

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 1699/2012 and CM 3731/2012**

Decided on: 26.03.2012

IN THE MATTER OF
AJAY BIKRAM SINGH

..... Petitioner
Through: Ms. Pinky Anand, Senior Advocate with
Mr. A.K. Aggarwal and Ms. Natasha Sahrawat,
Advocates

Versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Mr. Rajiv Bansal, Advocate with
Mr. Rahul Bhandari, Advocate

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. The present petition has been filed by the petitioner praying *inter alia* for setting aside the order dated 09.02.2012 passed by the respondent/DDA, rejecting the petitioner's bid for the plot bearing No.31 situated in Pocket B-10, Sector-13, Dwarka Residential Scheme, and for directing the respondent/DDA to allot the said plot to him, being a successful bidder in terms of the auction held on 18.11.2011.

2. Learned Senior Advocate appearing for the petitioner submits that in October 2011, the respondent/DDA had issued an advertisement to auction 63 residential plots on freehold basis, including the subject plot, which was to be tentatively held on 18.11.2011. The petitioner had

applied for participating in the aforesaid auction in respect of the subject plot measuring 179.59 sq. meters for which the reserve price was fixed at ₹4,04,07,750/-. The bid was submitted in the joint names of the petitioner and his wife, Ms.Veenu Kanwar. Pertinently, the wife of the petitioner has not been impleaded as a co-petitioner in the present proceedings. It is stated that the auction was conducted by the respondent/DDA on 18.11.2011. During the said auction, it transpired that the petitioner along with his wife were the sole bidders. However, the respondent/DDA proceeded with the bid and certified the petitioner to be a successful bidder in terms of the document placed on record as Annexure P-2, whereunder, the petitioner had deposited 25% of the bid amount, totalling to ₹1,01,25,000/-.

3. Thereafter, the petitioner states that he did not hear from the respondent/DDA till the impugned order dated 09.02.2012 was passed whereunder he was informed by the respondent/DDA that as per Clause II(5) of the Brochure, the officer conducting the auction, for reasons to be recorded in writing, could recommend the Competent Authority to reject any bid including the highest bid and that in the present case, the Competent Authority had rejected the bid of the petitioner in respect of the subject plot, being a single bid. As a result, the petitioner was called upon to take the refund of the earnest money deposited by him.

4. Aggrieved by the aforesaid rejection order, the petitioner submitted a representation dated 23.02.2012 to the respondent/DDA,

requesting it to recall the aforesaid cancellation letter/order and allot the subject plot to him. The respondent/DDA replied on 27.02.2012 informing the petitioner and his wife, Ms. Veenu Kanwar that the bid had not been accepted by the Competent Authority and that they may submit the relevant documents for the release of the deposited amount.

5. The present petition is occasioned in the wake of an advertisement issued by the respondent/DDA on 17.03.2012, inviting bids for the auction of 16 residential plots on freehold basis, including the subject plot. Learned Senior Advocate appearing for the petitioner submits that the action of the respondent/DDA in rejecting the petitioner's bid is contrary to the terms and conditions of the Brochure and merely because the bid received in respect of the subject plot was a single bid cannot in itself be a ground for rejection of his bid. She further states that the bid amount having been duly received by the respondent/DDA, the petitioner ought to have been declared a successful bidder. In support of her submission, she relies on the decision of the Supreme Court in the case of Industrial Assistance Group, Govt. of Haryana and Anr. vs. Ashutosh Ahluwalia and Anr. reported as **(2001) 4 SCC 359**.

