

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

Date of decision: 27.02.2012

+ **LPA 143/2012, C.M. Appl. 3260/2012 (for stay), 3261/2012 (for exemption) 3262/2012 (for condonation of delay) & 3263/2012 (for condonation of delay)**

M/S. CHAMELI FARMS PVT LTD Appellant
Through : Sh. Anil. K. Airi and Sh. Ravi Krishan
Chandna, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents
Through : Ms. Sangeeta Chandra, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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C.M. Appl. 3261/2012 (for exemption)

The application is allowed, subject to just exceptions.

C.M. Appl. 3262/2012 (for condonation of delay) & 3263/2012 (for condonation of delay)

For the reasons mentioned in the applications, C.M. Appl. 3262/2012 and C.M. Appl. 3263/2012 are allowed.

LPA 143/2012, C.M. Appl. 3260/2012 (for stay)

1. This appeal challenges a judgment of the learned Single Judge dated 14.11.2011, whereby W.P. (C) 19711/2005 was dismissed.
2. The appellant had participated in a bid whereby the respondents had offered, for sale, through auction, three plots – Plot Nos. 3, 8 and 9 at L.S.C., Sector-B, Pocket-VII, Vasant Kunj, New Delhi. The appellant bid for Plot No.3 and the price offered for the plot was Rs. 1,40,01,000/-; the bid was opened on 30.12.1994. The appellant's bid was the highest; it was further accepted, subject to approval by the competent authority – Vice Chairman, DDA. The latter, by his order dated 10.01.1995, rejected the offer. Consequently, the DDA refunded the Earnest Money deposited as a pre-condition for participation in the bid, i.e. Rs. 35,00,250/-. The appellant thereafter preferred a writ petition, before this Court, claiming that the rejection was arbitrary. Learned Single Judge, by the order dated 15.07.2004 in Writ Petition No. 4049/1995, held that the comparison made by the Vice-Chairman, DDA between the offer in respect of the other two plots, i.e. Plot Nos. 8 and 9 was not justified. The Court was of the view that the user indicated for the plot in question, i.e. No.3 was a restricted one – i.e. it was open for use by banks whereas the user advertised for other plots was a wider one – as commercial space. The DDA was directed to reconsider the matter and pass appropriate orders.
3. Consequent to the order of 15.07.2004, the DDA, after taking into consideration all the circumstances, issued a letter dated 15.02.2005 offering Plot No.3 to the appellant. In this, the appellant was given the choice of

depositing the price fixed for the plot, i.e. Rs. 3,14,79,674/-. This amount was to be deposited within 90 days of receipt of this offer. The petitioner apparently did not deposit any amount and instead chose to question the allotment letter so far as it pertained to price-fixation, through yet another W.P. 5885/2005. After hearing parties, that writ petition was allowed in the following terms:

“XXXXXX XXXXXX XXXXXX

8. *Decision conveyed to the petitioner is that the competent authority has decided to allot the commercial plot in question to the petitioner at a premium of Rs.3,14,79,624/-.*

9. *I am afraid, letter dated 15.2.2005 conveying the decision of the Vice Chairman DDA shows that once again, Vice Chairman, DDA has proceeded to consider the matter by taking into account the factors which are irrelevant.*

10. *Vice Chairman, DDA has to consider whether the original offer as per bid of the petitioner should or should not be accepted. While so deciding, Vice Chairman, DDA has to consider the relevant parameters and not extraneous parameters. In the instant case, when the petitioner sought a clarification as to how the land cost was being charged, on 3.3.2005 petitioner was informed that the basic land road adopted was on the basis of average auction rates for the year 2004-05.*

11. *Noting that the auction in the present case was in the year 1994, decision to accept or reject the bid on the basis of subsequent auction rates for 2004-05 would be impermissible. The decision of the Vice Chairman, DDA is once again vitiated in law.*

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4. After the decision of the Court in the second Writ Petition, the Vice Chairman, DDA reconsidered the matter and made a fresh determination. The gist of this decision was indicated to the appellant in a letter dated 27.09.2005. The material part of that letter reads as follows:

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2. *The area of the plot and the FAR of the plots was same. The use of plot is shop/office in respect of plot No. 8 & 9, and bank/bank office in respect of plot No.3. The reserve price of all these three plots were kept same, considering the fact that prevailing market rate/trend during that time did not indicate much difference between the plot having use of shop/office and bank/bank office, without giving any concession to plot no.3, which has use as bank/bank office. As per the practice, the restricted use was only considered for the plots pertaining to Guest Houses, Nursing Homes etc. and the reserve price was fixed less for these compare to shop/office plots. However, as regards the plots meant for bank/bank office were concerned, their price was kept at par with the reserve price of the shops/office.*

3. *The bid offered by the petitioner was Rs. 1,40,01,000/- against the reserve price of Rs. 71.22 lacs, which is 96.58% above the reserve price. In the same sector and Local Shopping Centre, the bid of the plot No.8 fetched Rs. 1,95,01,000/- against the reserve price of Rs.71.22 lacs, which is 173.81% above the Reserve Price and similarly plot no. 9 fetched Rs. 2,01,00,000/- which is 182.22% above the reserve price. Considering the fact that the location, plot size, number of storeys, FAR and the reserve price being same, the difference in the bid is considerable.*

4. *Even if DDA considers the point of restricted use for bank and bank office, it could have only marginal effect on the bid, but there being vast difference in the bid offered in respect of plot no. 8 & 9 in*

comparison to Plot No.3, and the bid being not competitive enough to represent the market trend, and considering the clause IV & V of the terms and conditions of auction, the bid offered by the petitioner in respect of plot no. 3 is not considered adequate for acceptance by DDA.

