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

Date of decision: 19th July, 2022

+ **LPA 433/2022**

MS REKHA GARG

..... Appellant

Through: Mr. Rajeev Saxena, Advocate

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Ashim Vachher, Standing
Counsel for DDA with Mr. Kunal
Lakra, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J. (ORAL)

CM APPL. 31622/2022 (Exemption)

Allowed, subject to all just exceptions.

LPA 433/2022 & CM APPL. 31621/2022

1. Vide the instant LPA, the Appellant seeks to challenge the Order dated 12.07.2022, passed by the learned Single Judge of this Court in C.M. APPL. 29093/2022 in W.P.(C) No.11788/2021, titled as Rekha Garg v. Delhi Development Authority.

2. The facts, in brief, leading to the instant petition are as under:-

- a. It is stated that the Appellant herein/bidder participated in an e-auction conducted by the Respondent/DDA on 03.01.2021 in respect of Plot No. 11 Pocket A-3, Sector 29, Rohini



(*hereinafter referred to as, “the property in question”*) for Rs.2,90,66,000/-. It is stated that on 02.02.2021, the Appellant herein was declared as the successful bidder of the e-auction of the property in question and as per the tender document, the Appellant paid 5% of the total amount of the property in question, i.e. Rs.7,00,906.26/-, as Earnest Money Deposit (*hereinafter referred to as ‘EMD’*) to the DDA.

- b. Letter of Intent (*hereinafter referred to as ‘the LoI’*) was issued to the Appellant on 22.02.2021 under which the Appellant had to pay the balance 20% of the total bid amount on or before 28.02.2022. It is stated that the mother of the Appellant, the husband of the Appellant and the son of the Appellant were declared COVID-19 positive on 01.03.2021, 09.04.2021 and 16.04.2021 respectively.
- c. It is stated that on 25.06.2021, the Appellant wrote a letter to the Respondent herein/DDA seeking for extension of time for making the payment of the 20% of the bid amount. It is stated that since the representation of the Appellant herein was not considered, the Appellant filed a Writ Petition, being W.P.8657/2021, before this Court.
- d. This Court *vide* Order dated 18.08.2021 directed the DDA to treat the writ petition as a representation and after hearing the Appellant through Video Conferencing the DDA was directed to pass a reasoned Order. It was also directed by this Court that the decision taken by the DDA should be communicated to the Appellant.



- e. Since there was no communication from the DDA on the representation filed by the Appellant herein, the Appellant filed an application, being CM APPL.32026/2021 in W.P.8657/2021.
- f. It is stated that CM APPL.32026/2021 was disposed of by this Court *vide* Order dated 17.09.2021 on the submission of the learned Counsel for the Respondent/DDA that the decision of the representation shall be conveyed to the Appellant during the course of the day.
- g. It is stated that when even after the directions of this Court in CM APPL.32026/2021, the decision was not communicated to the Appellant, the Appellant filed a writ petition, being W.P.(C) 10797/2021, seeking a copy of the reasoned Order dated 22.09.2021 passed by the DDA. It is stated that a copy of the Order was supplied to the Appellant during the course of the hearing and the Appellant chose to impugn the same. This Court *vide* Order dated 23.09.2021 passed the following Order and disposed of W.P.(C) 10797/2021:

“9. In the peculiar circumstances of the case, the DDA is directed to treat the earlier EMD (forfeited) as the petitioner's EMD for the fresh bid scheduled on 27.09.2021. The petitioner shall register herself for a new bid by tomorrow, if she so desires. If the petitioner is a successful H-I bidder, she will have to deposit the EMD and another amount of 20% as per DDA's intimation.”

- h. It is stated that the DDA filed an application, being CM APPL.



34986/2021, for modification of the Order dated 23.09.2021 contending that there was no consideration on the part of the DDA to treat the forfeited amount as EMD. The learned Single Judge *vide* Order dated 05.10.2021 clarified that the Order of treating forfeited amount as EMD is a direction of the Court and not a concession of DDA's Counsel.

- i. It is stated that Order dated 05.10.2021 was challenged by the DDA by filing an LPA, being LPA 357/2021. This Court *vide* Order dated 01.04.2022 disposed of the said LPA by passing the following Order:

“ After some arguments, learned counsel for the respondent submits that the respondent writ petitioner is agreeable to the impugned order being set aside without prejudice to the rights and contentions of the respondent writ petitioner in pending writ petition being W.P.(C) No. 11788/2021.

Accordingly, we set aside the impugned order passed by the learned Single Judge in W.P.(C) No. 10797/2021 dated 23.09.2021 read with order dated 05.10.2021.

The appeal stands disposed of in the aforesaid terms.”

- j. It is stated that the DDA started taking steps to re-auction the plot in question. Aggrieved by the same, the Appellant herein filed a Writ Petition before this Court, being W.P.11788/2021. An application, being CM APPL. 29093/2022, seeking stay of the re-auction proceedings was also filed by the Appellant and the same was dismissed by the learned Single Judge of this



Court *vide* Order impugned herein.

3. Heard, Mr. Rajeev Saxena, learned Counsel for the Appellant, Mr. Ashim Vachher, learned Standing Counsel for the DDA, and perused the material on record.

