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

% **Date of decision: 22nd March, 2024**

+ **CO.A(SB) 45/2011**

SANJAY MITTAL & ORS (PH) Appellants

Through: Mr. Kunal Sabharwal, Mr.
Deepak Mahajan & Mr.
Shubham Maadan, Advs

versus

URBAN IMPROVEMENT CO PVT LTD & ORS

..... Respondents

Through: Mr. D.S. Chauhan, Ms. Ruchi
Singh, Mr. Prashant Kumar,
Mr. Shikher Badial & Mr.
Santosh Kumar Baitha, Adv.
for R1.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The entire background of the matter which gives rise to the present appeal is elucidated in a separate detailed order passed by this Court in connected appeals bearing Nos. CO.A(SB) 36/2011, CO.A(SB) 37/2011 and CO.A(SB) 79/2011, today, which may be read as a part and parcel of the present order and the same has not been repeated for the sake of brevity.

2. Shorn of unnecessary details, the appellants herein moved C.A. No. 247/2011 in CP No. 50/2006, which came to be disposed of *vide* the impugned order dated 24.05.2011. This application was moved by



the applicants, seeking to be impleaded as necessary and proper parties. The appellants herein are the successful bidders of the tender for the sale of the plots advertised by the company. It is stated that they have been adversely affected by various orders of the Company Law Board¹ which have been passed restraining the sale of the plots.

3. It is pertinent to mention that the company issued a tender for the sale of 48 residential plots in Greenfields Colony and one plot for the purpose of a Cinema Complex; and the appellant along with 165 bidders had applied for 44 plots and were declared as successful bidders, along with 39 other bidders, for a total of 44 plots. In furtherance of the same, the appellants had deposited earnest money by way of a demand draft. However, at the time of making payment of the second installment, they were informed by the Company that in view of the order of restraint dated 13.01.2009 passed by the CLB, the balance payment could not be accepted.

4. In this regard, an order dated 29.03.2011 was passed by the CLB, which directed the appellants herein to approach the company or any other appropriate forum for redressal of their grievances. Thereafter, a meeting took place between the appellant and the company on 31.03.2011, wherein the appellant was informed that the Corporate Governance Committee had decided to cancel the sale of the plots to the appellant. It is stated that the appellants did not receive any such document or resolution for the proposed cancellation of the sale. It is evident that *vide* minutes of the company on 02.02.2011, it was resolved that the company had no objection to the cancellation of

¹ CLB



the process of sale by inviting tenders and the same was taken on record by the CLB, and on 21.04.2011 the CLB ordered that since the company had resolved to cancel the allotment of plots by tender process, the applications moved have since become infructuous.

5. Learned counsel for the appellant vehemently urged that execution of the tender documents and its acceptance by the duly constituted Board of Directors of respondent No.1/company and subsequent issuance of letter of allotment, which were effected before service of notice of the interim order passed by the CLB, created a valid, binding and subsisting contract between the appellants and respondent No.1. It was vehemently urged that the RWAs have no *locus standi* to challenge the award of the tender to the appellants and they were never served any notice of the applications which had been moved by the intervenors-RWAs and the entire order came to be passed in the absence of and behind the back of the appellants.

6. Further, drawing the attention of this Court to the observations made by the Company Law Tribunal in the impugned order dated 24.05.2011, it was vehemently urged that the Board of Directors of respondent No.1 did not even cancel the tender allotted to the appellants and rather left this decision to the discretion of Company Law Tribunal.

7. Learned counsel appearing for the intervenors Greenfield Plot Holders-cum-Residents Association, has vehemently urged that the CLB in the impugned order has given a categorical finding that the Board of Directors had proceeded with the sale of the properties/assets of the respondent No.1 company in complete disobedience of the



order dated 13.01.2009 and since the Board of Directors proceeded in contravention to the directions of the CLB, which were affirmed by an order of this Court dated 19.01.2009, the entire tender process was rightly set at naught.

ANALYSIS AND DECISION:

8. Having heard the learned counsel for the parties and on a careful perusal of the record, it is pertinent to mention that the CLB in the impugned order dated 24.05.2011 has delineated the entire factual background to the effect that the tender process was conducted in a hush-hush and collusive manner. Evidently, the opening of tenders/bids at the office of the company was conducted on 08.01.2009. The application received from the successful bidders was accepted. Thereafter, earnest money was deposited in the company bank account on 12.01.2009 and an intimation was sent to the successful bidders on 13.01.2009 *via* courier i.e., M/s. New Flash International. Undoubtedly, the stay on the sale of plots by the CLB was granted on 13.01.2009. Although, the Board approved the allotment of plots but the same was in gross violation of the directions dated 13.01.2009 passed by the CLB.

