

Skipper Construction Co. (P) Ltd. and anr. Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Jan-14-1991

Reported in : 43(1991)DLT636

Judge : S.B. Wad and; Usha Mehra, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Petition No. 2371 of 1989

Appellant : Skipper Construction Co. (P) Ltd. and anr.

Respondent : Delhi Development Authority and ors.

Advocate for Pet/Ap. : S.C.Malik,; K.N. Kataria,; B.P.S. Mangat,;

Judgement :

S.B. Wad, J.

(1) We had pronounced the operative order in this writ petition on 21.12.1990. The detailed reasons are as follows.

(2) M/S, Skipper Construction Co. (P) Ltd., the petitioners, are well known builders of Delhi. A land ad-measuring 2540 sq. meters was allotted to them by auction by

(he D.D.A. on 810.1980. The auction was of a commercial plot in Jhandewalan block known as the Commercial Tower Plot. Petitioners bid for Rs. 9.82 crores was accepted and the petitioners paid a sum of Rs- 2.45,75,000.00 being 25 per cent of the bid amount that very day. Even after repeated opportunities by the D.D.A. and the Court only part of the amount has been paid and as on 31st July, 1990, a sum of Rs.8,12,68,798.00 is still unpaid by the petitioner. This amount includes part of the principal and interest for delayed payment. Through the interim orders of this Court the petitioners have got their plans approved and got the no-objection certificate for the construction. The complex will have about 870 commercial shops. The building up to the First Floor is completed. The petitioners prayer is to permit them to continue with the construction and give a bank guarantee (and not the actual payment) for the sum of over Rs. 8.0 crores due against them. The D.D.A. is vehemently against further delay in the payment (which ought to have been completed 10 years back according to the terms of the auction), and does not accept the bank guarantee.

(3) MR.KAPIL Sibal, Sr. Advocate, appearing for the D.D.A. submits that the Supreme Court has more than once deprecated the practice of granting interim orders on furnishing bank guarantee in collecting government dues. The position is correct In Assistant Collector of Central Excise v. Dunlop India Limited : 1985ECR4(SC) , the Supreme Court has summarised the previous decisions and held ;

'GOVERNMENTS are not run on mere bank guarantees. Very often some Courts act as if furnishing a bank guarantee would meet the ends of Justice. No government business or for that matter no business of any kind can be run on mere bank guarantees. Liquid cash is necessary for the running of a government as indeed any, other enterprise.'

'WHERE matters of public revenue are concerned, it is of the utmost importance to realise that interim orders ought not to be granted merely because a prima facie case has been shown. More is required. The balance of convenience must be clearly in favor of the making of an interim order and there should not be the slightest indication of a likelihood of a prejudice to the public interest.'

'WE can take judicial notice of the fact that the vast majority of petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolonging the proceedings by one device or other. The practice certainly needs to be strongly discouraged.'

'WE deprecate the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out. without being concerned about the balance of convenience, the public interest and a host of other relevant considerations.'

(4) The petitioners filed the present writ petition on 2.8 1989, praying for a writ of mandamus directing respondent D. DA. to sanction the building plan forthwith, or in the alternative to grant permission to start construction at the cost and risk of the petitioners.

(5) MR.KAPIL Sibal, counsel for the DD.A., by taking us through the various orders passed by the D B. (Kirpal and Chaudhry JJ.) has submitted that the principal reliefs of section of plan and permission for construction was done through the interim orders, but the question of the payment of outstanding amount of over the Rs 8.0 crores was deferred from time to time. Finally, by the order dated 19th March. 1990 the D.B. ordered that the quantum of money and the mode of payment will be decided at the time of final disposal of the writ petition. The parties were directed to file their written arguments and the matter was listed for 16th April, 1990. On 18th April, 1990, the said D B. directed that the matter be listed before another Bench. The next D.B. (Charanjit Talwar and Sapra JJ.) permitted the D.D.A to encash the Bank guarantee for the sum of Rs. 1,94,40,000.00 if the payment was not made of that Installment within a week, also nothing in the same order that the D.D.A. had not accepted the bank guarantee. The said D.B. permitted the construction to go on. On 3rd May, 1990, the Supreme Court passed an interim order (in Special Leave Petition (Civil) No. 6338 and 6339 of 1990-filed by the D.D.A, against the said D.B. orders) directing the petitioner company to make the payment of Rs 1,94,40,000.00 and till then not to carry on with the construction. Thereafter, the petition has come before us for final disposal.

