

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

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Date of decision: 14th December, 2012

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LPA No.1054/2004

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Ms. Sangeeta Chandra, Adv.

Versus

SUNIL MADNANI

..... Respondent

Through: Mr. Sumit Bansal, with Mr. Ateev Mathur and Ms. Sumi Anand, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra court appeal impugns the judgment dated 18th August, 2004 of the learned Single Judge allowing WP(C) No.2981/1998 preferred by the respondent by quashing the letter dated 6th May, 1992 of the appellant DDA cancelling the bid made by the parents of the respondent for a residential plot of land bearing 7, New Rajinder Nagar, New Delhi and by directing the appellant DDA to make a fresh demand on the respondent for the bid price together with interest at 12% per annum; upon the respondent so making the payment, the appellant DDA has been further directed to hand over

possession of the plot and execute the conveyance deed with respect thereto in favour of the respondent.

2. The appeal was admitted for hearing and vide order dated 9th November, 2004 the operation of the impugned judgment stayed. The appellant DDA was also however restrained from reauctioning the said plot till the disposal of the appeal.

3. The undisputed facts are:

- i. that the auction for the aforesaid plot of land admeasuring 121.50 sq. mtr. was held on 14th January, 1992;
- ii. the parents of the respondent namely Smt. Pushpa Madnani and Sh. Balram Madnani had made the highest bid therefor in the sum of Rs.15,55,000/-;
- iii. in accordance with the auction terms, the parents of the respondent at the fall of the hammer deposited 25% of the bid amount i.e. Rs.3,88,750/- with the appellant DDA on 14th January, 1992 itself.
- iv. that the bid was confirmed on 15th January, 1992 and a demand for the further amount due of Rs.11,66,295/- payable latest by 14th March, 1992 was raised;

- v. no further payment was made by the said date of 14th March, 1992;
- vi. a further sum of Rs.25,000/- was deposited on 17th March, 1992 with the appellant DDA;
- vii. the appellant DDA vide letter dated 6th May, 1992, for the failure of the parents of the respondent to pay the balance amount, cancelled the bid;
- viii. a further amount of Rs.5,50,000/- was deposited by the parents of the respondent on 31st July, 1992, thereby depositing a total sum of Rs.9,63,750/- as against the bid amount of Rs.15,55,000/-;
- ix. a representation dated 6th August, 1998 was made by the parents of the respondent to the appellant DDA for revocation of the cancellation of the bid on the ground that they were unable to pay the entire bid amount owing to financial constraints;
- x. Smt. Pushpa Madnani died on 2nd June, 1993 and Sh. Balram Madnani on 13th June, 1993;

- xi. under cover of letter dated 10th January, 1997 the appellant DDA, after forfeiting the earnest money of Rs.3,88,750/- refunded a sum of Rs.5,75,000/-;
- xii. ultimately in or about June, 1998, the writ petition from which this appeal arises was filed impugning the letters dated 10.01.1997 and 06.05.1992 aforesaid and seeking a direction to the appellant DDA to accept the balance payment and allot the plot.

4. The appellant DDA contested the writ petition inter alia pleading that the bid stood automatically cancelled on non deposit of the entire amount in terms of the bid confirmation letter dated 15th January, 1992. It was further pleaded that under the terms of auction, the Vice Chairman of the appellant DDA could extend the time for making payment provided such application is made at least 7 days prior to the last date of making the payment; no such application was filed and the amounts of Rs. 25,000/- and 5,50,000/- were deposited by the parents of the respondent on their own and without seeking any extension of time.

5. The learned Single Judge allowed the writ petition as aforesaid for the reason-

- i. that during the pendency of the writ petition the respondent had also sought redressal through the Permanent Lok Adalat of the DDA, which had passed an order that the Lieutenant Governor as the Chairman of the DDA should reconsider the matter;
- ii. the Permanent Lok Adalat had noted that as per the policy of the DDA as contained in the Office Order dated F.100(56)/86/Imp/CL/Pt. dated 1st May, 1991, restoration could be done on payment of penalty at Rs.60 per sq. mtr. if the application for restoration is received more than 60 days after cancellation but before the expiry of 90 days of the cancellation; that the mother of the respondent had on 3rd August, 1992 sought revocation of the cancellation letter dated 6th May, 1992 - she had thus applied within 90 days period for having the bid cancellation recalled;
- iii. that the Lieutenant Governor, in pursuance to the order of the Permanent Lok Adalat had wrongly rejected the request for revocation of the bid cancellation order since the restoration was sought before expiry of 90 days from the date of cancellation and the appellant DDA as per its policy was duty bound to

restore the allotment by charging Rs.60/- per sq. mtr. as restoration charges;

