(2002) 05 DEL CK 0187

In the Delhi High Court

Case No : C.W. 529/77

Prominent Builders and Investors (P) Ltd. APPELLANT

Vs

Delhi Development Authority and Others RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 100 DLT 430

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : N.S. Bajwa, for the Appellant; Sangeeta Chandra, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Mahajan, J.—By way of this petition, petitioner assails the letter dated 4th April 1977 demanding interest and the notice dated 6th July 1977 calling upon the petitioner to deposit Rs. 93,047/- by way of interest failing which the plot would stand cancelled.

2. Briefly the facts are that the petitioner bid for a commercial plot No. 59 situated at Nehru Place on leasehold basis in an auction held on 6th February 1973. The petitioner''s bid for Rs. 30,10,000/- was accepted. A sum of Rs. 7,52,500/- being 25% of the premium was deposited on the spot on 6.2.1973. Petitioner was required to make payment of the balance payment of 75% of the premium within 120 days of the intimation of the acceptance of the bid under Clause 2(6) of the terms and conditions of the auction. The bid was accepted by the respondent-DDA and the acceptance was conveyed to the petitioner on 12.3.1973. The petitioner was required to make full payment by 11th July 1973. The petitioner vide letter dated 12th July 1973 sought extension for making the balance payment. An Installment of Rs. 7,52,500/- was deposited by the petitioner on 21.7.1973. Further time was sought for making the balance payment. The respondent granted 15 days time by way of letter dated 27th July 1973. Further time was sought and was granted by letter dated 13th November

1973. Another Installment of rs. 5,05,000/- was deposited on 1.11.1973 and the balance amount of Rs. 10,00,000/- was paid on 9.4.1974. The balance amount which was required to be paid by the petitioner on or before 11th July 1973 was paid in Installments and the last of which was paid on 9th April 1974. Thus full payment was made by the petitioner with a delay of 9 months. The respondent-DDA demanded interest for the period of delay in making the payment towards the balance sale price of the plot. The petitioner tendered payment of interest by way of a cheque dated 14.4.1974 for a sum of Rs. 93,047/-. Pursuant to the deposit of the cheque, the petitioner was granted a "No Objection Certificate" and thereafter on 18th April 1974 at the request of the petitioner, the possession of the plot was handed over to the petitioner in anticipation of the execution of the lease deed. The possession was taken over on the 18th April 1974 at 5.00 P.M. Thereafter instructions were issued to the bank to stop payment of the cheque that was deposited on 14.4.1974 on the ground that plans were unduly delayed by the respondent and the petitioner had also suffered loss of the cement quota. The respondent vide the impugned letter dated 4th April 1977 and notice dated 6th July 1977 claimed interest amounting to Rs. 93,047/- failing which action would be taken for cancellation of the bid and for revocation of the buildings plans.

3. Counsel for the petitioner contends that the respondent''s claim for interest is without jurisdiction, unreasonable and arbitrary and the respondent could not cancel the bid in pursuance of the illegal demand. The sanctioning of the plans was unusually delayed by the respondent. The perpetual lease deed as contemplated in Clause 4 of the terms and conditions was not executed between the parties. The building was to be erected within three years from the date of purchase in terms of the designs and architectural features prescribed by the respondent-DDA. Plans were submitted to the respondents on 26.12.1973. Sanction was accorded in 1974. In these circumstances, the impugned letter/ notice was not warranted. The respondents are not entitled to claim interest as the terms of auction also do not provide for payment of any interest. The petition was opposed by the respondents. It is contended that the petitioner was required to make balance payment as per the terms and conditions of the auction latest by 11th July 1973. The respondents could, in terms of Clause 2(iv) of the terms cancel the bid and forfeit the earnest money. A lenient view was taken and instead the respondent claimed interest on the unpaid amount @ 9%. The respondent computed the interest on belated payments. The petitioner agreed to make the payment of interest computed by the respondent. A cheque was tendered by the petitioner on 14.4.1974. The respondent granted a "No Objection Certificate". Thereafter, on 18.4.1974 at the request of the petitioner the possession of the plot was handed over in anticipation of the execution of the lease deed. Possession was taken over on 18.4.1974 at 5.00 P.M. The petitioner after taking possession issued instructions for stop payment of the cheque dated 14.4.1974. The petitioner had agreed to make payment of interest. A cheque in that regard was deposited with the respondent. The petitioner taking advantage

of the respondent in not encashing the cheque and after obtaining the No Objection Certificate and possession of the plot took a somersault and stopped payment of the cheque on the ground that the plans had been unduly delayed by the respondent-DDA. The plea now taken by the petitioner that they are not liable to pay interest under the Interest Act is an after-thought, untenable and without any merit. The petitioner has not come to this Court with clean hands. He agreed to make payment of the interest and a cheque was deposited.

