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

\+ W.P.(C) 8978/2022 & CM APPL. 26994/2022

JATINDER KUMAR WADHWA & ANR. ..... Petitioner
Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Anand Varma, Ms. Mansi Sood and Mr. Adyasha Nanda, Advs.

versus

DELHI DEVELOPMENT AUTHORITY & ANR .Respondents
Through: Mr. Anish Dhingra, Mr. Nakul Ahuja, Advs. for DDA

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

% **19.07.2022**

1. The letter dated 17th May 2022, forming subject matter of challenge in the present petition, preferred by the petitioner under Article 226 of the Constitution of India, has been issued in the context of a tender, floated by the respondent-DDA for sale of industrial properties by e-auction.

2. The issue in controversy being short, detailed allusion to facts may conveniently be eschewed.

Facts

3. A notice inviting tender for sale of industrial properties by e-auction was issued by the DDA on 27th September 2020. The terms of the bid required prospective bidders to submit 25% of the bid premium in two stages, with 5% to be deposited before participation in the e-auction programme and the remaining 20% to be submitted within seven days from issuance of the Letter of Intent (LoI) by the competent authority, accepting the bid of the bidder.

4. Clause 9 in Chapter II of the tender documents, dealing with the "Technical Terms and Conditions of online e-auction" envisaged issuance of Letter of Intent to the H1 bidder within seven days of approval of the acceptance of bid by the competent authority. Chapter-III of the tender documents set out "General Terms & conditions of the e-auction". Clauses 9 and 10 in Chapter-III read thus:

> "9. The demand-cum-allotment letter would be issued to the successful bidder through the BHOOMI Portal after receipt of second stage EMD payment and other requisite documents and verification of second stage EMD. The highest bidder is required to make payment of balance 75% bid amount, as demanded vide said demand letter referred to above, within 90 days from date of issuance of demand letter (without interest/within 270 days from the date of issuance of demand letter (subject to payment of interest on the balance amount @ 10.00% p.a. during the extended period) through payment tab provided in BHOOMI Portal failing which the bid will automatically stand cancelled without any further notice. No extension of time will be granted for payment of 75% of bid amount for period after 270 days from the date of issuance of demand-cum-allotment letter.
>
> Note: The successful bidder may pay the cost of the plot by availing loan facility from financial institutions for which the DDA offer NOC/mortgage permission.
>
> 10. In case, the highest bidder fails to deposit the balance 75% amount within the stipulated period, as mentioned in the

demand letter, the bid shall automatically stand cancelled and the Earnest Money shall stand forfeited without any further notice. In that eventuality, the Competent Authority shall be competent to re-auction the Industrial plot."

5. The petitioner paid 5% of the bid amount at the time of obtaining bid documents and paid the balance 20%, thereby completing the payment of EMD of 25%, on 23rd November 2020.

6. On 10th March, 2021, the following letter was issued to the petitioner, by the DDA:

"Delhi Development Authority
Industrial Branch
A Block, Ist Floor, Vikas Sadan, INA, New Delhi-23

File No. F51/(16)/2020/IND/2104
Date of Generation: 03/03/2021
Comp. No. /2777 Date of issuance: 10/3/2021

To

Jatinder Kumar Wadhwa & Neelam Wadhwa
F-263, First Floor, Vikaspuri, Delhi

Sub: E-auction of plot no. 86, Pocket/Block-C admeasuring 100.00 sq. mtrs. Situated in Mangolpuri Phase-I.

Dear Sir/Madam,

With reference to the E-Auction program held on 28.10.2020 for the purchase of the freehold rights of the above Industrial plot, I am directed to inform you that your bid for ₹ 18,112,000.00 for the above said plot has been confirmed by the Competent Authority. Now, the calculation of balance premium amount is as under:-

L-Cost	₹ 18,112,000.00
Less-Registration/Earnest Money	₹ 4,528,000.00
Document Charges	₹ 100.00
Interest/Token penalty on delay	

payment of 2nd stage EMD ₹ 0.00

Balance amount to be paid (p)
(75% of Bid Amount) ₹ 13,584,100.00
(One Crore Thirty Five Lakh Eighty Four Thousand One Hundred)

You are, therefore, requested to deposit the amount payable along with interest, if any, within stipulated time frame (as given on the back side of the letter) through online portal of DDA, i.e. "dda.org.in.--->online payment---> generate challan---> generate plot E-challan. Then thereafter fill the mandatory details and make payments through link generated.

