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

+ W.P.(C) 477/2010

Judgment dated 22.02.2010

IDEAS PLUS INK CONSTRUCTIONS (P) LTD Petitioner
Through: Ms.Suruchi Aggarwal, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY AND ORS Respondent
Through: Mr.Rajiv Bansal, Advocate

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI**

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?

G.S. SISTANI, J. (ORAL)

1. The facts of this case, as set out in the writ petition, are that the DDA had advertised for auction of plots at Jasola, Pocket-II on 25.03.2008. Petitioner is stated to have taken part in the auction for plot bearing No.132, Pocket-II, Jasola, Delhi measuring 150.14 sq. meters. The reserve price was fixed for the said plot at Rs.3,25,18,200/-. The petitioner deposited 25% of the bid amount, amounting to Rs.90.0 lacs. On 25.4.2008, respondent – DDA issued a demand notice to the petitioner for payment of the balance 75% amount and due date fixed was 21.07.2008. By letter dated 13.06.2008 petitioner requested the respondent for extension of time for arranging of funds for making the balance payment.
2. Counsel for the petitioner contends that respondent no.1 had failed to honour the assurances and commitments made with regard to providing 24 meters wide road for which DDA had charged extra premium. The DDA failed to grant extension of time for deposit of 75% premium. By letter dated 10.10.2008

petitioner again requested for time for making arrangement for balance payment. The respondent considered the request of the petitioner and granted extension of time for 180 days by letter dated 13.12.2008 and time was extended upto 17.01.2009 for depositing balance 75% of the premium of the plot along with the interest.

3. Admittedly, the petitioner did not deposit the balance 75% of the amount. The petitioner thereafter issued a legal notice dated 07.07.2009 to the DDA making a demand for refund of 25% of the amount deposited by the petitioner with interest @ 18% per annum.
4. The grievance of the petitioner is that respondent has not taken any action for removing the encroachment on the road which is yet to be constructed nor pocket-III, Jasola has been developed. Subsequently by communication dated 30.10.2009 respondent no.3 addressed a letter to the petitioner stating therein that since the balance amount in respect of plot had not been made, petitioner's case would be processed as per terms and conditions of the auction and earnest money would be forfeited. By the present petition, petitioner has made the following prayers:

“(i) A writ of Certiorari quashing the illegal notice dated 30.10.2009 whereby the petitioner has been threatened with forfeiture of the earnest money.

(ii) A Writ of Mandamus directing the DDA to develop the village beyond pocket 2, Jasola as pocket 3, Jasola and for which purpose the entire village was sealed on 8.1.2008.

(iii) A Writ of mandamus commanding the DDA to honour the terms and conditions and to develop the 80 ft. (24 mtr) wide road between pocket 2 and pocket 3, Jasola.

(iv) A writ of certiorari quashing the action of the DDA in not providing the 24 mtr. wide road in front of the plots allotted to the petitioner, as shown in the approved layout plan of the area, after demand and receipt of the extra premium for the same, being illegal, arbitrary, malafide, unjust, discriminatory and in violation of the Rules and Regulations and the

terms and conditions of the auction and specifications of the terms and conditions of the auction and specifications of the plot and area and the principles of equity, justice and good conscience.

(v) A writ of mandamus, commanding the DDA to forthwith remove unauthorized construction and encroachment from the area 24 mtrs. wide road in Jasola, Pocket 2, complete the same and make it available to the petitioner at the earliest and within a time bound time.

(vi) A Writ of Mandamus directing the DDA to refund the amount of Rs.90,00,000/- with interest thereon from 25.3.2008."

5. Counsel for petitioner submits that on the one hand DDA has failed to provide 24 meters wide road and on the other hand DDA is demanding balance 75% of the amount.
6. Counsel for the DDA has entered appearance and has vehemently opposed this petition on the ground that the plot in question was auctioned by the DDA on as is where is basis. He further submits that there is no proposal on behalf of the DDA to reduce the width of the road or not to lay the road. He also submits that in a connected writ petition No.4426/2008 this Court had passed the following order:

