

* HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7341/2008 & CM 14227/2008**

% Date of decision : 05.03.2009

IN THE MATTER OF :

#SANDIP SOOD

!

..... Petitioner

Through: Ms. Richa Kapoor, Advocate

versus

\$D.D.A.

^

..... Respondent

Through: Mr. Rajiv Bansal, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (ORAL)

1. This writ petition is filed by the petitioner praying inter alia for directions to the respondent/DDA to provide basic amenities in the Local Shopping Complex at Sector 5, Dwarka, New Delhi, and to repair the shop bearing No. 5, LSC, Sector 5, plot No. 18/12, ground floor, allotted in the tender to the petitioner. The second relief sought by the petitioner is for directions to the respondent/DDA to pay interest @ 10% on the amount deposited by the petitioner till the basic amenities are provided and repairs

carried out in the shop.

2. Facts of the case are that the respondent invited tenders in March, 2008 in respect of the shops including the shop, subject matter of the writ petition. In response thereto, the petitioner applied to the respondent and was declared the highest bidder in respect of the aforesaid shop in question on 28.03.2008 for a bid amount of Rs.28 lacs. The petitioner paid 25% of the bid amount as earnest money, i.e., Rs.7 lacs on the date of the finalization of the bid. Vide letter dated 21.04.2008, the respondent issued a demand letter to the petitioner demanding the balance payment of 75% of the bid amount, i.e., Rs.21,00,045/- to be paid on or before 20.05.2008, with a condition that thereafter interest would be chargeable @ 15% for every 15 days and for the next 180 days failing which, the earnest money shall be forfeited.

3. Counsel for the petitioner states that a further amount of Rs.7 lacs was deposited by the petitioner with the respondent on 14.10.2008, i.e., within the time permitted by the respondent on payment of interest, thus leaving a balance amount of Rs.14 lacs payable by the petitioner. It is contended on behalf of the petitioner that looking at the condition of the shop in question, the petitioner wrote a letter dated 30.09.2008 to the respondent requesting it to repair the shop in view of the fact that the walls of the shop were damaged, there were no electricity fittings, there existed no water or street lights, the floor, both inside and outside of the shop was

damaged and there were no toilet facilities in the market for the purposes of running the shop. As the respondent/DDA failed to take any action on the request of the petitioner, the petitioner filed the present writ petition.

4. Notice was issued on the present petition on 17.10.2008 on which date, the respondent accepted the notice and sought time to file reply. On the interim application filed by the petitioner, it was ordered that, subject to the petitioner depositing the balance sale consideration in the Court within one week, the earnest money of the petitioner would not be forfeited by the respondent and the allotment in respect of the shop would not be cancelled. In the meantime, the respondent was directed to undertake the complete repair work in relation to the shop in question and provide the basic amenities, without prejudice to its right. It was further ordered that in case the aforesaid work was completed by the respondent, it may place photographs on the record and seek orders for release of the amount deposited in the Court. Simultaneously, the petitioner had filed an application for seeking appointment of a Local Commissioner to report the condition of the shop in question. The collective fee of the Local Commissioner was fixed at Rs.15,000/- in the present case and in WP(C) 7349/2008.

5. The Local Commissioner carried out an inspection of the area in question and filed his report dated 01.11.2008 confirming that the shops, subject matter of the present writ petition and WP(C) 7349/2008, were not

in a fit condition for running any business therefrom. It was pointed out that the shutter rolling systems were non-operational; there were no rolling covers inside the shops; the iron shutter was in broken condition, patches of seepage were noticed in the ceiling of the shop; conduit pipes for electricity connection were yet to be installed; the gang box, electric switches and wiring were yet to be installed; the open places provided adjacent to the Local Shopping Centre were found to be not maintained; the boundary wall was found to be in broken condition; the drain/sewer holes were filled up with sand and dirt; the bathroom and toilet were without doors & windows and not properly maintained; there was no water or electricity in the toilet and the bathroom; the feeder cables were not installed to the common electric meter box and the electric meter boxes were without cover. Thus, the Local Commissioner reported that basic necessities/amenities were not available for running the business from the shops.