7. The "backside of the letter" to which the letter refers, contained the following:

Amount payable (75% Bid Amount + interest)/stipulated time frame		
P+0% interest	If paid within 1-90 days from demand letter issuance date	13,584,100.00
P + interest of 0.5 month @ 10% p.a.	If paid within 91-105 days from demand letter issuance date	13,640,700.00
P + interest of 1 month @ 10% p.a.	If paid within 106-120 days from demand letter issuance date	13,697,301.00
P + interest of 1.5 month @ 10% p.a.	If paid within 121-135 days from demand letter issuance date	13,753,901.00
P + interest of 2 month @ 10% p.a.	If paid within 136-150 days from demand letter issuance date	13,810,502.00
P + interest of 2.5 month @ 10% p.a.	If paid within 151-165 days from demand letter issuance date	13,867,102.00
P + interest of 3 month @ 10% p.a.	If paid within 166-180 days from demand letter issuance date	13,923,703.00
P + interest of	If paid within 181-195	13,980,303.00

3.5 month @ 10% p.a.	days from demand letter issuance date	
P + interest of 4 month @ 10% p.a.	If paid within 196-210 days from demand letter issuance date	14,036,903.00
P + interest of 4.5 month @ 10% p.a.	If paid within 211-225 days from demand letter issuance date	14,093,504.00
P + interest of 5 month @ 10% p.a.	If paid within 226-240 days from demand letter issuance date	14,150,104.00
P + interest of 5.5 month @ 10% p.a.	If paid within 241-255 days from demand letter issuance date	14,206,705.00
P + interest of 6 month @ 10% p.a.	If paid within 256-270 days from demand letter issuance date	14,263,305.00

Please Note:

a) If the premium is paid in part, the pro-rata interest vis-à-vis the principal amount would be payable and the bidder may calculate the interest accordingly.

b) This demand letter is subject to verification by Account Department of 25% of bid amount paid earlier by you within stipulated period as per terms & conditions of tender document.

c) No extension of time shall be granted for payment of demanded amount for period beyond 270 days from date of issuance of demand cum allotment letter under any circumstances. (Date of issuance is included in 270 days granted). In case the payment of balance premium along with interest (if any) is not received within the stipulated period as indicted above, the bid shall automatically stand cancelled and the entire EMD (25% of premium) shall automatically stand forfeited without any notice. In that case, DDA shall be at liberty to re-auction the plot.

Yours faithfully

Sd/-
Assistant Director, LSB (I), DDA

Sd/-
Assistant Director, LSB (I), DDA

Copy forwarded to:

1. Dy. CAO(LC-I), DDA

2. Chief Commissioner (Income Tax), Delhi Division. ICR Building, ITO, New Delhi."

8. Plainly read, the letter dated 10th March 2021 envisaged payment, by the petitioner, of a balance amount of ₹ 1,35,84,100.00 without interest, if paid within 90 days of the issuance of the said letter, and in the event of payment beyond 90 days, with interest at a slab rate, as set out in the afore-extracted table.

9. Clause (c) in the note below the table contained in the aforesaid letter also stipulated that no extension of time would be granted for payment of the demanded amount, beyond 270 days from the date of issuance of the demand letter i.e. from 10th March 2021. It also stipulated that, in case the balance premium along with interest was not received within the aforesaid stipulated period, the bid would automatically stand cancelled and the entire EMD, i.e. 25% of the premium, would stand forfeited without notice, leaving the DDA with the right to re-auction the plot.

10. Admittedly, of the amount of ₹ 1,35,84,100.00, contemplated by the letter dated 10th March 2021, the petitioner paid ₹ 50 lakhs on 17th June 2021 within the period of 90 days stipulated in the letter and paid the balance amount of ₹ 85,84,100/- on 8th July 2021 which was beyond 90 days, but within 270 days from the issuance of the said letter.

