
(1998) 05 DEL CK 0065
In the Delhi High Court
Case No : C.W.P. No. 3944 of 1994

Ashwani Kapoor and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 22-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 74
Delhi Development Act, 1957 — Section 41(3)

Citation : (1998) 73 DLT 843 : (1998) 1 ILR Delhi 378 : (1998) ILR Delhi 378

Hon'ble Judges : M.S.A. Siddiqui, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. Arun Jaitley and Mr. Navin Chawla, for the Appellant; Mr. Ravinder Sethi Mr. P.N. Misra and Mr. Danish Bhatnagar, for the Respondent

Judgement

Arun Kumar, J.

1.The facts leading to the filing of the present writ petition are:

The Delhi Development Authority (for short "DDA") put up an advertisement on 7th June, 1989 in the newspapers announcing the auction of a plot for 2/3 Star Hotel at Pitam Pura, New Delhi. The plot was to be auctioned as per certain terms and conditions. There is no dispute between the parties about the terms and conditions of the auction including the fact that the auction was on the basis of perpetual leasehold rights and the provisions of the Delhi Development Authority (Disposal of Developed Nazul Lands) Rules, 1981 would be applicable. The material terms of auction for purposes of the present petition are:

"(iv) The officer conducting the auction shall normally accept the bids subject to confirmation by the Competent Authority. The highest bid offered at the fall of hammer at the auction and the person whose bid has been accepted shall pay earnest money, a sum equivalent to 25% of his bid either in cash or by bank draft in favor of the DDA. The amount of earnest money is to be deposited in Central Bank of India, Vikas Sadan, IN a Colony, New Delhi. If the earnest money

is not paid, the auction already held in respect, of that plot shall be cancelled by the Officer conducting the auction.

(v) xx xx (vi) The highest bidder is required to collect the allotment-Cumdemand letter on the very next working day of the date of auction from the special counter, Main Reception, Ground Floor, Vikas Sadan, IN a Colony, New Delhi between 4.00 P.M. to 5.00 p.m. The highest bidder is required to make the payment of the balance 75% amount, demanded vide said demand letter referred to above, within 90 days from the date of issue of the demand letter by Bank Draft/pay orders only in the Branches of Central Bank of India/State Bank of India, Vikas Sadan, IN a Colony, New Delhi. In case the bidder fails to collect the demand letter on the next working day the date of issue of the demand letter will be treated the same. If the bid is not accepted, the earnest money will be refunded to the bidder without any interest unless it may have been forfeited under para (vii) below.

Four copies of perpetual lease deed Along with the copy of the site plan indicating the amount of stamp duty/transfer duty will be supplied to the highest bidder at the time of issue demand letter to get the lease deed papers stamped from the Collector of Stamps. Thereafter the lease deed will be executed and registered after receipt of full payment and handing over of possession.

Provided that the Vice-Chairman, DDA may extend the last date of payment, where he is satisfied that sufficient reasons exist for doing so, up to a maximum of 90 days subject to payment of interest the balance amount @ 18% per annum where the delay is 30 days or less and 25% per annum for a period exceeding 30 days."

(vii) In case the payment is not received within the stipulated period indicated in the demand letter the auction bid shall automatically stand cancelled and the 25% earnest money shall stand forfeited."

2. The petitioner was the highest bidder for the said plot. Against its bid for Rs. 3.30 crores the petitioner deposited Rs. 85 lacs with the respondent towards 25% of the bid amount as earnest money on 5th July 1989, i.e. the date of auction. On 6th July, 1989 the respondent issued a demand notice to the petitioner for payment of the balance amount of Rs. 2 crores 45 lacs within three months, i.e. by 4th October, 1989.

