
(2011) 02 DEL CK 0086

In the Delhi High Court

Case No : Regular Second Appeal No. 26 of 2004 and CM No. 5863 of 2010,
Regular Second Appeal No. 74 of 2004 and CM No. 3692-93 of 2004

Thy Neelkant Enterprises Pvt. Ltd.

APPELLANT

Vs

Delhi Development Authority.
 Delhi Development
Authority. Vs Thy Neelkant Enterprises Pvt. Ltd.

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) 122 DRJ 203

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Raman Kapur, in RSA No. 26/2004 and CM No. 5863/2010 and Sangeeta Chandra, in RSA No. 74/2004 and CM No. 3692-93/2004, for the Appellant; Sangeeta Chandra in RSA No. 26/2004 and CM No. 5863/2010 Raman Kapur in RSA No. 74/2004 and CM No. 3692-93/2004, for the Respondent

Judgement

Indermeet Kaur, J.—These are cross appeals filed by the Delhi Development Authority (hereinafter referred to as "the DDA) on the one hand and M/s Neelkanth Enterprises (hereinafter referred to as "the Plaintiff) on the other. Both have impugned the judgment and decree dated 6.10.2003. This judgment had modified the judgment of the trial judge dated 25.9.2001. Vide judgment and decree dated 25.9.2001 the suit filed by the Plaintiff Neelkanth Enterprises seeking perpetual injunction against the DDA restraining them from cancelling his auction bid and not acting upon the letter dated 7.6.1983 (which was against the interest of the Plaintiff) was decreed in his favour. Vide the impugned judgment and decree the finding of the trial court was modified and the Plaintiff had been directed to pay interest on the sum of Rs. 1,09,20,000/- which had been deposited by him (admittedly after the stipulated dates) till the date of actual payment; which interest would be determined by the DDA.

2. The factual matrix is not in dispute. The Plaintiff, a duly incorporated company, had bid at the public auction held on 09.11.1982 by the DDA. The subject matter

of the auction was a cinema-cum-commercial plot measuring 1750 sq. metre, Wazirpur Industrial Area. Plaintiff was the highest bidder; his bid was accepted on the spot and he had paid initial earnest money of Rs. 27,30,000/- on the same date. His bid having been accepted he was issued the allotment letter dated 14.12.1982. Plaintiff was required to pay the balance amount of Rs. 81,90,000/- by 14.3.1983. Contention of the Plaintiff was that since the land was not developed; there being no sewerage, electricity or water connection, the Plaintiff would not be in a position to carry out the construction at the site, which in terms of their auction bid mandated that the Plaintiff would construct the building at the site within two years from the date of the acceptance of the bid. Accordingly, the Plaintiff made representations dated 21.2.1983 and 14.3.1983 pointing out these discrepancies. No reply was given. On 7.6.1983 the Defendant extended time to the Plaintiff to deposit his amounts along with interest @18% per annum, or else his bid would be cancelled.

3. Present suit was accordingly filed. In the course of the suit proceedings under orders of the Court the Plaintiff had deposited the next 25% of the bid amount which was Rs. 27,40,000/- on 14.07.1992. On 27.12.1999, the balance 50% of the bid amount was, again under the orders of the court, deposited.

4. The contention of the DDA is that the parties had entered into a contract in terms of the terms and conditions of the bid document (page 105 of the paper book). 25% of the payment was deposited on the fall of hammer which was on the date of the auction i.e. 09.11.1982. However, further payment had not been made as per the stipulated dates which had expired on 14.3.1983; thereafter extension of time also stood expired on 12.6.1983. The Defendant is not bound to honour this commitment as the Plaintiff willfully defaulted in making the payment as per the terms of the contract. Clause 10 of the said terms and conditions of the auction bid entitles the department to forfeit the earnest money. It is pointed out that the department is not bound by the terms of the contract. Counsel for the department has placed reliance upon 105 (2006) DLT 829 Deluxe Estates (P) Ltd. v. DDA as also another judgment of the Division Bench of this Court reported in Aggarwal Associates (Promoters) Ltd. Vs. Delhi Development Authority and Another, to support his submission that where the Plaintiff himself had failed to adhere to the schedule of payments, the DDA could not be restrained from cancelling the auction bid; the earnest money is also liable to be forfeited. For the same proposition reliance has been placed upon Delhi Development Authority Vs. Smt. Prem Rani and Others, as also K. Bhattacharjee Vs. Delhi Development Authority, .

5. Arguments have been countered. Attention has been drawn to the definition of "nazul land" as contained in Section 2(i) of the DDA (Disposal of Developed Nazul Land) Rules 1981. Reference has also been invited to Section 22 of the DDA Act. It is pointed out that "nazul land" necessarily means developed land; in this case both the fact finding courts have noted and observed that the land in question was not developed; the impugned judgment had recorded that the peripheral

services were not available. It is submitted that in the absence of essential services i.e. water, electricity and sewerage not being available at the site it would not have been possible for the Plaintiff to complete the site within two years of the auction bid; it was in these circumstances, that the Plaintiff was constrained to move representations seeking extension of time which had arbitrarily been rejected. Counsel for the Appellant has placed reliance upon 2004 II AD Raj Kumar v. DDA 2002 V AD (Delhi) 592 Surender singh Oberio v. DDA and 1991 RLR 47 Reliable Lab (P) Ltd. v. DDA to support in stand.

