

Delhi Development Authority Vs. Skipper Construction and anr.

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Court : Supreme Court of India

Decided On : May-04-2000

Reported in : 2000(5)SCALE586

Judge : M.Jagannadha Rao and; U.C. Banerjee, JJ.

Acts : Delhi Development Authority Act - Sections 41

Appeal No. : I.A. Nos. 38, 40, 60, 64, 79 and 80 in W.P. (C) No. 21000/1993

Appellant : Delhi Development Authority

Respondent : Skipper Construction and anr.

Judgement :

ORDER

1. For the expenditure for publication of public advertisement by the Justice P.K. Bahri Commission this Court by an order dated 29th November, 99 directed that the amount should be paid out of the amount lying in the Registry and if any demand is made by the said Commission towards the expenditure of publication, the Registry should release the same from the funds available in the Registry. Now, there is a letter received from Hon'ble Mr. Justice P.K. Bahri dated 29.3.2000 referring to the expenditure in connection with the publication of the advertisements. The Registry is yet to release the amount as requested in the said letter. We, therefore, direct the Registry to release the amount of Rs. 55614/- and Rs. 88,408.12 towards the advertisement expenditure. The payment will be

released in favour of the Adknack Advertising Agency and the same will be sent to the Justice Bahri's Commission to be sent to the Adknack Advertising Agency.

Transfer of. Appeals and review applications pending in Delhi High Court:

2. The next question is regarding transfer of various appeals which are pending in the Delhi High Court in connection with the Barakhamba Property between various flat buyers and the Skipper's Co. In the earlier order passed by this Court there was a proposal by this Court for transfer of RFAs and the review applications to this Court. But now on further consideration of the matter, we are of the view that these RFAs should be disposed of only by the Delhi High Court and the Delhi High Court be requested to take this batch of cases out of turn and deal with them expeditiously. The Registrar of Delhi High Court will prepare a list of the RFAs and place the same before the Hon'ble the Chief Justice of Delhi High Court. We request the Chief Justice of Delhi High Court to constitute a special bench for hearing these appeals for early disposal. In passing this order for out of turn disposal, we have taken into account the various litigations of the Skipper Group of Companies in various Courts and in this Court and in connection with which several persons have approached the Court for specific performance contending that they had paid various amounts of money but have not been able to get the flats which were promised to them by the Skipper Group of Companies.

3. We have no doubt that the Delhi High Court will be able to take up the RFAs and dispose them of within next six months. The copy of this order will be communicated to the Registrar of the Delhi High Court to be placed before the Hon'ble the Chief Justice of Delhi High Court for appropriate orders.

4. The review petitions, if any, pending in the suits, may also be listed for early disposal in the Delhi High Court. (Copy of this order to be sent to the Registrar, Delhi High Court).

Diversion of Money from Barakhamba Road:

5. In regard to the money collected for the construction of the building at Barakhamba Road there is a dispute as to whether money collected from these

proposed flat buyers was diverted towards construction of the Jhandewalan property or any other property. Prima facie there is some material available on record in this behalf. It is necessary to estimate the extent of this diversion of funds. It may be that some documentary evidence and perhaps some oral evidence will also have to be received and an estimate is to be made of the amount diverted out of the amounts collected from Barakhamba Road property. We are, no doubt, told by the Skipper Co. that part of the money was diverted to construct the building at Jhandewalan but this was received back and the amount had thereafter gone into the construction at Barakhamba Road. But this contention is not accepted by the flat buyers. Skipper Co. admits that parts of this money were diverted to the other constructions also. According to the flat buyers the part of the amount collected from them towards the Barakhamba Road Property had been diverted not only to Jhandewalan Property but also elsewhere for other construction. If the money had gone into Jhandewalan Property, which was taken over by DDA and resold, a question of charge for these monies against DDA may perhaps have to be gone into and not otherwise, so far as the Barakhamba purchasers are concerned.

6. We are of the view that the question whether any money collected from the flat buyers of Barakhamba Road Property has been diverted towards the Jhandewalan Property or any other construction and to what extent - is to be investigated separately. We, therefore, request Justice Bahri who is already dealing with the other issues, to take this question also and help this Court in estimating the extent of this diversion. Justice Bahri will go into the question whether any money collected from various proposed flat buyers at Barakhamba Road has been diverted by Skipper Towards towards the construction of the building at Jhandewalan Property or for construction elsewhere and to what extent. The learned judge may take oral and documentary evidence for this purpose, if necessary apart from affidavits. We request him to submit his report as early as possible preferably within a period of three months from today. In the meantime, the parties who are appearing before us will be at liberty to file statements or affidavits before Justice Bahri within 15 days from today.