3. According to the petitioner the site of the hotel plot was found to be totally undeveloped and not fit for carrying out the construction of the hotel. The DDA had committed a breach of contract inasmuch as a totally undeveloped plot had been auctioned and sold to the petitioner. The petitioner filed a suit in this Court on 29th September, 1989. The petitioner prayed that in view of the fact that the plot was undeveloped and there was breach of contract on the part of the DDA he was not liable to pay the balance amount of the auction price. The prayers in the suit were cleverly worded inasmuch as mandatory injunction was sought against the DDA to direct it to develop the plot in question and the

perpetual injunction was also sought restraining the DDA from cancelling the allotment of the plot in question in favor of the plaintiff. This Court appointed a Local Commissioner in the said suit who is said to have given a report that the plot was undeveloped. Subsequently another Local Commissioner who was a retired Chief Engineer of CPWD was appointed for the same purpose and according to his report the petitioner could start construction on the plot even though development still remained to be done. The petitioner thus failed toward off its liability to pay the balance 75% of the auction price. The petitioner thereafter sought extension of time to pay the balance amount which the DDA declined to grant. The period of 90 days to deposit the balance 75% amount expired on 4th October, 1989. The petitioner did not pay the amount. As per terms of the auction extension for payment could be granted for one month on payment of interest @ 18% per annum on the amount due and for next two months on payment of interest @ 25% per annum failing which the bid would stand automatically cancelled and the amount already deposited would stand forfeited. On 4th December, 1990 the request of the petitioner for grant of extension of time to pay the balance 75% amount was rejected by the DDA. The effect of rejection of the request of the petitioner was that auction in favor of the petitioner stood automatically cancelled and the amount already deposited by him stood forfeited as per the terms of the auction. The petitioner then filed a writ petition in this Court being C.W. No. 3967/90 seeking extension of time to pay the balance amount. In the said writ petition an order was passed on 10th October, 1991 operative part whereof is reproduced as under:

"Having gone through the facts of this case and having seen that the petitioner has been committing defaults again and again in making the deposit of the balance 75% of the bid amount, we find no ground to interfere in the extraordinary writ jurisdiction.

Still in the interests of justice we give two months" time to the petitioner to pay the balance 75% of the bid amount Along with 18% per annum interest for the first month and thereafter 25% per annum till payment strictly in terms of the order dated 9th August, 1990 and in case this is done the automatic cancellation and forfeiture of the amount already deposited by the petitioner shall not stand in the way of the petitioner and in case this is not done then that will take effect. With this order and direction the writ petition stands disposed of."

4. An SLP filed by the petitioner against the said order of this Court was dismissed on 13th December, 1991.

5. Thereafter the petitioner moved an application dated 17th March, 1992 u/s 41(3) of the Delhi Development Act to the Central Government praying for relief on same terms as was granted to certain other auction purchasers of plots auctioned by the DDA. While the aforesaid application of the petitioner was still pending with the Central Government the petitioner filed another writ petition in this Court being C.W. No. 2115 of 1992 seeking direction to the Central Government for deciding the pending application and for restraining the DDA

from auctioning the plot in question. This Court directed the Central Government to decide the application of the petitioner within six weeks vide order dated 13th July, 1993. However, no stay of auction of the plot was granted. The Central Govt. ultimately decided the application of the petitioner vide order dated 3rd February, 1994. The application of the petitioner was dismissed. It was held that the circumstances relied upon by the petitioner for grant of relief similar to the relief granted in other cases were different. The facts in the case of petitioner and the other cases were not similar according to the Central Government. Subsequently the Writ Petition No. 2115/92 filed by the petitioner in this behalf was dismissed by this Court vide order dated 7th March, 1994. The order is reproduced as under.

"Present: Mr. Sandeep Sethi for the petitioner.

Mr. Ravinder Sethi, Sr. Adv. with Mr. J.P. Singh for the respondent.

CM 202/94 & CW 2115/92

By a detailed order of the previous writ petition, C.W. 3967/90 was disposed of by this Court on 10th October, 1991. It was found that the petitioner had no cause and this Court would not interfere, yet in the interest of justice, the petitioner was granted two months time to pay the balance 75% of the bid amount Along with 18% p.a. interest for the first month and thereafter Along with interest at the rate of 25% p.a. till payment strictly in accordance with the order dated 9th August, 1990, which was an order in the suit filed by the petitioner and it was specifically stated that in case this was done the automatic cancellation and forfeiture of the amount already deposited by the petitioner would not stand in the way of the petitioner and in case this was not done then that would take effect. In spite of this the petitioner did not comply with the order, and instead moved a petition u/s 41 of the Delhi Development Act, which has not been dismissed during the pendency of this writ petition, vide order dated 23rd February, 1994, whereby this writ petition was filed on 28th May, 1992.

