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Harash Talwar Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Sep-18-2003

Reported in : 2003VIIIAD(Delhi)285; 107(2003)DLT126; (2004)136PLR24

Judge : Sanjay Kishan Kaul, J.

**Acts : Transfer of Property Act - Sections 43; ;[Contract Act, 1872](#) - Sections 5; ;
[Constitution of India](#) - Article 226**

Appeal No. : C.W.P. No. 4858 of 1994

Appellant : Harash Talwar

Respondent : Delhi Development Authority and ors.

Advocate for Def. : C. Mohan Rao, Adv. for Resp. Nos. 1 to 4

Advocate for Pet/Ap. : R.K. Saini and; Hemant Arya, Advs

Disposition : Writ petition allowed

Judgement :

Sanjay Kishan Kaul, J.

1. The respondent Delhi Development Authority (DDA) issued a public advertisement on 02.05.1993 for offer of residential plots in Jangpura, defense Colony, Tilak Nagar, Geeta Colony and New Rajinder Nagar in an auction to be

held on 31.05.1993. The petitioner participated in the said auction and was the highest bidder in respect of plot No. E-38A, Jangpura measuring 264.80 sq. mtrs. having submitted a bid for Rs.30,93,000/-. The said bid was higher than the reserve price and the petitioner was required to deposit 25% of the bid amount at the fall of the hammer amounting to Rs.7,73,250/-. However, the petitioner deposited a sum of Rs.12,10,000/-.

2. The following are the relevant terms and conditions of auction :-

(i) The Officer conducting auction shall normally accept the bids subject to confirmation by Vice- Chairman of the Authority;

(ii) The highest bidder will be required to pay at the fall of the hammer 25% of the bid amount as earnest money either in cash or by bank draft drawn in favor of DDA. The balance 75% amount of the bid shall be payable within 60 days of the issue of demand letter.

(iii) The Officer conducting auction may, at any time, without assigning any reason withdraw all the plots or any or more than them from the auction.

The petitioner, however, did not receive any acceptance of the bid and, therefore, addressed a letter dated 21.06.1993 seeking confirmation of the sale so as to deposit the balance amount. This letter was followed up by a reminder dated 22.07.1993. It appears that on visit to office of the respondent the petitioner was told that the plot auctioned did not belong to DDA. The petitioner, thus, addressed a letter dated 19.08.1993 that he was willing to consider an alternative plot of minimum same size in defense Colony, Friends Colony, Vasant Vihar or in any other colony in South Delhi. The petitioner made a detailed representation dated 01.10.1993 stating that during discussions with representatives of the respondent DDA, the petitioner was told that a proposal could be discussed to allot another plot to him. The petitioner intimated that he was willing to accept another plot, but it should be also four side open in the same area or in the alternative areas already indicated. The petitioner also referred to the judgment delivered by the Division Bench of this Court in the case of one 'Shri Ravindra Mohan Aggarwal & Anr. v. DDA & Anr.' CWP No. 618/1990 decided on 01.08.1991 wherein alternative

plot had been so directed to be given in similar circumstances.

The petitioner continued to send reminders and claimed in the writ petition that the petitioner was offered two plots as alternative plots and that he gave his acceptance in writing in respect of the two plots, but no communication was received by the petitioner in that behalf. The petitioner made further representations on 24.05.1994 and 02.07.1994 and thereafter made the final representation on 25.07.1994 to the Lieutenant Governor, Delhi, i.e., respondent No. 4. The petitioner has thereafter filed the present writ petition seeking a writ in the nature of mandamus commanding the respondents to forthwith allot and give possession to the petitioner of an equally good and comparable alternative plot in the same or adjacent area at the same rates in lieu of the non-existent and unavailable plot auctioned to him earlier.

3. In the counter affidavit filed by the respondent DDA, it is stated that the plot was mistakenly put into auction even though it did not belong to DDA. In this behalf, it is stated that DDA was under impression that the plot in question had been transferred to DDA from the Ministry of Rehabilitation under a package deal. This package deal referred to was in terms of the letter dated 02.09.1982 of the Ministry of Supply and Rehabilitation transferring unutilised lands within the urban / urbanisable limits of Delhi / New Delhi under the charge of the Department of Rehabilitation to DDA for a total consideration of Rs.30 crores.

