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

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Date of decision: 05.07.2019

+ **W.P.(C) 6842/2019 and C.M. Appl. No. 28545/2019 (for stay)**

NITIN KUMAR GARG

..... Petitioner

Through: Mr. Lovish Sharma and Mr. Gobind
Malhotra, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Kush Sharma and Ms. Asiya
Khan, Advocates for DDA.

+ **W.P.(C) 6818/2019**

ROMI GUPTA & ANR

..... Petitioners

Through: Mr. Sarthak Bhatia and Mr. Sanil
Garg, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Kush Sharma and Ms. Asiya
Khan, Advocates for DDA.

+ **W.P.(C) 6836/2019 and C.M. Appl. Nos. 28534/19 (for interim relief) 28535/2019 (for exemption)**

MEENU JAIN

..... Petitioner

Through: Mr. Prateek Sharma, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY THROUGH
ITS VICE CHAIRMAN VIKAS SADAN

..... Respondent

Through: Mr. Kush Sharma and Ms. Asiya Khan, Advocates for DDA.

+ **W.P.(C) 6981/2019 and C.M. Appl. No. 29041/2019 (for stay)**

PATIALA KASHMIR ROADWAYS PVT. LTD. Petitioner

Through: Mr. Niloy Das Gupta and Mr. Arun Kumar Sharma, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Pawan Mathur, SC for DDA with Mr. Kush Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

G.S. SISTANI, J. (ORAL)

1. All these four writ petitions involve similar facts and almost identical issues have been raised and, therefore, they being disposed of by a common judgment.
2. Three writ petitions bearing W.P.(C) Nos. 6818/2019, 6842/2019 and 6836/2019 relate to e-auction by the Delhi Development Authority (DDA) of certain residential plots. The plot numbers, which are subject matter of each writ petition, are being detailed herein below:-

Srl. No.	W.P.(C) Nos.	Auction Sub Item	Auction Description of Work	No. of Bidders	Total No. of Bids	Reserve Price (rs)	H1 Bid (Rs)	H1 Bidder
1	W.P.(C) 6836/2019	Sl No. 100 Plot No. 48 Blk E-4	Rohini Sec-7 Block E-4 plot no. 48	1	1	11254848	11304848	Meenu Jain

2	W.P.(C) 6842/2019	Sl No. 118 Plot No. 103 Blk E-4	Rohini Sec-7 Block E-4 plot no. 103	1	1	5804026	5854026	Nitin Kumar
3	W.P.(C) 6818/2019	Sl No. 248 Plot No. 47 Blk C-4	Plot No. 47 C- 4 Block New Kondli	4	8	1472640	1872640	Shilpee Kumari
4	W.P.(C) 6818/2019	Sl No. 253 Plot No. 52 Blk C-4	Plot No. 52 C- 4 Block New Kondli	3	1	1472640	1522640	Romi Gupta
5	W.P.(C) 6818/2019	Sl No. 316 Plot No. 47 Blk C-5	Plot No. 47 C- 5 Block New Kondli	5	29	1472640	2922640	SUSHIL KUMAR GIRI
6	W.P.(C) 6818/2019	Sl No. 321 Plot No. 52 Blk C-5	Plot No. 52 C- 5 Block New Kondli	5	15	1472640	2222640	Akash Gupta

3. Writ petition, being W.P.(C) No. 6981/2019, relates to e-auction by the DDA of a commercial plot bears no.BT-5/255 Mangolpuri Industrial Area, Phase-I, New Delhi, held on 15th April, 2019 with the reserve price of Rs.4,20,48,000/-. The petitioner had deposited earnest money amounting to Rs.21,02,459/- on 20th April, 2019. The respondent DDA had informed the petitioner vide e-mail dated 27.4.2019 that the e-auction had ended on 26.4.2019 and the bid of the petitioner was the highest. However, later the EMD was refunded directly into the bank account of the petitioner on 6.6.2019, without assigning any reason.

4. The common facts that emerge in these writ petitions are that the DDA issued a notice for e-auction of plots on 9.3.2019. The Brochure was uploaded on 1.4.2019. The petitioners submitted their bid documents, along

with Earnest Money Deposit (EMD) on different dates. E-auction was held on 24.4.2019/26.4.2019. The petitioner in W.P.(C) No. 6818/2019 received a mail informing him that he has emerged as the highest bidder in the auction process. Similar intimations were also received by the petitioners in the other writ petitions. The common grievance of the petitioners is that they learnt subsequently that their bids have been cancelled.

5. The learned counsel appearing for the DDA submits that since the petitioners were single bidders and in the opinion of the Competent Authority, the plots in question could fetch a much greater value. It is submitted that this was subsequently established from the fact that when all these plots were re-auctioned far higher bids were received. Mr. Sharma has handed over a chart/tabulation in Court in support of his submission, which we have taken on record.

6. Learned counsels for the petitioners submit that the bid document nowhere states that in case of a single bidder, the auction would be cancelled. Additionally, they contend that serious prejudice has been caused to their rights as they could not participate in the subsequent bid. It is also pointed out that after the first bid was accepted, the system got locked and the petitioners were not allowed to participate again with respect to other plots. Thus, they have been deprived of their valuable rights, except Ms. Meenu Jain, petitioner in W.P.(C) No. 6836/2019, who had also participated in the subsequent auction. It is also submitted that in case the reason for rejection is that the DDA wanted competition and was not willing to consider a single bid, in that event, the DDA should have postponed the auction and should have invited the bids again, in which case, the petitioners would have participated.

