

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) No.720/2012**

Decided on: 26th March, 2012

IN THE MATTER OF:

M/S IDEAS PLUS INK CONSTRUCTION PVT LTD Petitioner
Through : Mr. J.P. Sengh, Sr. Adv. with
Ms. Sana Ansari, Mr. Sumeet Batra and
Ms. Ankita Gupta, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents
Through : Mr. Arun Birbal, Adv.
for R-1/DDA.
Mr. Asit Tiwari, Adv. for R-2/UOI.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

HIMA KOHLI, J (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for quashing the order dated 23.11.2011, passed by the respondent No.1/DDA, cancelling the allotment of a plot bearing No.132, Pocket 2, Jasola, New Delhi, measuring 250.14 sq. mtrs. in violation of the terms and conditions of auction and forfeiting the earnest money of 25% of the bid amount deposited by the petitioner in an auction held on 25.3.2008.

2. Briefly stated, the facts of the case are that in the year

2008, respondent No.1/DDA had issued advertisements to auction plots in Jasola Pocket 2, New Delhi. In response, the petitioner had submitted an application form for the subject plot. The reserve price of the subject plot was fixed by the respondent No.1/DDA as ₹3,57,70,735/-. On 25.3.2008, when the petitioner participated in the auction proceedings, it was declared as a successful bidder and it proceeded to deposit a sum of ₹90.00 lacs with the respondent/DDA as 25% of the bid amount.

3. On 25.4.2008, respondent No.1/DDA had issued a demand letter to the petitioner for the balance 75% of the bid amount, totaling to ₹2,70,00,016/-. Though the aforesaid amount was required to be deposited by the petitioner by 21.7.2008, it failed to do so within the stipulated time. On 12.6.2008, the petitioner requested the respondent No.1/DDA for extension of time of six months to deposit the balance 75% payment. The said request was however turned down by the respondent No.1/DDA on 17.7.2008. On 10.10.2008, the petitioner again approached the respondent No.1/DDA for extension of time to deposit the balance payment. This time, respondent No.1/DDA extended the time, upto 17.1.2009 to enable the petitioner to deposit the balance 75% of the bid amount.

4. Despite the above relaxation granted to it, the petitioner did not deposit the balance bid amount with the respondent No.1/DDA. Instead, it preferred a writ petition in this Court, registered as **WP(C)No.477/2010** entitled 'M/s. Ideal Plus Ink Constructions (P) Ltd. vs. DDA & Ors.' praying *inter alia* for quashing of a notice dated 30.10.2009 issued by the respondent No.1/DDA informing it that the Authority proposed to forfeit the earnest money deposited by the petitioner. Counsel for respondent No.1/DDA entered appearance in the above proceedings and opposed the aforesaid writ petition. After considering the rival submissions of both sides, vide judgment dated 22.2.2010, the aforesaid writ petition was dismissed while observing that the terms of payment were a matter of contract between the petitioner and the DDA, and the same could not be varied or altered by the Court. At that stage, counsel for the petitioner had submitted that the petitioner wished to make a representation to the DDA for extension of time for making the balance payment. In view of the aforesaid submission made on behalf of the petitioner, the Court directed that in case any representation would be made by the petitioner, DDA would consider the same in accordance with law.

5. Pertinently, the petitioner did not make any representation to the respondent No.1/DDA for a period of eight months, till as late as

22.10.2010. In its representation, the petitioner sought extension of time upto 31.8.2011 to deposit the balance bid amount. A perusal of the aforesaid request letter made by the petitioner to the respondent No.1/DDA reveals that the petitioner had not furnished any reasons for seeking further extension of time to deposit the balance payment (Annexure P-11). Thereafter, on 5.1.2011, the petitioner unilaterally deposited a sum of ₹1.00 crore with the respondent No.1/DDA and it proceeded to deposit the balance amount of ₹1,70,00,016/- on 17.11.2011.

6. On 23.11.2011, respondent No.1/DDA issued the impugned cancellation letter informing the petitioner that it had failed to fulfill the terms and conditions of the auction by depositing the balance 75% of the bid amount within the stipulated period. As a result, the representation dated 7.7.2011 submitted by the petitioner was rejected by the competent authority and the allotment of the subject plot was cancelled due to violation of the terms and conditions of the auction and the petitioner was informed that the earnest money of 25% of the bid amount deposited during the auction, stood forfeited. Aggrieved by the aforesaid cancellation letter dated 23.11.2011, the petitioner preferred the present petition on 1.2.2012.

7. On 6.2.2012, learned Senior Advocate appearing for the petitioner had sought an adjournment to enable the petitioner to place on record certain documents stated to have been obtained by it upon filing an application under the Right to Information Act, 2005. The said documents were sought to be placed on record to demonstrate that the petitioner's case had been recommended for approval by the competent authority, i.e., Vice Chairman, DDA, for reference to the Ministry of Urban Development for regularization of the belated payment of the bid amount by the petitioner. As a result, the case was renotified for today, i.e., on 26.3.2012.

