

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 18.11.2011

+ **W.P.(C) 8034/2011 & C.M. No.18098/2011**

IN THE MATTER OF

TRINITY COLONIZERS PVT LTD

..... Petitioner

Through: Mr. Jitender Vohra, Advocate

versus

DDA

..... Respondent

Through: Mr. Ajay Verma with Mr. Mukesh
Kumar, Advocates

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

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

HIMA KOHLI, J. (ORAL)

1. This order is in continuation of the order dated 16.11.2011, whereunder in view of the submission made on behalf of the petitioner that it was being discriminated against a similarly placed party who had also defaulted in making good the balance 75% of the bid amount for a plot adjoining the petitioner's and yet its plot had not been put up for re-auctioning by the DDA, counsel for the respondent/DDA was directed to obtain instructions as to the fate of the representation made by the

aforesaid party pursuant to liberty granted to it by the Court while disposing of a petition filed by it registered as **WP(C)No.477/2010** entitled 'M/s. Ideas Plus Ink Constructions (P) Ltd. vs. DDA & Ors.'

2. Counsel for the respondent/DDA states today, on instructions from his client, that DDA has decided to reject the representation of M/s Ideas Plus Ink Constructions (P) Ltd. and it proposes to re-auction the said plot, for which purpose, the file of the case has been put up before the competent authority for appropriate orders. Now that the respondent/DDA has clarified its position with regard to the adjoining plot, the plea of the petitioner that it is being treated by DDA on a different footing, does not hold true.

3. In so far as the merits of the present case are concerned, it is undisputed that the petitioner had participated in a bid for auction of residential plots by the DDA in the year 2008 and was declared as the successful bidder in respect of the subject plot No.131 Pocket-II, Jasola, Delhi, deposited 25% (₹1,25,00,000/-) of the total bid amount, i.e., ₹4,96,50,000/-, as earnest money. As per the terms and conditions for sale by auction, the petitioner was required to deposit the balance 75% of the bid amount, i.e., ₹3,71,000/-, by 21.7.2008, but it grossly defaulted in doing so. The explanation offered by the learned counsel for the petitioner for the default in payment is that there was a recession in the market, as a result of which the petitioner was facing a financial crunch and hence requests were made by it to the respondent/DDA for extension

of time to arrange funds to make good the balance payment. Pertinently, requests made by the petitioner for extension of time starting from June, 2008 continued to be repeated from time to time, without a single penny being paid by it to the respondent/DDA in the meantime towards the balance 75 % of the bid amount.

4. Today, it is submitted by the counsel for the petitioner that the respondent/DDA repeatedly sent cancellation letters to the petitioner without specifying a cancellation date, thus creating a confusion in the mind of the petitioner as to whether its bid had been cancelled or not. It is submitted that for the said reason, the petitioner had not been depositing any money towards the balance 75% of bid amount as it remained uncertain about cancellation of the bid.

5. The aforesaid plea raised by the petitioner is rejected as being devoid of merits. Merely because vide letter dated 08.12.2008, the respondent/DDA extended the time by 180 days to enable the petitioner to deposit the balance 75% of the bid amount which it failed to do, and further, the petitioner was extended the courtesy of being sent a letter dated 30.10.2009 by the respondent/DDA (Annexure P-15) intimating it that its earnest money would be forfeited on account of default in the payment of balance amount in respect of the subject plot, cannot now come to the aid of the petitioner, to explain the gross default on its part to pay the said amount. Similarly, vide the letter dated 1.8.2011 (Annexure P-21), the respondent/DDA once again informed the petitioner

about the forfeiture of the balance bid amount due to default in payment while also reiterating the terms and conditions for sale by auction, particularly, clause 10 thereof, which reads as follows:-

“10. In case, the highest bidder fails to make the balance 75% amount within the stipulated period, as mentioned in the demand letter or within such extended period, if any granted by the Competent Authority on his written application, the bid shall automatically stand cancelled and the Earnest Money shall stand forfeited. In that eventuality, the competent authority shall be competent to re-auction the residential plot.”

6. Both the aforesaid letters establish that sufficient notice had been given by the respondent/DDA to the petitioner to make good the default and pay the balance bid amount and only thereafter was its allotment cancelled. Thus, the contention of the petitioner of being treated arbitrarily, also does not hold good. Rather, facts reveal that the petitioner was given a long rope by the respondent/DDA, but it failed to take advantage of the same by depositing the balance amount.

7. As regards the reliance placed by the learned counsel for petitioner on a judgment of a Single Judge in the case of 'Kailash Nath & Associates (M/S) vs. DDA & Anr.', reported as **2007 IX AD (DELHI) 137**, the said judgment would not be of any assistance to the petitioner for the reason that though it dealt with a bid for sale of land, it was a decision rendered in respect of a civil suit for specific performance of an agreement to sell filed against the respondent/DDA and in the alternative, for recovery of

damages with interest, where pleadings were completed, documents filed, issues framed and evidence led and only after examining the facts of the case, the Court came to the conclusion in the said case that having extended the time for making the payment, it would be deemed that the defendant/DDA had treated the contract as subsisting which is why it was at least required to issue a notice to the plaintiff therein to perform the agreement before terminating it. In the present case, vide letter dated 30.10.2009, the respondent/DDA duly put the petitioner to notice that failure to deposit the balance payment would result in forfeiture of the earnest money in terms of the conditions of auction. Despite the same, the petitioner failed to deposit the balance payment. Nothing has been placed on record by the petitioner to indicate that the respondent/DDA had given an impression to it that it was treating the contract as subsisting. Thus the findings in the aforesaid judgment would not have any application to the present case. Furthermore, in the aforesaid case, the Court had pronounced the judgment in the context of the issues framed which were with regard to the entitlement of the plaintiff therein to the plot, for relief of specific performance and in the alternative, for recovery of damages. In the present case, the petitioner has not even bothered to take the aforesaid ground of there being a subsisting contract in its writ petition, which has been argued at length on two running dates and has culminated in the passing of the present order. The arguments urged today are quite apparently an afterthought and an attempt to

improve upon the petitioner's case, which cannot be permitted.

8. The terms and conditions of the sale by auction, are a matter of contract between the parties, and the petitioner, who was well aware of those terms, cannot seek alteration/variation thereof at a later date, as per its own whims and fancies. Pertinently, the petitioner has woken up from its deep slumber and chosen to approach the Court only on the eve of the re-auction of the subject plot, which is fixed for today and in respect of which, the advertisements were issued in the press by the respondent/DDA more than a month ago, on 15.10.2011. Having regard to the clear and categorical stand of the respondent/DDA that the earnest money deposited by the petitioner stands forfeited on account of non-payment of balance 75% bid amount, despite extensions granted to it, this Court is of the opinion that the petitioner is not entitled to grant of any relief in the present proceedings.

9. For all the aforesaid reasons, the present writ petition is dismissed in *limine*, along with the pending application, being devoid of merits.

NOVEMBER 18, 2011
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(HIMA KOHLI)
JUDGE