7. There are two other grievances which have been raised by learned counsels for the petitioners. Firstly, it is submitted that in terms of Clauses 2.4.6 and 2.6 (iii) of the tender conditions, in case a bidder was unsuccessful the Competent Authority was required to communicate to the bidder the non-acceptance of his bid within 15 days of the date of completion of the e-auction process. In addition, there was an obligation on the Competent Authority to return the EMD paid by the unsuccessful bidders without interest. The said EMD had to be refunded electronically directly in their bank account and that too within 15 days of the completion of the auction process. It is submitted that these conditions of the tender have not been complied with and the EMDs deposited by the respective petitioners were not refunded within 15 days. The contention thus is that since the refund was made by the DDA far beyond the period of 15 days, DDA is liable to pay interest on the amount illegally withheld by them. Secondly, the respondent has not informed the petitioners as to what is the reason for non-acceptance of the bid. It is submitted that the least that is accepted of a public authority is to communicate the reasons for not accepting the bid, more particularly, when at the initial stage in the first tender the petitioners were informed that they had emerged as the highest bidders.

8. Responding to these contentions, learned counsel for DDA has submitted that in fact the reasons for not accepting the bids of the petitioners was informed and this would be evident from a document which was placed on the e-portal. Learned counsel has drawn the attention of the Court to the document which has been placed on record by the petitioner himself in W.P.(C) 6842/2019. He points out that the last column of this document is titled 'reason' and in case the petitioner would have opened the document he would have known the reason for rejection. He further argues that the reason

of rejection was that the single bid was not conducive to competition and once the DDA was able to fetch higher prices, after survey of the adjoining plots, it was decided not to accept the single bids.

9. In response to the argument of the petitioner that the EMD was not refunded within 15 days in terms of clauses 2.4.6 and 2.6(iii), the learned counsel submits that he has no explanation or justification for the delay.

10. We have heard learned counsels for the parties.

11. To appreciate the contentions of learned counsels for the parties we deem it appropriate to reproduce the relevant portion of Clause 2.4 of the tender document:-

“2.4 Evaluation of Bid

2.4.1 The accepting officer, subject to confirmation of the VC, DDA, normally accept the highest Bid for a plot, provided that it is above the reserve price and found to be competitive enough to reflect the market value of the plot auctioned for.

2.4.2 The confirmation of the highest Bid shall be in the sole discretion of the Vice Chairman, DDA who does not bind himself to confirm the highest bid and reserve to himself the right to reject all or any of the bid without assigning any reasons. Any Bid not fulfilling any of the prescribed conditions or incomplete in any respect shall be rejected”

12. A reading of this Clause would show that discretion is vested in the Vice Chairman, DDA to reject the bids, without assigning any reason. Learned counsel for DDA has explained that in the present case, this clause was invoked not on account of arbitrary or whimsical reasons, but when it was noticed that the adjoining plot had been auctioned at a much higher price.

13. We find force in the submission made by learned counsel for the DDA. The tabulation handed over by learned counsel for the DDA would show gross difference of value in the first auction. The same reads as under:-

SI No.	Phase III Property No.	Reserve Price (In INR)	Amount Quoted by the bidder in Phase III Auction 24.04.2019 (In INR)	Name of the H1 Bidder	Amount Quoted by the bidder in Phase IV Auction 25.06.2019 (In INR)	Difference of H1 Value of Phase III & IV Auction (In INR)
1	SI No. 69 BT-5/255 Mangolpuri Industrial Area Phase-I	42,048,000.00	42,148,000.00	Patiala Kashmir Roadways Pvt. Ltd. W.P. (c) - 6981/19	Not placed for Auction	
2	SI No. 118, Plot No 103, Block-E4, Rohini	5,804,026.00	5,854,026.00	Nitin Kumar W.P. (c) - 6842/19	23,304,026.00	17,450,000.00
3	SI No. 253, Plot No. 52, Block C-4, New Kondli	1,472,640.00	1,522,640.00	Romi Gupta W.P. (c) - 6818/19 [Petitioner No. 1]	2,687,640.00	1,165,000.00
4	SI No. 252, Plot No. 51, Block C-4, New Kondli	1,472,640.00	1,522,640.00	Neetu Gupta W.P. (c) - 6818/19 [Petitioner No. 2]	2,672,640.00	1,150,000.00
5	SI No. 100, Plot No. 48, Block E-4, Rohini	11,254,848.00	11,304,848.00	Meenu Jain W.P. (c) - 6836/19	33,004,848.00	21,700,000.00

14. On examining this tabulation, we are satisfied that the Competent Authority exercised the powers vested in Clause 2.4 without any *mala fide* and for justifiable reasons, and we do not find any fault in the action so taken which would require interference in these proceedings.

15. As far as the submission of non-communication of the reasons is concerned, we find that the information was infact provided on the website. The document which we have referred to above, reflects the reason as well. There are, however, no justifiable reasons forthcoming on behalf of the DDA as to why the EMDs were not returned to the petitioners within fifteen days. For this lapse, we direct the DDA to pay interest at the rate of 8% per annum for the period beyond 15 days till the amount was returned. This amount shall be cleared within a period of four weeks from today.

16. As regards the contention of the learned counsel appearing in W.P.(C) 6842/2019 that the DDA be directed to consider that in case of a single bid in an e-auction rather than rejecting the bid, the auction itself should be postponed so that the single bidder is not deprived of his right to participate in the other auctions and also in case the re-auction is to take place then re-auction should be conducted only after the bidders of the earlier auctions are informed. We are of the view that there is some substance in the said contention. We therefore deem it fit to request the DDA that it should consider this suggestion made by the learned counsel for the petitioner, in future tenders, if so advised.

17. With the aforesaid observations, all the four writ petitions are dismissed. Interim orders, if any, stands vacated.

G.S.SISTANI, J

JYOTI SINGH, J

JULY 05, 2019/JK/S