8. In the meantime, the petitioner filed an application for stay of the auction of the subject plot announced by the respondent No.1/DDA in a public notice and fixed for 28.3.2012, and sought an early hearing of the writ petition. The said request was however declined and the date fixed in the matter was maintained.

9. A short affidavit dated 23.3.2012 has been filed by respondent No.1/DDA opposing the present petition and stating *inter alia* that the competent authority, i.e., Vice Chairman, DDA, had cancelled the allotment of the subject plot in view of the non-payment of 75% premium within the stipulated period or even within the

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extended period of 180 days. It was also conveyed to the petitioner that the amount lying deposited with the respondent No.1/DDA was being refunded to it after deduction of the earnest money. Further, it is averred in the affidavit that the deposit of premium by the petitioner prior to the issuance of the cancellation letter did not amount to regularization of the delayed payment and that respondent No.1/DDA had not called upon the petitioner to make the payment. Rather, the petitioner had made the payment on its own.

10. As regards the reference made by the petitioner to certain other cases of auction and belated payment wherein it was claimed that the same had been referred by the Vice Chairman, DDA to the Ministry of Urban Development for extension of time, it is averred by the DDA in its affidavit that the facts of the case of the petitioner herein are not comparable to the facts of those cases and in any event, the petitioner does not have a vested right to claim that its case must be referred to the Ministry for extension of time, as each case is required to be considered by the competent authority on its own merits.

11. Lastly, it is stated by learned counsel for respondent No.1/DDA that a bare perusal of the advertisement circulated by DDA

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inviting bids for a number of plots including the subject plot reveals that as against the reserve price of the plot fixed in the year 2008 at ₹3,57,70,735/-, the same has now been virtually doubled to ₹6,87,89,875/- and there is no reason for respondent No.1/DDA to not to put the subject plot to a fresh auction in view of the enhanced amount, that the plot is likely to fetch in the fresh auction that is now slated for 28.3.2012, i.e., day after tomorrow.

12. The Court has heard the counsels for the parties and considered their rival submissions. The scope of the present petition is fairly limited in view of the judgment dated 22.2.2010 passed in the earlier writ petition filed by the petitioner, i.e. WP(C)No.477/2010, wherein the petitioner had prayed for quashing of the notice dated 30.10.2009 addressed by respondent No.1/DDA to it deciding to forfeit the earnest money deposited by it. After examining the case of the petitioner, the Single Judge had clearly observed in its decision that the terms of payment were a matter of contract between the petitioner and the DDA, and the same could not be varied or altered by the Court. It was also observed that the earnest money deposited by the petitioner with respondent No.1/DDA had been forfeited due to non-payment of the balance bid amount despite extension of time granted to it by the respondent No.1/DDA. Consequently, the said petition was

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dismissed. Admittedly, the petitioner has not filed any appeal against the aforesaid decision, which has thus attained finality. Therefore, the merits of the aforesaid case cannot be re-examined by this Court in the present proceedings.

13. As regards the prayer for extension of time that had been made on behalf of the petitioner in the earlier writ petition, the same was not a matter of right that the petitioner could claim, but was purely a matter of discretion to be exercised by respondent No.1/DDA and the said discretion was not exercised by the DDA in the facts of the present case, as is apparent from a perusal of the impugned cancellation order dated 23.11.2011.

14. For the petitioner to contend that the competent authority ought to have referred its case to the Ministry of Urban Development for regularization of the belated payment of the bid amount, deposited beyond a period of 180 days in terms of Section 45(2)(b) of DDA (Disposal of Developed Nazul Land), 1981, subject to payment of interest @ 15% per annum is unjustified. This Court finds force in the submission made by learned counsel for respondent No.1/DDA that such a discretion vests in the Vice Chairman, DDA, and that it is only in cases where there is sufficient ground available to justify

condonation of such a long delay could such a discretion be exercised by the Competent Authority and the facts of the present case were not such that the said Authority was inclined to exercise the discretion vested in it in favour of the petitioner.

15. It is also pertinent to note that the impugned cancellation order dated 23.11.2011 ultimately came to be passed by respondent No.1/DDA not on its own, but on account of orders passed by this Court in another litigation initiated by the successful bidder of the adjoining plot, i.e., plot no.131, that had been auctioned by the respondent No.1/DDA contemporaneously. Just as the petitioner herein defaulted in depositing the balance 75% of the bid amount within the stipulated time, the successful bidder of the aforesaid plot, namely, M/s Trinity Colonizers Pvt. Ltd., had also defaulted in making the payment of the balance 75% of the bid amount and when the respondent No.1/DDA decided to forfeit the earnest money deposited by the said petitioner, it approached this Court by filing a writ petition, registered as **WP(C)No.8034/2011** entitled 'M/s Trinity Colonizers Pvt. Ltd. vs. DDA'.