7. Copy of the Saharaya Commission's Report and the copies of the report of the Department of the Company Affairs and any other material which are relevant on the question of diversion of monies will be made available to Justice P.K. Bahri. If any assistance is necessary in this connection the Commission may request Mr. Dayan Krishnan who is appearing along with the Amicus Curiae in this Court, for assistance.

Saharaya Commission, Canara Bank etc.:

8. Learned Solicitor General submits on behalf of the Canara Bank that he would like to get some more information from the Canara Bank in regard to the circumstances leading to the counter guarantee issued by the Canara Bank. An affidavit in this behalf will be filed within four weeks by the Canara Bank. A copy thereof will be given to counsel for Mr. Suneja and also to counsel for the Punjab National Bank and to the Amicus Curiae.

9. Learned senior counsel Mr. V.R. Reddy appearing on behalf of the Punjab National Bank states that whatever information is required by Mr. Suneja will be furnished by the Punjab National Bank. I.A. No. 78/2000:

10. This is an application by the Canara Bank for release of documents to the family members of Mr. Suneja. We do not think that we can pass any orders in this IA filed by the Bank. If any application is filed by any family members of Mr. Suneja, it can be considered separately. No other orders are necessary in this IA. It stands disposed of.

Matters relating to DDA Officials:

11. This Court on November 29, 1994 appointed Justice O. Chinnappa Reddy, Former Judge of this Court to investigate into the conduct of the officials of the DDA including that of its ex-officio Chairman at the relevant time in handing over possession of the property at Jhandewalan of M/s. Skipper Construction Pvt. Ltd., before receiving the auction amount in full and also in allegedly conniving at the construction thereon as well as in the advertisements given by Skippers for booking the premises in the building in question. Learned Judge was also

requested to look into the propriety of the order dated 4.10.1998 passed by the then ex-officio Chairman of the DDA and the directions given by the Central Government under Section 41 of the Delhi Development Authority Act.

12. Subsequently, this Court passed an order dated 9.10.1995 stating that the report of Justice O. Chinnappa Reddy Commission had been received and it had named certain officers who prima facie have acted beyond their authority and for impermissible considerations. This Court held that steps should be taken on the basis of this finding. Thereafter, as per order dated 29.11.1995 this Court referred to the fact that the said Commission had found Sri S.C. Dikshit, Director (C.L.) and Sri. V.S. Ailwadi, Vice-Chairman, responsible for several irregularities. The Commission had stated that both of them had prima facie sacrificed the interests of DDA and went on recommending and granting extensions for which there was absolutely no justification. The Commission had also found that such repeated extensions were in violation of the terms and conditions of auction and were not authorised by any statutory power or resolution of the DDA.

13. So far as the period from March, 1982 to May, 1982 was concerned, the Commission had found that Sri K.S. Baidwan, Secretary to the Ltd. Governor and Sri V.S. Ailawadi, Vice-Chairman and Sri. Virender Nath, Commissioner, had, prima facie, colluded together and stalled the implementation of the order of the Lt. Governor, S.L. Khurana, directing cancellation of the bid and thereby facilitated M/s. Skipper Construction Co. to obtain an order of stay from the Civil Court. The learned Judge also found that though the DDA did adopt a resolution as far back as May 14, 1984 accepting the recommendations of the Committee (appointed by it) devising a scheme for recovering the balance amount due from Skipper in instalments still in view of the subsequent developments, Sri R.S. Sethi, Commissioner (Lands) had prima facie, designedly delayed the execution of the agreement thereby enabling Skipper to dupe the members of the public by selling each space in the proposed building to more than one person.

14. The Commission further found that Sri Prem Kumar, Vice-Chairman was prima facie a silent accessory to the role played by Sethi. The Commission also held that the process of recovery of the balance bid amount was stalled in the first instance

by repeated extensions granted by Sri Ailawadi, Baidwan and Virender Nath which facilitated Skipper to obtain stay orders from the Court. The learned Judge further held that the process of recovery was stalled finally 'by the turn about taken by Sir H.L. Kapoor, the Lt. Governor and Sri Om Kumar, Vice-Chairman who twisted the issue by linking the question of payment with and subjecting the same to the sanctioning of the building plans by the order embodied in the letter dated October 14, 1988'. The learned Judge characterised the action of Sri Kapur and Sri. Om Kumar as unjustified and uncalled for and in violation of the original terms and conditions of action as well as the stipulations contained in the agreement, licence deed and the bank guarantee. The action was found to be prima facie detrimental to the interests of the DDA.