We are of the opinion that filing of this writ petition was an abuse of the process of the Court. Earlier order passed by this Court would show that first the petitioner filed a civil suit in which he obtained ex parte injunction, which was vacated by the learned Single Judge giving further two months time to comply with the order and second time the petitioner obtained similar relief in the writ petition referred to above.

The plea taken in Section 41 proceedings was that some other similar situated persons" had been given refund of the earnest money in certain cases referred to in para 19 of the writ petition. One such case is of 1989. The petitioner should have raised all these points in the earlier writ petition. Peace meal raising of points and pleas is not permissible in law. Accordingly, we decline to interfere and dismiss this writ petition with costs."

6. The petitioner filed a SLP in the Supreme Court against the said order which was dismissed on 11th July, 1994. Before the Supreme Court the Counsel for the petitioner stated that he wished to challenge the order dated 23rd February, 1994 regarding dismissal of the application u/s 41 of the Delhi Development Act by the Central Government by appropriate proceedings in accordance with law. The Court observed that if the law gave the petitioner any Forum to challenge the order dated 23rd February, 1994 he could do the same.

7. On the strength of the said observations the present writ petition was filed in this Court on 16th September, 1994. The prayers of the petitioner in the present writ petition are:

"(a) Issue a writ, direction or order in the nature of certiorari quashing the order dated 23.2.1994 passed by the Secretary, Ministry of Urban Development and restraining respondent No. 2 from reauctioning or otherwise alienating the subject plot.

(b) Issue a writ, direction or order in the nature of mandamus directing the respondents to grant to the petitioner the same benefits and treatment as given by them in other identical cases."

8. During the course of hearing of this writ petition the learned Counsel for the petitioner confined his argument to challenging the forfeiture of the sum of Rs. 85 lacs. It was urged that the forfeiture was wholly unreasonable as could not be sustained in law. Relying on the provisions of Section 74 of the Contract Act it was submitted that even though the amount of penalty was specified, the Court could go into the question of reasonableness of the amount and could restrict the penalty/forfeiture to a reasonable amount. Thus the forfeiture clause contained in the terms and conditions of contract is not as such challenged. What is challenged is the action in forfeiting the entire amount. It is prayed that the forfeiture of the amount of Rs. 85 lacs which was 25% of the auction price deposited with the DDA was unjustified and could not be sustained. An affidavit was filed by the petitioner stating that in the meanwhile the plot had been reauctioned in December, 1996 and it had fetched a price of Rs. 7 crore 77 lacs, which showed that the DDA had made a huge profit in reauction of the plot in question and for that reason also forfeiture of a sum of Rs. 85 lacs deposited by the petitioner with the DDA was liable to be struck down. In support of his contention that in matters of forfeiture of earnest money also there ought to be reasonableness, i.e., the amount to be forfeited should be reasonable, the learned Counsel for the petitioner mainly relied on the provisions of Section 74 of the Indian Contract Act and certain decisions of the Apex Court. Section 74 is reproduced as under:

"74. Compensation for breach of contract when penalty stipulated for. - When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not

actual damage or loss is proved to have been caused thereby to receive from the party was broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.-A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.-When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of any condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.-A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

9. It is submitted that employer is only entitled to a reasonable compensation not exceeding the amount quantified by way of penalty from the party which has broken the contract in view of the aforesaid provision of the law. In this connection reliance was placed on the judgment of the Supreme Court in *Maula Bux Vs. Union of India (UOI)*, . This was a case of deposit of an amount by way of security guaranteeing due performance of contract for supply of goods. The Government who had to receive the supplies, forfeited the amount deposited by the contractor by way of security in view of the failure of the contractor to supply the stores. It was observed that whether under the terms of the contract the party in breach has undertaken to pay a sum of money or to forfeit a sum of money which he has already paid as security, for granting due performance of the contract to the party complaining of the breach of contract, the undertaking is of the nature of penalty. It is not necessary in every case of breach of contract that the aggrieved party must suffer actual loss or damage before it can claim compensation for breach of contract. The Court is competent to award reasonable compensation in such cases even if no actual damage is proved as having been suffered in consequence of breach of contract.

It was observed :

"But the expression "whether or not actual damage or loss is proved to have been caused thereby" is intended to cover different classes of contracts which come before the Courts. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation the sum named by the parties if it be regarded as a genuine preestimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming "compensation" must prove the loss suffered by

him."