6. Pursuant to the aforesaid report of the Local Commissioner, the respondent/DDA filed its counter affidavit dated 12.02.2009 admitting therein that the shops in question require some repairs. However, it is contended on behalf of the respondent that the petitioner is expected to have inspected the shop before submitting a tender therefore in accordance with the terms and conditions of the tender and since the shop was being sold on an 'as is where is' basis, the petitioner cannot take a plea that he was unaware of the site condition. It was also contended on behalf of the

respondent that the petitioner could not have avoided payment of the consideration amount of the shop merely because it was not in a good condition.

7. It is pertinent to note that the petitioner has filed another application, being CM 3143/2009 enclosing therewith the current photographs of the shop in question, which still show that a large amount of repair work is required to be undertaken in the said shop to enable the petitioner to run his business therefrom and the toilet block in the complex and the common areas therein are required to be repaired. Looking at the condition of the shop and the peripheral area, as is apparent from a perusal of the recent photographs filed by the petitioner and those filed along with the writ petition as also by the Local Commissioner alongwith his report, there is no doubt about the fact that the petitioner could not have been in a position to run his business from the shop in question in the condition, in which it was. The respondent cannot be permitted to take advantage of the clause contained in the terms of tender to the effect that the shop is being sold on an 'as is where is' basis, when it is the duty of the respondent to make the Shopping Complex reasonably presentable for any shopper to approach the Shopping Complex, much less for the petitioner to start his business from the said Complex. The condition of the Shopping Complex as is reflected from the photographs filed by the Local Commissioner with his report as Annexures 1 to 2 collectively is, to say the least, appalling.

8. In the aforesaid facts and circumstances, the respondent is directed to take immediate steps to repair the shop in question, allotted to the petitioner and provide basic amenities in the shopping complex in question including the common areas, within a period of eight weeks from today, whereupon the respondent shall be entitled to release of the balance 50% earnest money deposited by the petitioner in Court as per order dated 17.10.2008.

9. Insofar as the claim of the interest by the petitioner from the respondent is concerned, in view of the facts and circumstances of the case, ideally the respondent ought to be called upon to pay interest on the 50% amount deposited by the petitioner with the DDA, till the shop is made fit for use. However, as per the demand letter dated 21.04.2008, the petitioner is also required to pay interest @ 15% per annum after expiry of 30 days from the date of the demand. Admittedly, the petitioner has not paid the 75% of the bid amount within 30 days. In these circumstances, the equities are balanced by holding that neither the petitioner, nor the respondent shall pay any interest to each other. It is further clarified that in case the respondent/DDA does not undertake the task of repairing the shop and providing basic amenities in the Local Shopping Complex, Sector-5, Dwarka within the stipulated time, as indicated by the Local Commissioner in his report, the respondent shall be liable to pay interest @ 9% per annum on the amount lying deposited with it.

10. It is further ordered that the amount deposited by the petitioner in the Court shall be placed in a FDR by the Registry forthwith, initially for a period of three months to be renewed thereafter, from time to time, till further orders. The aspect of release of interest earned on the aforesaid amount shall be considered at the time of releasing the amount to the respondent in terms of the order dated 17.10.2008. It is further ordered that taking into consideration the fact that the Local Commissioner's report clearly established the contention of the petitioner that the respondent/DDA was grossly in default in repairing the shop, the fee of the Local Commissioner shall be borne by the respondent/DDA by reimbursing the said amount to the petitioner through counsel within four weeks.

11. The writ petition is disposed of alongwith the pending application.

12. List in the category of 'directions' for compliance on 20.07.2009.

HIMA KOHLI,J

MARCH 05, 2009
rkb