(6) The question for our consideration is what order should we pass for securing the payment of the huge amount of over Rs. 8.0 crores, which the petitioners have not paid even after securing the orders from this Court regarding sanction of the plan and permission to start construction. Mr. Sibal has brought to our notice that after the Supreme Court order one of the customers, to whom the shop space is sold by the petitioners, has filed a Civil Suit. on the original side of this Court making D.D.A. as a party. He has obtained a 389 direction from the Court against the DD.A. for accepting an Installment through the bank guarantee. Considering the long history of delay in the payment of the large funds to the D.D.A. for construction of houses for middle income, low income groups and workers sections of the society, and the mandatory directions of the Supreme Court In Dunlop, we order the petitioners to make the payment of Rs. 8,12,68,798.00 to the D.D.A. forthwith and reject the prayer of a bank guarantee.

(7) The course of this litigation is like the ever-changing course of a river-sometimes zig-zag, sometimes confusing and confounding. The averments and the reliefs claimed in the writ petition and opposed in the counter-affidavit underwent changes during the course of the bearing. Some orders were passed by the administration during the pendency of the petition and the interim orders were passed by the Court from time to time. A few more submissions were added in the written submissions and then again at the stage of arguments. Since the matter was heard by us only at the stage of final disposal, we had to take into consideration all these developments from time to time. We have, however, ensured that no party is taken by surprise.

(8) The principal submissions of the petitioner are : 1. The D.D.A. cannot insist on the entire payment in one go. The petitioners are entitled to make the payment in Installments and on furnishing bank. guarantee 2- They are entitled to make the payment by Installments and bank guarantee by virtue of the agreement dated 11.8.87. This agreement is a statutory agreement. 3. The Lt. Governor by his order dated 4.10.1988 has rescheduled the payment of Installments from the second Installment onwards so as to make the Installments payable after the plan was sanctioned. 4. It is the D.D.A which is responsible for the delay in the sanctioning of the plan and, therefore, the petitioner has no liability for the alleged delay in

the payment. 5. The letter of the respondents dated 16.2.1990 purporting to cancel the letter dated 4.10.1988 and withdrawing the no-objection certificate for construction, was illegal as it proceeds on the wrong assumption that the petitioner had not cooperated in the finalisation of the Plan. 6. The petitioners have made payment of over Rs. seven crores and their outstanding liability does not exceed Rs. 4.86 crores. 390 7. The petitioners are liable to pay interest at the agreed rate only on the original auction price. The D.D.A. is not entitled to charge interest on any other basis, and the total outstanding claimed by the D.D.A. of Rs.8,12,68,798.00 , as of July, 1990, is based on the interest wrongly calculated. Each of these submissions is controverted by the counsel for the His submissions are: 1. The writ petition, in substance, is for specific performance of a contractual obligation of the agreement dated 11.8.87 and the letter of the Lt. Governor dated 4.10.1988. The writ petition is not maintainable for enforcement of the contractual obligations. 2. The only prayer in the writ petition is in regard to the sanction of the building plan. No relief for payment by Installments and through bank guarantee is claimed in the writ petition. The Court hearing the interim applications could not have passed any orders in regard to the said relief. Similarly, the Courts could not have passed any orders permitting the construction through interim orders when the outstanding dues were not cleared. So also relief regarding construction could not have been granted through interim orders when no objection certificate was withdrawn by the D.D.A. 3. The D.D.A. had expressly opposed payment through bank guarantee and the submission has been recorded in the orders of the Court. The interim orders regarding bank guarantee are contrary to the decisions of the Supreme Court. 4. The letter of the Lt. Governor dated 4.10.1988, purportedly giving extension of time for payment, is illegal as the Lt. Governor was not competent to issue such a letter. 5. Assuming that the Lt. Governor could issue the letter dated 4.10.1988, the only concession given by the said letter is in regard to the second Installment which had become due on 15.3.1988 and did not apply to any other Installment. 6. The petitioner had deliberately delayed and defaulted in 391 its obligation to make the entire payment of the auction price and the interest, contrary to the terms of the auction, the agreement dated 1' 8 1987 and extension of time granted by the Court through various order . The D D.A. is, therefore, entitled to payment of the entire outstanding amount of principal as well as interest

in lump sum in cash or by a bank draft 7. The D D.A. has charged interest in terms of the agreement and according to the bank practice and the amount outstanding towards principal as well as interest as on 1st July, 1990, is Rs 8,12,68,798.00 after giving due credit to the amounts paid by the petitioner. 8. The alleged delay in the sanction of the building plan raised serious disputes of facts which cannot be decided in a writ petition In any case the sanction of plan was and is not a pre-condition for the payment of the outstanding amount of the auction price. According to the terms of the auction the balance payment of 75 per cent of the auction price of Rs- 9.82 crores was to be made within three months from 8.1.1980 and thereafter according to the terms of the agreement dated 11.8.87 by 15.9.1989. Neither of them lay down sanctioning of the plan as a pre- condition for payment of outstanding auction price.