4. I have heard learned counsel for the parties and also perused the material on record.

5. The relevant clauses of the terms and conditions are quoted below:-

"2(iv) - In case of default, breach or non-compliance of any of the terms and conditions of the auction or mis-representation by the bidder and/or intending purchaser, the earnest money shall be forfeited.

2(vi) - When the bid is accepted by the DDA the intending purchaser shall be informed of such acceptance in writing and the intending purchasers shall, within four months thereof, pay to the Delhi Development Authority the balance 75% amount of the bid in cash or by Bank Draft in favor of the Delhi Development Authority or cheque guaranteed by a Scheduled Bank as "good for payment for three months" in favor of the Delhi Development Authority. If the bid is not accepted, the earnest money will be refunded to the intending purchasers without any interest unless the earnest money is forfeited under para 2(4) above. 4(2)(i) - The lessee shall have to erect within three years from the date of the offer of the possession of the plot, a building in accordance with the type, design and other architectural features prescribed by the Delhi Development Authority after obtaining and in accordance with the sanction to the building plan with necessary design plans and specifications from the proper Municipal bye-laws and the Delhi Development Authority. The lessee shall not start construction before the said plan, etc. are sanctioned by the authorities aforesaid."

6. The thrust of the petitioner''s argument is that the demand of interest is without jurisdiction and the terms and conditions of the auction do not contain any provision for levy of interest. There is no force in the aforesaid submission. Reliance was placed on a judgment of the Supreme Court in State of Orissa Vs. Shri B.K. Routray, . The aforesaid judgment does not support the petitioner''s case.

7. To my mind, the petitioner is not entitled to grant of relief under Article 226 of the Constitution of India on the ground of estoppel, conduct of the petitioner, reasonable stand of the respondents. According to the terms and conditions of the auction, the petitioner was required to make full payment of the bid money by 11th July 1973. The sanctioning of the plan had no nexus with the payment of the premium. The petitioner could not deal with the plot in question till possession was handed over to him. Failure on the part of the petitioner to make payment by the due date empowered the respondent under Clause 2(iv) of the

terms and conditions of the auction to cancel the bid and forfeit the earnest money paid by the petitioner. The respondent chose not to exercise that power and took a lenient view in the matter and extended the time for making the payment. The petitioner realised that he would not be given possession of the land unless interest was paid by him. When the respondent demanded interest, the petitioner readily made payment by way of a cheque without demur and without questioning the authority of the respondents to levy interest for the delayed payment of premium.

8. In light of the aforesaid sequence of events, it is clear that the possession was obtained on basis of false pretences and representation and the conduct of the petitioner disentitles him to any relief from this Court. It was never the case of the petitioner that the respondents were not authorised or empowered to demand payment of interest, payment of which was delayed by the petitioner. Once having acquiesced to make payment of interest by tendering the cheque, the petitioner is now estopped from raising the plea for the first time in the writ petition that the respondents have no jurisdiction to charge interest.

9. The petitioner took advantage of the respondent''s leniency in extending the time, granting No Objection Certificate and handing over possession of the plot. The respondents were under no obligation to extend the time or handover possession when payments were made 9 months beyond the due date. The petitioner acted cleverly and speciously and immediately responded to the request of the respondents for payment of interest with the intention of obtaining NOC and possession and then having gained advantage, retracted and stopped payment of the cheque. Thus the conduct of the petitioner clearly shows that its intentions were dishonest from the very beginning as they had realised that they could not have commenced construction on the plot till NOC and the possession was given to them by the respondents. The payment of cheque was stopped on flimsy and frivolous grounds and the petitioner simply asked for deferring payment of interest without questioning the authority of the respondents to levy interest on the delayed payments.

10. To sum up, the interest was calculated and charged by the respondent on the delayed payments. Petitioner tendered the cheque. He obtained the No Objection Certificate and also obtained possession of the land and then somersaulted by issuing instructions to the bankers to stop the payment. Moreover, the petitioner never raised any objection about the rights of the respondent to charge interest on the delayed payment. He readily agreed to make the payment. The plea now taken by the petitioner is an after-thought and is untenable.

11. In the facts and circumstances of the case, the equities are in favor of the respondent. There appears to be no justification for the petitioner to now challenge the demand of interest. The respondents were thus within their rights to insist on payment of interest by the petitioner.

The grant of relief under Article 226 of the Constitution of India is discretionary.

The Supreme Court in Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another, has observed that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice keeping in mind the principles of equity with the aim to promote honesty and fair play. In the present case, the petitioner turned dishonest and took advantage of the respondents'' leniency. The conduct of the petitioner disentitles him to any relief in exercise of discretionary jurisdiction of this Court.

12. Accordingly, there is no merit in the petition. Dismissed.

13. The petitioner is directed to pay the amount of Rs. 93,047/- to the respondent within four weeks from the date of this order.