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

% Judgment Delivered on: 01.06.2010

+ W.P.(C) 10428/2009

A.K. MALHOTRA & ANR. Petitioners

Through : Mr. Puneet Agrawal, Adv.

versus

DDA Respondent

Through : Ms. Geeta Mehrotra, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Rule. With the consent of counsel for the parties, writ petition is set down for final hearing and disposal.
2. Brief facts of the case, which have led to the filing of the present petitions, are that on 20.12.1988 petitioners submitted their bid for auction and allotment of a shop bearing no.6, measuring no.5 sq. mt., in Shopping Centre C/o 112 MS (SFS Flats), Katwaria Sarai, New Delhi. The bid was submitted by the petitioners jointly for a sum of Rs.48,000/- and being the highest bid the same was accepted. A sum of Rs.12,000/- was deposited by the petitioners on the spot towards the earnest money as per terms and conditions. Petitioners received a communication dated 25.1.1989 addressed by the DDA to the petitioners requiring them to deposit the balance amount of the shop, in question, which was Rs.36,000/- + Rs.17.50p. towards the ground rent + Rs.17.50p. towards maintenance charges plus Rs.45/- towards document charges.

3. It is the case of the petitioners that they deposited the total amount of Rs.36,000/- in cash on 23.2.1989 vide Challan no.47224 at State Bank of India, I.P. Estate, New Delhi. It is also the case of the petitioners that a third copy of the challan was sent to the respondent, as required by the DDA. The petitioners received a default notice dated 4.4.2009 from the DDA that they have not deposited Rs.36,080/- and also threatened to cancel the bid. On 11.4.1989 petitioners informed the respondent DDA that the above payment was made on 23.2.1989 and the respondent DDA was also supplied a third copy of the challan, which fact is disputed by counsel for the respondent DDA. Petitioners received another default notice dated 21.6.1989 alleging non-deposit of the amount which was replied to by the petitioners on 27.7.1989. Petitioners were again called upon by the DDA on 30.1.1997 to furnish third copy of the challan failing which the bid would be cancelled.
4. Counsel for the petitioners submits that the petitioners have personally met the officials of the DDA in the year 2001 and also submitted certain documents to the DDA. Petitioners addressed several letters to the DDA. As no satisfactory response was received by the DDA, petitioners have been forced to file the present writ petition.
5. Present petition is opposed by counsel for the DDA, firstly, on the ground of delay and laches. Counsel for the respondent submits that the auction was conducted in December, 1988, and as per the terms and conditions of the auction the petitioners were to pay the balance 75% of the amount of tender within 30 days, which communication was addressed to the petitioners on 25.1.1989. Counsel further submits that the petitioners failed to submit a third copy of the challan as per the terms and conditions of auction. Counsel for the respondent DDA relies upon Clauses 10 and 11 of the auction conditions, which read as under:

“10. In case the successful tenderer fails to pay balance 75% of amount of the tender amount within 30 days from the date of issue of demand letter or within such extended period if any

granted by Competent Authority on his written application made within 20 days from the date of issue of demand letter the tenders shall stand cancelled and the earnest money forfeited, in the eventuality the Competent Authority shall be competent to retender the shop.

11. Within 10 days from the date of making the payment indicated in clause (vii) above the successful tenderer shall appear before the Deputy Director (CE) in his office in person or through an authorized representative alongwith terms and conditions of tender duly typed on a non judicial stamp paper worth Rs.2/- signed by tenderer and duly attested by the notary public Specimen Signature of individual or combined as case may be duly attested by notary public / gazetted officer and 4 passport size joint photo one of which should be attested by gazetted officer and conveyance deed paper duly stamped by collector of stamps and any other documents indicated in the demand letter. On submission of the above documents the possession letter will be issued on the same day and the same can also be collected in person by Tenderer on the very same day. The possession letter so issued shall carry the date on which the physical possession of the unit will be handed over to the tenderer at site for non-production of proof of the payment of balance 75% of premium in time as stipulated above clause 2 (vii) the tender is liable to be cancelled and the earnest money shall be forfeited. The tenderer are advised to retain photo copy of the terms and condition with them to submit the above required documents, in case they are successful in the tender."