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5. The appellant questioned the pricing indicated by the DDA through a third round of Writ Petition, i.e. 19711/2005. The order of 20.08.2007, in that proceeding, noted that the appellant was willing to deposit the amount as a without-prejudice gesture. A cheque was also apparently brought to the Court. The DDA was accordingly directed to consider the offer. By its letter dated 07.05.2008, the DDA rejected the offer. It was contended before the learned Single Judge that the latest round of consideration by the VC, DDA was nothing but a repetition of the earlier reasons given to the Court in the first two writ petitions which had been expressly rejected. All that was left for the VC, DDA to do was to arrive at a proper method for fixing the price of the plot in view of the last order of the Court in the second Writ Petition dated 08.08.2005. Learned counsel urged that the impugned judgment has completely overlooked this aspect and was greatly swayed by the fact that the Earnest Money was refunded as early as in January 1995 and that there were no equities in favor of the appellant.

6. Learned counsel took us through the various documents, particularly, the decision of the DDA in its letter dated 27.09.2005 and highlighted the circumstance that after the Single Judge had repeatedly stated that there

could be no question of parity having regard to the terms of user advertised for the said plot, i.e. No.3, the VC, DDA could not have, on 27.09.2005, particularly, since the DDA did not claim itself to be aggrieved by the previous orders in the Writ Petitions, harp back on the so-called similarity of the plots, as is evident from paras 3 and 4 of the letter indicated to the appellant.

7. This Court has considered the submissions and also considered the various orders as well as the reasoning of the learned Single Judge. Whilst there is no doubt that the earlier writ petitions had succeeded on the term that the DDA could not conclude that all the three plots could be similarly priced, having regard to the differing user, at the same time, what the Court had to see in the present round was whether the price-fixation was fair and justified. It is apparent from the letter/order dated 15.02.2005 by which Plot No. 3 was offered to the appellant, that no break-up of the cost was indicated.

8. It is very clear that the circumstance led the Court to allow the writ petition on 08.08.2005, when the learned Single Judge observed that it was not open to the DDA to have based itself on the cost determination for a subsequent order, i.e. of 20.04.2005. The counter-affidavit in this case, filed in the Writ Petition by the DDA on 21.10.2005 justified the price-fixation exercise whereby the total amount claimed was Rs. 3,14,79,624/-. We notice that the main component (original bid amount) was based on the appellant's offer, i.e. Rs. 1,40,01,000/-. On that amount, the DDA had claimed compound interest @ 7% per annum with effect from 30.12.1994 till end of

October, i.e. Rs. 1,37,01,750/-. On these two elements, the DDA imposed what it termed as Non-Participation Charges, for the increase in price to the extent of Rs. 28,61,784/-.

9. The learned Single Judge in this case was unpersuaded by the appellant's contentions of arbitrariness in price-fixation. After recounting in detail the entire sequence of events, which encompassed the previous two rounds of litigation and noticing the previous Division Bench rulings of this Court in *Kusum Lata Khajanchi & Ors. v. DDA & Ors* 1995(35) DRJ (DB) 480 to the effect that DDA as a contracting party has flexibility in accepting or rejecting the bid even if it is the highest one, and that so long as rejection is not arbitrary or erroneous, the learned Single Judge noted that the High Court, in its exercise of powers under Article 226 of the Constitution of India would not interfere with it.

10. The impugned judgment relied upon *Aman Hospitality Pvt. Ltd. v. DDA* 135 (2006) DLT 214 (DB) and held that the price fixation was not arbitrary. The Court also took into consideration the circumstance that the appellant enjoyed the benefit of 100% Earnest Money deposit refund as far back as in January 1995 and concluded that the equities were not in favor of grant of relief, having regard to the long passage of time. We also notice that the appellant did not seek any interim order or offer to make any deposit pursuant to the conditions contained in the allotment letter dated 15.02.2005 and instead chose to challenge it. The subsequent Writ Petition has entirely focused on the price-fixation or cost determination exercise of the DDA.

11. It is a well-settled proposition that the Courts would not interfere with

the cost or price-fixation exercises which take into consideration prescribed as well as relevant criteria (see *Sh. Sitaram Sugar Co. Ltd. v. UOI* AIR 1990 SC 1277). In this case, the DDA, in our opinion, determined the cost taking into consideration all relevant factors. The order of 27.09.2005 in fact recites the direction of 08.08.2005. In that, basis of price-fixation is the offer given by the appellant itself. The other components include interest and 10% non-participation charge (since the petitioner stayed away from the public action exercise conducted at a later point of time). Even though they were given the choice of depositing the amounts as early as in 15.02.2005, the petitioner did not do so. In our opinion, the cost determination by the DDA was not arbitrary. For these above reasons, we find no infirmity in the impugned judgment. The appeal is accordingly dismissed. The application for stay, for the same reason, is rendered infructuous and is, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P.GARG
(JUDGE)

FEBRUARY 27, 2012
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