

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

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Date of decision: 29th September, 2016

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W.P.(C) No.684/2002

M/S SDB INTRASTRUCTURE PVT. LTD.

..... Petitioner

Through: Mr. H.L. Tiku, Sr. Adv. with Mr.
Shubhankar Sengupta and Mr. Rajesh
Bhardwaj, Advs.

Versus

DDA & ANR.

..... Respondents

Through: Mr. Dhanesh Relan and Ms. Akshita
Manocha, Advs. for DDA.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition (i) impugns the letter dated 8th September, 1989 of the respondent Delhi Development Authority (DDA) (respondent no.2 is the Vice Chairman of the DDA) requiring the petitioner to hand over the possession of plot no.5, District Centre, Bhikaji Cama Place, New Delhi with the superstructure standing thereon to the respondent DDA; (ii) impugns the letter dated 30th April, 1999 of the respondent DDA calling upon the petitioner to remove the breaches of the terms and conditions of auction of the aforesaid plot failing which action for cancellation of the bid of the petitioner with respect to the said plot shall be initiated; (iii) seeks a mandamus commanding the respondent DDA to execute the lease deed of

the land underneath the aforesaid plot directly in favour of the sub-allottees or alternatively in favour of the petitioner; and, (iv) seeks a mandamus to the respondent DDA to accept the ground rent tendered by the petitioner from time to time.

2. It is *inter alia* the case of the petitioner (i) that in the auction held by the respondent DDA on 7th February, 1981 of plot no.5, Bhikaji Cama Place, New Delhi, the bid of the petitioner being the highest was accepted and upon the petitioner paying the entire consideration, the actual physical possession of the plot was delivered to the petitioner on 9th September, 1981; (ii) that the petitioner raised a multi-storied commercial building on the said plot of land in accordance with the sanctioned building plan; (iii) that the building contains approximately 350 separate and distinct units and which were sought to be conveyed and sold by the petitioner to different persons; (iv) that the petitioner called upon the respondent DDA to execute the lease deed of the land in accordance with the terms and conditions of auction; (v) that the petitioner, under the Delhi Apartment Ownership Act, 1986 (Apartment Act) also was under an obligation to execute the sub-leases in favour of allottees to whom different flats/shops/spaces in the building had been allotted by the petitioner; (vi) that the respondent DDA instead of executing

the lease deed, issued a notice dated 25th November, 1988 asking the petitioner to show cause why the auction bid should not be cancelled in view of deviations in construction; (vii) the respondent DDA issued another show cause notice dated 27th April, 1989 under Section 30(1) of the Delhi Development Act, 1957 (DDA Act) –the unauthorised deviations mentioned therein were of the kind which had been made by the flat buyers after the completion of construction and allotment of different flats to them and the petitioner was not to blame therefor; (viii) that the petitioner has already parted with the entire premises to various flat owners and the petitioner could not control the unauthorised constructions by the said flat buyers; (ix) similar notices dated 7th June, 1989 and 11th July, 1989 were also issued by the respondent DDA to the petitioner; (x) the respondent DDA ultimately vide impugned letter dated 8th September, 1989 cancelled the bid and forfeited the money and directed the petitioner to hand over possession of the plot together with superstructure; (xi) however no proceedings for taking over possession were taken by the respondent DDA and on the contrary another show cause notice dated 20th September, 1989 under Section 30(1) of the DDA Act was issued; (xii) on the request of the petitioner, a joint inspection of the premises was carried out on 17th January, 1990 and the

petitioner represented that the deviations alleged by the respondent DDA were beyond its control; (xiii) yet another show cause notice dated 30th April, 1991 was issued by the respondent DDA to the petitioner asking the petitioner to remove the breaches within 15 days failing which the bid of the petitioner will be cancelled; (xiv) that from the issuance of the notice dated 30th April, 1991 it was evident that the earlier notice dated 8th September, 1989 had been withdrawn by the respondent DDA; (xv) that if there is any misuse or unauthorised construction in any part of the building, the respondent DDA is at liberty to take action with respect thereto; (xvi) that the petitioner after having sold different flats in the building is left with no interest therein but remains liable for payment of ground rent; (xvii) though the petitioner from time to time tendered ground rent to the respondent DDA but the same was refused and on the contrary a demand for ground rent was raised; and, (xviii) that the petitioner offered to pay an amount of Rs.76,21,298/- towards ground rent but the same has not been accepted.

