

Skipper Towers (P) Ltd. Vs. Delhi Development Authority

Skipper Towers (P) Ltd. Vs. Delhi Development Authority

SooperKanoon Citation : sooperkanoon.com/697986

Court : Delhi

Decided On : May-31-1991

Reported in : 45(1991)DLT9; 1991RLR359

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

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

Appeal No. : Civil Writ Appeal No. 1154 of 1988

Appellant : Skipper Towers (P) Ltd.

Respondent : Delhi Development Authority

Judgement :

S.B. Wad, J.

(1) M/S. Skipper Towers Pvt. Ltd, the petitioner company, is a well known builder of Delhi. In C.W. 2371/89 the petitioners had taken in auction a commercial plot from the Dda in Jhandewalan Block, known as Commercial Tower in 1980. Till 1990 they had not made payment of over Rs. 8 crores to the DDA. Through the W.P. in this Court they secured the sanction of the building plan and permission to undertake the construction. It was ultimately found that they had not only not made the payment of over Rs. 8 crores for a decade but also violated the Agreement and the license Deed thoroughly. This Court dismissed the W.P. and permitted the

Dda to enter the property after forfeiting the entire amount initially paid. The present W.P. is not only a repeat story by the same builder but worse. Here there is not only breach of Agreement and the license Deed but breach of solemn undertaking to this Court regarding payment. The petitioners are guilty of contempt of this Court. Dda Auction of Commercial plot. If bid of a builder (a previous defaulter) is accepted on 9.2.82 requiring him to pay balance within 90 days and Dda grants to him repeatedly extensions for more than 3 years during which he pays some amount and then he obtains extensions from High Court in W.P. by giving undertaking to pay balance dues and fails, then he is guilty of Contempt of Court. If same builder has defaulted for a decade of Rs. 8 Crore about Jhandewalan plot, then he is not entitled to relief u/Art. 226.

(2) On 9.2.1982 the petitioners successfully bid for plot No. 12, Community Centre, Yusuf Sarai, N Delhi, measuring 225 sq. meters for construction of a multistoreyed commercial complex, for Rs. 84 lakhs. The petitioner paid 25% of the bid amount immediately. According to the terms of the auction the balance of 75% was to be paid within 90 days from the date of auction. In spite of two extensions the balance amount was not paid. The Dda, therefore, informed them on 4.6.1982 that their bid was cancelled. On their further request, however, on 9.11.1982 the Dda rescheduled the payment of the balance amount together with interest. The payment schedule was again readjusted on 14.11.1984. On 13.9.1985 a fresh Agreement was made between the Dda and the petitioners on the faith and representation made by the petitioners. According to the Agreement the petitioners were to make the payment of 50% of the auction premium before the Agreement was signed and the balance was to be paid with 18% interest in three equal Installments payable on 15.9.85, 15.12.85 and 15.6.86. For the balance of the amount the petitioner was to give a bank guarantee. On the same day a license Deed was executed by the petitioner for a period of one year. The license Deed made it clear that the legal ownership of the plots shall remain with the DDA. Any conscientious probability or chance of the accused here found guilty of the offence alleged. construction to be made by the petitioner was to conform to the rules, regulations, bye-laws, orders and directions issued by the Dda from time to time. The petitioners were prohibited from making any transfer of the premises. During the period of license the Licensor had a lien on the belongings and property of the

petitioners. The license Deed further provided that in case of breach by petitioner the Dda had absolute discretion to revoke the license and enter the plot and take it over, free from all encumbrances, Along with all buildings that may be standing therein without payment of any compensation. The license Deed was subject to the sole arbitration of the Vice-Chairman, Dda, in case of any dispute. At the time of the Agreement the petitioners made the payment of Rs. 20 lakhs so as to complete the 50% of the payment of the auction premium. The possession of the plot was delivered to the petitioner on 8.10.1985. The petitioners did not make the payment of any further Installments and tried to avoid giving the bank guarantee.