11. The petitioner was, therefore, as per the aforesaid letter, required to pay interest on the amount of ₹ 85,84,100/-, but did not do so.

12. The petitioner wrote to the respondent on 24th September 2021, seeking to know the fate of his application. In response, the respondent addressed the following communications to the petitioner on 28th September 2021:

> "On Tue, Sep 28, 2021 at 5:53 PM Land Sales Branch Industry <assttdirlsbi@gmail.com> wrote:
>
> Madam/Sir,
>
> You are requested to submit the Identification slip, Affidavit & Undertaking (format enclosed) as mentioned in Chapter III subclause (II) 11 of terms & condition of e-Auction so that possession handing over letter may be issued.
>
> If the aforesaid documents has already been submitted, please share the same with return mail.
>
> Note: Kindly, also mail the documents in PDF form."

13. Requisite documents, as requisitioned by the aforesaid letter dated 28th September 2021, were submitted by the petitioner on 30th September, 2021.

14. The period of 270 days, envisaged by the demand-cum-allotment letter dated 10th March, 2021 expired on 4th December,

2021. Before that late, as already noted, the petitioner had paid the entire amount of ₹ 1,35,84,100.00, demanded by the letter dated 10th March, 2021, but had not paid any interest thereon.

15. On 11th and 13th January, 2022, the respondent addressed the following communications to the petitioner, which, in my opinion tilt the balance in the present case:

> Communication dated 11th January, 2022
>
> "On Tue, Jan 11, 2022 at 6:00 PM Land Sales Branch Industry <assttdirlsbi@gmail.com> wrote:
>
> Sir,
>
> You are requested to deposit Rs. 1,28,135/- on a/c of interest on delay payment of premium so that further action in the matter may be taken."
>
> Communication dated 13th January, 2022.
>
> "On Thu, Jan 13, 2022 at 4:12 PM Land Sales Branch Industry <assttdirlsbi@gmail.com> wrote:
>
> Sir,
>
> It is to inform you that the time period to deposit Rs.1,28,135/- on a/c of interest on delay payment of premium will be count from the previous Email date (i.e 11.01.2022)
>
> On Tue, Jan 11, 2022 at 6:00 PM Land Sales Branch Industry <assttdirlsbi@gmail.com> wrote:
>
> Sir,
>
> You are requested to deposit Rs. 1,28,135/- on a/c of interest on delay payment of premium so that further action in the matter may be taken."

16. On receiving the aforesaid communications, the petitioner wrote to the respondent on 24th January 2022, calling upon the respondent to specify the category of type of payment to be chosen for deposit of interest on the delay payment of premium.

17. On receiving no response to the said communication, the stipulated interest amount of ₹ 1,28, 135, was also paid by the petitioner on 9th February 2022, which was within 30 days from the letter dated 11th January 2022 and, therefore, within the time period stipulated in the letter dated 13th January 2022 *supra*.

18. Despite queries from the petitioner, the respondent remained silent regarding the fate of the petitioner's bid. On 17th May 2022, the following letter was issued by the respondent to the petitioner:

> "Delhi Development Authority
> Land Sales Branch (Industrial)
> A-Block, Vikas Sadan, INA
> New Delhi-110023
>
> No. F-51(16)/2020/IND/419 17/05/2022
>
> (i) Sh. Jatinder Kumar Wadhwa &
>
> (ii) Smt. Neelam Wadhwa
> Both R/o F-263, 1st Floor
> Vikaspuri, Delhi-110018
>
> Sub: Rejection of bid in respect of Plot No. 86, Block-C, in Mangolpuri Industrial Area, Ph-1, Delhi-reg.
>
> Ref: F. No. F-51(16)/2020/IND/2104 dated 10.03.2021
>
> Sir/Madam,

1. Please refer to the above mentioned letter dated 10.03.2021 vide which you were requested to deposit the amount payable along with interest, if any, within stipulated time-frame (as given on the back side of the letter) through online portal of DDA.