6. Record has been pursued.

7. The dates as aforementioned are admitted. The bid document on the basis of which, the Plaintiff had bid laid down clear terms and conditions. The terms and conditions were for the auction of a commercial plot for a Cinema Hall at the Community Centre, Wazirpur Industrial Area. Much emphasis has been laid on the word "development" which finds mention in the title of the document and which reads as follows:

Delhi Development Authority Terms and Conditions of Auction of Cinema Plot In Community Centre At Wazirpur (Industrial Area) Under The Delhi Development Authority (Disposal of Developed Nazul Land) Rule 1981.

8. Clause 10 of this document stipulates as under:

10. As person fails to pay the balance amount of his bid to the Authority within fifteen days of acceptance of the bid or within such period as may have been specified otherwise in accordance with the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, shall forfeit the earnest money and it shall be competent for the Vice-Chairman to re-auction the plot.

9. Clause 18 reads as follows:

Within a period of two years from the date of acceptance of the bid, the successful bidder shall, at his own expense construct building at the site for the purpose of a cinema with new and sound materials and shall complete the water, sanitary and electrical installations required for the said building.

10. Admittedly, the bid of the Plaintiff was lowest; his bid had been accepted; the agreed auction amount was of Rs. 1,09,00,000/-. On 09.11.1982, the earnest money of Rs. 27,30,000/- was deposited by the Plaintiff. The balance payments had not been made as per the payment schedule. The contention of the Plaintiff that he was not liable to make the payment as the land had not been developed and the bid document also making a reference to the developed land which is also clear from the definition of nazul land u/s 2(i) of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules as also Section 22 of the DDA Act, 1957 is an argument without any merit.

11. The two Courts below were the two fact findings Courts. Seven issues had been framed by the trial judge. Oral and documentary evidence had been

adverted to. Trial judge was of the view that since the land was not developed and the contract of electricity, water and sewerage had been given only after the date of auction, the Plaintiff was entitled to the decree as prayed for by him.

12. The impugned judgment had however held otherwise. Para 15 is relevant; it reads as follows:

15. The contention of the learned Counsel for the Appellant is that the Plaintiff was well aware of the state of the land under auction as it was not reasonable that no inspection would have been carried out before bidding and that therefore it is not of much significance whether or not the land was developed or not, since the obligations of the parties rested on contract. If development is to be defined as provisions of peripheral services, then on the evidence on record, most certainly, on the date of auction, the land was not developed. However, the purpose of the auction was also to ensure development-as open vacant lands were to be utilized for the planned development of Delhi for use as per the Master Plan. Thus, commercial sites earmarked were auctioned also for development of the area as per specific land use to prevent the haphazard growth of the city. Nowhere in the invitation for bids, or in the contract was it mentioned that the DDA was auctioning the plots after having developed the peripheral services. Nor was such a promise held out that such services had already been provided or would be provided within a specific period. Moreover ,the auction bidder had every opportunity to inspect the site before bidding and having known the conditions and in the absence of any terms in the contract, it cannot be said that the DDA was bound to provide these services before, any obligation could be enforced on the Plaintiff. As rightly submitted by the learned Counsel for the Appellant, it was open to the Plaintiff to not bid for the plot it if found that the plot was undeveloped. Having consciously entered into the contract, the Plaintiff was bound to discharge its obligations under the contract. The state of development, or rather the lack of it, cannot be absolve the Plaintiff from its duties under the contract.

13. The impugned judgment had rightly concluded that the purpose of the auction was to ensure development; open vacant lands were to be utilized for the planned development of the Delhi as per the Master Plan. The bid document had imposed no condition upon the DDA; the said terms and conditions nowhere stated that it only after the provision of electricity, water, sewerage and other facilities is made available, will the bidder deposit the balance amounts. The bid document is running into 28 Clauses. There is no such mention. The specific dates of payment are however contained therein. Clause 9 stipulated that after the acceptance of the bid , the bidder will be informed of such acceptance in writing and the bidder shall within 90 days thereof pay to the DDA the balance amount of the bid in cash or by bank draft. Admittedly this communication in writing was the allotment letter dated 14.12.1982 issued by the Defendant to the Plaintiff. The balance amounts were not deposited by the Plaintiff as per schedule. Clause 10 stipulated that in an eventuality where the bidder would not

make the payment of the balance amount of his bid within 15 days of his acceptance or such extended period as specified, his earnest money shall be forfeited. Clause 11 stipulated that the successful bidder will submit a dully filled in application. This application had been submitted by the Plaintiff on 09.11.1982 itself (page-57 of the documents of the Respondent). Unequivocal undertaking signed by the Plaintiff inter alia reads as follows:

I/We have read and understood the conditions of auction and those contained in the proforma of the perpetual lease deed and hereby unequivocally accept the same. I/we the intending purchaser(s) will pay the balance of the premium and other amounts and execute the lease deed in the prescribed form in accordance with the said conditions.

