(1995) 11 DEL CK 0033

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No''s. 1394, 2537 and 3680 of 1995

Kusum Lata Khajanchi and Others APPELLANT

Vs

Delhi Development Authority and Others RESPONDENT

Date of Decision : 10-11-1995

Acts Referred:

Citation : (1995) 4 AD 900 : (1996) 61 DLT 37 : (1995) 35 DRJ 480

Hon'ble Judges : R.C. Lahoti, J;Lokeshwar Prasad, J

Bench : Division Bench

Advocate : K.S. Sidhu, B. Mohan and Jayant Bhushan, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioners seek quashing of the letter dated 23.3.95 of the respondent-DDA whereby the petitioners'' bid for a plot made on 23.2.95 has been directed to be rejected by the Vice Chairman-DDA and amount of earnest money deposited on the date of the auction directed to be refunded. The petitioners also seek a direction to the respondents to accept the petitioners'' bid in accordance with the terms and the conditions of the auction.

(2) It is not disputed that plot No.43 in Residential Scheme Pocket-V, Sector-C, Basant Kunj was advertised by the Dda for sale by public auction. The petitioners made a bid of Rs.42.40 lacs which was accepted as the highest bid by the officer conducting the sale. The petitioners deposited an amount of Rs.10,60,000.00 being the amount of earnest money. The bid was put up before the Vice Chairman-DDA for acceptance. The Vice Chairman has not accepted the bid. The auction was conducted under the Delhi Development Authority (Disposal of Developed Nuzul Land) Rules, 1981 (hereinafter `Rules''- for short).

(3) According to the petitioners the bid made by them was above the reserved price of Rs.31.89 lacs and being the highest, ought to have been accepted by the Vice Chairman. The rejection is arbitrary and hence liable to be struck down.

(4) According to the respondent-DDA the bid made by the petitioners was much lower than the other bids fetched for similar size plots in the same area on the same day and thus did not reflect the true market value of the property. All the relevant facts were put up before the Vice Chairman who in his statutory discretion directed not only the bid made by the petitioners but three other bids also to be rejected which in his opinion were on the lower side. The correctness and reasonableness of the decision taken by the Vice Chairman is fortified by the subsequent event as the same plot was reauctioned on 26.6.95, only three months later than the date of the bid made by the petitioners, and fetched a bid of Rs.60 lacs. Moreover no concluded contract had come into existence between the parties. The Rules and the terms and conditions of the auction vest in the Vice Chairman the ultimate power to accept the bid and the petitioners having participated in the auction under the terms and conditions so notified, cannot raise a grievance if the Vice Chairman has in his discretion refused to accept the bid.

(5) Rule 29 (relevant part thereof) of the Rules provides as under :- 29. Sale of the highest bidder

THE officer conducting the auction shall normally accept, subject to confirmation by the Vice Chairman, the highest bid offered at the fall of the hammer at the auction and the person whose bid had been accepted shall pay as earnest money, a sum equivalent to 25 per cent of his bid and he shall pay the balance amount to the Authority within fifteen days of acceptance of the bid or within such period as the Vice Chairman may specify in the public notice under Rule 27 or in another public notice : (Underlining by us)

(6) Clause (ii)(4) of the notified terms and conditions of the auction sale provided as under :-

"THE auction (Sic-Officer) conducting the auction shall normally accept the bids subject to confirmation by the competent authority."

It is not disputed that the competent authority is Vice Chairman-DDA.

(7) In State of Orissa and Others Vs. Harinarayan Jaiswal and Others, , their Lordships of the Supreme Court have held :-

"THE Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. Hence quite naturally, the legislature has empowered the Government to see that there is no leakage in its revenue. It is for the Government to decide whether the price offered in an auction sale is adequate. While accepting or rejecting, a bid, it is merely performing an executive function. The correctness of its conclusion is not open to judicial review. We fail to see how the plea of contravention of Article 19(1) (g) or Article 14 can arise in these cases. The Government''s power to sell the exclusive privilege set out in Section 22 was not denied. It was also not disputed that these privileges could be sold by public auction. Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate."

(8) Following the law laid down by the Supreme Court, a Division Bench of this Court has held in Smt. Mamta Taneja VS. Dda & Ors., (CWP 2457/90 decided on 18th March, 1991) :-

"IT is not in dispute that the conditions of allotment provide that the officer conducting the auction shall normally accept the bids but such acceptance is subject to confirmation by the competent authority. The terms further provide that the person whose bid is accepted at the fall of the hammer by the officer conducting the auction shall be required to pay the earnest money which is deposited in the bank account of the respondents. The deposit in the bank account does not mean that there is concluded contract because this tentative acceptance is subject to the confirmation of the competent authority which, it is admitted, is the Vice Chairman. The terms of the allotment further provide that if the bid is not accepted then the earnest money is to be refunded to the bidder without any interest. This clearly shows that if the bid is not accepted then even though the earnest money may have been realised and deposited by the respondent the same has to be refunded. The action of deposit of earnest money and the subsequent return of the same clearly show that the principles of promissory estoppel would have no application."

(9) In Arun Kanotra & Ors. VS. D.D.A. & Anr., (CWP 1556/92 decided on 20.3.95) another Division Bench of this Court has taken the view that if the amount of the bid was considered not acceptable and on the lower side by the competent authority, interference in writ jurisdiction could not be made. The Division Bench has further held :-

"THE aforesaid view-point was confirmed by the Vice Chairman of respondent-authority and the bids including the one in question were cancelled. According to the terms and conditions of auction the bids could be provisionally accepted by the Presiding Officer conducting the auction subject to the confirmation by the competent authority. The cancellation of the bid in question on the aforesaid approach of the respondent-authority cannot be termed as mala fide or arbitrary."