6. Counsel for the DDA further submits that petitioners were to approach the Deputy Director (CE) within ten days of making the payment and was also to comply with various formalities including submission of terms and conditions on a non-judicial stamp paper of Rs.2/- duly attested by the notary public, specimen signature of the individual duly attested by notary public / gazetted officer and four passport size photographs to enable the DDA to complete the formalities. Counsel further submits that as per Clause 11 of the auction conditions in case proof of balance 75% of premium is not submitted in time the tender would be liable to be cancelled and the earnest money forfeited. Counsel also submits that the DDA has issued various communications to the petitioners and has

repeatedly called upon the petitioners to complete the formalities. Counsel next submits that the petitioners have failed to complete the formalities, which has led to the automatic cancellation as per the terms of auction.

7. Counsel for the petitioners submits that petitioners have been repeatedly approaching the DDA from time to time and accordingly, the time was spent in getting a satisfactory response and in the absence of any satisfactory response the petitioners could not take necessary steps in the matter.
8. I have heard counsel for the parties. In this case, an auction was held in the year 1988 for allotment of shop no.6 in which petitioners jointly submitted their bid. Petitioners were declared as successful bidder. As per the terms of auction petitioners, deposited Rs.12,000/- at the spot and further petitioners were to deposit the balance 75% within 30 days of the communication dated 25.1.1989. While there is no dispute that the petitioners, in fact, deposited 75% it is disputed by counsel for the DDA that the petitioners submitted the third copy of challan within the time allowed. It is also not in dispute that the petitioners did not complete the other formalities nor the petitioners complied with the terms and conditions of the auction, more particularly as per Clauses 10 and 11 of the auction conditions, according to which the petitioners were to appear before the Deputy Director (CE) in person or through an authorized representative along with terms and conditions of tender duly typed on a non-judicial stamp paper worth Rs.2/- signed by the tenderer and duly attested by the notary public, specimen signature duly attested by notary public / gazetted officer, and four passport size photographs one of which was to be attested by a gazetted officer. Admittedly, from the year 1988 to the year 2001 petitioners did not take any steps to complete these formalities. In fact, even after the year 2001, when the petitioners did not receive any satisfactory response from the DDA, petitioners did not approach this Court. It

has been repeatedly held that time taken in making representations by itself may not be a ground for condoning the delay.

9. Counsel for petitioners have failed to render any satisfactory explanation for the delay. In the case of **Karnataka Power Corpn. Ltd. v. K. Thangappan**, (2006) 4 SCC 322, it has been specifically held that if writ jurisdiction is exercised after unreasonable unexplained delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties, and has held that:

“6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad v. Chief Controller of Imports and Exports*¹. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurd*² (PC at p. 239) was approved by this Court in *Moon Mills Ltd. v. M.R. Meher*³ and *Maharashtra SRTC v. Shri Balwant Regular Motor Service*⁴. Sir Barnes had stated:

“Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried

¹ (1969) 1 SCC 185 : AIR 1970 SC 769.

² 2 (1874) 5 PC 221 : 22 WR 492.

³ AIR 1967 SC 1450.

⁴ (1969) 1 SCR 808 : AIR 1969 SC 329.

upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose v. Union of India*⁵ that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P. v. Nandlal Jaiswal*⁶ that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Raja Lakshmiah v. State of Mysore* (AIR 1967 SC 973). This was re-iterated in *R.N. Bose's* case (supra) by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. P.Samantaraj* (AIR 1976 SC 2617) making of

⁵ (1970) 1 SCC 84 : AIR 1970 SC 470.

⁶ (1986) 4 SCC 566 : AIR 1987 SC 251.

repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone.”

10. There is no explanation as to why the petitioners did not approach Deputy Director (CE) in his office in person or through an authorized representative alongwith terms and conditions of the tender. There is also no explanation as to why the petitioners did not furnish the necessary documents to the DDA from 1996 till 2001. Even after 2001 the petitioners did not take any steps to safeguard the interest. Accordingly, present petition is dismissed.
11. At this stage, counsel for the petitioners submits that since the money already stands deposited with the respondent, petitioners are willing to make a representation to the respondent for considering allotment of another shop on such terms and conditions as DDA may consider appropriate. Counsel for the petitioners also submits that DDA be also directed to refund the amount already deposited. Counsel for the DDA relies on paragraph 17 of the counter affidavit filed wherein it has been stated that vide communication dated 8.9.2006 DDA called upon the petitioners to submit the bank account number, documentary proof of residence and other documents to enable DDA to process his case for refund.
12. In view of above, it will be open to the petitioners to make such a representation to the DDA. DDA will consider the representation of the petitioners, in accordance with law. On submitting necessary documents and completion of all formalities, DDA shall refund the amount, deposited by the petitioners in accordance with law.

G.S. SISTANI, J.

June 01, 2010

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