

(1995) 06 DEL CK 0002

In the Delhi High Court

Case No : Interim Application No. 3392 of 1992 and Suit No. 1010 of 1991

Rajenderas (India) Ltd.

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 20-06-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1995) 59 DLT 321 : (1995) 111 PLR 47

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : Y.K. Jain, P.K. Jain, Ravinder Sethi and Sumeet Bansal, for the Appellant;

Judgement

Devinder Gupta, J.

(1) This is plaintiff's application seeking injunction restraining the defendant from taking forcible possession of plot No. 10, New Subzi Mandi, Azadpur, Delhi, and the building standing thereon or any part thereof or from interfering with the possession of the plaintiff in any manner, without payment of compensation and without due process of law.

(2) On 2nd April, 1991, an ad interim ex parte injunction was granted restraining the defendant from taking possession of the property in question except in due course of law.

(3) plaintiff is a company and claims to be carrying on business as promoters and builders of multi-storeyed buildings in Delhi. Plot No. 10, New Subzimandi, Azadpur, Delhi was put to auction by defendant on 5th January, 1987. plaintiff was declared to be the highest bidder having made a bid of Rs. 25,05,000.00 . As per terms of auction, the plaintiff deposited 25% of the bid amount immediately on the fall of the hammer and balance of 75% was to be deposited within 90 days of the acceptance of the bid which was to be communicated by the defendant to the plaintiff. The bid made by the plaintiff was duly accepted

and the amount was duly deposited by the plaintiff. Lease deed was not executed and it appears that there was some dispute as regards the terms to be incorporated therein. According to the plaintiff, the dispute as regards some of the terms of lease deed was a subject matter of number of disputes in a writ petitions including C.W.No. 2828/86, M/s.Lord Builders Pvt. Ltd. v. Union of India and Delhi Development Authority in which main prayer was about the change in terms of the draft lease in the form in which the Delhi Development Authority wanted the builders to execute and the said builders requested the Delhi Development Authority to amend the terms.

(4) After the dispute was over, Delhi Development Authority asked the plaintiff to execute lease deed through communication dated 2nd April, 1988. A draft lease deed, which the Delhi Development Authority Wanted the plaintiff to execute was not in consonance with the decision, which had been arrived at in the aforesaid writ petition, Therefore, the plaintiff checked with the Delhi Development Authority and on 10th March, 1989, the defendant informed the plaintiff that the revised lease deed format was only applicable for future auctions and not for the earlier auctions. The defendant then called upon the plaintiff to return the lease deed papers duly stamped from the Collector of Stamps for execution of lease deed. The matter remained in correspondence. plaintiff then submitted papers to the Collector of Stamps for assessment of stamp duty. Before the papers could be collected back, after assessment of the stamp duty payable thereon and before the same could be submitted to the defendant for execution of lease deed, defendant through notice dated 4th August, 1989 informed the plaintiff that plaintiffs bid to the plot had been cancelled due to non-execution of the lease deed and that the plot along with super-structure was liable to be resumed. plaintiff was asked to hand over possession of the plot along with super-structure to the Assistant Engineer on 18th August, 1989.

(5) Feeling aggrieved, the plaintiff preferred a petition under Article 226 of the Constitution of India, (C.W.2302/89) on 9th August, 1989. During pendency of the writ, an application was moved by the plaintiff on 4th May, 1990 offering to execute lease deed. irrespective of further controversy. The writ petition preferred by the plaintiff was dismissed on 28th February, 1991 on the ground that principles of natural justice had duly been complied with. plaintiff thereafter preferred SLP to Supreme Court which was dismissed in liming on 25th March, 1991 and review petition was still pending when suit was filed. plaintiff's case is that even after dismissal of the petition by the High Court, representation was addressed to the defendant showing its readiness and willingness to execute lease deed and requesting that bid may be revived and the plaintiff may be permitted to execute the lease deed. The plaintiff has claimed several reliefs, namely, a decree for declaration that defendant's action in cancelling the bid is illegal and in the alternative a decree directing the defendant to consider and allow the request of the plaintiff to have the bid revived in accordance with the guidelines. In case both these two prayers not allowed. It has been prayed that decree be passed directing an inquiry be made into the amount of compensation

payable to the plaintiff by the defendant and compensation be awarded against the defendant for which plaintiff will pay the necessary Court fee.

(6) The defendant has contested the suit and in nutshell its case is that the plaintiff's bid was rightly cancelled, which order of cancellation was challenged in a writ petition. The plaintiff has remained unsuccessful, Therefore, the plaintiff is precluded from challenging the same in this suit since reliefs claimed in the suit are barred under the principles of res-judicata. Order of the High Court dismissing the writ petition became final when SLP against the same was dismissed and even review petition, which had been preferred has since been dismissed. According to the defendant, after the bid had been duly accepted, no construction could have had been raised by the plaintiff till the execution of lease deed. Under the building bye-laws and other statutory rules the plans cannot be sanctioned unless and until a lease deed is executed in favor of the plaintiff. It is one of the essential requirements before the sanction of the building plans that lease deed should have been executed by the Delhi Development Authority. Even assuming that the plaintiff has constructed upon the plot, the construction so raised is not in accordance with the sanctioned plan. Major deviations had been made by the plaintiff. The plot was auctioned as a Restaurant plot and there is no question of any multi-story commercial construction raised thereupon. It has been alleged that the matter as regards major deviations made by the plaintiff were pointed out from time to time and even the building permit in favor of the plaintiff was revoked when entire construction became unauthorised. All these facts were placed on record of C.W. 2302/89 which was preferred by the plaintiff.

(7) I have heard learned Counsel for the parties, who have taken me through the entire record. While deciding application u/s 39 Rules 1 and 2 CPC . the primary question to be considered would be as to whether there is any prima facie case in favor of the plaintiff for grant of injunction. Due to the facts that the defendant's action which was notified to the plaintiff on 4th August, 1989 that the bid in respect of the plot has been cancelled whereby possession of the plaintiff was sought to be resumed was challenged by the plaintiff in Civil Writ No. 2302/89, which was dismissed on 28th February, 1991 on merits and even SLP and review petitions were dismissed, it cannot be said that there is any prima facie case in plaintiff's favor. All the grounds, which the plaintiff has raised in the instant suit against the cancellation of the bid and resumption of plot by the defendant were raised and were also available to the plaintiff in the writ petition. The same were, as per the contents of the writ petition, copy of which has been placed on the record were raised and have now been raised again in the instant suit. While dismissing the writ petition, plaintiff's contentions were duly considered and the writ petition was dismissed by a speaking order. plaintiff's contention that it was ready and willing to execute the lease deed was also negatived. Under these circumstances, it cannot be said that there is any prima fade case for grant of injunction. In view of rejection of the writ petition at the most the plaintiff would be entitled to claim compensation or damages. The plaintiff has no other or independent right to the plot since the so called right to

hold the plot and raise construction itself stands cancelled and the order of cancellation has become final. plaintiff has thus no right to hold on the possession of the plot in question. There is also no question of any irreparable loss or injury being caused to the plaintiff in the event of injunction not being granted, since the loss or damages, if any, can be compensated in terms of money for which the plaintiff has already prayed for. Balance of convenience also does not lie in the grant of injunction in view of the upholding of the defendant's action of cancellation of the bid. Accordingly, the application is dismissed with costs quantified at Rs. 3,000.00 . The order passed on 2nd April, 1993 is hereby vacated. S.1010/91 List for trial on_____.