2. Further refer the clause (c) of demand letter dated 10.03.2021 which is reproduced verbatim as under:-

> "*c. No extension of time shall be granted for payment of demanded amount for period beyond 270 days from date of issuance of demand cum allotment letter under any circumstances. (Date of issuance is included in 270 days granted). In case the payment of balance premium along with interest (if any) is not received within the stipulated period as indicted above, the bid shall automatically stand cancelled and the entire EMD (25% of premium) shall automatically stand forfeited without any notice. In that case, DDA shall be at liberty to re-auction the plot.*"

3. The extended time limit of 180 days (as per terms & conditions of e-auction and Demand Letter) expired on 04.12.2021 and the payment of interest for delay payment of balance premium for the plot mentioned in subject has not been deposited within the stipulated period i.e. 04.12.2021.

4. Hence, as per clause 'c' of Demand Letter as well as Clause II(c) of Chapter III of Tender Documents, your bid for plot No. C-86, Mangolpuri Industrial Area Ph-I, Delhi stands cancelled and the entire EMD (25% of H1 bid) stands forfeited automatically. Now, DDA is at liberty to re-auction the plot.

5. In view of the above, you are hereby requested to provide a copy of cancelled-cheque, other bank details so that refund process could be initiated for the amount which is to be refunded back to you.

6. This is issued with the approval of Competent Authority.

Sd/-
Assistant Director
Land Sales Branch (Industrial)"

19. It is this letter which the petitioner has sought to impugn in the present proceeding, under Article 226 of the Constitution of India.

Rival Submissions

20. Mr. Rajshekhar Rao, learned Senior Counsel for the petitioner has advanced various pleas, even while acknowledging, candidly, the fact that the bid documents, read with the demand-cum-allotment letter dated 10th March 2021, required the petitioner to pay ₹ 1,35,84,100 along with interest as stipulated in table on the rear side of the said letter, where payment of the said amount was not made within 90 days of 10th March, 2021. He acknowledged that there was a default in payment of interest as stipulated in the said letter. His submission is that, nonetheless, the letters dated 11th January, 2022 and 13th January, 2022 from DDA to the petitioner had necessarily to be regarded as extending the time for payment of interest as stipulated in the said letters having been paid by the petitioner within 30 days of issuance of the letter dated 11th January, 2022, the respondent could not have cancelled the petitioner's bid and forfeited its EMD.

21. Mr. Rao has placed reliance, in this context, on the judgment of the Supreme Court in ***R.K. Saxena v. DDA***[1].

22. Mr. Dhingra, learned Counsel for the respondent submits, *per contra*, that the terms of the tender documents were clear, categorical

[1] **(2001) 4 SCC 137**

and unequivocal, and were well within the knowledge of the petitioner from the time he chose to participate in the bid. If, therefore, he defaulted in complying with the terms and conditions stipulated in the bid documents, he did so at his own risk and peril. This aspect of the matter was further clarified to the petitioner in the letter dated 10th March 2021.

23. In view thereof, Mr. Dhingra would submit that the petitioner could not seek to capitalise on the communications dated 11th January, 2022 and 13th January, 2022, written by the respondent to the petitioner. He also expresses doubts as to whether the said letters were actually issued by the competent authority in the office of the respondent.

24. Mr. Dhingra further submits that these letters could not be treated as extending the time for paying the interest, as Clause 10 of the tender documents expressly envisaged extension of time only on on a written application by the bidder, and no such written application had been submitted by the petitioner. Mr. Dhingra has sought to rely on a judgment of a coordinate Bench of this Court in ***Kaleshwar Builders & Developers (P) Ltd. v. M.C.D.***[2]

25. Mr. Dhingra further submits that, by efflux of time, the petitioner's bid stood cancelled automatically on 4th December, 2021 and that, therefore, no relief could be granted to the petitioner at this stage.

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[2] **(2009) 161 DLT 134**

Analysis

26. Undoubtedly, if Clause 9 of the tender document and the stipulations conditions in the letter dated 10th March, 2021 were to be read in isolation, the petitioner would have had no case, as it was specifically stated, therein, that the bid amount, inclusive of interest, was required to be paid within 90 days and that, on the petitioner defaulting in doing so, interest would be chargeable on the remaining bid amount paid after 90 days, with a maximum period of 270 days being provided for the entire payment to be made by the bidder.