15. It appears that the learned Judge also made in the body of the Report, adverse comments against Sri K.S. Bains, Vice-Chairman and for his failure to encash the bank guarantee furnished by Skipper immediately, at least in regard to the payment of third and fourth instalments.

16. Various other aspects of the Report have been mentioned by this Court in its order dated 29.11.95 and we have referred only to some of the facts in that order. This Court finally stated in the said order that the conclusions arrived at by the learned Judge were entitled to great weight and constitute sufficient basis for initiating action against the officers concerned. According to its Court, the Report pointed out that how the several officers of the DDA prima facie flouted the orders of the Lt. Governor and acted against the interests of DDA and how they, by their several acts, helped Skipper in achieving its nefarious design to defraud both the DDA and the innocent members of the public.

17. This Court pointed out that the members of the public appear to have prima facie lost more than Rs. 20-30 crores in the bargain. This could not have happened but for the active connivance and collusion of some of the officers of the DDA. This Court then gave elaborate directions in regard to each of the officers and directed the Government of India (Department of Personnel) to submit a report of the progress of disciplinary proceedings at intervals of every three months to this Court.

18. It is now stated that the following actions were taken against these five officers:

1. Sri R.S. Sethi - Reduction of Pay Development Commissioner, Government, of Arunachal Pradesh, Arunachal Pradesh Civil Secretariat, Itanagar-791111
2. Sri K.S. Baidwan Reduction of Pay Principal Secretary-cum-Commissioner (Industry) Government of NCT of Delhi, CPO Building, Kashmiri Gate, Delhi.
3. Sri Virender Nath - Reduction of Pay Financial Commissioner & Secretary, Transport Department, Government of Haryana, Haryana Civil Secretariat, Chandigarh
4. Sri Om Kumar - Censure Resident Commissioner, Government of Tamilnadu, Tamilnadu House, New Delhi.
5. Sri Ailawadi - No action taken Chairman, because of Haryana retirement. Electricity Regulatory Commission, S.C.O.180/5, Panchkula.

19. A question has arisen whether the minor punishments awarded are too meagre or were exonerated and whether the manner in which the final orders were passed by the Government of India in connection with these five officers is correct and whether the punishment awarded is not commensurate with the gravity of the misconduct proved.

20. Before we propose to take any further action in the matter, we think it proper to issue notices to the five officers to show cause why the matters be not referred to the Vigilance Commission for re-examination.

21. Registry will issue notices to these officers (along with a copy of this order).

22. List this matter on 21.7.2000, after the miscellaneous matters are over. Israel Embassy:

23. An exercise regarding valuation of property and the offers made by the Embassy has been going on.

24. Counsel appearing on behalf of the Israel Embassy is permitted to file a report before this Court after obtaining instructions. The copies of the same may be

furnished to the other counsel appearing in this matter.

25. List this matter on 11.5.2000 at 2.00 P.M. LA. No. 74

26. This application relates to symphony Apartments. The applicant has an order against Skipper Builders from the Consumer Court. It appears that winding up application is pending against Skipper Builders. It will be for the petitioner to go before the Company Court. As the application is not maintainable in this Court, the same is dismissed. All the * similar purchasers of proposed flats of Symphony apartments are also to make their applications in the Company Court where the Liquidation Proceedings are pending. I.A. No. 77

27. Sri. Jaswant applicant in this I.A. has made certain observations at page 4 of the annexure-A attached to his affidavit. He expresses regret for these observations.

28. It is made clear to Sri. Jaswant Singh that the matters concerning specific performance, refund of money and damages in regard to Barakhamba properties are pending in appeals in the Delhi High Court and unless said appeals are disposed of there is nothing that this Court can do at present. Inquiry in this Court is limited for the present to the question of extent of diversion of funds from Barakhamba property by Skipper Towers (P) Ltd. to other constructions at Jhandewalan property or elsewhere. This aspect has already been referred to Hon'ble Mr. Justice P.R. Bahri. With these clarifications, the application is disposed of.

Amicus Curiae:

29. The Registry is directed to release a further sum of Rs. 25,000/- to Sri. Dayan Krishnan, learned Counsel appearing on behalf of the Amicus Curiae.