16. In the course of arguments addressed in the aforesaid writ petition, the petitioner therein claimed that it was being discriminated

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against a similarly placed party, i.e., the petitioner herein, who had also defaulted in depositing the balance 75% of the bid amount for an adjoining plot, and had still not suffered the penalty of forfeiture and rather, the said plot had not even been put on the block for re-auction by the DDA. In view of the aforesaid stand taken by the counsel for the petitioner therein, counsel for the respondent/DDA was directed to obtain instructions from the Department as to the fate of the representation that had been made by the aforesaid party pursuant to the liberty granted to it, vide order dated 22.2.2010 passed in WP(C)No.477/2010. It so transpired that the party being adverted to by M/s Trinity Colonizers (P) Ltd. in WP(C)No.8034/2011 happens to be the petitioner herein, who had filed an earlier writ petition, registered as WP(C)No.477/2011, wherein, it was given the liberty to make a representation to the DDA for seeking extension of time to deposit the balance bid amount.

17. In view of the clear directions issued to respondent No.1/DDA in the aforesaid writ petition that it give a response to the pending representation of the petitioner herein, counsel for respondent No.1/DDA had informed the Court in the course of the proceedings in WP(C) No.8034/2011 that it had been decided by the Competent Authority to reject the application of the petitioner herein and the *W.P.(C) 720/2012*

subject plot was proposed to be re-auctioned. In the light of the aforesaid submission made by the counsel for respondent No.1/DDA therein and having regard to the merits of the said case, WP(C)No.8034/2011 was dismissed *in limine* vide order dated 18.11.2011, as being devoid of merits. Pertinently, the aforesaid dismissal order dated 18.11.2011 was challenged in an intra court appeal, registered as **LPA No.17/2012** entitled 'M/s Trinity Colonizers Pvt. Ltd. vs. DDA', which was dismissed as withdrawn with liberty granted to the appellant therein to file a civil suit, if permissible in law. It is in the light of the aforesaid background that the impugned cancellation order dated 23.11.2011 came to be passed by the respondent No.1/DDA in respect of the petitioner herein.

18. Counsel for respondent No.1/DDA seeks to explain the delay in passing the aforesaid order by submitting that an officer in the department, who was dealing with the matter, had wrongly retained the file for a period of about 1½ years without putting it up for the consideration of the appropriate authority. However, this fact came to the notice of the Department only when the said file was called for by the Deputy Director (Land & Building) on 15.11.2011, pursuant to the directions issued in the proceedings in WP(C) No.8034/2011. He further states that immediately after the facts of the present case were

perused, the request of the petitioner herein seeking condonation of delay in depositing 75% of the bid amount was declined and simultaneously, the Principal Commissioner, DDA made a recommendation that appropriate action be taken against the concerned officer who had caused the undue delay in putting up the case of the petitioner for consideration. In support of his submission, learned counsel for respondent No.1/DDA hands over a photocopy of the noting file of the case, wherein the note of Mr. V.K. Sandhu, Principal Commissioner, DDA dated 28.11.2011, appears at page 38.

19. Having perused the records and in view of the aforesaid factual matrix, this Court declines to engage itself once again on the merits of the case which have already been considered in WP(C)No.477/2010 and adjudicated upon on 22.2.2010. As regards the representation made by the petitioner to the respondent No.1/DDA for extension of time to deposit the balance payment, it is apparent from the record that the petitioner has been dragging its feet for reasons best known to it. This fact is also borne out by the manner in which the petitioner chose to remain dormant for eight months pursuant to the order dated 22.02.2010 and approached respondent No.1/DDA only on 26.10.2010 by making a representation for extension of time to deposit the balance payment. Again, in the said representation also there was no cogent reason offered by the

petitioner as to why such an indulgence be shown to it. In fact, the representation is completely silent in this regard. Rather, it is a terse two-line letter, wherein, all that the petitioner had stated was that it was not in a position to deposit the balance amount in time. Pertinently, even at that time, the petitioner had not deposited any amount with the respondent/DDA and instead, it had proceeded to unilaterally deposit less than 50% of the balance bid amount in January 2011 and the remaining amount in November 2011.

20. It is relevant to note that in this duration spanning over four years, the prices of the land have escalated, which is also apparent from the fact that the reserve price of the subject plot has almost doubled as compared to the reserve price fixed by the DDA in the earlier auction in respect of the same plot. Thus, there is no good reason for this Court to exercise its discretion in favour of the petitioner by calling upon respondent No.1/DDA to accept the balance amount deposited with it by the petitioner on its own in January and November 2011 and be deprived of an opportunity of earning a handsome profit on the sale by auction of the subject plot.

21. In view of the above facts and circumstances, the present petition is dismissed. Needless to state that the petitioner shall be

entitled to claim refund of the balance amount beyond 25% of the bid amount that has been unilaterally deposited by it with the respondent No.1/DDA towards the auction of the subject plot held on 25.3.2008, upon completion of all the necessary formalities in that regard.

(HIMA KOHLI)
Judge

MARCH 26, 2012
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