

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

Reserved on: August 22, 2012

Pronounced on: August 30, 2012

+ **W.P.(C) 9772-73/2006 & C.M.No. 7275/2006**

MAMRAM EDUCATIONAL SOCIETY & ANR

Petitioners

Through: Mr. Harish Malhotra, Senior
Advocate with Mr. Tanuj Khurana,
Advocate

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Rajiv Bansal, Advocate with
Ms. Swati, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Respondent vide its Communication of 28th March, 2006 (Annexure –D) had called upon petitioner - Society to deposit the auction bid amount of ₹19,96,50,050/- within the stipulated period, otherwise the auction bid shall stand cancelled automatically and earnest money of ₹6,65,50,000/- deposited by petitioner – Society towards allotment of 12141 sq. meter of land for construction of Technical/Higher Educational Institute in Sector A-8, Narela, Delhi (*henceforth referred to as the subject land*) shall stand forfeited without notice.

2. Since respondent's policy decision of 15th December, 2003

of allotment of Nazul Lands to societies for setting up Higher/Technical Institutes at a premium determined through auction was quashed by a Single Bench of this Court in W.P.(C) No. 3188/2006, *Association of Self Financing vs. DDA & Ors.*, rendered on 17th April, 2006, therefore the relief sought in this petition is to quash the auction held on 6th March, 2006 in respect of the subject land being null and void in view of the afore-noted decision in *Association of Self Finance* (supra) and to refund the earnest money deposited by petitioner - Society as noted in the aforesaid impugned Communication (Annexure-D). The alternate relief sought is to allot the subject land to petitioner - Society at *pre-determined rates* as fixed by the Government in view of a Single Bench decision in *Association of Self Finance* (supra) and not to dispossess petitioner - Society from the subject land.

3. While entertaining this petition, liberty was granted to the petitioner to seek extension of time for depositing the balance auction bid amount in terms of respondent's policy governing auction of plots as contained in the brochure of DDA (Annexure-C). Taking note of a Division Bench order, vide interim order of 1st September, 2006, it was left to petitioner to apply afresh for extension of time to deposit the balance auction bid amount. Thereafter, the order-sheets of this case are silent as to whether petitioner had actually sought an extension of time for depositing the balance auction bid amount and if it was so done, then what was the stand of respondent in respect of petitioner's application seeking extension of time for depositing balance auction bid amount. So while concluding the hearing in this matter, both the sides were called upon to disclose as to whether petitioner had

sought extension of time for deposit of balance auction bid amount in pursuance to interim order of 1st September, 2006 and if so, how respondent had dealt with the said application.

4. Taking note of subsequent development of the ***DDA (Disposal of Developed Nazul Land) Rules, 1981*** (hereinafter referred to as the *Nazul Rules*) being amended in the year 2006, making it mandatory to allot the Institutional Lands to Societies like the petitioner by auction/tender, it was urged by learned senior counsel for petitioner that in view of validity of the *Nazul Rules* as amended in the year 2006 being upheld by a Division Bench of this Court in *W.P. (C) No. 2459-60/2005, Bhagwan Mahavir Education Society (Regd.) and Anr. vs. DDA & Ors*, rendered on 25th March, 2011, respondent has two options, i.e., either to allot the subject land to petitioner - Society in terms of its Communication (Annexure –D) or to refund the earnest money. It was also urged by learned senior counsel for the petitioner that otherwise alternative relief of allotment at pre-determined rates, as sought by petitioner, be granted.

5. Respondent in its counter affidavit had maintained that petitioner cannot be allowed to wriggle out of a valid, legal and concluded contract in the face of Communication of 28th March, 2006 (Annexure-D) impugned herein, as there was no interim order putting on hold auction of the subject land. According to learned counsel for the respondent, since auction in question was not the subject matter of decision in *Society for Employment & Career Counseling (Regd.) & Anr. vs. Vice Chairman, DDA & Ors.*, 129 (2006) DLT 351 negating the respondent's auction policy of 15th December, 2003, therefore, petitioner's reliance upon the afore-

noted decisions in *Association of Self Financing (supra)* and *Career Counseling (supra)* is wholly misconceived. Regarding the refund of earnest money, stand of respondent is that the same stands forfeited as despite respondent's Communication of 28th March, 2006 (Annexure-D) petitioner had not deposited the balance auction bid amount resulting in automatic forfeiture of the earnest money so deposited by petitioners.