(3) Thus, the petitioner availed of the indulgence shown by the Dda from time to time and secured possession of the plot, without, making the payments and subsequent Installments, as agreed. As in the earlier petition it did not prefer to avail of the arbitration clause in the license Deed and proceeded to file the present W.P. in May, 1988. After the petition was filed, this Court again rescheduled the terms of payment while giving the direction to the petitioners to make the payment according to the schedule and simultaneously directing the Dda to sanction the plan and permitting the petitioner to start the construction. The petitioners failed to make the payment and to furnish the bank guarantee, as required by the orders of this Court. While sanctioning the Plan the petitioners were informed by the Chief Fire Officer to comply with the requirements of fire safety. The petitioners constructed the basement and 6 floors of the building in breach of the building bye-laws and safety regulations required by the Chief Fire Officer. While the construction was being done by the petitioners, they deliberately refused to make any payment of the Installments, as directed by the Court. On 22.3.90 the Bench hearing the petition took an undertaking from the petitioners to make the balance payment in two Installments, also clarifying that the failure to make the payment would amount to contempt of Court. There-after the Cheque for Rs. 20 lakhs was given by the petitioners to the DDA. The Cheque bounced.

(4) After this order of the Bench the petitioners preferred a Special Leave Petition . in the Supreme Court. The petition was dismissed directing the payment of Rs. 20.00 lakhs and stopped the construction till the payment of Rs. 20 lakhs., was made. The Supreme Court order was not complied by the petitioners and no

payment. was made. Since the petitioners were in clear contempt, one more opportunity was given to them on 5.12.1990 to make the payment of Rs. 35,37,306.90 p. within 10 days so as to purge the contempt, but the petitioners failed to do it. The counsel for the petitioners informed the Court that the petitioners were unable to make the payment.

(5) Thus, we come to a situation where the petitioner had made the construction in violation of the building bye-laws and fire safety requirements. The order for sanction of the Plan and construction was secured from; the Court on false promises of making the payment. As on 15.11.1990 the petitioners are to make the payment of Rs. 49,99,143/15 towards the principal and interest. They are liable to pay further interest from 15.11.90 also. Admittedly, there is deliberate nonpayment by the petitioners in spite of repeated opportunities both by the Dda and this Court. They are in clear breach of the auction terms, the Agreement dated 13.9.1985 and the license Deed of the same date. They are in gross contempt of the Court.

(6) We direct the petitioners to pay a sum of Rs. 2,000.00 as the fine for the gross contempt of this Court. We know that this is a flee bite punishment for a perpetual defaulter like the petitioners. But the petitioners will have to purge the contempt by, making the balance payment. The Dda is, entitled to forfeit the entire amount paid by; the petitioners so far under the terms of the Agreement and the license Deed. The Dda is also entitled to take over the plot in question with the buildings standing on it, free from all encumbrances in terms of the Agreement and the license Deed mentioned above. According to the terms of the license Deed and the Agreement the petitioners were prohibited from making any transfer of the plot or building thereon to third parties. The Dda is, thereforee, entitled to re-enter the plot with the building/s thereon, free from all encumbrances, including the interest in the third party, if any, created by the petitioners. Since this Court has already given much concessions to the petitioner and additional time of over two years from the date of the filing of the writ petition, we do not think that the petitioner is further entitled to any extension of time for making the balance payment.

(7) One of the contentions of the petitioner was that between 1985 and 1988 there was a ban on the high rise buildings and, therefore, they were not liable to pay interest for the said period, We do not find any substance in this contention. The original payment was due within 90 days from the date of auction in 1982 itself. The petitioner deliberately avoided to make the payment till 1985 when the ban was imposed. The auction terms and the Agreement did not make payment conditional on the sanction of the Plan. The petitioners are, therefore, liable to pay interest even for the said period between 1985 and 1988. S. The writ petition is dismissed with costs. Counsel fee Rs. 5,000.00. The fine of Rs. 2,000.00 for contempt of this Court should be deposited with the Registrar of this Court immediately.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com