



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

Date of decision: 14th OCTOBER, 2022

IN THE MATTER OF:

+ **LPA 337/2021 & CM APPL. 32805/2021**

DELHI DEVELOPMENT AUTHORITY

..... Appellant

Through: Mr. Ashim Vachher, Standing
Counsel for the DDA

versus

SHREYA

..... Respondent

Through: Mr. Amandeep Singh, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. By way of the instant appeal, DDA seeks to challenge the Order dated 13.07.2021 (*hereinafter referred to as 'the Impugned Order'*) passed by the learned Single Judge in W.P.(C) 5992/2021, titled as Shreya v. Delhi Development Authority. The learned Single Judge by way of the Order impugned herein has allowed the Writ Petition filed by the Respondent herein seeking a writ of mandamus directing the DDA to accept 25% of the reserve price which had to be deposited by the Respondent herein in pursuance to the e-auction held on 07.08.2020 for plot No.210, Pocket-1, Phase-III, Sector-25, Rohini, New Delhi (*hereinafter referred to as 'the property in question'*).
2. Shorn of details, the facts leading to the instant appeal are as under:



- a. An advertisement was issued by the DDA for e-auction of residential plots on '*as is where is*' basis. The Respondent herein participated in the e-auction conducted by the DDA on 07.08.2020 and she was declared a successful bidder.
- b. As per the e-auction documents, the bidders had to deposit 5% of the reserve price at the first stage, i.e. before participating in the e-auction programme. 20% of the bid premium and difference of 5% reserve price had to be deposited at the second stage by successful bidder within seven days from the issuance of Letter of Intent (*hereinafter referred to as 'LoI'*) after acceptance of their bid by the DDA. It is also specified that if the successful bidder fails to deposit balance 20% of reserve price within 7 days then the EMD of 5% submitted at the time of participation shall be forfeited. It was also specified that the payments were to be made on-line through NEFT/RTGS/e-payment on DDA's e-auction portal.
- c. It is stated that the Respondent herein was not informed regarding the LoI through e-mail. It is stated that when the Respondent herein contacted the help-desk of DDA, she was informed that an SMS had been sent to the successful bidders. It is stated that the Respondent herein was informed that the DDA has issued LoI through e-mail and the same has been uploaded on the e-auction portal as well and the Respondent herein was asked to check her registered e-mail ID and to visit the e-auction portal for more details and for accepting the LoI. It is stated that an SMS was sent to the Respondent on 26.08.2020. It is stated



that in the e-auction portal it was mentioned that the payment of 20% of the reserve price of the property in question had to be made within 7 working days from 26.08.2020. It is stated that on 02.09.2020, the Respondent herein tried to deposit the money but she was unsuccessful. It is stated that the Respondent herein visited DDA's office and met various officials. It is stated that the Respondent told the officials of DDA that she had not received the LoI in respect of the property in question. It is stated that despite various communications, no proper reply was given by the DDA. It is also stated that in earlier e-auctions conducted by the DDA, extension of time to pay the amount had been granted by the DDA. It is stated that when the Respondent herein came to know that the same property is being put to subsequent auction, the Respondent herein filed W.P.(C) 5992/2021 seeking a writ of mandamus directing the DDA to accept 25% of the reserve price of the property in question.

- d. The learned Single Judge *vide* Order impugned herein allowed the Writ Petition stating that since there is no proof of intimation of LoI by the DDA through e-mail and in the absence of such intimation, the Respondent herein cannot be made to suffer because of DDA's fault. The learned Single Judge held that the copy of the LoI which has been annexed to the affidavit neither has the name of the successful bidder nor is the plot number mentioned on the same. The learned Single Judge rejected the contention of the DDA that third party rights have already been created on the property in question and held that the purported



cancellation of the petitioner's bid (Respondent herein) was itself arbitrary and unsustainable in law and the DDA could not have created any third-party rights. The learned Single Judge directed the DDA to accept the amount within two weeks. The learned Single Judge held that all acts subsequent to the purported cancellation of the earlier bid would be deemed to be subject to the determination of the Petitioner's (Respondent herein) claim in the property in question. The learned Single Judge directed the DDA to process the possession and title documents of the property in question and deliver the same to the Respondent herein within four weeks from the date of the impugned Order.

e. Aggrieved by the said Order, DDA has filed the instant LPA.

3. Mr. Ashim Vachher, learned Standing Counsel appearing for DDA, contends that an e-mail was sent by the DDA to the Respondent herein along with the LoI and it is possible that the e-mail got bounced. He states that the system generates the e-mail and an SMS was sent to the Respondent as an additional mode of communication. He states that the LoI was also uploaded on the e-auction portal. He states that in any event, the Respondent herein knew that an SMS has been sent and money has to be deposited. He also states that the LoI was there in the web portal. He submits that the Respondent has not deposited the money and there is nothing which prevented the Respondent herein from depositing the money within the prescribed time limit. He states that the principle contention of the Respondent has always been that the DDA has stated in the bid document that 20% of the bid premium was to be submitted by the Respondent within seven days from the issuance of LOI. He



further submits that there is an Arbitration Clause in the bid document and since the dispute in question has arisen between the parties, the parties ought to have approached the Arbitral Tribunal to resolve their disputes.