(9) In spite of repeated indulgence the petitioners had avoided to make the payment of the outstanding dues under one pretext or the other, in cash or through a bank draft, by unilaterally attempting to force payment by Installments and that too by a bank guarantee. The petitioners were responsible for collusive suit. No. 1875/90 filed by one Mr. K-G Arora, a purchaser of a shop space from the petitioner and obtaining an order directing the D.D.A. to accept the bank guarantee.

(10) The petitioners have committed deliberate breach of the various terms and conditions of the Agreement dated 11.8.1987 and the license Deed of the same date, including payment of Installments and the license, therefore, would stand revoked. The D.D.A. has also the right to enter upon the plot and to take possession of the buildings and to forfeit the entire amount paid by the petitioner so far, in terms of Clause 15 of the license Deed. 10. Many of these contentions would fall in line and get answered if a brief history of the petitioners' performance in regard to payment of outstanding amount is traced. On 8.10.1980, the date of the auction, the petitioner 392 paid 25 per cent of the bid amount, viz. Rs. 2,45,75,000.00 . The bid was accepted on 14.10.1980 and the balance of Rs. 7,36,25,000/ was to be paid within 90 days according to the terms of the auction. According to condition No. 6 of the terms of action, the possession of the plot was to be handed over to the purchaser 'after the payment of full amount of the

premium and the other amounts payable under these conditions'. The terms of the auction further provided that the lessee shall have the right to erect within two years from the date of taking over possession of the plot a building in accordance with the design and other architectural features prescribed by D, after obtaining and in accordance with the sanction of the building plans with necessary designs, plans and specifications from the proper municipal and other authority concerned, in accordance with their respective rules, bye-laws etc. as the case may be. The lessee shall not start construction before the said plan, elevations, cross-sections are duly sanctioned by the authorities. It was further provided that after the full payment of the premium was paid by the auction purchases a registered lease deed would be executed between the parties.

(11) The balance of 75 per cent of the bid amount was not paid by the petitioner within the prescribed period of 90 days. There are large number of letters on record to show that between 1981 and 1984 numerous extensions were given to the petitioners to make the payment of the outstanding amounts. Sometime in 1983-84 the petitioners and 14 other builders who had not made the payment of the auction price represented to the DD.A. and the Central Government for showing the indulgence for payment in Installments. It was claimed by them that due to the bank squeeze on the credit and the fall of demand of land in Delhi such indulgence was necessary. A Committee of experts was formed which gave its report in 1984 and recommended that the Agreements for payment in Installments supported by bank guarantee should be drawn up with the builders and till the payment was made a temporary license for two years should be given to them. During 1985-86 the D.D.A. repeatedly contacted the petitioner for signing the Agreement and the Bank Guarantee, but the petitioner avoided to do so on one pretext or the other. Finally on 11.8.1987 an Agreement was signed between D'D,A. and the petitioner. A license Deed was also signed on that date and the bank guarantee was furnished. up to 19.5.1982 the petitioners had paid additional amount of Rs. 3,37,50,000.00 , which included interest on delayed payment. By the time the Agreement of 11.8.1987 together with the Bank Guarantee was entered into, a sum of Rs. 9.72 crores was due from the petitioner towards principal and interest. Through the said Agreement the petitioners accepted the liability to pay the outstanding, amount of Rs. 9.72 crores in five equal Installments

of Rs. 1,94,000.00 each. The agreed schedule for payment of Installments was as follows :

1. 1st Installment payable by 15.9.87 : Rs. 1,94,40,000.00 . 2. 2nd Installment payable by 12.3.88 : Rs. 1,94,40,000- 3. 3rd Installment payable by 15.9.88: Rs. 1,94.40,000-/. 4. 4th Installment payable by 15.3.89 : Rs. 1,94,40,000.00 . 5. 5th Installment payable by 15.9.89 . Rs. 1,94,40,000.00 .