4. This fact came to notice prior to issuance of confirmation of the bid to the petitioner and, thus, an Officer was deputed to visit the Land & Development Office, Nirman Bhawan and even D.O. letters were issued. It is stated that, on confirmation, it was found that the plot in question continued to vest with L&DO.;

5. The counter affidavit also states that it further transpired that the site was being used as a neighborhood park and the residents of Block E, Jangpura Extension also moved a representation dated 25.05.1993 to the Lieutenant Governor of Delhi and Vice- Chairman, DDA to keep the plot as open green area. A decision was, thus, taken not to confirm the bid made by the petitioner. It is further stated that subsequent communications continued to be exchanged with L&DO.; The Patwari of Kanungo of Survey Branch also gave report that the plot had not been

transferred to DDA and, thus, DDA came to the conclusion that there was no alternative but to return the money with interest to the petitioner. This decision is stated to have been taken on 09.03.1994 and was approved by the Vice-Chairman, DDA on 01.06.1994 to refund the amount with interest subject to confirmation from the Ministry of Urban Development. The relevant letter stated to have been received only subsequently is dated 18.10.1994. This letter was issued in pursuance to a joint survey carried out on 17.10.1994. The said letter states that the plot in question falls in the land earmarked for park and site No. 20, Jangpura, which was transferred to DDA in respect of plot No. E-34, which had already been auctioned by DDA.

6. The refund was decided to be made with interest @ 8% per annum; the refund voucher was prepared on 11.11.1994; and the cheque was prepared on 13.12.1994 for the sum of Rs.13,44,068.50. However, before the cheque could be issued, the present writ petition was filed and, thus, the cheque was sent during the pendency of the writ petition, but the same was returned by the petitioner on 10.02.1995 as having been refused.

7. There is denial of the fact that any proposal was asked from the petitioner for an alternative plot and that no right accrued in favor of the petitioner to seek any comparable plot. It is, however, admitted that the issue of alternative plot was mooted departmentally, but on examination by the concerned authorities, it was not found feasible.

8. Respondent No. 5, Ministry of Urban Development, Union of India, has chosen not to file any counter affidavit.

9. The petitioner with rejoinder has filed a letter dated 30.01.1995 issued by DDA calling the petitioner to see the Commissioner on 06.02.1995. The petitioner visited the Office of DDA on 06.02.1995 and on the same day issued a letter referring to the offer for out of Court settlement by DDA and stating that the petitioner was interested in a plot situated next to Surya Holiday Inn in Garhi.

10. The petitioner, after commencement of final hearing in the present matter, but before conclusion of the submissions, filed an additional affidavit to bring on record

certain subsequent facts and developments. In the additional affidavit, it is stated that the plot of land in question was later on allotted by L&DO; to Sanatan Dharam Jangpura Temple Committee vide allotment letter dated 05.05.2000. This allotment was challenged by one Shri S.K. Sethi before the Senior Sub-Judge. It is stated in the written statement filed by L&DO; in the said proceedings it has been denied that the plot in question was a park or was being used as a park and it was stated that the same is very small and could not be used as a public park. A copy of the said written statement has been filed in which such an averment has been made in para 8 on merits. It is, thus, stated in the affidavit that the reason why the plot was not handed over to the petitioner by DDA was on account of the fact that the plot in question was a park and, therefore, did not form a part of the land transferred to DDA by the Ministry of Rehabilitation. It is stated that in terms of the said package deal, all lands were transferred on 'as is where is basis' except the ones mentioned in Annexure- C to the said letter and Jangpura Extension does not even find a mention in the said Annexure- C. It is, thus, stated that the plot in question stood transferred to DDA and, thus, DDA or L&DO; cannot be permitted to say that the land was not transferred to DDA. It is further stated that Civil Revision No. 202/2002 arising from the orders passed in the civil suit are pending before this Court. The petitioner has also filed the communication between the allottee and MCD. The allottee vide letter dated 04.08.2000 had sought to know the status/position of the piece of land and in terms of the reply of MCD of the same day, it was stated that the same was shown in the layout plan as 'open'.

11. Learned counsel for the petitioner has contended that the basic reason for non-allotment of plot to the petitioner was fallacious since the land actually vested with DDA. In this behalf, learned counsel referred to the letter dated 02.09.1982 of the then Ministry of Supply and Rehabilitation to contend that Jangpura was subsequently mentioned at Seriall No. 1 of Annexure A as developed land and no part of Jangpura was mentioned in Annexure- C, which gives details of the land retained by the Department of Rehabilitation. Thus, the whole land of Jangpura stood transferred to DDA.

12. Learned counsel has also referred to the additional affidavit filed by the petitioner to show that the basis for DDA stating that the plot did not stand

transferred to it in terms of the letter dated 02.09.1982 was also the fact that the plot was actually a park. It is, however, stated that L&DO; has allotted the said plot to Sanatan Dharam Jangpura Temple Committee vide allotment letter dated 05.05.2000 and in the suit filed against the said allotment has taken a stand in the written statement that the land is not a park and the plot could not be used as a public park since the same is very small in size.