A distinction was pointed out between amount being deposited as earnest money and amount being deposited as security for due performance of contract.

10. An observation by the Judicial Committee in (Kanwar) Chiranjit Singh Vs. Har Swarup AIR 1926 P C (1), was quoted in this context:

"Earnest money is part of the purchase price when the transaction goes forward: it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee."

In para 7 it was observed:

"Forfeiture of earnest money in a contract for sale of property movable or immovable - if the amount is reasonable, does not fall within Section 74."

This was taken as a settled preposition of law on the ground that forfeiture of a reasonable amount paid as earnest money does not amount to imposing a penalty but if forfeiture is of the nature of penalty, Section 74 applies. In case of deposit by way of security for due performance of the contract agreeing to have it forfeited in the event of breach of contract, it was held that that will be in the nature of penalty.

11. The same concept is found in the Union of India (UOI) Vs. Rampur Distillery and Chemical Co., Ltd., . Maula Bux (supra) was relied upon. It was observed that the amount deposited by way of security for guaranteeing due performance of the contract cannot be regarded as earnest money.

12. The aforesaid two decisions of the Supreme Court point out the distinction between deposit of money as security for due performance of the contract and agreeing to have the same forfeited in the event of breach of contract and the cases of payment by way of earnest money which is liable to be adjusted as part of the price. Sec. 74 of the Contract would apply in the former case whereas it would have no application in the latter.

13. Shri Hanuman Cotton Mills and Others Vs. Tata Air Craft Limited, , contains a detailed discussion regarding the meaning of the words "earnest money". On a review of various decisions the following principles were laid down:

"(1) It must be given at the moment at which the contract is concluded.

(2) It represents a guarantee that the contract will be fulfilled or, in other words, "earnest" is given to bind the contract.

(3) It is part of the purchase price when the transaction is carried out.

(4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.

(5) Unless there is anything to the contrary in the terms of the contract, on

default committed by the buyer, the seller is entitled to forfeit the earnest."

14. In the above case as per conditions of the contract between the parties, the buyer was liable to deposit with the supplier 25% of the total value of the stores at the time of placing the order. The deposit was to remain with the supplier as earnest money and was to be adjusted in the final bids. No interest was payable on the deposit to the buyer. Thus the buyer was bound to pay the full value of the stores supplied to it minus the amount of deposit before taking delivery of the stores. In case of default by the buyer, the supplier was entitled to forfeit unconditionally the earnest money paid by the buyer and cancel the contract. The amount representing earnest money was primarily a security for the performance of the contract and in the absence of any provision to the contrary in the contract, the security amount was liable to be forfeited. Applying the above principles it was held that the forfeiture of 25% deposit in accordance with the contract could not be faulted.

15. From the above mentioned decisions of the Supreme Court, it clearly emerges that when the earnest money or the deposit by way of earnest is liable to adjustment in the total price, it will not be a case falling u/s 74 of the Contract Act and the forfeiture has to be accepted as justified by the terms of the contract.

16. In the present case the deposit of 25% of the auction price was as per the terms of the contract and was to form part of the total auction price because the buyer, i.e., the petitioner had only to deposit the balance 75% price. As per the ratio of the aforesaid decisions of the Supreme Court, the forfeiture of the 25% deposit by way of earnest money, Therefore, cannot be called in question.

17. Even the question of reasonableness of the amount sought to be forfeited cannot be challenged in the facts of the present case. Firstly the 25% deposit by way of earnest money in matters relating to immovable properties cannot be said to be an unreasonable amount. This has been upheld by the Courts in various cases. The Supreme Court upheld the forfeiture of 25% of the price of goods in the case of *Shree Hanuman Cotton Mills (supra)*. This Court has upheld forfeiture of similar 25% deposit in *Aggarwal Associates (Promoters) Ltd. Vs. Delhi Development Authority and Another*, . Secondly, the learned Counsel for DDA has relied on the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 to contend that the 25% deposit by way of earnest money and its forfeiture on account of non-payment of the balance 75% price has statutory force. Rules 29 and 32 of the aforesaid Rules provide for deposit of 25% amount as earnest money at the time of fall of hammer by the successful bidder. These Rules further lay down the time frame within which the balance 75% amount of the auction price is to be paid. Rule 32 lays down the consequence of failure to pay the balance price within the specified period. According to this Rule, the 25% amount which already stands deposited by way of earnest money is liable to be forfeited in such a case. The submission of the learned Counsel for the DDA in this behalf is that these Rules have been framed under statutory powers and, Therefore, have the force of law. Because of this it does not remain merely a