(12) It was also agreed through the said Agreement that the auction purchaser shall immediately after the execution of the Agreement withdraw proceedings, if any, filed by him or any other person on his behalf in any Court of law. The object was the expeditious payment of the outstanding amount without complications and delays of the Court proceedings. It was then agreed that if the auction purchaser commits default in making payment of any of the Installments or other conditions, his bid shall be liable to be cancelled forthwith, in which event earnest money as also the interest paid by him shall be forfeited. The Agreement also provided that upon making the total payment equal to 50 per cent of the bid amount and upon furnishing the bank guarantee in the prescribed manner for the balance of 50 per cent, the D.D.A. will separately grant license to the auction purchaser to enter upon the said plot for the purpose of raising construction of a building in accordance with the terms and conditions of auction and the sanctioned building plans. The auction purchaser shall not be deemed to have any right, title or interest therein nor shall have any right to create such a right in favor of any person. For all intents and purposes, legal possession of the said plot shall remain with the Authority until full bid amount. Along with interest payable thereon for the delayed payment has been made by the auction purchaser to the Authority. The Agreement further stated that the D.D.A. had 'agreed to grant indulgence' 'on the faith and representation of the auction purchaser' and because of the alleged difficulty of 'market in relation to land property having fallen down tremendously during the past few months'. The Agreement also stated that action for granting indulgence and for entering into an Agreement and license Deed was being done under the directions of the Central Government 'and as envisaged by sub-section (3) of Section 22 of the Delhi Development Act, read with Rules 45 (2) & (6) of the D.D.A (Disposal of Nazul Land) Rules, 1981. It was clearly set out that the Agreement

was 'without prejudice to other terms and conditions of the auction'.

(13) The license Deed made on the same date reiterated the terms in the Agreement and further provided that the license is for a period of two and a half years from the date of the execution for the purposes of starting construction of the building in accordance with the sanctioned building plans. It also provided that 'legal possession and ownership of the said plot shall remain with the Licensor until full payment of the bid amount Along with interest payable thereon has been made by the licensee'. It was then stated that the permission for construction and no-objection certificate shall not be deemed to create any right in the licensee to the said plot. The license Deed further provided that the overall control of the licensed premises and the supervision shall remain vested with the Licensor and that the Licensor shall have 'a lien on all belongings and properties of the licensee for the time being in or upon the premises of the Licensor'. Clause 12 of the license Deed provided that in case of dispute in regard to interpretation or performance of any terms and conditions of the license Deed, it shall be referred to the sole arbitration of the Vice-Chairman, D.D.A., whose decision shall be final and binding. Clause 15 provided for the consequences of the breach of the license Deed by the petitioner that 'in case the balance of 50% of the said amount and interest thereon (i.e. Rs 9.72 crores) is not paid by the licensee to the licensor in accordance with the terms and conditions of the auction duly modified by the Agreement dated 11.8.1987, the Authority may in its absolute discretion revoke the license and enter upon the plot and take over free from all encumbrances all the buildings that may be standing thereon (whether complete or incomplete) without payment of any compensation therefor and the licensee shall not be entitled even to the refund of the bid amount that may have been paid by them to the Licensor'.

(14) Under the Agreement of 11.8.1987 the first Installment of Rs. 1,94,40,000.00 was due on 15.9.1987. Only the part payment was made by the petitioners on various dates and the balance of Rs. 88,76,375.00 lakhs was required to be recovered by the D.D.A. by availing of the bank guarantee on 7.12.19a7. The second Installment was due on 15.3.1988. The petitioners did not make the payment. They represented to the Lt. Governor for postponement of the payment

of second Installment for six months after the sanction of the Plan, It may be noted that for the first time the petitioner submitted the plan for sanction and requested for no-objection certificate on 31.3.1987. The Plan was rejected as it did not satisfy the requirements of the bye-laws and other conditions.

(15) The third Installment had also become due on 15.9-1988 but the petitioners did not make the payment. On 4.10.1988 the Lt. Governor issued a letter to the petitioners permitting them to pay the second Installment after one month of the sanction of the building plan with interest @ 18%. It was clearly understood by the petitioners on the receipt of the said letter that only the demand of the second Installment was postponed by one month. The petitioners, therefore, recorded their grievance through a letter to the Lt. Governor suggesting that the payment of all the subsequent Installments should have been deferred. The letter of the petitioner pursuant to which the Lt Governor's letter dated 4.10.1988 was issued had expressly requested for the deferment of the payment of the second Installment only.

(16) The fourth Installment, according to the Agreement, had fallen due on 15.3.1989 but no payment was made by the petitioners. The petitioners are now contending that the payment of further Installments was dependent on the sanction of the Plan in terms of the Agreement and the license Deed dated 11.8,1987. This is not borne out by the terms of the Agreement or the license Deed. But, in any case, it clearly related to the question of interpretation of terms and conditions of the Agreement and the license Deed, and the petitioner therefore, ought to have preferred arbitration in terms of clause 12 of the license Deed. the pensioner did not do so but instead filed the writ petition in July 19⁸⁹, praying for mandamus for sanction of the Plan and permission for construction without making the due payment from second Installment onwards or even assurance of making the said payment.

