



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

Date of decision: 24th MAY, 2022

IN THE MATTER OF:

+ **W.P.(C) 7167/2021 & CM APPL. 22636/2021**

MERTA INVESTMENT PVT LTD

..... Petitioner

Through: Mr. Ravi Sikri, Sr. Advocate with Mr.
Deepak Yadav, Mr. Jasbir Bidhuri,
Advocates

versus

THE VICE CHAIRMAN DELHI DEVELOPMENT AUTHORITY &
ANR. Respondents

Through: Mr. Anish Dhingra, Mr. Rupinder
Oberoi Dhingra, Advocates for DDA

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India, 1950, challenging impugned Order dated 14.07.2021 passed by the Director (Old Scheme Branch), Delhi Development Authority (Respondent No.2 herein) wherein the Petitioner's request for allotment of Plot. No. 58, Pocket P, EPDP Colony, C.R. Park, New Delhi – 110019 (*hereinafter*, "the demised plot") at 85% of the his Bid was rejected and allotment was cancelled.

2. The facts, in brief, leading up to the filing of the instant writ petition are as follows:



- a) It is stated that on 01.06.2019, the Delhi Development Authority (DDA) had issued an advertisement pertaining to the e-auction of properties. Consequently, the Petitioner placed its bid in pursuance of the e-auction on 25.06.2019, and on 26.06.2019, the Petitioner was declared to be the Highest Bidder (H1) with respect to the demised plot.
- b) The demised plot was inspected by an architect hired by the Petitioner and it was found that the actual area of the same (106.55 sq. mtr.) was lesser than the area notified by the DDA (139.07 sq. mtr.). The Petitioner wrote to the DDA on 19.08.2019 requesting a verification of the dimensions of the demised plot and sought for a reduction in the value of the plot on a pro-rata basis. Instead of responding to the letter dated 19.08.2019, DDA issued a Letter of Intent dated 21.08.2019 stating that the bid of the Petitioner with respect to the demised plot had been accepted and that the Petitioner had been declared the Successful Bidder.
- c) The Petitioner duly complied with the requirements stipulated in the Letter of Intent dated 21.08.2019, and deposited a sum of Rs. 3,40,28,949/-. However, the grievance as to the measurement of the demised plot was raised yet again as the variation in the same was found to be more than 10%. Despite the repeated requests, it is stated that the DDA issued an Allotment-cum-Demand Letter dated 07.10.2019 instead, requesting the Petitioner to pay the balance sum of Rs. 2,55,21,756/- within a period of 90 days.
- d) It is stated that the Petitioner made repeated correspondences



and was also under severe financial duress. The concerns of the Petitioner were also highlighted at a meeting held on 12.12.2019 held with the Vice Chairman of the DDA (Respondent No.1) and a letter dated 12.12.2019 was also submitted by the Petitioner seeking a revised Demand Letter. No response was received regarding the same, and on 01.01.2020, under protest, the Petitioner deposited the balance sum within the stipulated 90 days. A letter dated 01.01.2020 was also submitted to Respondent No.1 requesting for a refund of the excess payment that was to be calculated after revision of the value of the demised plot on a pro-rata basis.

- e) On 18.02.2020, a meeting took place between the Petitioner and the Office of Respondent No.1 with regard to the refund of the excess payment as well as the execution and registration of the Conveyance Deed of the demised plot. It is stated that the Petitioner was informed and assured that only 10% of the Bid Amount with respect to the demised plot could be returned as per the internal policies of the DDA. It is stated that as the Petitioner was facing financial hardship, the Petitioner agreed to the refund of 10% of the Bid Amount and gave its written consent on 05.03.2020 (Annexure P-16, page No. 125 of the paperbook) to forego the excess premium paid. Yet again, repeated communications were made to the Respondents by the Petitioner seeking a refund of the excess payment as well as execution and registration of the Conveyance Deed of the demised plot.
- f) It is stated that *vide* RTGS on 26.08.2020, DDA unilaterally



transferred a sum of Rs. 3,40,28,949/- to the Bank Account of the Petitioner without any intimation, and written information regarding the same was made available to the Petitioner on 07.09.2020. The allotment of the demised plot, therefore, stood cancelled. In this regard, the Petitioner moved this Court by way of W.P.(C.) No. 7181/2020 challenging the actions of the DDA. *Vide* Order dated 29.09.2020, this Court directed DDA to treat the writ petition as a representation and to also grant a personal hearing to the Petitioner, with a decision being taken after taking into account a judgement of this Court in Gaurav Enterprises v. Delhi Development Authority, [1997 (43) DRJ 13]. Furthermore, a *status quo* regarding the demised plot was directed to be maintained by the DDA.