- iv. that one Shri Ashok Gupta UDC-OSB of the DDA also had in his note dated 23rd September, 1992 while processing the request dated 6th August, 1992 of the parents of the respondent for revocation of the bid had recorded that though they had not requested for extension of time for making the payment of balance premium in accordance with the terms of auction but since had subsequently made such a request, the same should have been granted subject to payment of interest at the rate of 18% per annum or 15% per annum as DDA had granted extension of time in similar cases where the request for extension of time was received; he had in the said note also referred to the Circular dated 1st May, 1991 (supra) permitting restoration within 90 days on payment of restoration charges at the rate of Rs.60/- per sq. mtr.;
- v. the Additional Director (OSB) had also while note dated 24th September, 1992 recommended restoration of bid subject to payment of interest and restoration penalty;

- vi. however thereafter the file meandered between the officers of the DDA with a question being raised as to the officer who was authorized for taking necessary decision for restoration of the bid and ultimately the letter dated 10th January, 1997 refunding Rs.5,75,000/- after forfeiting the earnest money was issued;
- vii. such action of the DDA was shocking inasmuch as the file notings showed that the parents of the respondent no.3 were entitled to restoration of the bid on depositing restoration charges at Rs.60/- per sq. mtr. and interest at 18% per annum on account of delayed payment;
- viii. that the Lieutenant Governor also while considering the matter in compliance of the directive of the Permanent Lok Adalat had rejected restoration without giving any justification for his decision;
- ix. that the issue of extension of time for making payment and the issue of restoration of cancelled bid are entirely different;
- x. that since the parents of the respondent had a right under the Policy of the DDA to have the cancellation restored and that right had been violated, the writ petition was entitled to succeed.

The Single Judge however considering the delay on the part of the respondent from 1993 till 1997, directed that the respondent must pay interest at the rate of 12% per annum on the balance of the bid amount as also restoration charges till the filing of the writ petition.

6. The counsel for the appellant and the counsel for the respondent have been heard between yesterday and today.

7. It is the contention of the counsel for the appellant before us that the Circular dated 1st May, 1991, on the basis of which it has been held by the learned Single Judge that the policy of the DDA permits restoration if applied for within 90 days and on payment of restoration charges, is not applicable to cancellation of bid. We may in this regard state that since the complete writ record had not been filed in this appeal, we have called for the writ record and find the appellant DDA to have therein filed an additional affidavit dated 11th February, 2002 also stating that the said Circular comes into operation only when the possession of the plot is handed over to the purchaser after payment of premium / dues to the DDA and since the parents of the respondent had not paid the premium / dues, therefore the said Circular was not applicable to the facts of the case. It was also stated that in auction cases, the appellant DDA follows only the terms of auction. The

respondent had filed a response affidavit dated 31st July, 2003 contending that the Circular dated 1st May, 1991 nowhere mentions such distinction and that the DDA had in a number of cases, instances whereof were given, restored the bids which stood cancelled on account of non payment. We may however notice that the learned Single Judge has in the impugned judgment not returned any finding in this regard, though has based his decision on the Circular dated 1st May, 1991. He has in this regard relied only on the file notings aforesaid and which had been accepted by the Permanent Lok Adalat.

8. We are afraid, neither the file notings nor acceptances thereof by the Permanent Lok Adalat of the DDA could be treated as decisive and in the face of an express plea by the DDA that the said Circular did not apply, the learned Single Judge ought to have returned his own finding thereon rather than relying on the file notings and the order of the Permanent Lok Adalat.

9. As far as the file notings are concerned, it has been held in ***Sethi Auto Service Station v. DDA*** (2009) 1 SCC 180 that internal notings are not meant for outside exposure and notings in the file culminate into an executable order affecting the rights of the parties only when it reaches the final decision making authority in the department, gets his approval and the

final order is communicated to the person concerned. Similarly, in ***Jasbir Singh Chhabra v. State of Punjab*** (2010) 4 SCC 192, it was held that issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favoring a particular person, someone may suggest a particular line of action; however, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The said views were recently approved in ***Union of India v. Vartak Labour Union*** JT 2011 (3) SC 110.

10. It is also not as if the Permanent Lok Adalat though presided by a retired Additional District Judge had independently examined the applicability of the Circular. The Permanent Lok Adalat merely relied on the file notings. It is nobody's case that the UDC of the DDA who made this file noting was competent to take a view in this regard.

11. On the contrary we find the Circular dated 1st May, 1991 to be titled "Sub: Composition Charges For The Late Execution Of Title Deeds And Delay In Construction Over Residential, Industrial, Commercial And Institutional Plots And Restoration."

and issued to revise the guidelines for recovery of composition fee for extension of period of construction on plots and other allied matters. The same, under Head 1 provides for “Composition Charges For The Belated Construction” under Head 2 provides for “Late Execution Of Lease/Sub-Lease Deed” and under Head 3 provides for “Restoration Charges” (and on which reliance has been placed by the learned Single Judge). The last para of the Circular is as under:

“If the application is not made for restoration within a period of 90 days the plot will be re-auctioned. However, if before re-allotment/re-auction of the plot the application is received then penalty @Rs.100/- per sq. mtr. is to be charged before restoration is allowed. Further in case where allotments are cancelled on account of breach of the terms and conditions of allotment/misuse, the date of receipt of application for restoration should be reckoned from the date of removal of breach/stoppage.”