(17) The fifth and last Installment, according to the Agreement, became due on 15.9.1989, but again no payment was made. The Bench hearing the writ petition directed the renewal of the bank guarantee which had come to an end by 15.9.1989 and by summoning all the officers of the concerned Department in

Court directed the Plan to be sanctioned. The Plan was finally sanctioned on 8.3.1990 and the construction was permitted. It is pertinent to note that even after the Plan was sanctioned on 8.3.1990 even the second Installment which had 395 fallen due on 15.3.1988 was not paid, although all the five Installments had fallen due by that time. In the applications filed in the Court for extension of time the D.B. on 19.3.1990 and 19.4.1990 gave extension of time by one month, permitted the construction to go on and gave liberty to the D.D.A. to recover the amount through bank guarantee, although it is noted in the orders that the D.D.A. was not agreeable to any bank guarantee and insisted out-right payment. The D.D.A. filed a Special Leave Petition in the Supreme Court against the said orders and the Supreme Court directed the payment of the second Installment and stopped the construction till the payment of the Installment of Rs. 1,94,40,000.00 was made. The said Special Leave Petition is still pending disposal in the Supreme Court. The D.D.A. filed the Special Leave Petition against the orders passed in the CMP. Nos. 3461/89 & 1765/90, but so far as the main petition is concerned that remained to be disposed of by this Court.

(18) The petitioners did not comply with the orders of the Supreme Court but filed a suit, bearing No. 1875/90 through one Mr. K.G. Arora on 6.6.1990, making D.D.A. as a party for restraining the D.D.A. from recovering the outstanding amount in any way other than through the bank guarantee. On 15.6.1990 the Vacation Judge, Kirpal J., passed an interim order directing the D.D.A. to accept the bank guarantee and to recover the Installment through the bank guarantee. It is interesting to note that the suit was thereafter not pursued and on 28.8.1990 the suit was dismissed in default.

(19) The petitioners, thus, committed breach of the Agreement dated 11.8.1987 and the license Deed right from the first Installment and did not make the payment of the second, third, fourth and fifth Installments. Even after the sanction of the Plan on 8.3.1990 the due Installments were not paid. The petitioners disobeyed the orders of this Court as well as the Supreme Court. They tried to over-reach the Supreme Court's order by the alleged collusive suit. It is, therefore, patently clear that the petitioners deliberately and contemptuously avoided making the outstanding payment as envisaged by the Agreement and the license Deed, thus,

committing the breach of its terms and conditions and at the same time getting the plans sanctioned through the Court and starting the construction.

(20) On this background we can now deal with the various submissions of the counsel for the parties. The question as to whether the contractual obligations can be enforced through a writ petition is still a grey area in the judicial remedies, although the Supreme Court has of late looked at it from the point of view of natural justice, particularly where the State or an instrumentality of a State is one of the parties. But this case is a peculiar case where the part of the contractual duty of the sanction of Plan and issue of no-objection certificate for construction has been done through the interim orders of the Court while the question of payment of the outstanding dues and the effect of the breach of the Agreement has been left unanswered in the said interim orders. If at this stage of the litigation the parties are to be left to go to arbitration in terms of the license Deed or to file a civil suit for breach of contract and for recovery of the amount, it will create manifold complications and payment of huge amount of over Rs. 8 crores will get further delayed and the public interest 396 will be seriously jeopardised. Considering the peculiar aspect of this litigation and the public interest, we are inclined to dispose of all the issues arising out of the Agreement and the license Deed through our decision. If we do not do it, the petitioners will reap all the benefits of the sanctioning of the Plan and permission for construction while the D.D.A., a public authority, will be left high and dry. On its own admission the petitioners have collected more than Rs. 11 crores from the prospective buyers of the shop spaces in the proposed building under construction. Moreover, the prayer of the petitioners that the Agreement and the license Deed in question permit them to make the payment by Installments and through a bank guarantee cannot be considered without the interpretation of the said documents. Also the prayer on behalf of the D.D.A. that the petitioners should be directed to make the entire payment of the outstanding amount cannot be acceded to unless we find that there is a breach of Agreement and license Deed by the petitioners. Revocation of license and entering on the plot and other reliefs are only consequential to the finding as regards the breach of the said two instruments.