27. That the petitioner did eventually pay the entire principal amount of ₹ 1,35,84,100 along with interest of ₹ 1,28,135/-, as specifically stipulated in the letters dated 11th January 2022 and 13th January 2022 addressed by the respondent to the petitioner, is not in dispute.

28. The question that would arise for consideration is, therefore, whether the cancellation of the petitioner's bid and forfeiture of the EMD paid by the petitioner by, the letter dated 17th May 2022 was, or was not, sustainable on facts and in law.

29. Clause 10 of the tender documents conferred power, on the respondent to extend the time for making the requisite payment therein. The power conferred by the said clause on the respondent may be regarded as akin to a power of relaxation. In ***Narender***

Chadha v. UOI*[3]*, it has been held that, where the authority is conferred with a power to relax, and actually relaxes the rigour of the instrument in question, there is a presumption in law that the relaxation was granted in exercise of the power conferred by the instrument.

30. No doubt, Clause 10 envisages extension of the time to make payment on a written request by the bidder. That could, however, be regarded as a delimiting factor if the respondent had not actually extended the time for making payment in accordance with Clause 9. The letters dated 11th January, 2022 and 13th January, 2022 are incapable of being read in any manner other than as letters extending the time for making the payment of interest as demanded by the demand-cum-allotment letter dated 10th March, 2021. This impression is fortified by the fact that the exact amount of interest payable by the petitioner was also stipulated in the said letters. The letter dated 13th January 2022, moreover, also stated that the time period for depositing the balance interest of ₹ 1,28,135/- on the delayed payment of premium would be reckoned from 11th January 2022. Though no specific period within which the interest was to be paid is stipulated in the said letters, the petitioner having deposited the interest within 30 days of 11th January 2022, it has to be held that interest, as stipulated by the communications dated 11th January 2022 and 13th January 2022, was paid by the petitioner within the time envisaged by the said communications.

31. It is not in dispute that, having accepted, thus, the balance

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[3] **(1986) 2 SCC 157**

premium as computed in the letter dated 10th March 2021 as well as the stipulated interest amount of ₹ 1,28,135/-, as specified in the letters dated 11th January, 2022 and 13th January 2022, from the petitioner, the respondent remained absolutely silent regarding the fate of the petitioner's bid, despite the petitioner having queried in this regard on 11th May 2022. It was only on 17th May 2022, that the impugned communication came to be issued, forfeiting the EMD paid by the petitioner on the ground that his bid stood cancelled.

32. It is also not in dispute that, prior to 17th May 2022, no communication was issued by the respondent to the petitioner intimating the petitioner that his bid stood cancelled. The submission of Mr. Dhingra, that, by efflux of time, and by operation of the letter dated 10th March 2021, the bid stood cancelled on the expiry of 270 days from 10th March 2021, on account of failure of the petitioner , in paying, the interest on the balance premium amount by the said date, cannot be accepted in the light of the subsequent communications dated 11th January 2022 and 13th January 2022, extending the time available to the petitioner to deposit the interest amount which remained to be paid and specifically stipulating the amount that was required to be paid by the petitioner.

33. In this context, the decision of the Supreme Court in ***R.K.Saxena***[1] does aid the petitioner.

34. As in the present case, R.K. Saxena (hereinafter "RKS"), the petitioner in that case, was the H1 bidder in the auction conducted by the respondent – incidentally, the DDA. 75% of the bid amount was required to be paid by RKS within 60 days from issue of the demand letter. This time, however, could be extended by the Chairman of the DDA on sufficient cause being shown, upto 180 days, subject to payment of interest on the balance amount @ 18% per annum. A demand letter was issued by the DDA to RKS on 7th January, 1996. ₹ 19,63,545/- was required to be paid by RKS, in terms of the said letter, within 60 days thereof.

35. RKS deposited a sum of ₹ 5.5 lakhs on 19th February 1996 and sought extension of time to pay the balance. Two communications, extending time, were issued by the DDA to RKS on 29th March 1996 and 8th August 1996. RKS, however, could not deposit the entire amount required to be paid by the dates till which time was extended by the said communications and, therefore, again sought extension of time.