4. *Per contra*, Mr. Amandeep Singh, learned Counsel appearing for the Respondent, contends that the Respondent was not allowed by the DDA to submit the money on 02.09.2022. He states that despite numerous attempts on the part of the Respondents, no proper reply has been given by the DDA. He submits that the Order of the learned Single Judge does not require any interference from this Court.

5. Heard Mr. Ashim Vachher, learned Standing Counsel appearing for DDA, and Mr. Amandeep Singh, learned Counsel appearing for the Respondent, and perused the material on record.

6. The admitted facts of the case are that the Respondent herein was a participant of the e-auction conducted by the DDA and she was the highest bidder of the property in question. In terms of the e-auction, the Respondent herein deposited 5% of the reserve price of the property in question at the time of participation in the e-auction. It is also admitted that an SMS was sent to the Respondent on 26.08.2020 informing her that DDA has uploaded the LoI on the e-auction portal. The Respondent was directed to check the e-auction portal for more details. The Respondent herein knew that as per the e-auction portal, the last date for payment of money was 02.09.2020. Though the Respondent has stated that he was not able to deposit the amount on 02.09.2022, a perusal of the Writ Petition shows that the grievance of the Respondent herein was primarily that he ought to have been given 7 working days to pay the amount. There is no averment that the Respondent has deposited the money by seventh day or even after seven days or that the portal



was not working for acceptance of money. When this Court raised a question to the learned Counsel for the DDA, that was there any restriction on the Respondent herein to deposit the money after expiry of seven days or whether late payments are accepted by the DDA. Learned Counsel for DDA stated in the open Court that there was no restriction on the Respondent to deposit the money at any point of time.

7. From the perusal of material on record it is clear that the Respondent has not deposited the money. There is no assertion in the Writ Petition that the Respondent herein made any attempt to deposit the payment and the amount was not accepted by the DDA. The only submission of the Respondent in the Writ Petition in this regard is that the Respondent's father went to the Office of DDA and explained that no email regarding the intimation for LOI was received by the Respondent and on 02.09.2020, he had requested the DDA to accept 25% of earnest amount. A copy of the RTI application has been annexed with the Writ Petition (Annexure-A9). The RTI letters do not show that there is any specific query regarding as to whether the portal for receiving the money was open even beyond 02.09.2020 or not. There is nothing to show that the Respondent tried to deposit the money and the portal where the money was to be paid was not working beyond the prescribed period. Though the Respondent has asserted the fact in the writ petition, the same has been denied by the DDA. The Respondent ought to have deposited the money to show her *bona fides*. The question as to whether an e-mail had been sent by the DDA or not is purely a question of fact. Material on record indicates that the e-mail sent by the DDA either bounced back or had gone to the spam folder or got blocked. Learned Counsel for the DDA asserts that DDA has sent an e-mail, a fact which has been denied by the Respondent. These issues



cannot be decided in proceedings under Article 226 of the Constitution of India and it would require the parties to lead evidence by filing a Suit.

8. Clause 1.11 of the bid document, which deals with disputes resolution, reads as under:

"1.11 Disputes: In case of disputes, only Local Courts in Delhi shall have jurisdiction. The Parties shall endeavor to settle by mutual conciliation any claim, dispute, or controversy ("Dispute") arising out of, or in relation to this Auction. Any Dispute shall be finally settled in accordance with the Arbitration and Conciliation Act, 1996. Such arbitration proceedings shall be conducted in Delhi. The arbitration proceedings shall be conducted in the English language."

9. The issue as to whether the Respondent attempted to make payments within the prescribed time limit, which has been asserted by the Respondent and denied by the DDA, and the issue as to whether an e-mail was sent by the DDA which was not received by the Respondent due to any technical glitch, cannot be decided by this Court. These issues can be decided only by filing a Suit or by Arbitration which is provided for in the bid document. In light of the aforesaid, the learned Single Judge should not have accepted the submission of the Respondent as gospel truth and reject the submission of the DDA only on the basis of affidavits.

10. This Court is of the considered opinion that the judgment of the learned Single Judge needs to be set aside and the parties must be relegated to arbitration. The parties are, therefore, free to initiate proceedings under the Arbitration and Conciliation Act, 1996, for settling their disputes.



NEUTRAL CITATION NO: 2022/DHC/004292

11. With these observations, the appeal is allowed. Pending application(s), if any, are disposed of.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

OCTOBER 14, 2022

Rahul