(21) Counsel for the petitioners submits that the Agreement dated 11.8.87 is a statutory Agreement in terms of the Delhi Development Act. For our immediate purpose we may assume it to be so. But the real question is what is the purport of the said Agreement as also the license Deed. The Agreement in question mentions the consolidated amount of Rs. 9.72 crores towards principal and interest, payable up to 15.9.1989 and for the payment of the said amount the Installments were fixed. Bank guarantee is given for securing those Installments in relation to the payment of the said amount. A plain reading of the Agreement as well as the license Deed makes it clear that it does not create a right in the petitioners for all times and indefinitely for payment by Installments and through a bank guarantee only. Both from the terms of the auction purchase and the Agreement dated 11.8.1987 it is patently clear that the sanctioning of the Plan comes only after the entire payment of the outstanding dues together with the interest has been made by the petitioner. The submission of the petitioners that the payment was dependent upon the sanctioning of the Plan or they had the right to make the payment only by Installments and through a bank guarantee or that the D.D.A. cannot insist upon the entire payment in cash/bank draft are totally misconceived and contrary to the terms of the said instruments. The submissions are, therefore, rejected.

(22) The next submission of the petitioners that the letter of the Lt. Governor dated 4.10.1988 permits them to make the payment of second, third, fourth and fifth Installments one month after the sanction of the Plan is contrary to what has been stated in the letter dated 4.10.1988 and is a clear after thought. This is clear from the contemporaneous evidence of the petitioners letter dated 25.10.1988 written to the D.D.A. making a grievance in regard to the said letter of the Lt. Governor dated 4.10.1988. Even in the writ petition what is stated in para 69-A is that the Lt. Governor had deferred only the second Installment and that too only for one month after the approval of the building plans. They had also made a grievance of the liability to pay interest for the delayed payment. The present submission of the petitioner, therefore, that the payment of all Installments after the first Installment was postponed by the letter dated 4.10.1988 is contrary to the said letter and wrong. 397

(23) Even otherwise the Lt. Governor was not legally competent to defer even the payment of the second Installment Counsel for the D.D.A. submits that the land in Jhandewalan was originally the land of the Secretary of State and formed part of the Nazul Land which the D.D.A. was not competent to deal with under Section 22 of the Delhi Development Act. The Lt. Governor was not, therefore, competent to deal with the said land in exercise of the powers under Section 22 of the said Act. Counsel for the petitioners has filed an independent affidavit on this question and submitted that the land in question forms part of what is now called Jhandewalan Extension and that there was no evidence to show that the land covered by Jhandewalan Extension was the property of the Secretary of State. We need not go to this question since the order of the Lt. Governor suffers from a serious legal infirmity on other grounds. The Agreement dated 11.8.1987 expressly states that the Agreement had been entered into by the D.D.A. on the directions of the Central Government. The Central Government is entitled to give such directions under Section 45 of the Delhi Development Act and the Delhi Development Authority is bound to follow the same. The Lt. Governor does not tell in his letter dated 4.10.1988 that the Central Government has given fresh directions for the deferment of the payment of the second Installment. It is a well-recognised principle of public law that all letters/orders publicly issued by a public authority are to be strictly construed according to its letter and cannot be improved upon by any extraneous or collateral evidence. We must, therefore, assume that contrary to the original directions of the Central Government in regard to the date of the payment of the second Installment the Lt. Governor has changed the nature of the Agreement by stipulating that the second Installment shall be paid one month after the sanction of the building Plan. The Agreement in question was entered into by the Delhi Development Authority after a proper Resolution to that effect was passed by the Authority. Before passing the Resolution the Committee was appointed to go into the grievance of about 15 builders, including the petitioners. On the petitioners own saying the said Agreement is a statutory Agreement entered into by the D.D.A. Section 3 of the Delhi Development Act lays down the constitution of the Authority which consists of Administrator/Lt. Governor ex-officio; the Vice-Chairman and Finance member, Engineer member, appointed by the Central Government, It also consists of the elected representatives of the

Municipal Corporation, Metropolitan Council and nominated members by the Central Government. Commissioner of the Municipal Corporation is also an ex-officio member. All decisions of the Authority are, therefore, the decisions by the Authority consisting of all the said members and the decision is a collective decision. The Administrator or the Lt. Governor who is only an ex-officio Chairman cannot arrogate to himself the powers of the Authority under Section 3 of the Act. Nor can he alone discharge the functions of the Authority without the proper collective resolution of all members consisting of the Authority. When the original Agreement dated 11.8.1987 was entered into by the Authority after a collective Resolution of the Authority, the Administrator/Lt. Governor alone, without any resolution of the Authority, was not legally competent to amend, modify or make any changes in the said Agreement. The letter of the Lt. Governor dated 4.10.1988 was, therefore, without any authority of law and is therefore, non-est in the eye of law. For the same reason, the subsequent letter of the Lt. Governor dated 16.2.1990 has no force of law.

