

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

Date of decision: 18th July, 2011

+ W.P.(C) No.8790/2008

% NARENDER KAPOOR Petitioner
Through: Mr. Sumit Bansal and Mr. Ateev Mathur,
Advs.

versus

D.D.A. Respondent
Through: Mr. Sayid Marsook and Mr. Nikhil Goel,
Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner had submitted a tender for an office on ground floor admeasuring 66.60 sq. mtrs in pursuance to the bids invited by the respondent DDA for allotment of built up shop/office/kiosk on freehold basis in Convenient Shopping Centre, Jhilmil Colony, Ph-II, LIG Houses. The terms and conditions of the tender *inter alia* required the bidders to

deposit 25% of the bid amount alongwith the tender and the position with respect to the payment of the balance amount was as under:

“8. The demand cum allotment letter would be sent to the successful tenderer immediately after the tender is accepted by the competent authority i.e., within two weeks of the display of result on the notice board. The highest tenderer shall make payment of balance 75% of the amount demanded vide demand cum allotment letter referred to above within 30 days from the date of issue of demand letter by Bank Draft/Pay Order payable only at Vikas Sadan, INA, New Delhi branches of Central Bank of India/State Bank of India. The Competent Authority may, in his absolute discretion, extend the last date of payment upto a maximum period of 180 days beyond the last date for payment with reference to the date of issue of demand letter subject to payment of interest on the balance amount. The interest shall be chargeable @ 15% Compounded and compounding shall be done on the last day of the accounting year of the DDA.

10. In case the highest 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, the tenders shall stand cancelled and the

earnest money forfeited. In that eventuality the Competent Authority shall be competent to re-tender the shop.”

2. The counsel for the petitioner has stated that the reserve price for the space aforesaid was Rs.33,30,000/- and the bid of the petitioner for Rs.47,06,000/- was, on 28th March, 2008, declared to be the highest.

3. The case of the petitioner is that however no demand cum allotment letter was received by the petitioner and the petitioner for the first time received a letter dated 6th October, 2008 asking him to, within 15 days from the date of issue of the letter, submit the 3rd copy of the bank challan of payment if already made by him in accordance with the demand letter dated 26th May, 2008 failing which the allotment would be cancelled without further notice. The petitioner’s case is that the demand cum allotment letter dated 26th May, 2008 aforesaid was never received by him. The petitioner claims that he went to the office of the respondent on 16th October, 2008 and sought a revised demand cum allotment letter granting him time of 30 days to make the payment to enable the petitioner to avail of loan / financial assistance for making the payment. Contending that the said request was not accepted, the present petition was filed seeking mandamus to the respondent DDA to issue fresh demand cum allotment letter to the petitioner. Notice of

the petition was issued and vide order dated 13th April, 2009 which continues to remain in force, *status quo* was directed to be maintained with respect to the space aforesaid, in case the tender in respect of the same had not been finalized.

4. Counter affidavit has been filed by the respondent to which rejoinder has been filed by the petitioner. The respondent in its counter affidavit has *inter alia* stated that upon the petitioner approaching the DDA in public hearing on 27th October, 2008 and representing that the demand letter has not been received by him, he was asked to deposit the demanded amount by 23rd December, 2008 which date was within the permissible extendable limit of 180 days (from the letter dated 26th May, 2008) but the petitioner failed to deposit the said amount and thus the bid stood cancelled.

5. The petitioner in the rejoinder has contended that without a valid demand letter, he could not have been called upon to pay the balance amount.

6. It is also on record that though the demand cum allotment letter as per the records of the DDA was dispatched by speed post but neither the proof of delivery nor the return envelop is available on the file of the respondent

DDA.

7. The facts aforesaid would show that the petitioner at the time of making the bid was aware that the demand cum allotment letter was to be issued within two weeks of the declaration of the highest bidder and which admittedly happened on 28th March, 2008. There is nothing to show that the petitioner at any time within two weeks approached the DDA to inquire about the demand cum allotment letter. The petitioner chose to remain quiet till October, 2008. Even after becoming aware of the demand cum allotment letter having been issued, the petitioner did not choose to deposit the amounts for which admittedly an opportunity was given. The reason given now before this Court that the petitioner needed the demand cum allotment letter to avail of the loan from the Bank does not find mention in the letter delivered by the petitioner to the respondent DDA on 6th October, 2008 (at page 16 of the paper book). The relief claimed in this petition also is for issuance of the demand cum allotment letter only and which is found to be of a dilatory nature. The petitioner even while approaching this Court did not offer to make the payment or to deposit the amount and continued to seek the demand cum allotment letter.

8. The terms and conditions of allotment and on the basis whereof others would have bid and/or would have decided not to bid, required the successful bidder to be ready with the entire payment, maximum within 45 days of the date for opening of the bids. There is nothing to show that the petitioner made any effort to make the payment within the prescribed time. The action of the respondent DDA impugned in this petition are found to be in accordance with the terms of the tender.

9. This Court had on the last date of hearing asked the counsel for the respondent DDA to obtain instruction whether the amount with reasonable interest can now be received. The counsel for the respondent states that there is no such policy.

10. Even otherwise the Division Bench in the judgment/order dated 2nd September, 1993 in CWP No. 2395/1990 titled ***Kailash Nath & Associates v. UOI*** and the Apex Court in ***Meerut Development Authority v. Association of Management Studies*** (2009) 6 SCC 171 have held that the exercise of writ jurisdiction in such contractual matters is not appropriate. As aforesaid, no case of arbitrariness in the action of the respondent DDA is made out.

11. As far as the argument of non receipt of the demand letter is concerned, the same raises a factual dispute which cannot be adjudicated in this jurisdiction.

12. No merit is thus found in the petition. The same is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

JULY 18, 2011
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