13. Learned counsel has further contended that the Vice-Chairman, DDA had, in fact, confirmed the bid of the petitioner and only the communication had not been issued to the petitioner. It is, thus, stated that the terms and conditions of the auction stood satisfied to the extent it required confirmation by the Vice-Chairman. Learned counsel in this behalf referred to Annexure R-1, which are the terms and conditions for sale by auction by DDA, more specifically clause II(5), which is as under :-

' II. BIDDING AT AUCTION AND SUBMISSION OF APPLICATION

5. The Officer conducting the auction may, for reasons to be recorded in writing and submitted to the Vice-Chairman, reject any bid including the highest bid. The confirmation of the highest bid shall be in the sole discretion of the Vice-Chairman, DDA who does not bind himself to confirm the highest bid and reserve to himself the right to reject all or any of the bids without assigning any reason, even if the highest bid is above the reserve price.'

14. Learned counsel has also contended that the issue of providing alternative relief to the petitioner in the form of another plot was also considered and the petitioner was even called for the said purpose, which would be apparent from the letter dated 30.01.1995 of DDA and the representation of the petitioner dated 06.02.1995 after the meeting on the said date with DDA. Learned counsel submitted that in similar other cases alternative plots have, in fact, been allotted and has given four illustrations of the same in para 2 of the rejoinder. It is stated that these are all plots where possession could not be handed over after auction due to one reason or the other.

15. Learned counsel has also referred to the fact that though L&DO; was given an opportunity to file counter affidavit, they have chosen neither to appear nor to file counter affidavit and, thus, the allegations made against L&DO; should be presumed to be correct.

16. A reference has also been made to the Division Bench judgment of this Court in Shri Ravindra Mohan Aggarwal's case (supra) where a direction was made to give an alternative plot. In fact, this judgment was taken note of at the stage when rule was issued in the present writ petition on 16.03.1995, though it was noted that the matter was pending before the Supreme Court in appeal. Learned counsel for the respondent has, however, pointed out that the said Division Bench judgment stands overruled by the Supreme Court in Delhi Development Authority v. Ravindra Mohan Aggarwal & Anr., : AIR 1999 SC1256 .

17. Learned counsel for the petitioner has referred to judgment of the learned Single Judge of this Court in Shri Joginder Nath Bhandari v. Lt. Governor of Delhi & Ors. 1989 (2) Delhi Law 17. In the said case, the petitioner therein had been allotted a plot of land in a draw of lot under the quota for the municipal councilors and had deposited the money. However, the allotment was cancelled in 1980 on the ground that the land was meant for resettlement of evictees. This decision was held to be arbitrary and a direction was issued to allot the alternative plot to the petitioner. It was also held that it was open to DDA to change the location of the allotment of land if it could not be allotted at the original site.

18. A reference was made by learned counsel also to another Division Bench judgment of this Court in Shri Vijay Kumar Ganeja & Ors. v. D.D.A. & Ors. 1990 (3) Delhi Law 246 . In the said case, the petitioners purchased the plot in auction, but the possession was not given by DDA and the plot was converted into a park. It was found that in terms of the Zonal Plan, the site was meant for a residential area and, thus, a writ was issued directing DDA to hand over possession of the said plot. Learned counsel has, thus, contended that the appropriate remedy is to give alternative plot to the petitioner, as claimed for in the writ petition, and not the refund of money, which was returned by the petitioner. Learned counsel has further submitted that the original records can also be perused to see how the

case of the petitioner progressed in the files of the Department.

19. Learned counsel for the respondents, on the other hand, has opposed the writ petition and submitted that the respondent DDA provided the appropriate relief to the petitioner when the amount deposited by the petitioner was refunded with interest @ 8% per annum, but the petitioner refused to accept the said cheque. Learned counsel has submitted that the respondent DDA took all steps to verify position of the land with L&DO;, but there was some delay in the said verification, which resulted in the delay in response by DDA to the petitioner. This delay was compensated by interest granted to the petitioner. It is submitted that this decision was just and fair since DDA was not in a position to hand over possession of the plot in question since the said plot of land did not vest with DDA.

20. Learned counsel has submitted that the documents filed with the additional affidavit of the petitioner dated 10.09.2003, in fact, support the case of the respondent DDA to the extent that the allotment made to the Sanatan Dharam Jangpura Temple Committee has been made by L&DO; which itself would show that the land never vested with DDA. Learned counsel has further submitted that in terms of the letter dated 02.09.1982 what was vested with DDA in Jangpura were 29 plots and 17/46 pockets totaling measuring 37274 sq. yds. It is, thus, only those plots, which vested with DDA. On verification from L&DO;, it was found that plot No. E-38A did not vest with DDA. This was so, as the relevant site No. 20 was not plot No. E-38A but plot No. E-34, which had already been auctioned by DDA. Further, the plot at least on that date was being used as a park.

