

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

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Date of decision: 14th November, 2011

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WP(C) No. 19711/2005

M/S CHAMELI FARMS PVT. LTD.

..... Petitioner

Through: Mr. Neeraj Kishan Kaul, Sr. Adv.
with Mr. Anil Airi & Ms. Nandni
Sahni, Advocates.

Versus

DDA & ANR.

..... Respondents

Through: Ms. Sangeeta Chandra, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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|----|---|---------------|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the communication dated 27th September, 2005 of the DDA to the petitioner rejecting the bid of ₹1,40,01,000/- for Plot No.03 in the Local Shopping Centre, Pocket-B, Sector-7, Vasant Kunj, Delhi in the open auction held on 30th December, 1994. The writ petition also

seeks a mandamus to the respondent DDA to accept the bid of the petitioner and to allot the plot and deliver the possession thereof to the petitioner.

2. Notice of the petition was issued and vide order dated 4th October, 2005 which was confirmed on 22nd January, 2010, status quo directed to be maintained with respect to the said plot. Pleadings have been completed and the counsels have been heard.

3. There is a history of litigation in the decade between 30th December, 1994 when the auction was held and 27th September, 2005 when the bid of petitioner despite being the highest was rejected.

4. The said bid was rejected by the Vice-Chairman of the DDA earlier also on 10th January, 1995 for the reason of the other two Plot Nos.08 & 09 of the same size as Plot No.03 auctioned on the same day having fetched the price of ₹1,95,01,000/- and ₹2,01,00,000/- respectively. The petitioner had then filed W.P.(C) No.4049/1995 impugning the said rejection. The said writ petition was decided vide judgment dated 15th July, 2004. This Court found that while the other two plots bearing nos.08 & 09 were intended for use as shopping-cum-office, the said plot bearing no.03 was intended for bank/bank office. It was thus felt that the Vice-Chairman, DDA, while rejecting the bid for the reason of variation in the bid amount, had not

considered the different prescribed use for the subject plot. Accordingly, the matter was remanded to the DDA to take a fresh decision.

5. DDA in compliance of the order in the first writ petition aforesaid, vide letter dated 15th February, 2005 offered to allot the Plot No.03 to the petitioner on payment of premium of ₹3,14,79,614/- instead of ₹1,40,01,000/- bid by the petitioner. Challenging the same, a second writ petition being W.P.(C) No.5885/2005 was preferred. It was the stand of the DDA in the second writ petition that the price of ₹3,14,79,614/- had been demanded in accordance with the then prevalent prices according to the bids received at the then contemporaneous time. This Court vide judgment dated 8th August, 2005 held that DDA was required to take a decision on the bid as received in the auction held on 30th December, 1994 and could not take the subsequent price rise into consideration. Accordingly, the demand dated 15th February, 2005 of the DDA was quashed and the matter remanded to the DDA for decision afresh.

6. It is in compliance therewith that the decision as contained in the letter dated 27th September, 2005 impugned in this petition has been communicated to the petitioner. DDA this time has rejected the bid on the ground that there was no difference between the subject Plot No.03 and the

other Plots No.08 & 09 and for this reason only the reserve price of all the three plots in the auction held on 30th December, 1994 was kept at ₹71.22 lacs and while the bids of Plots No.08 & 09 were 173.81% and 182.22% respectively above the reserve price, the bid of the subject Plot No.03 was only 96.58% above the reserve price; that considering the fact that the location, plot size, number of storeys, FAR and the reserve price was the same, the difference between the bids was considerable; that finding the bid to be not competitive and not representing the market value and in exercise of powers reserved under the terms of auction, the bid was not accepted.

7. Impugning the aforesaid communication dated 27th September, 2005 this third writ petition has been filed. It is the contention of the senior counsel for the petitioner that the reasons as have now prevailed with the DDA for the rejection of the bid are the same as existed earlier and which reasons did not find favour with this Court and were set aside and thus the petitioner is entitled to the plot.