3. The petition came up first before this Court on 30th January, 2002 when notice thereof was issued. Rule was issued in the petition on 25th September, 2002 and it was directed that it will be open to the petitioner to deposit the ground rent and the same be accepted by the respondent DDA

without prejudice to the rights and contentions of the parties. Repeated opportunities were taken by the respondent DDA to file reply/counter affidavit stating that the files pertaining to the subject property were with the Central Bureau of Investigation (CBI). Vide order dated 24th February, 2004 CBI was directed to hand over the relevant records to the respondent DDA. However it appears that the original record was stated to be not traceable.

4. Vide order dated 8th October, 2004 respondent DDA was directed to inspect the building and to report whether it was the petitioner who had violated the terms of the bid/auction or the persons who had purchased office spaces/flats in the building had violated the same and to file counter affidavit on the basis thereof.

5. The respondent DDA in its counter affidavit pleaded (i) that the petitioner raised construction in violation of the sanctioned plan and therefore the bid of the plot was cancelled under Clause II (4)(a)(b) and the petitioner was vide impugned letter dated 8th September, 1989 called upon to deliver possession; (ii) that the cancellation was for the reason of (a) lower ground floor being used as offices; (b) several offices unauthorisedly functioning in the basement; (c) front internal road of the side of the path on

the main road having been encroached; and, (d) public corridor having been encroached in the upper ground floor and the upper ground floor being used for shop/office purposes; (iii) that the petitioner, as per the terms of auction was required (a) to within two years of being put in possession of the plot raise construction in accordance with the sanctioned building plan and design plans and to submit a report and to not commence construction before execution of the lease deed; and, (b) not use the plot or the building for the purpose other than specified; (iv) that as per control drawings; (a) the prescribed user of the basement was for servicing and storage like plant, machinery, equipment and water tanks; (b) the prescribed user of the lower ground floor was for parking for cars, cycles, scooters, reception & entrance areas, plant machinery and stores; (c) the prescribed user of the upper ground floor was for retail shopping and for pedestrian movement; (d) the prescribed user of the first floor was for retail shops, public relation offices, banks, travel agents etc.; (e) the prescribed user of the second to the fourth floor was offices/commercial/guest house; and, (f) the prescribed user of the roof was for lift room, plant, storage, water tanks; (v) however both, the basement and the lower ground floor, were found as being used as offices and in the upper ground floor the public corridor had been encroached and

shops/offices constructed thereon; (vi) that the balconies of the upper floors had been covered and were being misused; (vii) common areas had been encroached; (viii) unauthorised construction had been made at the terrace; (viii) that it is evident that it is the petitioner who had made the unauthorised construction and sold the same – without construction the same could not have been put to unauthorised use; (ix) the petitioner had also committed breach of terms and conditions by selling the spaces within the building without seeking any permission in accordance with the lease deed; and, (x) keeping the larger interest in mind, the respondent DDA can consider restoration of allotment on the condition of removal of all unauthorised construction and misuse and payment of ground rent and other requisite charges thereof.

6. Though the petitioner is found to have filed a rejoinder to the aforesaid counter affidavit but the same merely reiterates the contents of the petition.

7. The respondent DDA in additional affidavit filed in response to the order dated 27th February, 2007 has informed (i) that as per procedure of the department, after cancellation of allotment the allottee is asked to hand over

possession and if fails to hand over possession, the case is referred to Estate Officer for eviction proceedings but in the present case no reference to the Estate Officer appears to have been made; (ii) that the impugned notice dated 30th April, 1991 was inadvertently issued and was withdrawn by letter dated 30th April, 1993; (iii) the Building Department had also issued the notices dated 20th September, 1989 and 4th January, 1990 with respect to partition walls constructed unauthorisedly in the basement, offices and shops having been unauthorisedly constructed in the car parking area in the lower ground floor, a car showroom having been unauthorisedly built in the car parking area in the lower ground floor, corner shops having been unauthorisedly constructed along public corridor at upper ground floor, toilets on the upper ground floor having been unauthorisedly converted into shops, eight rooms having been unauthorisedly constructed on the terrace floor; (iv) that w.e.f. 26th November, 1997, the building activities of the area stood transferred to Municipal Corporation of Delhi (MCD) and hence action in respect of building bye-laws has to be taken by the MCD; (v) that as per the inspection of the building on 2nd April, 2007 also, unauthorised construction and misuse existed; (vi) that the plea of the same being done by the allottees/purchasers is false as without the petitioner selling the spaces,

the question of there being misuse would not have arisen; and, (vii) that as per the terms of auction/bidding, the petitioner was to remain responsible even after transferring the floors/spaces and that the petitioner thus cannot absolve itself of the responsibility.