(10) Recently, we have held in similar set of facts in Dr.Hotchandani & Ors. VS. Dda (CWP 250/95 decided on 17.10.95):-

"LAW is well settled that while exercising our writ jurisdiction, we are not to sit as an appellate authority over the decision of an authority like the Vice Chairman of DDA. We have only to examine whether the decision taken by the Vice Chairman-DDA is a reasonable decision, a decision which a reasonable man guided by relevant considerations could have taken in the circumstances of the case. It is pertinent to note that there is no allegation of malafides made against the Vice Chairman-DDA. If the Vice Chairman was of the opinion, having taken into consideration the relevant data placed before him, that the bids which were below a certain figure, did not reflect the market trend of prices of land and the Dda was likely to gain on the plots being offered for sale by public auction once again, there is nothing wrong in it. The Vice Chairman has acted in the interest of the DDA. He has tried to save the Dda from the huge financial loss which was likely to result to the Dda in the event of all the bids being accepted. He was, Therefore, justified in rejecting the bids relating to five plots including the one made by the petitioners. The terms and conditions of the auction also gave such an authority to the Vice Chairman. It is true that reasons must exist for rejecting a bid including the highest bid. The reasons do exist though they were not conveyed to the petitioners. It is enough if the reasons exist though not communicated. (Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others,).

(11) In view of the provisions contained in the Rules and the notified terms and conditions of the auction, it is clear that there is a discretion conferred on the Vice Chairman-DDA to accept or not to accept a bid inspire of the same having been accepted as the highest bid by the officer conducting the sale. In the case at hand , we are of the opinion that the discretionary decision taken by the Vice Chairman is not open to question . There are no malafides alleged. There is no arbitrariness as the decision is well reasoned. The subsequent event of the same plot having fetched a bid of Rs.60 lacs fortifies the view that the decision taken by the Vice Chairman was in public interest and to save the Dda from the substantial financial loss which it would have otherwise suffered.

(12) DR.SIDHU, learned Senior Advocate appearing for the petitioner has placed strong reliance on two Division Bench decisions, namely, Brindra Ban Agarwala Vs. Official Liquidator of The Sarswati Soap and Oil Mills Ltd., and Premier Insurance Co.Ltd. VS. M/s. Bharat Commerce and Industries Ltd. & Ors. Air 1962 Mys 185. Both the cases are of sales conducted by official liquidator under the Companies Act. Having carefully considered the two decisions we are of the opinion that none of them helps the petitioners.

12.1In Brindra Ban Aggarwala''s case (supra) the law laid down and relied on by Dr.Sidhu is :- "It is desirable to say that, in our opinion, when property is sold by an Official Liquidator subject to confirmation by the Court, the subsequent offer of a higher bid should not be ground for refusing confirmation of the sale provided the price is adequate." (Pr.5) "In the case of sales effected by an official liquidator a reserve price should if possible be fixed and in that event the purchaser at the sale, provided his price exceeds reserve and there has been no fraud or irregularity, would be entitled to have the sale confirmed notwithstanding the subsequent receipt of a higher offer." (Pr.6)

12.2The Allahabad decision has been followed by the Division Bench of Mysore High Court in Premier Insurance Co. Ltd.''s case (supra).

12.3It is submitted by Dr. Sidhu that in as much the price offered by the petitioners exceeded the reserve price, it ought to have been accepted; the amount of bid received at the subsequent sale being irrelevant.

12.4In Brindra Ban Aggarwala''s case (supra) B had made a bid of Rs.1,10,000.00 which was accepted by the Official Liquidator and placed before Company Judge for acceptance. However, the Company Judge directed the sale to be held afresh. At the subsequent sale R made a bid of Rs.1,15,000.00 . The advertisement of subsequent sale did not come to the notice of B. Bid of Rs.1,15,000.00 made by R was accepted by the Official Liquidator and also by the Company Judge. It was this order which was the subject matter of appeal before the Division Bench.

12.5Inspite of having formed and expression an opinion on the law stated generally, it is pertinent to note that the Division Bench has dismissed B''s appeal upholding the decision of the Company Judge. During the course of its decision, the Division Bench has held :- "It is difficult to think that the appellant has genuine grievance and in view of the express condition of the auction that the sale would be subject to the confirmation by the Court we think it clear that the appellant has no right to insist on his offer, although it was the highest, being accepted." (Pr.3) "The question whether the sale should or should not have been confirmed was, however, matter which lay within the discretion of the Court." (Pr.4)

12.6In Premier Insurance Company''s case (supra) also the bid which was knocked down was of Rs.22 lacs. Subsequent to the auction sale, other parties raised their bids before the Court of Rs.23 lacs and then to Rs.24 lacs. The Company Judge opined that inspire of offer of Rs.24 lacs having been made before the Court, bid of Rs.22 lacs made at the auction was liable to be accepted as the same could not be said to be inadequate and was above the reserve price of Rs.20 lacs. It was this exercise of the discretion by the Company Judge upheld by the Division Bench in appeal.

12.7It is pertinent to note that in both the Division Bench decisions, it was the exercise of discretion by the Company Judge in whom vested the ultimate right to accept or not to accept the bid which was upheld. In the case at hand, as per the statutory rules and as was notified in the terms and conditions of the public auction, the acceptance of the bid is clearly stated to be subject to the discretion of the Competent Authority which is none else than the Vice Chairman-DDA. He has exercised his discretion against the petitioners by not accepting their bid. Reasons have been assigned for the view so taken by the Vice Chairman. The exercise of discretion is neither arbitrary nor unreasonable and cannot be found fault with.

(13) For the foregoing reasons the petition fails and is dismissed though without any order as to the costs.

