongside the prayers in W.P.(C) No. 10896/2006, it would be apparent that the same are contradictory. The appellant, on the one hand, is requesting this court, by way of the present appeal, for a direction accepting the bids made in respect

of the two plots in question held under the very same auction dated 06.03.2006 and, on the other hand, in W.P.(C) No. 10896/2006, the petitioner is seeking a declaration that the auction held on 06.03.2006 be declared as null and void.

13. Apart from the fact that the appellant is taking apparently contradictory stands, the fact remains that the letters dated 03.04.2006 remained unchallenged by the petitioner till the filing of the present petition (W.P.(C) No. 6394/2008) on 01.09.2008. Thus, we find that the impugned order of the learned Single Judge does not call for any interference both on the ground of delay and laches as well as on the ground that the appellant had clearly by his conduct accepted the rejection of the bids and had also accepted refund of the earnest money deposited, without any demur. Consequently, the appeal is dismissed.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

SEPTEMBER 22, 2009
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