8. Vide order dated 19th March, 2008 the petitioner was directed to inform whether there is any flat buyers' association and on 18th September, 2008 it was reported that there is no registered association of flat buyers.

9. The petition, on 19th December, 2012 was dismissed in default of appearance of the petitioner but on application moved by the petitioner, was on 3rd July, 2013 restored to its original position. On 1st September, 2015 the counsel for the petitioner again stated that the petitioner desired to amicably resolve the matter with the respondent DDA. Apparently no settlement was reached. The counsels were heard on 18th May, 2016 and judgment reserved.

10. The senior counsel for the petitioner, during the hearing, relied on:-

- (i) ***K.K. Birla Academy Vs. D.D.A.*** 115 (2004) DLT 361 – where in the context of Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 it was held that once *Nazul* land is allotted and premium is paid, an indefeasible

right to the land is created in favour of the allottee and the allottee is entitled to execution of a lease in its favor and such a vested right can be taken away only by law.

- (ii) ***Shanti memorial Society Vs. Union of India*** 142 (2007) DLT 787 where, finding no justification for DDA, after accepting premium, not executing the lease deed, mandate to execute the lease deed was issued.
- (iii) ***Sant Ram Sodhi Vs. Lt. Governor*** 119 (2005) DLT 386 where, finding the breaches and violation of the lease deed averred by the DDA to be not attributable to the lessee but to the tenant of the lessee and against whom lessee had taken court proceedings, the demand of the DDA for charges for such misuse as condition for converting leasehold rights in the land into freehold was set aside.
- (iv) ***Ram Prakash (Prof.) Vs. D.D.A.*** 2007 VIII AD (Delhi) 313 holding that DDA can levy misuse charges provided it adopts a reasonable and fair procedure consistent with the principles of

natural justice and exercises such powers within reasonable time.

11. In the present case, neither is it the plea of the petitioner nor is any document pointed out to show that the land which was auctioned is *Nazul* land. Without the same, reliance by the senior counsel for the petitioner on the first of the aforesaid judgments is misconceived. I may record that it is not as if all lands at disposal of DDA are *Nazul* land.

12. The petitioner herein came into possession of the land aforesaid by virtue of being the highest bidder during the auction of the said land. The following clauses of the terms and conditions of auction are relevant for the present purpose:-

“4. *SALIENT CONDITIONS OF LEASE DEED:*

(i)*The intending purchaser shall execute the lease deed in the said form when called upon to do so.*

(ii) *The following are the other main conditions of the lease-*

(a) *The lessee shall have to erect and complete the building within two years from the date of the offer of the possession of the plot, in accordance with the type, design and other architectural features prescribed by the*

Delhi Development Authority after obtaining and in accordance with the sanction to the building plan with necessary design plans and specifications from the proper Municipal or the other authorities concerned in accordance with their respective rules, bye-laws etc., as the case may be. The lessee shall not start construction before the said Plans etc., are duly sanctioned by the Authorities aforesaid. The lessee shall also submit a project report within one month from the date of possession. The project report shall indicate the schedule of completion of various stages of construction. However, the auction purchaser shall not be allowed to start any activity connected with the construction work before execution of the lease-deed.

- (b) The plot or building thereon shall not be used for a purpose other than that as specified.*
- (c) The lessee shall not be entitled to sub-divide the plot or to amalgamate it with any other plot.*
- (d) The lessee will also not be entitled to dispose of, sublet or transfer the plot before or after the erection of the building without the prior permission of the Authority.*

In the event of permission being granted, 50% of the unearned increase in the value of the land i.e. the difference between the premium paid and the

market value of the land at the time of transfer of the plot would be paid to the Delhi Development Authority.

The lessee may, with the previous consent in writing of the lessor, mortgage or charge the plot to the Life Insurance Corporation, a Scheduled Bank or such other financial agency as may be approved by the lessor in his absolute discretion.

.....

- (h) *The intending purchaser shall also ensure that the purchasers of floor area units in the building observe the general conditions of lease entered into between the lessor and the lessee. The intending purchaser of the floor area shall not use or cause to be used the unit/any portion thereof for any purpose whatsoever other than an office for business purposes nor shall he use or cause to be used for said unit/in such manner which may or is likely to cause nuisance or annoyance to the occupiers of any other adjoining and neighbouring properties. Nor shall he use the said unit for any illegal, immoral purposes or for any residential purposes.*

5. **OTHER CONDITIONS:**

The lessee may sublet the whole or part of the building that may be erected upon the plot for the purpose specified in the terms & conditions of the original lease. The lessee may also, with prior permission of the DDA in writing, sell or

transfer the floor space constructed on the plot. The written permission will be granted on payment of Rs.100/- for each case of sale/transfer provided such a transaction does not violate the said terms & conditions. For sale/transfer subsequent to the first sale of the floor space units, the permission of the DDA shall be required which will be given after charging by the Authority @ Rs.5/- per sq. ft. of the floor space to be transferred.