8. The counsel for the DDA has at the outset contended that though the petitioner had earlier deposited earnest money of ₹35 lacs with the DDA but the same was returned by the DDA to the petitioner while cancelling the bid on 10th January, 1995 and accepted by the petitioner and the petitioner after

having accepted the refund of the earnest money, is not entitled to challenge the rejection of the bid. She has further explained that the DDA while raising the demand dated 15th February, 2005 impugned in the second writ petition had misconstrued the order in the first writ petition. She has yet further invited attention to the terms and conditions of the auction under the DDA (Disposal of Developed Nazul Land) Rules, 1981 and which vest a discretion in the DDA to reject even the highest bid. Reliance is placed on ***Kusum Lata Khajanchi Vs. Delhi Development Authority*** 1995 (35) DRJ 480 (DB) where the acceptance or rejection of bid by the DDA unless found to be arbitrary or unreasonable was held to be non-interferable in exercise of power of judicial review. It was yet further held that the reasons for rejection are not even required to be communicated to the highest bidder. Reliance is also placed on the recent judgment dated 26th October, 2010 of another Division Bench of this Court in W.P.(C) No.2875/1991 titled ***S.L. Sachdev Vs. DDA*** (awaiting which several adjournments were granted in the present writ petition) also laying down that no enforceable right to be awarded a contract can be claimed even by the highest/lowest bidder and the governmental authority can deviate and award the contract to someone other

than the highest/lowest bidder as long as good and valid reasons for the departure exist.

9. The counsel for the petitioner in rejoinder has contended that this Court while deciding the previous two rounds of litigation also has been aware of the refund of the earnest money having been received by the petitioner and thus the said factor cannot non-suit the petitioner in the third round of writ petition. Reliance is also placed on *Aman Hospitality Pvt. Ltd. Vs. Delhi Development Authority* 135 (2006) DLT 214 (DB) laying down that though DDA is entitled to reject the highest bid but should also give due sanctity to public auction particularly where there has been good response from participants with competitive bidding and the highest bid should not be rejected irrationally. Reference is also made to *State of Orissa Vs. Harinarayan Jaiswal* AIR 1972 SC 1816 laying down that the power reserved by the Government unto itself to accept or reject the highest bid is not unconstitutional; until the bid is accepted, there is no concluded contract and merely by giving bid, no vested right is acquired; the fact that the Government is the seller, does not change the said legal position.

10. At this stage, reference may also be made to the happenings during the pendency of the present writ petition. Though as aforesaid, the petitioner had filed the second writ petition impugning the demand dated 15th February, 2005 of the DDA for ₹3,14,79,614/- but during the hearing on 20th August, 2007 in the present writ petition, the petitioner offered to pay the said price together with interest from 15th February, 2005 till the date of payment. DDA was accordingly asked to consider the said offer. DDA has filed its response dated 7th May, 2008 thereto stating that the said demand was on an incorrect interpretation of the order of this Court in the first writ petition and the offer now to pay the price of ₹3,14,79,614/- with interest is nothing but an effort to take undue benefit of increase in the market rate of commercial plots after 2006 because of the sealing and demolition drive against the commercial activities in residential areas; DDA has stated that the plot will be put to re-auction and the petitioner if interested can participate in the same.

11. What strikes one immediately in the present case is, that the petitioner without any stake i.e. after pocketing even the refund of the earnest money, has been embroiling DDA in litigation with respect to the plot for the last 15 years and has thereby, to the detriment not only of the DDA but also of the

public has prevented valuable commercial space from coming into existence. This Court in the order in the first round of litigation though noticed the acceptance of the refund of earnest money by the petitioner did not consider the effect thereof and the judgment in the first round of writ petition is *sub silentio* thereon.

12. Earnest money is paid by a buyer to indicate an intention and ability to carry out the contract and which is forfeitable upon default of the buyer. Payment of earnest money in the present case, was a precondition to the acceptance of the bid (subject to confirmation by the Competent Authority) and the said earnest money was to remain with DDA till confirmation of the bid by Competent Authority and upon such confirmation, to be adjusted against purchase price and upon default in payment of purchase price, forfeitable. Of course in the event of the bid being not confirmed, earnest money was refundable without any interest. The question which arises is, whether a buyer who takes back the earnest money even if without prejudice, can be said to be still interested in the contract or can be said to be left with any right to seek performance from the seller. As per the terms of auction in the present case, the earnest money was to remain with DDA till confirmation/rejection of bid. Can the buyer challenge rejection of his bid

after taking back the earnest money. If the buyer were to be so allowed and were to succeed in the challenge and then default, the seller would be without any earnest to forfeit. The same would amount to changing the terms of auction/contract and which cannot be done.