case of terms of contract. These terms of contract (auction) have statutory force and, Therefore, cannot be called in question. This is especially so because there is no challenge to these Rules in the present case. The learned Counsel for the petitioner tried to meet this argument by saying that the Rules contain enabling provisions and are merely by way of guidelines for the Department. When we consider the question of reasonability of the amount being forfeited, this cannot be the answer to the argument advanced on behalf of the DDA in view of the fact that the relevant terms of the auction find force from the statutory Rules, at least the question of their being reasonable or not cannot be raised.

18. The argument advanced on behalf of the petitioner that in the present case the DDA did not suffer any loss, rather if made a substantial profit on reauction of the plot and, Therefore, the forfeiture is not at all justified, cannot be sustained. The forfeiture clause cannot be made dependent on the outcome of reauction of a property. The reauction may not take place for years. In the present case itself the initial auction was in the year 1989 while the reauction took place in December 1996. Apart from the measure of the price fetched at the time of reauction, it is difficult to expect any evidence on the question of reasonability of the amount to be forfeited. The moment one goes into the question of what is the material for determining the reasonable amount to be forfeited, the necessary corollary would be that the matter will have to be settled through litigation.

19. In this connection we would like to mention that normally when parties enter into a contract, the natural expectation is that the parties would abide by it. The parties have to maintain the solemnity of the contract. The deposit of earnest money and its forfeiture in the event of failure to perform the remaining part of the contract is a condition really meant to ensure the due performance of the contract. The liability on account of forfeiture of 25% of the price is intended to be a deterrent against breach of contract, i.e., non-payment of the balance 75% price. We find nothing unreasonable, unjust or arbitrary in this.

20. The learned counsel for the petitioner relied upon Hazi Abdul Sattar Vs. M.P. State Minor Forest Produce Ltd., Bhopal and Others, AIR 1989 M.P. 7 in support of his argument that the forfeiture of 25% earnest money was unreasonable and unjust. This is a case of deposit of money by way of security for due performance of contract and not a case of deposit by way of earnest money liable to be adjusted in the price of the goods. Therefore, this case has no relevance so far as the facts of the present case are concerned.

21. The learned Counsel also relied on Workers Trust and Merchant Bank Ltd. Vs. Dojap Investments Ltd. (1993) 2 All ER 370. This was a case of deposit of 25% of sale consideration of a piece of land by way of earnest money and there was a forfeiture clause in the contract in the event of failure to pay the balance amount within 14 days of the auction. The following extract from the head-note brings out the ratio of the judgment:

"A deposit by the purchaser on a contract for the sale of land showed that the purchaser was in earnest in performing the contract and, as such, forfeiture of the deposit in the event of failure to complete the sale did not fall within the general rule that a penalty payable in the event of a breach of contract was unlawful unless the provision for the payment or forfeiture of a sum of money in the event of breach was a genuine pre-estimate of the loss which the innocent party would incur by reason of the breach. Accordingly, a deposit could be validly forfeited even though the amount of the deposit bore no reference to the anticipated loss to the vendor flowing from the breach of contract. However, the amount of the deposit had to be reasonable and, having regard to usage which had been established over a long period that the customary deposit was 10% of the contract price, a vendor who sought to obtain a larger amount than 10% by way of forfeitable deposit had to show special circumstances which justified such a deposit, otherwise the deposit would be held to be a penalty intended to act in terrorem. Since the 25% deposit required by the bank was not a true deposit by way of earnest, the provision for its forfeiture was a plain penalty and had to be repaid."

From the above extract it will be seen that the judgment proceeded on the basis as to whether 25% by way of earnest was a genuine pre-estimate of the loss flowing from breach of contract. It was also felt that customary deposit by way of earnest was 10% which would be a reasonable amount to forfeit. While discussing the question of reasonableness, we have noted that deposit of 25% of the auction price is customary in this country and has been upheld by Courts. Further in the facts of the present case the 25% deposit is as per the norms laid down in statutory rules to which there is no challenge. Therefore, this case cannot be of any assistance to the petitioner in the present case.