The lessee shall also be responsible, after transferring/selling the floor space to ensure that the transferee/buyer does not violate these terms and conditions.

The lessee will make such arrangements as are necessary for the maintenance of the building and common services.

8. **DELIVERY OF POSSESSION OF PLOTS AND EXECUTION OF LEASE:**

The possession of the plot shall be handed over to the intending purchaser. After the payment of the balance of the premium and the other amounts payable under these conditions. Thereafter, the lease shall be executed and registered.”

13. Admittedly no lease deed has been executed in favour of the petitioner till now. The status of the petitioner with respect to the aforesaid land thus remains as of an allottee. If the petitioner is in violation of any of the terms and conditions on which it was allotted the land and put into possession thereof, the respondent DDA would be entitled to cancel the allotment

and/or refuse to execute the lease deed and call upon the petitioner to deliver possession of the land and if the petitioner fails to do so, to take appropriate legal proceedings in that respect. The only effect of the land, if is *Nazul* land, would be that a lease would be deemed to have been executed and the respondent DDA would be required to take proceedings as of cancellation of the lease.

14. It is however the case of the petitioner that it has already sold each and every inch of the built-up space on the said plot of land and received consideration thereof. The petitioner thus, upon selling the entire built-up space is not left with any stake in the said building save for profiteering from maintaining common areas and services of the said building and would not really be prejudiced by an action of the respondent DDA, even if of cancellation of the allotment and resumption of the said plot; the only prejudice to the petitioner, may be, would be of the persons to whom it has sold the said spaces making claims against the petitioner. The real sufferers of such an action of the respondent DDA would be the purchasers of different flats/spaces from the petitioner who have paid market price therefor to the petitioner. It is such persons who, inspite of paying the full

consideration, would be dispossessed from the immovable property which they purchased.

15. The respondent DDA of course has pleaded that no permission as required was obtained by the petitioner for effecting such sales and the charges required to be paid to the respondent DDA therefor have also not been paid. However the fact remains that the respondent DDA did not put in place appropriate mechanism therefor. The builders/real estate developers as the petitioner bid for such plots as the subject matter of the present petition, not for their own use but for commercial exploitation. In fact flats/spaces in the proposed buildings are often marketed and sold immediately after acceptance of the bid and without even a brick being laid on the plot of land. The respondent DDA, once was permitting sale of spaces/flats in the proposed building, ought to have built in the price thereof the charges therefor and/or prohibited such sale/transfer. Once the terms of auction permit such sale/transfer, the purchasers of flats/spaces from the petitioner presume the requisite formalities therefor having been fulfilled and cannot be made to suffer for non-fulfillment thereof by the petitioner. I repeat that the effect of holding such sales/transfer of plots/spaces in the building by the

petitioner to be also unauthorised would fall on the purchasers and not on the petitioner.

16. The situation as has arisen with respect to the subject building is prevailing in a large number of other multi-storied buildings constructed/developed on other lands allotted/transferred/sold by the respondent DDA and other such public authorities or even on private lands. The public authorities as the DDA have turned a blind eye thereto and not taken any remedial steps and left the public to be exploited by the builders/real estate developers.

17. I entertain no doubts whatsoever that the violations pleaded by the respondent DDA and on the basis whereof the respondent DDA has also taken the actions impugned in this petition are of the making of the petitioner. Had the petitioner left the basement and the lower ground floor for uses as permitted and not constructed shops/flats therein and not sold the same, the question of misuse thereof would not have arisen. Similarly, had the petitioner not encroached upon the public passages on the upper ground floor by constructing shops/flats therein and not converted the common toilets therein into flats the same would not have existed. It cannot be lost

sight of that the petitioner, till the date of arguments, admitted to be carrying out the work of maintenance of common areas and services in the building and collecting charges therefor from the persons to whom the flats/spaces had been sold and/or tenants inducted by them. Had the petitioner not itself made the aforesaid deviations, the petitioner would not have allowed such deviation to come up.

