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

+ **W.P.(C) 2052/2024 & CM APPL. 8565/2024**

JINDAL FILMS INDIA LTD.

..... Petitioner

Through: Mr. Prashant Mehta with
Mr. Charanpreet Singh, Advocates.
(M): 8860577210
Email: singh.charanpreetsingh9@gmail.com

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Ashim Vachher, Standing
counsel, DDA.
(M): 9811023217
Email: ashimvachher@vachherassociates.com

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Date of Decision: 15th February, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition has been filed impugning the order dated 06th September, 2023 received by the petitioner on 09th January, 2024. There is further prayer that the respondent be directed that the Earnest Money Deposit ("EMD") submitted by the petitioner to the tune of Rs. 4,39,24,032/- towards auction of Plot No. A, Sector-E2, Vasant Kunj, New Delhi-110070 in e-auction held on 21st July, 2022, shall not be forfeited and the said amount shall be refunded to the petitioner.
2. The case of the petitioner is that the petitioner participated in the e-



auction and became the H1 bidder, however, it transpired that the respondent did not even have the title or ownership of the said plot.

3. Thus, various issues were raised by the petitioner, for which a detailed representation dated 29th August, 2022 was sent to the respondent by email dated 29th August, 2022.

4. Subsequently, a writ petition being *W.P. (C) No. 12649/2022* was filed before this Court. By order dated 01st September, 2022 in the said petition, respondent was directed to give a fair hearing to the petitioner. Further, it was directed that the decision in respect of the matter would be disposed of by the respondent within a period of three weeks.

5. Learned counsel appearing for the petitioner submits that in contravention to the order dated 01st September, 2022, the petitioner was not given any fair hearing by the respondent.

6. It is submitted that the concerned officer namely, Mr. V.S. Yadav who initially conducted the personal hearing of the petitioner on 21st September, 2022 and heard the submissions of the petitioner, got transferred somewhere else. Subsequently, the impugned order dated 06th September, 2023 has been passed by another official namely, Mr. Somketu Mishra, Director (CL). It is submitted that the aforesaid officer while passing the order dated 06th September, 2023 did not give any chance to the petitioner to represent the case before him nor any opportunity of hearing was granted by the aforesaid official, before passing the impugned order dated 06th September, 2023.

7. When the matter was listed on the last date of hearing i.e. on 13th February, 2024, learned counsel appearing for the respondent/Delhi Development Authority (“DDA”) had been asked to take instructions.



8. Today, learned counsel appearing for the DDA confirms the fact that the order dated 06th September, 2023 has indeed been issued by a subsequent officer, Mr. Somketu Mishra, whereas, the hearing was granted to the petitioner by the earlier officer namely, Mr. V.S. Yadav.

9. Having heard learned counsel for the parties, it is manifest that the petitioner was granted hearing on 21st September, 2022 by the previous officer namely, Mr. V.S. Yadav. However, the impugned order dated 06th September, 2023 came to be passed approximately after one year by the subsequent officer, which was received by the petitioner only on 09th January, 2024. Considering the facts as aforesaid, it is clear that the order dated 06th September, 2023 is patently illegal, as the hearing was granted to the petitioner by one officer, while the speaking order was passed by another officer.

10. Law in this regard is very clear that a hearing given to a party cannot be an empty formality. The Supreme Court has held in a catena of judgments that in case hearing is granted by one officer and the order in question is passed by another officer, then the same would tantamount to violation of Principles of Natural Justice.

11. Thus, Supreme Court in the case of ***Gullapalli Nageswara Rao Versus Andhra Pradesh State Road Transport Corporation and Another, 1958 SCC OnLine SC 49*** has held as follows:

“xxx xxx xxx

31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the



witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. **If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.**

xxx xxx xxx”

(Emphasis Supplied)

12. Similarly, holding that if one person hears and the other decides, then the personal hearing becomes an empty formality, Supreme Court in the case of *Automotive Tyre Manufacturers Association Versus Designated Authority and Others*, (2011) 2 SCC 258, has held as follows:

“xxx xxx xxx

83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in *Gullapalli* [AIR 1959 SC 308] , if one person hears and other decides, then personal hearing becomes an empty formality.

84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly.

xxx xxx xxx”

(Emphasis Supplied)

13. Likewise, this Court in the case of *Mahindra Electric Mobility Limited and Another Versus. Competition Commission of India and Another*, 2019 SCC OnLine Del 8032, has held as follows:-



“xxx xxx xxx

177. Having so concluded, this Court is nevertheless of the opinion that a hearing by a larger body and decision by a smaller number (for compelling reasons or otherwise) does lead to undesirable and perhaps at times avoidable situations. To address this, the court hereby directs that when all evidence (i.e. report, its objections/affidavits etc.) are completed, the CCI should set down the case for final hearing. At the next stage, when hearing commences, the membership of the CCI should be constant (i.e. if 3 or 5 members commence hearing, they should continue to hear and participate in all proceedings on all hearing dates); the same number of members (of the CCI) should write the final order (or orders, as the case may be). This procedure should be assimilated in the form of regulations, and followed by the CCI and all its members in all the final hearings; it would impart a certain formality to the procedure. Furthermore, the court hereby directs that no member of the CCI should take a recess individually, during the course of hearing, or “take a break” to rejoin the proceeding later. Such “walk out and walk in” practise is deleterious to principles of natural justice, and gravely undermines public confidence in the CCI's functioning. Once the hearing commences, all members (who hear the case, be they in quorums of 3 or 5 or seven) should continue to be part of the proceeding, and all hearings, en banc. An analogy may also be drawn to the hearings in courts before benches of more than one member. Hearings may take place from time to time before benches of varying composition, but once the final hearing has commenced, the matter is heard and decided only by the same bench. There is no addition, deletion or substitution in the composition of the bench during the course of final hearing. If at all, it becomes impossible to continue the hearing before the same bench (for example, due to one of the judges having demitted office), the matter is heard afresh by the new bench even if the composition is partly common with the previous bench. A similar example may be given of hearings in the Supreme Court - if a matter is heard in part by a bench of two judges, further hearings are held only before that bench, and not before the bench of three judges even if both the original members of the bench are also part of the three judge bench. The invariable practice of the courts, which also ought to be followed by the CCI, is that the bench which hears the matter decides it, and that every member who participates in the hearing, is also party to the final decision.

xxx xxx xxx”

(Emphasis Supplied)



14. Considering the aforesaid detailed discussion, the impugned order dated 06th September, 2023 cannot be sustained in law. Accordingly, the same is set aside.

15. However, DDA is directed to grant fresh hearing to the petitioner and pass a reasoned and speaking order, in accordance with law.

16. It is further directed that the DDA shall do the aforesaid exercise in a time bound manner preferably within a period of four weeks from today.

17. It is further directed that the speaking order passed by DDA, shall not be given effect to, for a period of one week after receipt of the order by the petitioner.

18. The DDA would be at liberty to serve the speaking order to the petitioner through the counsel who has appeared today, as well, the details of whom, are recorded in the present order.

19. Consequently, the present petition is disposed of in terms of the aforesaid directions, along with the pending application.

MINI PUSHKARNA, J

FEBRUARY 15, 2024

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