- g) It is stated that in pursuance of the Order of this Court dated 29.09.2020, a personal hearing dated 05.02.2021 took place with an authorised representative of the Petitioner wherein the DDA allegedly assured the Petitioner that a decision would be taken in their favour. Accordingly, the Petitioner furnished a consent letter dated 05.02.2021 indicating their willingness to accept the demised plot with a 15% rebate in cost as per the accepted Bid Amount calculated on a pro-rata basis.
- h) It is stated that *vide* Order dated 14.07.2021, DDA rejected the Petitioner's request for allotment of the demised plot at 85% of the H1 Bid Amount. Aggrieved by the same, the Petitioner has been constrained to approach this Court by way of the instant writ petition.

3. Mr. Ravi Sikri, learned Senior Counsel appearing for the Petitioner,



submits that actions of the DDA in unilaterally returning the money deposited by the Petitioner and then rendering the impugned Order 14.07.2021 is contrary to the Order of this Court dated 29.09.2019 in W.P.(C.) 7181/2020. He further submits that impugned Order has misinterpreted the judgement in Gaurav Enterprises v. Delhi Development Authority (supra), and has drawn a fictitious distinction between the instant case and the said judgement.

4. The learned Senior Counsel appearing for the Petitioner relies upon the judgement of this Court in Gaurav Enterprises v. Delhi Development Authority (supra) to submit that in the said case, the variation in plot size had been more than 15% and the Petitioner therein had not deposited the demanded amount within the stipulated time, however, the Court had still upheld the allotment of the land to the Petitioner therein. He states that in the instant case, the variation in the land allotted to the Petitioner is more than 15% and, therefore, this warrants a deduction in the demand notice on a pro-rata basis. He further submits to this Court that despite exhibiting their willingness to pay the requisite monies immediately and having done so, the DDA has exercised their power in the most arbitrary and illegal manner by not only returning the money that had been deposited by the Petitioner without intimating them about the same, but also rejecting the request of the Petitioner *vide* the impugned Order in contravention of the Order dated 29.09.2019 passed by this Court.

5. Mr. Sikri, the learned Senior Counsel, argues that the money was returned to the Petitioner only after the Petitioner requested the DDA to refund the excess money that had been deposited and sought for a reduction of the Bid Amount on a pro-rata basis. He submits that the actions of the DDA are contrary to law as well as the principles of natural justice as DDA



took advantage of the financial burden imposed on the Petitioner to exact consent and promises from the Petitioner, only to violate the same. Mr. Sikri states that the delay in execution of the Conveyance Deed and the handing over of the demised plot to the Petitioner has deepened the Petitioner's financial problems. The learned Senior Counsel states that the principle of Promissory Estoppel dictates that the DDA could not have backed out of its obligation to the Petitioner, as had been conveyed during the Personal Hearings, in such a whimsical and arbitrary manner.

6. *Per contra*, Mr. Anish Dhingra, learned Counsel appearing on behalf of the DDA, submits that there exists an arbitration clause and, therefore, in the face of an alternate remedy, the instant writ petition is not maintainable. He further submits that Clause (5) of the Eligibility in Chapter III, General Terms and Conditions of the E-Auction clearly states that bidders must be prepared to accept a variation of 15% in the area announced, subject to adjustment of cost in proportion to the amount on the accepted bid. He also submits that the area of the residential plots announced are only approximate in nature. He states that the e-auction document states that wherever the variation in plot size varies more than 15%, the plot would have to be reauctioned.

