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

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Date of decision: 19.03.2020

+ **O.M.P.(I) 3/2020**

ASHOK KUMAR MANN Petitioner
Through: Mr. Yudhvir Singh Chauhan,
Advocate.

versus

DELHI STATE INDUSTRIAL & INFRASTRUCURE
DEVELOPMENT CORP. LTD. Respondent
Through: Mr. Anuj Chaturvedi,
Advocate with Mr. Waseem
Ahmad, Legal Assistant

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. 3651/2020

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

O.M.P.(I) 3/2020

1. Present petition has been filed under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') with the following prayer:

“a) That this Hon’ble Court be pleased to pass orders restraining the respondent herein from creating any third

party interest over Plot No. Commercial Plot measuring 300 Sqm, located at 18mtr road, adjoining cycle track, Pocket II, Sector 2, Bawana Industrial Area, pending the hearing and final disposal of the dispute through arbitration between the parties.”

2. It is the submission of the Petitioner that on 08.03.2019, the Respondent had invited bids for commercial plots to be allotted at Bawana Industrial Area under a Scheme, relevant part of which is extracted hereunder:

"3.9. PROVISION FOR SETTLEMENT OF DISPUTES:-

In the event of any question dispute or difference arise under these presents, or in connection therewith (except to any matter the decision of which is specially provided by these presents) the matter first shall be resolved at the level of the managing director DSIIDC. In case the dispute is not resolved then the same shall be referred to the sole arbitrator duly appointed by the managing director, DSIIDC. The Award of the Arbitrator shall be final and binding on the parties.

Subject as aforesaid, the provisions of the Arbitrator and Conciliation Act 1996 (amended from time to time) and the rules framed there under and any modification thereof for the time being in force shall be deemed to apply to the arbitrator proceedings under this cause. "

3. On 12.04.2019, an E-auction took place, in which the Petitioner was found to be one of the successful bidders. On 11.06.2019, the Demand-cum-Allotment letter was issued to the Petitioner and he was asked to deposit Rs. 7,53,00,000/- with the Respondent. On 30.08.2019, Respondent issued a 'No Objection'

Certificate for mortgage of Commercial Plot, measuring 300 sq. meters located at 18 Meter Road, adjoining cycle track, Pocket II, Sector 2, Bawana Industrial Area.

4. Petitioner thereafter arranged funds by taking loan from the Banks and deposited the above amount with the respondent, which is an undisputed fact. Respondent, after receiving the full Bid Premium towards the commercial plot, issued Allotment letter on 16.09.2019.

5. On 20.09.2019, Respondent even handed over the possession of the plot to the Petitioner, who thereafter started construction work over the plot and submits that he has invested about Rupees One Crore on the digging and foundational work of the said plot. Photographs to that effect have been placed on record. The facts to this extent are uncontroverted.

6. Petitioner submits that to his surprise, Respondent issued a letter dated 30.10.2019 offering him to choose another plot out of the available three vacant plots of the same size and asked the Petitioner to appear before the Director, DSIIDC on 01.11.2019 to resolve the matter. In the compelling circumstances, the Petitioner appeared before the Committee appointed by the Respondents and finally chose one plot measuring 300 sq. meters at 18 meter road, Sector 2, Block F, Bawana Industrial Area.

7. The grievance of the Petitioner in the present petition is that the plot initially allotted to the Petitioner was unilaterally cancelled

which is illegal and now even the second plot which was offered, is not being allotted. Learned counsel further submits that while the Arbitrator has been appointed by the Respondent, he has raised an objection to the appointment of the Arbitrator and therefore, the need to file the present petition has arisen.

8. An interim injunction is sought by the petitioner restraining the respondent from creating third party rights and interest over Commercial Plot measuring 300 sq. meter road, located at 18 meter road, adjoining cycle track, Pocket II, Sector 2, Bawana Industrial Area, which was auctioned and allotted to the Petitioner.

9. Issue notice.

10. Mr. Anuj Chaturvedi, Advocate, who enters appearance on advance copy accepts notice on behalf of the Respondent. Learned counsel points out that the first plot that was auctioned was actually erroneously put to auction. It was discovered subsequently that the plot in question was allotted in the year 2006 to another person, whose details are as under:

Mr. Suraj Mal Yadav,
S/o Shri Khubi Ram Yadav,
R/o C-1993, Sushant Lok, Phase-I,
Gurgaon (Haryana)-122001

11. On realising that the Respondent had erroneously put to auction a plot which was owned by Mr. Yadav, the allotment was cancelled. Since the Petitioner had paid the entire money, the said sum has been refunded to the Petitioner, along with 10% interest.

12. Learned counsel for the Petitioner, however submits that the refund was given without the consent of the petitioner, but acknowledges the fact that money has been received by the Petitioner.

13. Insofar as the second plot is concerned, learned counsel for the Respondent, on instructions, submits that after the plot was offered to the Petitioner, it was discovered from the records that the land use of the plot does not permit 'commercial use'. Therefore, it was decided that the offer made to the Petitioner, be cancelled.

14. Learned counsel for the Petitioner submits that this contention is absolutely misplaced. The land is an 'Institutional Area' and there is no impediment in it being put to commercial use.

15. I have heard the learned counsels for the parties. The contention with respect to second plot in question is beyond the scope of the present petition as the prayer sought and extracted above is with respect to the first plot, which was auctioned. Since the plot in question admittedly belongs to a third party, prayer (a) cannot be granted in favour of the Petitioner. The petitioner is, however, at liberty to raise his claims for damages or any other claim on account of cancellation of the said allotment in appropriate proceedings. With respect to the offer of the second plot, it is left open to the Petitioner to take such appropriate remedies as may be available to him, in accordance with law.

16. The petition is accordingly disposed of in the aforesaid terms.

JYOTI SINGH, J

MARCH 19, 2020

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