18. However the fact still remains that the effect of dismissal of the petition and allowing the respondent DDA to resume the land would be to the prejudice of the purchasers who have bought valuable flats/spaces in the building by paying the price thereof to the petitioner. The prejudice to the petitioner would be only that the petitioner would not be able to profiteer from carrying out maintenance of common areas and services in the building.

19. Fortunately, I have been approached with the problem aforesaid in jurisdiction under Article 226 of the Constitution of India and which gives me enough leeway to find a lasting and practical solution to the problem. I am of the view that a solution to the problem which ensures (i) that the unauthorised constructions/deviations/misuse are removed/stopped; (ii) that

the charges due to the DDA including towards ground rent and for permission for sale are recovered; and, (iii) the *bona fide* purchasers of flats/spaces from the petitioner do not suffer, is the need of the hour.

20. I am however of the view that the purchasers from the petitioner of flats/office spaces which are unauthorised or are constructed over/in portions meant for common use cannot fall in the category of *bona fide* purchasers. Thus no leniency can be shown to them. Their remedies if any are against the petitioners. Similarly, the purchasers of flats/spaces from the petitioner, even if have paid the dues of the respondent DDA attributable to their respective space/flat to the petitioner, cannot deny payment thereof to the respondent DDA as the said dues would be a charge on the said flat/space and if not paid, the respondent DDA would be entitled to resume the possession of respective office space/flat.

21. This Court has already vide judgments dated 28th May, 2010 reported as (2010) 172 DLT 442 (DB) and 13th July, 2012 reported as (2012) 194 DLT 138 (DB) in W.P.(C) No.1959/2007 titled ***O.S. Bajpai Vs. The Administrator (Lt. Governor of Delhi)*** and in W.P.(C) No.8705/2011 titled ***S.C. Oberoi Vs. Land & Development Officer*** issued directions to the

bodies such as the respondent DDA for execution of deeds of apartment with respect to spaces/flats in such multi-storied building. There is no reason as to why the said judgments of the Division Bench of this Court should not be implemented qua the subject building and with which implementation the controversy subject matter of this petition would also stand resolved.

22. I therefore dispose of this petition with the following directions:-

- (i) The petitioner to within two months hereof deposit with the respondent DDA all amounts by way of ground rent or otherwise collected by it from the owners/occupiers of flats/spaces in the aforesaid building and the respondent DDA to accept the same.
- (ii) The petitioner to at the time of making the aforesaid deposit also file an affidavit with the respondent DDA to the effect that it is not holding any amount whether by way of ground rent or otherwise collected from the owners/occupiers of flats/spaces in the aforesaid building and the petitioner is restrained from hereafter collecting any amount towards ground rent or

otherwise from the owners/occupiers of flats/spaces in the aforesaid building.

- (iii) The respondent DDA to within two months hereof carry out a detailed survey of the building aforesaid and to have prepared detailed drawings of the building including of each floor of the building, identifying by measurement the flats/spaces therein and the name and other particulars of the persons who are claiming to own the same.
- (iv) The petitioner to within two months aforesaid file another affidavit with the respondent DDA giving the names and particulars of the persons who as per the record of the petitioner are the purchasers/owners of different flats/spaces in the aforesaid multi-storied building.
- (v) The respondent DDA to thereafter, in accordance with the prevalent Rules & Regulations, Bye-laws assess which parts of the building are unauthorised or in misuse and whether such unauthorised construction/misuse can be regularized/condoned and if so on what terms and to intimate the owner of such

flats/spaces having unauthorised construction or the misuse, of the same and to thereafter take action in accordance with law with respect thereto.

- (vi) The person/s affected by the action aforesaid of the respondent DDA shall have their remedies in law against the petitioner as well as against the respondent DDA.
- (vii) The respondent DDA to thereafter also apportion its dues with respect to the aforesaid building and/or construction thereon amongst the different flats/spaces as per area thereof and to raise a demand on the owners of individual flats/spaces and if they fail to pay the same to resume such space/flat and to deal with the same as may be deemed fit by the respondent DDA.
- (viii) The concerned competent authority under the Apartment Act of the respondent DDA to also initiate steps in conjunction with the owners of flats/spaces in the aforesaid building to form an Association of Apartment Owners within the meaning of the Apartment Act aforesaid to take over the maintenance of

common areas and services in the building and the petitioner is directed to do the needful in that regard.

- (ix) The respondent DDA to in accordance with *O.S. Bajpai* supra also initiate steps for execution of deed of apartments in favour of the purchasers of flats/spaces in the aforesaid building who have paid all their dues to the respondent DDA and the petitioner is directed to co-operate in all respects in that regard.

23. The parties are left to bear their own costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 29, 2016
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