12. On a reading of the entire Circular and not merely Heading 3 titled “Restoration Charges”, there is no doubt whatsoever that the same applies to cases where the allottee/auction purchaser though has made payment for the plot and is in possession thereof but has either delayed raising of construction on the plot or has delayed the execution of lease deed/sub lease deed or where allotment has been cancelled on account of breach of terms

and conditions of allotment/misuse. We may in this regard notice that under Rule 8 of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 the allotment is complete only on making of the entire payment and not before that. Naturally the question of delay in raising construction or delay in execution of lease/sub lease arises only after the allottee/auction purchase has been put into possession and not before that. In the present case the respondent/his parents should have been put into possession only after they had paid the entire auction bid amount and not before that. The said Circular was thus clearly not applicable and the learned Single Judge fell in error in relying on the file notings of a UDC of the DDA in this regard rather than examining the rival pleas as to the applicability of the said Circular. Since the judgment of the learned Single Judge is squarely based on the said circular, the judgment is liable to be set aside on this ground alone.

13. The counsel for the appellant DDA has however also drawn our attention to *V.K. Khosla Vs. Union of India* 71(1998) DLT 642 which was also a case of cancellation of auction bid on account of non payment of the balance deed amount within time. Reliance in that case was placed besides on the Circular dated 1st May, 1991 (supra), also on Circular dated 20th July,

1982 laying down rates of penalty on account of restoration of allotment/auction bid/lease deed. It was held, that though the Circular dated 20th July, 1982 referred to restoration of the auction bids also but a complete reading thereof showed that the same was applicable only in case where the purchase had been completed by the payment of the entire price and was not applicable when the entire bid amount had not been paid; that the Circular dated 20th July, 1982 and 1st May, 1991 were not issued by the Central Government or under the authority of the Central Government as required in terms of Section 22(3) of the Delhi Development Act and were merely instructions and did not partake character of the terms issued by the Central Government; that the said Circulars in any case are in conflict with Rule 29 of the Nazul Rules; that if the Circular dated 1st May, 1991 were to be held to entitle a party to seek restoration of the auction bid at any time prior to re-auction, it would be in conflict with Rule 29 of the Nazul Rules and cannot hold the field.

14. We are in respectful agreement with the said judgment.

15. The learned Single Judge in the impugned judgment though noted the delay on the part of the respondent from 1993 to 1998 when the writ petition was filed and for the said reason held the respondent liable for interest at

12% but did not consider that the said delay on the part of the respondent was rather fatal to the writ petition. We have carefully perused the writ petition. In the writ petition, in this regard, we do not find any explanation whatsoever for the period from 1993 to 1997 and the respondent claims to have learnt of the bid made by his parents only on receipt of letter dated 10th January, 1997 of the DDA. The respondent thus had clearly slept over his rights, if any, inherited from his parents and was after lapse of five years from automatic cancellation of the deed on 14th March, 1992 not entitled to challenge the said cancellation. We are of the opinion that the writ petition ought to have been dismissed on this ground alone.

16. The counsel for the respondent has contended that the parents of the respondent who had made bid were old and ailing and died soon thereafter and delay ought to have been condoned. He has in this regard again relied upon the order of the Permanent Lok Adalat.

17. We are unable to agree. The auction terms were clear and no right came into existence in favour of the bidder till the entire amount was paid. It thus cannot be said that there was even an agreement to sell in favour of the bidder which could be specifically enforced. Upon the entire payment not having been made the bid itself stood cancelled and no right thereunder

remained in favour of the bidder. Moreover, it has been held by a Division Bench of this Court in the judgment/order dated 2nd September, 1993 in CWP No.2395/1990 titled ***Kailash Nath & Associates Vs. Union of India*** and the Supreme Court in ***Meerut Development Authority Vs. Association of Management Studies*** (2009) 6 SCC 171 that the exercise of writ jurisdiction in such matters is not appropriate. Mention may also be made of ***Kisan Sahkari Chini Mills Ltd. Vs. Vardan Linkers*** (2008) 12 SCC 500 laying down that the writ remedy in contractual matters can be allowed only where an element of public law is involved. As aforesaid, no case of arbitrariness in the action of the appellant DDA is made out.

18. The counsel for the respondent in the written submission handed over at the time of hearing though has referred to ***Vishwa Raj Saxena vs. DDA*** MANU/DE/0041/2008 and ***Ashok Kumar Kanojia Vs. Delhi Development Authority*** 117 (2005) DLT 648 but has in oral submissions not even referred to the said judgments nor alongwith the written submission bothered to file copies thereof. In these circumstances need is not felt to deal therewith.

19. We accordingly allow the appeal and vacate the interim order restraining DDA from auctioning the said plot and set aside the judgment dated 18th August, 2004 of the learned Single Judge. Axiomatically the writ

petition from which this appeal arises stands dismissed. The respondent is also directed to pay costs of litigation of Rs.25,000/- to the appellant DDA by depositing the same in this Court within two weeks and whereafter the DDA shall be entitled to withdraw the same.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

DECEMBER 14, 2012
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