6. It was urged by respondent's counsel that in view of a decision of Division Bench of this Court in *Bhagwan Mahavir (supra)*, the alternate relief sought by petitioner cannot be granted and thus, this petition merits rejection.

7. Upon considering rival submissions advanced during the hearing of this petition, the Communication of 28th March, 2006 (Annexure-D), the material on record and the decisions relied upon, this Court finds that alternate relief sought for allotment of Institutional Land to the petitioner at pre-determined rates cannot be granted in view of a Division Bench decision of this Court in *Bhagwan Mahavir (supra)*. Hence, at the outset, the alternate relief sought is declined.

8. Qua the main relief sought, not much is required to be said because soon after the decision of 17th April, 2006, in *Association of Self Finance (supra)*, quashing respondent's policy to auction Institutional Lands, respondent's auction policy was put in place by virtue of the *Nazul Rules* being amended vide Notification of 19th April, 2006 and so there was no impediment in the way of petitioner to have complied with the terms of the bid as reflected in the DDA's brochure (Annexure-C) by which petitioner was bound.

9. The consequences of not abiding by the terms and conditions of auction bid in question are clearly spelt out in Clause 9 and Clause 10 in respondent's brochure (Annexure-C), which deserves attention. Aforesaid clauses read as under:-

"9. In case the highest bidder fails to make payment of 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 plot.

10. After making the payment of balance 75% of amount and intimating thereof, the highest bidder is required to appear before the Deputy Director (IL) in person or through an authorized representative alongwith the third copy of bank challan in support of payment of balance 75% amount, terms and conditions of auction duly typed on a non-judicial stamp paper worth Rs.10/- signed by auction purchaser(s), recent passport size photographs of individual or combined, as the case maybe. On submission of all documents and subject to verification of the payment made by the auction purchaser, the possession letter will be issued within 30 days and the same can also be collected in person by the auction purchaser. The possession letter so issued will carry the date on which the physical possession of the plot will be handed over to the auction purchaser at site. In case the purchaser fails to turn up at site on the date and time fixed for handing over of possession, the next date of possession will be fixed only on payment of penalty @ 1000/- p.m. for not taking over the possession by the purchaser. The possession, however, must be taken within 3 months from the date of issuance of possession letter and in case it is not taken within that period, then the allotment shall stand cancelled and the Earnest Money shall stand forfeited without notice." (emphasis supplied)

10. While entertaining this writ petition, liberty was granted to the petitioner to seek extension of time for depositing the balance amount and it is claimed on affidavit of 27th August, 2012 by the petitioners that vide application of 8th September, 2006 (Annexure PX-2) they had sought extension of time to make the balance payment and the said application was received by respondent - DDA vide acknowledgement of 11th September, 2006 (Annexure PX-1).

11. The need arose to call upon the parties to disclose their respective stand in relation to the interim order of 1st September, 2006 as the pleadings are silent about it. Since petitioners have now disclosed that they had infact sought extension of time to make the balance payment, therefore, the burden shifts upon respondent to disclose as to what was the fate of the said application (Annexure PX-2). Despite opportunity given, respondent has failed to discharge its burden of disclosing as to what had happened to the petitioner's application (Annexure PX-2) seeking extension of time to make the balance payment, so respondent cannot take advantage of the terms and conditions of the auction bid to deny refund of the earnest money to petitioners. However, this Court has already come to the conclusion that petitioners could not take refuge behind the decision in *Association of Self Financing* (supra), so petitioners are not entitled to refund of the entire earnest money.

12. The writ petition does not disclose as to how petitioners had come into possession of the subject land without paying the balance auction bid amount and so, there is no question of petitioner being entitled to any protection from being dispossessed from the subject land. Since respondent has already allotted the land in question to

the Government for construction of a school and vide order of 18th August, 2011, the Directorate of Education was permitted to construct a school building on the land in question, therefore, respondent can legitimately forfeit 5% of the earnest money and to refund the balance earnest money to petitioner within a period of four week or so.

13. Accordingly, auction in question in respect of the subject land, is held to be valid and the alternate relief sought is declined with a rider that petitioners shall be entitled to the refund of 95% of earnest money within the period stipulated above.

14. With directions, as aforesaid, this petition is disposed of with no orders as to costs.

(SUNIL GAUR)
Judge

August 30, 2012
pkb