"O R D E R
08.12.2009

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1. With the consent of counsel for the parties, present petition is set down for final hearing and disposal. The grievance of the petitioner as set out in the petition is that respondent – DDA is contemplating to shorten the width of the road from 24 meters in front of the plots allotted to the petitioner as shown in the approved layout plan of the area, although the DDA has received extra premium for the same. Even otherwise, it is contended that the act of shortening the width of the road is in violation of the rules and regulations and the terms and conditions of the auction and specifications of plots. Petitioner also seeks a direction for removal of unauthorized construction and encroachment from the area 24 meters wide road in Jasola, Pocket-2, Delhi.
2. Counsel for respondent –DDA on instructions submits that there is no proposal of the DDA to reduce the width of the road, subject matter of this writ petition.
3. Counsel for respondent –DDA, however, submits that a

portion of the area part of Khasra No.268 min has been acquired but physical possession of the same has not been handed over to the DDA by the LAC and further part of Khasra No.272 min (200 sq. yds.) which is also subject matter of the acquisition, physical possession of the same has also not been handed over to the DDA. In absence of these areas having been handed over to the respondent –DDA, there is some likelihood of the road being shorten on these points alone.

4. In view of the stand taken by counsel for respondent – DDA, no further orders are required to be passed. DDA shall be bound by the statement made by their counsel in court today.

CM NO.7062/2009.

5. Dismissed, as infructuous.”
7. Counsel for the DDA further submits that present petition is a gross abuse of the process of the court. It is submitted that the petitioner has failed to make the balance payment and the earnest money deposited stands forfeited. He submits that by letter dated 13.06.2008, petitioner had sought extension of time for making the payment only on the ground that they were in the process of arranging funds. The request was rejected by the DDA on 17.07.2008 on the ground that no genuine reason for extension of time was mentioned in the letter. By a subsequent letter dated 10.10.2008 petitioner again sought extension of time for making payment on the ground that due to current market situation they were unable to arrange funds to make the balance payment. Three months extension was sought on the ground that petitioner was in the process of making arrangement. DDA acceded to the request of the petitioner and granted extension of 180 days, subject to payment of 15% interest per annum. Despite the extension granted, the petitioner did not make the payment. Consequent thereto, as per the terms and conditions of the auction, the respondent has forfeited the earnest money.
8. I have heard counsel for the parties. Great emphasis has been laid by counsel for the petitioner that despite the extra premium paid, the respondent has not laid 24 meters road for which the DDA should be asked to give an undertaking. Counsel has also

sought a direction during the course of hearing to the DDA to grant extension of time.

9. The basic facts are not in dispute. Petitioner participated in the auction conducted by the DDA on 25.3.2008. Reserve price of the plot was fixed at Rs.3,25,18,200/-. Petitioner deposited Rs.90.0 lakhs being 25% of the bid amount. The balance 75% was to be deposited by the petitioner by 21.07.2008. Petitioner sought extension of time to make the payment vide letter dated 13.6.2008, which was rejected by the DDA as there was no ground mentioned in the letter for extension of time. Petitioner again requested DDA for extension of time to make the payment vide letter dated 10.10.2008 on the ground that due to current market situation they were unable to arrange funds to make the balance payment. Three months extension was sought on the ground that petitioner was in the process of making arrangement. DDA acceded to the request of the petitioner and granted extension of 180 days, subject to payment of 15% interest per annum. Despite the extension granted, the petitioner did not make the payment. In both the letters seeking extension of time petitioner did not raise the ground that 24 mt. wide road was not being developed by DDA nor any ground was raised with regard to unauthorized construction. Grounds sought to be raised in the present petition by the petitioner herein is an afterthought. In a connected writ petition, DDA has already given an undertaking to this court that there is no proposal of DDA to reduce the width of the road. Order passed in WP(C)No.4426/2008 has been extracted above. During the course of hearing of this petition, counsel for DDA had reiterated the statement made in the earlier writ petition [WP(C)No.4426/2008] that there is no proposal to delete the road from the lay out plan.
10. The terms of payment are a matter of contract between the petitioner and the DDA. Terms of a contract cannot be varied or altered by this Court. Taking into consideration the stand of the DDA that the earnest money deposited by the petitioner stands

forfeited due to non-payment despite extension being granted by DDA, present petition is dismissed.

11. Counsel for petitioner, at this stage, submits that petitioner wishes to make a representation to the DDA for extension of time for making the payment. In case any representation is made by the petitioner, DDA shall consider the same in accordance with law.

CM.No.997/2010 (STAY)

12. In view of order passed in the writ petition, application stands disposed of.

February 22, 2010
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G.S. SISTANI, J.