(24) Since we have held that the letters of the Lt. Governor dated 4.10.1988 and 16.2.1990 have no legal force, the question as to whether the petitioners were responsible for the delay in the sanction of the Plan or whether the D.D.A. was responsible has no effect or relevance on the question of the petitioners' liability to make the payment of the outstanding dues. We are not, therefore, required to pronounce on the submission of the counsel for the D.D.A. that the question of the responsibility for the delay in the sanction of the Plan raised disputed questions of fact and cannot be gone into in a writ petition. Once we come to the conclusion that liability to pay outstanding amount was not dependent on the sanction of the Plan, the question of the delay in the sanctioning of the Plan becomes irrelevant and a non-issue.

(25) The next submission of the counsel for the petitioners is that the D.D.A. can charge interest only on the original auction price and not on any other basis. In the numerous letters between 1981 and 1986 the D.D.A. had made it clear that the petitioners were liable to pay interest on the delayed payment. The Agreement dated 11.8.1987 consolidated the entire amount then due on principal and interest and on that basis fixed the Installments. The petitioners had agreed to the said

method and mode of calculation of interest. Counsel for the D.D.A. is quite right in saying that the interest has been charged as agreed and the appropriation of the payments has been made first towards the interest and then towards the principal, according to the banking practise. We are satisfied that the rate of interest charged by the D.D.A. is not higher than what is charged by the nationalised banks while advancing the loans.

(26) We, therefore, reject all submissions made on behalf of the petitioners and hold that the D.D.A. is entitled to recover the entire amount of Rs. 8,12, 68,789.00 as on 1.7.1990 in lump sum in cash or through bank draft. The decision of the Supreme Court in Dunlop (supra) entitles the D D.A .to insist upon cash payment and to reject the bank guarantee. Since there is a deliberate breach of the obligations under the license Deed and the Agreement dated 11.8.1987 by the petitioners legal consequences, as mentioned in term 15 of the license Deed, spring into action.

(27) Realizing that the petitioners have no case in law, their counsel has submitted that the Court should consider the equities of the matter while passing the final order. The counsel submits that during the delay in the sanction of the Plan, the prices of the construction material has gone very high and if the petitioners are not shown further indulgence, public interest of 870 buyers of shop spaces will suffer. From the orders of the earlier Bench dated 19.3.1990 it is clear that the petitioners were able to persuade the said Bench and get the permission for construction of the building. We have anxiously given our consideration to the submission. We are convinced that as compared to the interest of 870 purchasers of the shop spaces, there is a wider and general public interest which has suffered serious prejudice by non-payment of over Rs. 8 crores. The D.D.A. has limited resources for their responsibilities of construction of houses for the weaker sections and the lower and middle income groups of society. The timely payment of over Rs. 8 crores would have ensured at least some buildings being constructed for the said weaker sections of the 399 society by now. The indulgence of making the payment by Installments supported by bank guarantee was given through the Agreement dated 11.8.87 on faith and representation of the petitioner but the petitioners have failed to live up to the faith and confidence reposed in them. There if a

disobedience of the orders of this Court and the Supreme Court. The action of filing a suit so as to bypass the Supreme Court order is deliberate and contumacious. The petitioners admit that they have to pay about Rs. 5 crores to the D.D.A. During the course of the arguments we gave opportunity to the petitioners to pay the said amount to the D.D.A. but they failed to avail of the said opportunity and showed their inability to make any payment, thus, depriving this Court of showing any further indulgence even at this late stage. We had called upon the petitioners to submit the information in regard to the collection of money from the prospective buyers of the shop spaces in the building under construction. From the information supplied by the petitioners in writing it is clear that they have collected over Rs. 11 crore from the prospective buyers. It is an elementary principle of equity that one who expects equity must also do equity and while approaching the Court he must come with clean hands. The conduct of the petitioners all along does not deserve any sympathy from the Court.

(28) During the course of the arguments counsel for the petitioners drew out attention to the reference to the Statesman case in the orders of the Db, in the context of permission to raise the construction. We do not find any similarity of circumstances in the two cases. In the case of Statesman, unlike the present case, the entire payment of the auction price was made by the Statesman. The only dispute there was in regard to the refuge areas for fire protection, which was raised for the first time in the Supreme Court. The Supreme Court permitted the construction up to the height of 15 meters because the said refuge areas were to be provided at the construction higher than 15 meters. This is not the position in the present case. The permission for the construction of the building in the present case could not and cannot be asked for the petitioner on the analogy of the Statesman case.