36. This time, DDA did not respond. RKS, nonetheless, deposited ₹ 1.4 lakhs on 17th September 1996, ₹ 3.1 lakhs on 20th September 1996, ₹ 1.39 lakhs on 27th September 1996 and ₹ 1,34,500/- on 27th September 1996. These payments, though made beyond the time stipulated in the bid documents were accepted by the DDA. Resultantly, RKS ended up having paid the entire amount payable in respect of the plot under auction. Interest was also paid by RKS @ 25% per annum, albeit beyond the time stipulated in that regard. The judgment notes the fact that DDA, nonetheless, accepted the said amount.

37. Paras 7 to 10 of the report in the said case read thus:

> "7. In spite of having accepted the delayed payments the plot was not delivered to the Appellant. The Appellant, therefore, sent legal notices on 22nd June, 1999 and on 29th June, 1999. Only after receipt of the legal notices the Respondent by letter dated 1st July, 1999 cancel the allotment and forfeit the earnest money of Rs. 6,54,500/-.
>
> 8. The Appellant filed a Writ Petition which came to be dismissed by the impugned Order dated 29th February, 2000. The High Court held that after the expiry of the period the Appellant could not have deposited the balance amount unilaterally and without any demand being issued to him. The High Court held that payments made after the extended date were not valid and legal tender of money in accordance with law. On this basis the High Court refused to grant any relief to the Appellant.
>
> 9. In our view, the Order of the High Court cannot be sustained. To be noted that by 27th September, 1996 the entire amount payable for the plot had been deposited and delay in payment was less than 30 days. Thereafter in January 1997 interest at the rate of 25% per annum, on delayed payments, was also paid. Both the delayed payments and the interest amount were accepted by the Respondent. The moment those payments were accepted there was deemed extension of time. It is only after 1-1/2 years i.e. after the legal notices were served by the Appellant that the allotment is cancelled by the letter dated 1st July, 1999, in our view, on the facts of this case, i.e. after accepting the delayed payments and interest Respondent could not have cancelled the allotment.
>
> 10. In the circumstances of this case, the impugned Order is set aside. The letter of cancellation is quashed. The Respondent is directed to allot, to the Appellant, the plot purchased by him."

38. Extrapolating, to the facts of the present case, the *ratio decidendi* of ***RK Saxena,***, (i) the DDA having, by its letters dated 11th

January 2022 and 13th January 2022, granted extension of time to the petitioner to pay the interest of ₹ 1,28,135/-, (ii) the petitioner having deposited the said amount within 30 days of the letter dated 11th January 2022, (iii) the said payment having been accepted by the DDA, and (iv) power to extend the time for payment being specifically conferred by Clause 10 of the tender document, it has to be held that the respondent-DDA's decision that the petitioner was in default in making payment according to the bid documents, as contained in the letter dated 17th May 2022, cannot sustain on facts or in law.

39. ***Kaleshwar Builders & Developers*** [2]**,** on which Mr. Dhingra relies, being a judgment of a learned Single Judge, which does not consider ***RK Saxena***, need not seriously detain us in the present case. Besides, there is a stark distinction between the facts in that case and the present which clearly distinguishes the said judgment as being of no applicability of the case at hand. There was no communication from the respondent-DDA in that case to Kaleshwar Builders & Developers (P) Ltd., extending time for making payment. As against this, in the present case, as already noted by me hereinabove, the DDA has specifically extended the time for making payment of balance interest by its letters dated 11th January 2021 and 13th January 2022.

Conclusion

40. In view of the aforesaid discussion ,the impugned letter dated 17th May 2022, issued by the DDA to the petitioner, is quashed and set aside.

41. Rule is made absolute.

42. As the petitioner was undisputedly H1 bidder, the DDA is directed to allot, to the petitioner, the industrial plot located at C-86, Mangolpuri, Industrial Area Phase-I, Delhi or in case the said plot is already allotted, another plot of equivalent size and value within 6 weeks of receipt of a certified copy of this judgment, to execute the Conveyance Deed to convey the property and place the petitioner in possession thereof.

43. The present petition stands allowed accordingly, with no order as to costs.

C. HARI SHANKAR, J.

JULY 19, 2022
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