6. Counsel for the respondent/DDA, who appears on advance copy opposes the present petition on two counts. It is firstly stated that the present petition is highly belated as the petitioner was served with the cancellation order by the respondent/DDA a month and a half ago, on 09.02.2012 and in case he and his wife, the co-bidder were truly

aggrieved, they ought to have approached the Court immediately thereafter. He further states that in any case, the terms and conditions of the bid, as prescribed in the Brochure enclosed as Annexure P-1, clearly reveal that Clause II(5) gave an option to the Competent Authority to reject any bid including the highest bid, upon receiving a recommendation from the officer conducting the auction and in the present case, what weighed with the respondent/DDA while passing the cancellation order, was the fact that it had received only one bid in respect of the subject plot and that too only ₹1 lac above the reserve price, i.e., at a bid of ₹4,05,07,750/-, whereas the respondent/DDA expects the plot to fetch a much higher price, which possibility, it is well entitled to explore by calling for a fresh auction in respect of the subject plot. Counsel for the respondent/DDA relies upon a decision of the Division Bench of this Court in the case of Virendra Kapoor vs. Airports Authority of India & Ors. reported as **157 (2009) DLT 5630 (DB)** and a decision of the Supreme Court in the case of Master Marine Services (P) Ltd. vs. Metcalfe & Hodgkinson (P) Ltd. and Anr. reported as **(2005) 6 SCC 138** to fortify his stand that the right to refuse the lowest or any other tender is always available to the Government. He further states that the decision relied upon by the other side is not applicable to the present case for the reason that the petitioner herein has not pointed out that there exists any collateral purpose, for which the respondent/DDA has turned down his bid, for him to invoke Article 14 of the Constitution of India.

7. This Court has heard the counsels for the parties. The first point against the petitioner that has weighed with the Court is that he has approached this Court at the eleventh hour. Here is a case where the cancellation letter of the bid is dated 09.02.2012 and in ordinary course the said letter would have been received by the petitioner within 2 or 3 days from the date of issuance. By virtue of the aforesaid letter, the petitioner was duly informed that the Competent Authority had rejected his bid of the subject plot, being a single bid against the plot. Thus, the petitioner was well aware of the reasons for rejection. Instead of seeking his legal remedies against the rejection order, the petitioner decided to represent to the respondent/DDA, which is not a statutory representation as envisaged under the Brochure, for the petitioner to explain the delay in approaching the Court.

8. Furthermore, even the aforesaid representation of the petitioner came to be rejected by the respondent/DDA on 27.02.2012. However, the petitioner still did not approach the Court within a reasonable time from the date of receipt of the aforesaid rejection letter and now that the respondent/DDA has inserted an advertisement in the press on 17.03.2012 for sale by bid in respect of a number of plots including the subject plot and informed the public that the auction is to be held on 28.03.2012, the petitioner has filed the present petition on 23.03.2012, which is virtually at the eleventh hour. For the petitioner to now invite the Court to examine the validity of the impugned cancellation

letter, as belatedly as two days short of the date of auction, i.e., 28.03.2012, is not acceptable and unjustified. Moreover, the suggestion made by learned Senior Advocate for the petitioner, that the bid may be permitted to be conducted by the respondent/DDA on the assigned date but it be made subject to the outcome of the present petition, would in itself be sufficient ground to depress the bids received in respect of the subject plot and shall act as a dissuading factor for potential bidders to bid for the subject plot, due to an apprehension of possible legal wrangles they may land themselves in.

9. As regards the terms and conditions for sale by auction, Clause II of the Brochure laid down the procedure of bidding at the auction and submission of applications. The relevant sub-clauses of the aforesaid Clause-II are extracted hereinbelow for ready reference:-

"II. BIDDING AT AUCTION AND SUBMISSION OF APPLICATION:

4. The Officer conducting the auction shall normally accept the bids, subject to confirmation by the Competent Authority, the highest bid offered at the auction and the person whose bid has been accepted shall pay, at the fall of hammer, Earnest Money, a sum equivalent to 25% of bid amount by Pay Order/Demand Draft in favour of DDA. The amount of Earnest Money is to be deposited in Central Bank of India/State Bank of India, Vikas Sadan, INA, New Delhi. If the Earnest Money is not paid, it shall be deemed that the bid has been revoked/withdrawn and the amount, as specified in Clause-1(3) above, shall stand forfeited.

5. The Officer conducting the auction may, for reasons to be recorded in writing and recommend to the Competent Authority to reject any bid including the

highest bid.