14. On 09.11.1982 when the Plaintiff had deposited 25% of the bid amount and had undertaken to pay the balance amount; he was well aware of the terms and conditions stipulated in the said undertaking. It is also difficult to conceive that a man would have undertaken to invest a large amount of more than one crore in the year 1982 for a 1750 sq. metre of plot without having inspected the physical site of the premises. If the condition of the plot was not suitable, nothing prevented the Plaintiff from not making the bid; it was obviously a fruitful commercial venture which the Plaintiff had entered into. There was no corresponding obligation on the DDA to first develop the land and only then the balance payment would be made by the Plaintiff. The terms of the contract were clear and unequivocal. There was no ambiguity. There being no such pre-condition, the Plaintiff had to necessarily adhere to the schedule of payment which he admittedly did not do so. The last date of payment as per the schedule was 14.3.1983; this was for the balance payment of Rs.81,90,000/-. Vide his letters dated 21.2.1983 Ex.PW-2/13 and the subsequent letter dated 14.3.1983 (Ex.PW-2/14) the Plaintiff addressed communications to the DDA stating that it was not profitable to proceed with the venture as the land was not developed. There was no justification on the part of the Plaintiff to have made such requests. Even otherwise vide Ex.DW-1/3 the DDA had extended the time of payment up to 12.6.1983. Even in this extended period of time the Plaintiff did not make the balance payment.

15. The impugned judgment had correctly returned all these findings. It was however swayed by the fact that the Plaintiff had deposited the balance 75% of the amount under orders of the court. It had proceeded on the assumption that since entire auction amount stood deposited; the only controversy left is the payment of interest, if any, to be made by the Plaintiff. It had illegally and erroneously presumed that the DDA has no other grievance with the Plaintiff; this is not the position as is evident from the defence of the Defendant available before the trial judge and before the arguments propounded the first appellate Court.

16. On 14.7.1992, a sum of Rs. 27,30,000/- was deposited by the Appellant; balance 50% was paid much later i.e. on 7.12.1999. There is no finding by the

court, not even a prima facie finding that the deposit of this payment on the aforementioned dates would in any manner advance the case of the Plaintiff in his favour. The terms of the bid document rightly entitled the department to forfeit the earnest money after the Plaintiff did not make the balance payment in time.

17. Judgments relied upon by the learned Counsel for the DDA advance his case; once it is clear that the contract had not been adhered to, the DDA is rightly entitled to forfeit the earnest money which was also a specific term as contained in Clause 10 of the bid document. The judgments relied upon by the Appellant are all distinct on facts. In the case of Raj Kumar (Supra), the question was about the provision of amenities qua the allottees of houses; i.e. the allotment of flats under the Expendable Housing Scheme of 1996; the challenge was to the right of the DDA to enhance the price. The judgment of Surender Singh Oberoi (Supra) also related to allotment of flats; basic amenities had admittedly not been provided by the DDA; payment of 50% balance amount was deferred till the amenities were provided. Facts are again distinct. In the judgment of Reliable Lab (supra), balance amount had been accepted by the DDA; some of the allottees were given possession; it was held that such a discriminatory approach qua the Petitioner was illegal.

18. On all counts, this Court is of the view that the Plaintiff has no case. Admittedly the Plaintiff had not adhered to the payment schedule in terms of their contract; he had committed a flagrant violation of its terms. There was no plausible reason for not doing so. Development of the land was not a pre-condition in the making of balance payment by the Plaintiff to the DDA. That apart extension of time granted by DDA was not acceptable to the Plaintiff. The Plaintiff presumably and understandably must have inspected the site before his making the bid auction. It does not now lie in his mouth that till the electricity, water and sewerage facilities are granted to him he would not been in a position to make the balance payment. In the case of Prem Rani (supra) where the Single Judge of this Court had allowed refund of 50% of forfeited amount to the party, the Division Bench had set aside the said order and held that the Single Judge should not have interfered in the terms and conditions laid down in the brochure of the DDA which permitted the DDA to forfeit the earnest money in terms of the contract between the parties.

19. In the instant case also the DDA is entitled to forfeit the earnest money i.e. the sum of Rs.27,30,000/-. This is in terms of their admitted contract. The over and above balance amount which had been deposited by the Plaintiff is liable to be refunded back to him. This excess amount of Rs.27,30,000/- is lying deposited with the DDA since 14.12.1992 and the other sum of Rs.54,60,000/- is lying deposited since 07.12.1999 which being over and above the earnest money are liable to be refunded back to the Plaintiff with interest @ 9% per annum.

20. The appeal of the DDA is allowed. Appeal of M/s Neelkanth Enterprises is dismissed. All pending applications are disposed of.