(29) In the operative order we had directed that the license would stand revoked and the D.D.A. would enter upon the plot if the payment stated therein is not made within the stipulated time. These orders are merely consequential orders to our finding of the breach of the license Deed and the Agreement dated 11.8.1987, particularly in regard to non-payment of outstanding dues. In spite of repeated opportunities by the D.D.A. itself and by this Court the petitioners are not ready to

make the payment. As stated above, at the time of the final hearing we had given an opportunity to the petitioners, to at least, make payment of the admitted outstanding dues of about Rs. 5 crores but the petitioners have not availed of the opportunity. We, therefore, think that the requirement of natural justice is more than satisfied in the present case and no further opportunity for revocation of license from the D.D.A. is necessary on the facts of this case.

(30) We cannot part with this Judgment unless we comment upon the extraordinary conduct of the D D. A., amounting almost to the dereliction of duty as a public authority In the numerous auctions of plots/flats which the D D.A. makes every other day, the possession is never handed over unless the 400 entire payment is received and leases are cancelled for non-payment of even one small Installment. In the present case the possession was handed over to the petitioners when they had not cleared even the first Installment payable. The D.D.A. had with it the bank guarantee furnished under the Agreement dated 11.8-87 valid up to 15.9.1989 to cover all the Installments. There was no restraint order by any Court of law in encashing the bank guarantees and recovering the huge amount of Rs. 9.72 crores The Supreme Court in Dunlop case has held that government and its instrumentalities need cash for their administration and the governments cannot be run on bank guarantees. But here is an extra ordinary cash where the D.D.A. refused to collect the said huge amount available to it under the bank guarantees Thus, the D.D.A, has failed to make itself available crores of rupees which could have been utilised for discharge of its obligation to provide housing for weaker sections, low income groups and middle income groups of the society. There were in all 15 builders who had defaulted in the payment of auction price where their bids had been accepted for vast commercial complexes If the D.D.A. had not collected the outstanding amounts from the other 14 builders, similar to the petitioners, the accumulated loss would be easily more than Rs. 50 crores If for non-payment by the other builders the auctions/license in their favor had been revoked why same treatment was not given to the petitioners If, on the other hand, the outstanding amount was recovered from all other builders, why expeditious steps were not taken to collect the amount of Rs. 9.72 crores from the petitioners. D.D.A. is a statutory authority and is accountable to the public for their actions. The facts of the case raise strong suspicion of special favor shown to the

petitioners. We recommended that the Vice-Chairman should hold an administrative enquiry into the various aspects of the failure of the D, indicated by us, fix the responsibility and take appropriate action against the erring officers.

(31) After we had reserved the judgment an application was made by the counsel for the petitioners for production of original D.D.A. record and for its inspection by the petitioners. We could not accede to the request as it has come after the closure of the argument and the reservation of the judgment. The original record was, however, produced before us in sealed cover. We have not found it necessary to look to the said record as we could dispose of the petition on the documents produced by the parties in the writ petition. The petitioners wanted us to look up the original record to see as to why the plans were not sanctioned in time. We have held that the question of payment of the outstanding dues was not dependent on the sanction of the plans. The petitioners also wanted us to look from the original record whether the Lt. Governor had the authority to issue the letter dated 4.10.1988, but from the interpretation of the Delhi Development Act and other established principles of law we find that he had no authority or competence to issue the said letter and, therefore, reference to the original record was not required.

(32) For the reasons stated above, the writ petition is dismissed with costs. We reiterate the operative order already pronounced by us on December 21, 1990. The D.D.A. is entitled to take over the plot along with the buildings there on free from all encumbrances and also forfeit the entire amount paid by the petitioners so far in terms of Clause 15 of the license Deed dated 11.8.1987, in case petitioners fail to make the payment as stated in our order dated 21.12.1990. 401

(33) As regards the interest due from 1.7.90 till the date order the D.D.A. should furnish the particulars to the petitioners within one month from today. The petitioners shall make the payment of the said interest within two weeks thereafter.

(34) Counsel fee Rs. 5,000.00 ,

(35) The original record produced by the D.D.A, in the Court be returned immediately. We have extended the date of stopping of construction in the

operative order from 9th January, 1991 to 14th January, 1991, on the request of the counsel for the petitioners, as the present reserved order could not be finally typed by 9th January, 1991.

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