6. The successful bidder shall submit duly filled in application, in the form attached, immediately after the close of the auction of the plot in question. The intending purchaser shall submit an affidavit and an undertaking as per the specimen attached, while depositing the challan of balance payment along with other documents.

7. If the bid is not accepted, the Earnest Money will be refunded to the bidder without any interest. If DDA has to withdraw the residential plot from auction (including not handing over the residential plot to successful bidders due to any reason like excess area or less area, etc.) then the E.M. and premium deposited will be returned to the auction purchaser without any interest up to a period of six months from the date of auction. Beyond six months period, DDA will pay an interest of 7% for the amount lying with DDA for such period."

10. Sub-clause 5 of Clause II makes it abundantly clear that the officer conducting the auction may, for reasons to be recorded in writing recommend to the Competent Authority to reject any bid including the highest bid. In the present case, the bid of the subject plot received from the petitioner and his wife was for ₹4,05,07,750/-, i.e., merely ₹1 lac above the reserve price fixed for the plot. It is not disputed that the petitioner and his wife were the sole bidders in respect of the subject plot. The respondent/DDA invoked sub-clause 5 of Clause II of the Brochure to reject the said bid, being a single bid. The aforesaid right to reject the bid could have been exercised by the Competent Authority alone. Therefore, for the petitioner to state that he ought to have been informed

on 18.11.2011 itself, i.e., on the date of auction, as to whether he was or was not successful in the bid, is untenable for the reason that the officer who was conducting the auction was not empowered to do so. He was only required to make his recommendations to the Competent Authority, which were in turn to be examined by the said Authority and a decision taken in this regard could have been communicated to the petitioner only after the date of auction. As a result, the deposit of 25% of the bid amount by the petitioner on the date of the auction could not create any vested right in his favour and such a bid was always subject to its acceptance by the Competent Authority.

11. As regards the reliance placed by the counsel for the petitioner on the decision in the case of Industrial Assistance Group (supra), the aforesaid judgment is distinguishable on facts for the reason that in the aforesaid case, the Supreme Court was examining a situation, where a concluded contract had been arrived at between the appellants and the respondents therein in respect of a specific plot allotted to the respondent/entrepreneur and it was in view of the subsequent directions issued by the State Government that the plots in the area could be sold only by an open auction and where the process of allotment had not been completed, the application money should be returned, was the subject plot put to auction in terms of the new policy. In the present case, no concluded contract had been arrived at between the petitioner and the respondent/DDA for the reason that the respondent/DDA had yet to issue

a demand-cum-allotment letter to the petitioner in terms of Clause II(8) of the Brochure. In other words, though the petitioner along with his wife had deposited 25% of the bid amount, the bid had yet to be accepted by the Competent Authority by issuing them a demand-cum-allotment letter in respect of the subject plot. Thus, the petitioner cannot assert that he was a successful bidder of the subject plot in terms of the Brochure issued by the respondent/DDA.

12. It may also be relevant to note that it is not the case of the petitioner that the respondent/DDA has rejected his tender for any collateral purpose or on account of any extraneous consideration. Merely because the petitioner was the sole bidder of the subject plot does not mean that the respondent/DDA was under an obligation to accept his bid. Also, the submission made by learned Senior Advocate appearing for the petitioner that the reserve price of the subject plot has been maintained even in the bid to be held on 28.03.2012 is not sufficient to persuade the Court to intervene at this stage inasmuch as the timeline between the last auction held in respect of the subject plot by the respondent/DDA on 18.11.2011 and the one to be held on 28.03.2012 is only four months and the same is not long enough for the respondent/DDA to necessarily hike the reserve price of the plot as it is required to examine the current trend in the market before taking such a decision. The purpose of fixing the reserve price is primarily to ensure that the bid is not below the expected price and no cartel is formed to depress the price of the plot.

But it is not as if a bid made above the price quoted by the petitioner for the subject plot cannot be received by the respondent/DDA this time.

13. For all the aforesaid reasons, this Court declines to entertain the present petition, which is accordingly dismissed in *limine*, alongwith the pending application.

MARCH 26, 2012
rkb/sk

(HIMA KOHLI)
JUDGE