22. In *Delhi Development Authority Vs. Grihsthapana Co-operative Group Housing Society Ltd.*, , the Supreme Court held the forfeiture clause relying on its earlier decision in *Shree Hanuman Cotton Mills case* (supra). Subsequently in *Delhi Development Authority Vs. Shilpa Cooperative Group Housing Society Limited*, (1996) 8 SSC 119:62 (1906) DLT 421, the earlier decision in *Delhi Development Authority Vs. Grihsthapana Co-operative Group Housing Society Ltd.*, , was distinguished on the basis that in the instant case the Society had accepted the offer of payment of enhanced premium. It was held that the entire earnest money due was liable to be forfeited. However, keeping in view of the peculiar facts of the case, some relief was allowed to the Society by reducing the amount. These cases really did not proceed on the argument based on Sec.74, Contract Act. Whereas Sec.74, Contract Act is the mainstay of the argument of the learned Counsel for the petitioner in the present case.

23. In the result, we find no merit in the contention raised on behalf of the petitioner that the respondent is not entitled to forfeit the 25% of the auction price deposited by the petitioner as earnest money in view of the failure of the petitioner to pay the balance 75% price. In the earlier part of this judgment, we

have given facts leading to the filing of the writ petition. Those facts show that right from the beginning the petitioner has been dilly-dallying on the aspect of payment of 75% auction money. He has been trying to find excuses for not paying the amount. He has been all along trying to gain time in this behalf and even the indulgence shown by this Court in granting him further time to pay the balance amount was not utilised. First he tried to gain time regarding payment of balance price. When he failed to avail of the opportunity granted by way of extension of time, he started challenging the forfeiture of the 25% amount which he had deposited by way of earnest money. In fact there is merit in the contention raised by the learned Counsel for the respondent that the conduct of the petitioner in the present case totally disentitles him from seeking any relief under Article 226 of the Constitution of India.

24. We would like to note here another argument raised by the learned Counsel for the respondent by way of preliminary objection. Since we have examined the merits of the contentions raised on behalf of the petitioner and we did not want to throw the petitioner out on the basis of the preliminary objection, we did not choose to discuss this in the earlier part of this judgment. As the argument was raised, we would like to note the same at this stage before we conclude this judgment. The argument is that in view of the order passed by this Court in an earlier writ petition filed by the petitioner, it was not open to the petitioner to raise the points which have been raised at the time of hearing of this petition. Rather it was submitted that this petition was not maintainable in view of previous order of this Court. The order relied upon in this behalf is the order dated 10th October, 1991, operative part whereof we have quoted earlier. In the said writ petition, the petitioner had approached for extension of time to pay the balance 75% of auction money. The DDA had already declined to grant extension by that time and, Therefore, the forfeiture clause had become operative as per terms and conditions of the auction. This Court while disposing of the writ petition granted further two months" time to the petitioner to pay the balance 75% of the bid amount Along with interest @ 18% p.a. for the first month and thereafter @ 25% p.a. till payment. It was further observed that in any case the petitioner complied with the order, the automatic cancellation and forfeiture of the amount already deposited by the petitioner shall not stand in the way of the petitioner. In case the petitioner failed to comply with the order, the forfeiture would take effect. The petitioner admittedly failed to comply with the said order. The learned Counsel for the DDA submitted that as a result of this it was not open to the petitioner to challenge forfeiture of the 25% of the bid amount any more and the present writ petition was liable to be dismissed on this ground alone. There is great force in this submission made on behalf of the respondent. This Court has already held that if the petitioner failed to pay the amount within two months from the date of the said order, the forfeiture of 25% of the bid amount would stand. This order of this Court was confirmed because the SLP against the order was dismissed by the Supreme Court. It would follow that the forfeiture of the 25% of the bid amount was no more open to challenge in view

of the said order. However, in view of the nature of the controversy raised before us during the course of hearing of the present petition and in order to hopefully put an end to the litigation, we considered it appropriate to deal with the main question raised before us rather than dismiss the petition on the basis of the preliminary objection.

25. The result of the above discussion is that the writ petition fails and is hereby dismissed with costs. Costs quantified at Rs. 20,000/-.