7. Mr. Dhingra submits that the demands of the Petitioner are against the principles of natural justice, and that was incumbent upon the Petitioner to conduct their own investigations and analysis as well as to check the accuracy, adequacy, correctness and reliability and completeness of the assumptions, assessments, statements and information contained in the e-auction document. He states that the Petitioner cannot go against the conditions stipulated in the e-auction document and challenge the allotment of the demised plot by forcing the DDA to accept the payment of 85% of the



bid amount.

8. The learned Counsel for the DDA submits that Gaurav Enterprises v. Delhi Development Authority (supra) does not apply in the instant case as the facts therein are completely different from the facts in the instant case. He states that the Competent Authority has distinguished both the cases astutely to arrive at the conclusion that the said judgment would not apply herein as the allotment had been cancelled in that case on account of non-deposit of the premium amount within the stipulated period of time. He states that this Court in Gaurav Enterprises v. Delhi Development Authority (supra) had, however, not quashed the clause pertaining to the 15% variation in the size of the plot.

9. Heard Mr. Ravi Sikri, learned Senior Counsel appearing for the Petitioner, Mr. Anish Dhingra, learned Counsel appearing for the DDA, and perused the material on record.

10. The material on record reveals that on 26.06.2019, the Petitioner was declared to be the Highest Bidder (H1) with respect to the demised plot. Pursuant to this, the Petitioner conducted an inspection of the plot with the aid of an architect and found that there was a variation of more than 15% in the area of the plot. This factum was also referred to DDA's Engineering Deptt. which, *vide* letter dated 16.11.2019 intimated that the actual area was found to be 112 sq. mtrs. as against 139.07 sq. mtrs. The Petitioner, though seeking clarification with regard to the area as well as a reduction of the value of the demised plot on a pro-rata basis, deposited a sum of Rs. 3,40,28,949/- requested as per the Letter of Intent dated 21.08.2019. The material further reveals that the Petitioner's clarifications were left unanswered and DDA issued an Allotment-cum-Demand Letter dated 07.10.2019 instead, requesting the Petitioner to pay the balance sum of Rs.



2,55,21,756/- within a period of 90 days.

11. It is further found that the Petitioner complied with the terms stipulated in the letters and duly submitted the amounts requested, however, the requests of the Petitioner with regard to reduction in the value of the demised plot went unheard. It was only when the Petitioner sought for the Execution and Registration of the Conveyance Deed, along with a refund of only the excess payment, did DDA refund the entire amount of Rs. 3,40,28,949/- without any intimation whatsoever. Furthermore, when the Petitioner approached this Court challenging the unilateral transfer of money by DDA to the Petitioner, this Court had already in Order dated 29.09.2020 rendered in W.P.(C) 7181/2020 directed DDA to treat the writ petition as a representation and to also grant a personal hearing to the Petitioner, with a decision being taken after taking into account a judgement of this Court in Gaurav Enterprises v. Delhi Development Authority (supra).

12. A perusal of the aforesaid judgement showcases that this Court, while dealing with a similar matter wherein there was a more than 15% variation in the area of the plot, had rejected the contentions of the DDA and noted that the Petitioner therein harboured a reasonable expectation after duly following the conditions stipulated in the bid. This Court had also directed for a reduction in the value of the demised plot therein on a pro-rata basis and for consequent possession to be handed over to the Petitioner therein. This Court is of the opinion that the facts of Gaurav Enterprises v. Delhi Development Authority (supra) are similar to the instant matter, and despite the Petitioner therein not having deposited the demanded amount within the stipulated time, this Court had ruled in favour of the Petitioner. In the instant case, the Petitioner has duly fulfilled the conditions set out for due registration and execution of the Conveyance Deed, and as a principle of



equity, the impugned Order dated 14.07.2021 should be set aside.

13. Additionally, Clause (5) of Part- I of Chapter – III on General Terms and Conditions of the E-Auction states that the area of residential plots announced is only approximate, and bidders must be prepared to accept a variation of up to 15%, subject to adjustment of cost in proportion to the amount of the accepted bid. It reads as under:

"5. The area of residential plots announced are only approximate, and the persons whose bids are accepted should be prepared to accept variation up to 15% either way in the area announced, subject to adjustment of cost in proportion to the amount on the accepted bid."