13. The petitioner in the present case, if intending to challenge the rejection of his bid, ought to have not encashed the cheque towards refund of earnest money. It is not that he would have been prejudiced by such course of action; he could have sought the relief in the writ petition of, in the event of succeeding, adjustment of interest also on such earnest money in the balance price payable. However, the petitioner chose to take back the earnest money, reserving his right to challenge the rejection of his bid. In my view, the same negates the petitioner continuing to remain ready and willing to perform his part of the contract and the petitioner by taking refund of earnest acquiesced in the rejection of the bid and lost his lien on the property for which earnest money was given. The Division Bench of this Court in *Gopal Devi Vs. Kanta Bhatia* AIR 1994 Del 349 referring to i) *Adeshir M. Mama Vs. Flora Sassoon* AIR 1928 PC 208, ii) *Sundarramayyar Vs. K. Jagdeeshan* AIR 1965 Mad. 85 and iii) *Ayissabi Vs. Gopala Konar* AIR 1989 Ker. 134 held that where the plaintiff prior to

institution of suit for specific performance issued notice claiming double the amount of earnest money, the plaintiff is not entitled to the relief of specific performance. In my opinion, the said principle applies to the facts of the present case also. The petitioner, upon pocketing the refund of earnest money lost the right to enforce his bid or to contend that it was wrongly rejected. I am thus of the view that while DDA and the public have suffered on account of deprivation of the valuable commercial space, the petitioner has had a ring side view of the litigation without any stake therein.

14. Though the counsels for the petitioner attempted to give colour of, DDA in the order dated 27th September, 2005 having merely repeated the same reasons which did not find favour with this Court in the earlier round of litigation, but in my opinion, no. The bid of the petitioner was nothing but an offer of the petitioner for the subject Plot No.03. The said offer has never been accepted by the DDA. Rather, the DDA within a week of the bid had rejected the same as far back as on 10th January, 1995 and refunded the earnest money paid by the petitioner. What prevailed with this Court in the first round of litigation was the arbitrariness of the reasoning given by the DDA for rejection of the bid. However, notwithstanding the same this Court even then did not deem it appropriate to direct DDA to give the plot to the

petitioner but merely asked the DDA to reconsider the matter. Such reconsideration resulted in the misconceived demand dated 15th February, 2005 of ₹3,14,79,614/- which was quashed in the second round of litigation. However, no arbitrariness or unreasonableness can be found in the reasons now given by the DDA in the communication dated 27th September, 2005 impugned in the present writ petition.

15. Though this Court is conscious that DDA occupies near monopolistic position for marketing such large pieces of commercial land but that too would not make for any change in the legal position as flowing from the judgments aforesaid. An examination of reasons for rejection of the bid in the present case also does not show any error therein. The same are also not found to have been rejected in the judgment in the first round of writ petition. In the first round of writ petition, it was not noticed that the reserve price and FAR of the subject Plot No.03 was the same as of Plots No.08 & 09. When DDA did not discriminate between the subject Plot No.03 with the Plot Nos.08 & 09 while fixing the reserve price, DDA is justified in rejecting the highest bid for subject Plot No.03 which was considerably lower than the bid received for the other two plots auctioned on the same day. It may also be noticed that the judgment in ***S.L. Sachdev*** (supra) SLP

whereagainst is informed to have been dismissed was also concerning an earlier auction of the year 1991 of the same Plots No.03, 08 & 09 and a reading of which judgment also reveals that the same price was bid for all the three plots then also.

16. DDA in the impugned communication dated 27th September, 2005 has also clarified that the past practice showed that the user prescribed for Bank/Bank Office did not restrict the price and only the users prescribed of guest houses, nursing homes etc. restricted the price. It has also been stated that there was really no difference in the prescribed user of subject plot with Plots No.08 & 09. The said reasons are found to be logical and adequate and the petitioner has not been able to demonstrate any perversity therein. The rule of this Court in exercising powers of judicial review cannot exceed the said limits. This Court cannot substitute its own opinion for the opinion backed by right of the DDA to reject even the highest bid.

17. There is another aspect of the matter. For whatsoever reasons, the bid made 15 years ago has remained sub judice. It would be not equitable to now ask the DDA to sell/lease the plot to the petitioner after such long lapse of time. The spirit of the Nazul Rules is to get the best possible price. The price today would definitely be much more. It was for this reason that even

the petitioner had a change of heart during the pendency of the present proceedings when it offered to pay the price which the petitioner itself had got set aside by filing the second round of writ petition.

18. There is thus no merit in the petition, the same is dismissed. Though the present is a fit case for imposition of costs on the petitioner but the petitioner having succeeded in the earlier two rounds, I refrain from imposing any costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 14, 2011

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