4. Facts of the case reveal that the Appellant had to deposit 25% of the total bid amount on or before 28.02.2021. The Appellant paid 5% of the bid amount on 02.02.2021, i.e. before the issuance of the LoI. Since the balance 20% had not been paid, in terms of the tender document, the EMD has been forfeited by the DDA. The Appellant filed W.P.(C) 8657/2021 praying for extension of time for depositing the balance 20% of the bid amount. The Appellant relied on a circular dated 22.06.2021, issued by the DDA, extending time for depositing payment of the balance 75% of the bid amount as a part of the COVID-19 relief. This Court *vide* Order dated 18.08.2021 disposed of W.P.(C) 8657/2021 directing the DDA to treat the Writ Petition as a representation and consider the same and convey its decision to the Appellant. In the said Order the learned Counsel for the DDA had specifically stated that the circular dated 22.06.2021 is applicable only to those persons who have deposited 25% of the bid amount. Since there was no communication from the DDA on the representation regarding the decision taken by the DDA, the Appellant herein filed an application, being CM APPL.32026/2021 in W.P.8657/2021. The said application was disposed of by this Court *vide* Order dated 17.09.2021 on the submission of the learned Counsel for the Respondent/DDA that the decision of the representation shall be conveyed to the Appellant during the course of the day. Even when after the directions of this Court in CM APPL.32026/2021, the decision was not communicated to the Appellant, the Appellant filed a



writ petition, being W.P.(C) 10797/2021, seeking a copy of the reasoned Order dated 22.09.2021 passed by the DDA. The copy of the Order was supplied to the Appellant during the course of the hearing and the Appellant chose to impugn the same. W.P.(C) 10797/2021 was disposed of by this Court *vide* Order dated 23.09.2021 directing the DDA to treat the earlier EMD, which was forfeited by the DDA, as a fresh bid for the auction of the plot in question which was scheduled on 27.09.2021. DDA filed an application, being CM APPL. 34986/2021, for modification of the Order dated 23.09.2021 contending that there was no consideration on the part of the DDA to treat the forfeited amount as EMD. This Court *vide* Order dated 05.10.2021 clarified that the Order of treating forfeited amount as EMD is a direction of the Court and not a concession of DDA's Counsel. The said Order was challenged by the DDA by filing an LPA, being LPA 357/2021. This Court *vide* Order dated 01.04.2022 set aside the Orders dated 23.09.2021 and 05.10.2021. The net result is that the Appellant's plea for extension of time for depositing 25% of the bid price has been rejected. There was no impediment on DDA from proceeding ahead with the re-auction. The Appellant has chosen not to file the circular dated 22.06.2021, which, according to the Appellant, would not apply to this case. On the contrary, the learned Counsel for the DDA has taken a specific stand that the said circular would be applicable only to those cases where payment of 25% of the bid amount has already been made and only 75% of the remaining amount is left to be deposited. The contention of the learned Counsel for the Appellant that time should have been extended in favour of the Appellant in view of the adverse circumstances faced by the Appellant and the learned Single Judge ought to have granted stay to the re-auction proceedings of the



plot in question, cannot be accepted because the Order dated 05.10.2021 was passed only after hearing the parties and the said Order has been set aside in LPA 357/2021 *vide* Order dated 01.04.2022.

5. At this juncture, it is necessary to refer to certain clauses of the Tender Document for auction conducted by the Respondent/DDA in which the Appellant/bidder participated. Relevant clauses of the said tender document reads as under:

"2.4.4 After deposit of second stage EMD, the DDA shall issue a Demand- cum-Allotment Letter for the plot to the bidder whose bid has been accepted through registered post calling upon him to remit the balance 75% amount/premium of the bid offered within 90 (ninety) days of issue of this Letter.

2.4.5. In case the payment of balance premium is not received within the stipulated period as indicated above and in the Demand-cum-allotment letter, the bid shall automatically stand cancelled and the entire EMD (25% of the premium offered) shall stand forfeited without any notice. In that eventuality, DDA shall at liberty to re-auction the plot.

*2.5. Validity of offer.
The Bidders shall keep their offer valid for acceptance by the Competent Authority for a period of 180 days. If the bidder withdraws his offer within the period of 180 days, earnest money deposit paid by him shall be forfeited without any show case notice. Demand-cum-Allotment letter will be valid for 180 days from the date of issue and it will have ceased to be effective thereafter "*



6. A perusal of the abovementioned clauses demonstrates that after deposit of 25% of the bid amount, the DDA shall issue a Demand- cum- Allotment Letter for the plot to the bidder whose bid has been accepted through registered post calling upon him to remit the balance 75% amount/premium of the bid offered within 90 days of issuance of Demand-cum-Allotment Letter. Clause 2.4.5 stipulates that if the balance premium is not received within the stipulated period as indicated in the Demand-cum-Allotment letter, the bid shall automatically stand cancelled and the entire EMD (25% of the premium offered) shall stand forfeited without any notice and the DDA would be at liberty to re-auction the plot. Clause 2.5 of the e-auction document stipulates that the maximum period for keeping the offer of acceptance open is 180 days and it also states that the Demand-cum-Allotment letter would be valid for 180 days from the date of its issuance and it would cease to be effective thereafter.

7. As has been stated above, the material on record indicates that Demand-cum-Allotment letter was issued to the Appellant/bidder on 02.02.2021 which clearly stipulated that in case balance premium is not paid by the Appellant/bidder within 90 days, the bid shall stand cancelled and the entire EMD shall stand forfeited without any notice and the DDA would be at liberty to re-auction the plot. Furthermore, Clause 2.5 states that the Demand-cum-Allotment letter is only valid for a period of 180 days.

8. Viewed in this light, the Order of the learned Single Judge of this Court refusing to stay the re-auction proceedings of the plot in question does not require any interference. The right of the Appellant to ask for further extension of time for depositing the balance 20 % of the EMD stood closed



NEUTRAL CITATION NO: 2022/DHC/002901

by Order dated 01.04.2022, by which the Order dated 05.10.2021 in W.P.(C) No. 10797/2021 was set aside.

9. Accordingly, the instant LPA is dismissed, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 19, 2022

Rahul