14. In the instant case, the variation in the area is more than 15% but the Petitioner is prepared to take the plot and accepts pro-rata reduction of 15% variation and had in fact gone to accepting up to 10% variation as is evidenced by letter dated 05.03.200 written by the Petitioner to the Director (OSB), DDA. At no juncture has the Petitioner expressed unwillingness in not being allotted the demised plot. The Petitioner had already agreed to a refund of 10% of the Bid Amount and given its written consent to forego the excess premium paid. There is also no explicit condition in the e-auction document which indicates that the auctioned plot must be reaucted if a variation of area of a plot is more than 20%.

15. In the instant case, it has to be presumed that the Petitioner had done its due diligence when it came to ascertaining the area of the demised plot and even after knowing that the plot size is smaller still he proceeded to go ahead with the bid. It is the Petitioner's case, which has not been disputed by the DDA, that the Petitioner had reiterated its request for clarification as well as reduction on the value of the plot orally as well as by visiting the office of



the DDA physically several times. Multiple communications had been made on behalf of the Petitioner, even before the issuance of the Letter of Intent. The Petitioner is ready to bear a greater loss.

16. DDA, coming within the ambit of “State” under Article 12 of the Constitution of India, is obligated to comply with the principles of natural justice. It is trite law that writ Courts must not hesitate to exercise their jurisdiction under Article 226 where the actions of the State are violative of fundamental rights under our Constitution as being wholly unreasonable and unfair, and that in such circumstances, Courts must grant relief in favour of a person where both law and equity demand that such relief should be granted. [See Managing Director, Haryana State Industrial Development Corporation and Ors. v. Hari Om Enterprises and Another, (2009) 16 SCC 208.

17. The Supreme Court in Ritesh Tiwari v. State of U.P., (2010) 10 SCC 677, has deliberated upon the ambit of equitable jurisdiction under Article 226 of the Constitution of India, and noted that promotion of good faith and equity as well as to prevention of perpetration of a legal fraud are ideals that must be borne in mind by a Court of equity. The relevant portion of the said judgement has been reproduced as follows:

"26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on



the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. (Vide Champalal Binani v. CIT [(1971) 3 SCC 20 : AIR 1970 SC 645] ; Chimajirao Kanhojirao Shirke v. Oriental Fire and General Insurance Co. Ltd. [(2000) 6 SCC 622 : AIR 2000 SC 2532] ; LIC v. Asha Goel [(2001) 2 SCC 160 : AIR 2001 SC 549] ; Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496] ; Chandra Singh v. State of Rajasthan [(2003) 6 SCC 545 : 2003 SCC (L&S) 951] and Punjab Roadways v. Punja Sahib Bus and Transport Co. [(2010) 5 SCC 235])"

18. The actions of DDA to arbitrarily return the amount of the Petitioner without any intimation, and then rejection of the allotment of the demised plot to the Petitioner *vide* impugned Order dated 14.07.2021 is unconscionable and unacceptable and is against the principle of equity and good conscience. It is pertinent to note that the actions of the DDA followed the personal hearing dated 05.02.2021 that took place with an authorised representative of the Petitioner wherein the DDA allegedly assured the Petitioner that a decision would be taken in their favour. The Petitioner had also furnished a consent letter dated 05.02.2021 indicating their willingness to accept the demised plot with a 15% rebate in cost as per the accepted Bid Amount calculated on a pro-rata basis. DDA cannot now turn its back to the



Petitioner and solely rely upon the bidder not conducting inspections with respect to the demised plot. The good faith that has been reposed in the DDA by the Petitioner has been flouted time and again by way of arbitrary and unreasonable actions when the Petitioner has been consistently following the terms and conditions imposed by the DDA. The reproachable conduct of the DDA in dealing with the Petitioner is not appreciated by this Court.

19. In view of the above observations, the instant writ petition is allowed. Pending application(s), if any, are disposed of.

20. The DDA is directed to execute and register the Conveyance Deed with respect to demised plot in favour of the Petitioner within a period of eight weeks from the date of this Order. Furthermore, DDA is directed to accept the Bid Amount from the Petitioner with a rebate of 15% on a pro-rata basis as per the Clause (5) of Part I of Chapter II of the document of e-auction.

SUBRAMONIUM PRASAD, J.

MAY 24, 2022

Rahul