9. To cut the long story short, the CLB had an occasion to examine the fact that no audit of the company had been done since 2004 and there was an absolute lack of transparency on part of the Board of Directors of the respondent No.1 company and in this regard, the CLB observed as under:-

“13. All is not well with the Company. Nothing *prima facie* irregularities and illegalities in the functioning of this Company as reflected in the minutes of the meetings of Governing Committee



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constituted by the CLB, as noted in the internal Auditor's Report and as observed by the Observer by the CLB pursuant to the order of the Hon'ble High Court at Delhi requiring the CLB to look into the Company Application Nos. 23, 55 and 105 containing allegations of allotment of plots and other sites calling tenders (and that too not in a proper and transparent manner) instead of making allotment through public auction, depletion of FDs of the Company, grievances of the shareholders, plotholders and residents in this colony of the R-1 Company, in the facts of the present case, the Central Govt. has decided not to press for extension of term of the present directors and has left it to the CLB to appoint new directors or passing appropriate orders in the matter.

14. C.A. Nos. 23 and 55 have already become infructuous in view of the R-1 Company's decision to cancel allotment of plots by tender, as stated. C.A. No. 54/109 of the Company for recall of stay order dated 13.01.2009 and C.A. No. 643/09 of the Union of India, not having been mentioned, stand disposed of in view of this order. C.A. No. 347/09 by Shri Vidya Sagar Quanungo, a tenderer stands hereby dismissed as the Applicant has no locus, non-compliance of the contractual obligations between the parties cannot be agitated before the CLB. The prayer to refund the earnest money to the tenderer as sought in C.A. No. 348/09 is to be dealt with by the Company as per law. C.A. No. 644/09 regarding setting the matter with an allottee whose allotment already stands cancelled can no longer be proceeded with. Besides, the Company's allotments have to be in compliance with the CLB's orders as conveyed by the then Under Secretary (C.L. Pratham) vide his letter dated 29th October, 1982 addressed to the Company that it has been directed by the CLB under Section 408(6) that future sale of plots, if any, should be made by Public Auction and after giving due notice and publicity by the Company. As regards the 5 applicants in C.A.No. 247 of 2011 it is noted that they also have no locus as the applicant in C.A. No. 347 of 2009. However, on hearing the applicant's application the Applicants and Respondent Company were require4d to submit affidavits to the CLB giving details of the despatch of letters to the successful bidders and also subsequent payments by them, if any, made in compliance to the terms of the tender document. It is noted that though additional affidavits have been filed by the Applicants in C.A. No. 247/11 as well as the Respondent Company but no additional information or evidence has been provided as required, merely the pleadings made earlier have been repeated. From the Internal Auditor's Report, it is clear that despite the tender process having been stopped vide order dated 13.01.2009, which was later also affirmed by the Hon'ble High Court at Delhi, on 19.01.2009 the R-1 Company proceeded to





have the board meeting which approved allotment of plots. The Company had informed the successful bidders about the stay of the tender process only on 13.03.2009 as is evident from the speed-post receipts dated 14.03.2009. Though the stay order was given on 13.01.2009 the Company proceeded to issue letters dated 13.01.2009 informing the bidders about their success in the tender process. It could not be ascertained as to when the letters said to be dated 13.01.2009 were actually despatched and as to when these successful bidders actually received the intimation regarding their being successful in the bid through tender. However, the correspondence enclosed in C.A. No. 247 reveals that they had, that two of such application had, received the letter said to be dated 13.01.2009 only in February and in March 2009. ”

10. *Ex facie* the aforesaid observations tell their own tale. The entire tender process was done in an unfair manner and lacked transparency. It was rather found to be against the overall interest of the respondent No.1 company as also the various stakeholders involved as per the Report of the Auditor.

11. Therefore, the present appeal filed by the appellants deserves to be dismissed. However, the appellants cannot be blamed for the indiscretions and irregularities committed by the erstwhile Board of Directors of the respondent No.1 company during the relevant time. The applicant rightly seeks benefit of the doctrine of ‘Indoor Management’ so as to suggest an inference that he negotiated with the Board of Directors in the ordinary course of business and there was no unjust enrichment on his part. Hence, the appellants shall be entitled to recover any amount paid by them to the respondent No.1 company pursuant to their tender.

12. Accordingly, the present appeal is dismissed. However, this shall not preclude the appellants from seeking refund of the earnest



money deposited by them, as well as installments, if any, paid by them to the respondent No.1 company, along with accrued interest, if any, from the respondent No.1 company.

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DHARMESH SHARMA, J.