21. Learned counsel has further contended that at no stage was there any acceptance of the bid communicated to the petitioner and nothings in the file are only steps taken in the decision-making process and no rights accrued in favor of the petitioner till acceptance was communicated, which, in fact, has never been communicated. Learned counsel has relied upon clause II(5) of the conditions of auction to submit that the confirmation of the highest bid was at the sole discretion of the Vice-Chairman, DDA, who did not bind himself to confirm the highest bid and reserved the right to reject all or any of the bids without assigning any reasons even if the highest bid is above the reserve price. In the present case, the highest

bid was not accepted and the bid was rejected by the final decision of Vice-Chairman, DDA and duly communicated to the petitioner. It was further submitted that this was for good and cogent reasons in view of the dispute of title itself and the fact that the plot never vested with DDA.

22. Learned counsel has referred to the decision of the Supreme Court in DDA v. Ravindra Mohan Aggarwal's case (supra), wherein it was held by the Supreme Court that the initial acceptance of bid and the deposit of 25% amount did not constitute transfer of property and DDA cannot be compelled to finalise the sale and deliver possession to the bidder after a lapse of 14 years or in the alternative to allot another plot even though the disability attached with the plot has since ceased to exist on the date of the petition. The amount was directed to be refunded with 9% per annum interest. It would be relevant to reproduce the controversy before the Supreme Court as set out in para 15 of the judgment, which is as under:-

' 5. The facts relevant and material for the disposal of this appeal are :- (i) that the plot on the date of the auction was situated within the green-belt and hence could not have been put to auction by the DDA; (ii) that the sale was not finalised inasmuch as the same was stayed by the High Court in a public interest litigation; (iii) that the authority competent to accept the bid recorded its acceptance at a point of time when the High Court had already stayed the same though the order of the High Court was not till that point of time brought to the notice of the authority; (iv) that the acceptance of the bid was never communicated by the DDA to the respondents; (v) that the tendered amount was 25 per cent only of the bid amount. The balance 75 per cent was yet to be paid by the respondents to the petitioner; and (vi) that it was only in the year 1994 that the zonal plan was modified to alter the use of the plot to residential purpose.'

The Supreme Court thereafter proceeded to pass its judgment on contentions of the parties in the following terms :-

' 7. Having heard the learned counsel for the parties, we are of the opinion that there is merit in the appeal and the same deserves to be allowed. On the date of the auction the plot being in the green-belt, could not and should not have been

put to auction. There is no estoppel against statute and when the considerations of public interest are involved. The acceptance of the bid recorded by the Vice-Chairman, DDA on the file was bad for two reasons. Firstly, it was so recorded after the passing of the interim order of stay by the High Court though it was in the process of being communicated. Secondly, the acceptance was not communicated by the DDA to the respondents and therefore the acceptance was not complete. Merely because the respondents gathered knowledge of the acceptance having been recorded on the file would not make any difference. Reliance on Section 43 of the Transfer of Property Act is entirely misconceived inasmuch as there was no transfer or grant ever made by the DDA in favor of the respondents. Acceptance of the bid at a public auction and deposit of 25% of bid amount do not constitute a transfer of property. The respondents have no basis in law to support their claim. Even the equitable considerations would not justify a public authority like DDA being directed today to provide an alternate plot to the respondents in the same locality and at the same price after a lapse of 14 years from the date of the auctions.

8. We may place on record that according to the appellant, the auction having been stayed by the High Court, the amount of RS.81,250/- was sent by cheque to respondents, but they did not accept the same. The amount has remained with the DDA for all these 14 years.

9. The appeal is allowed, the impugned order of the High Court directing the DDA to allot an alternate plot to the respondents is set aside. The writ petition filed by the respondents is directed to be dismissed. However, in the facts and circumstances of this case, the amount of Rs.81,250/- which has remained with the DDA is directed to be returned to the respondents with interest calculated at the rate of 9 per cent per annum from 5-2-1985 till the date of return. No order as to the costs.'

23. Learned counsel for the respondent has further drawn strength from the aforesaid judgment to contend that the petitioner is not concerned with the decision-making process or discussions in the file till acceptance is not communicated as observed aforesaid. In fact, as early as in the case of Bachhittar

Singh v. State of Punjab & Anr., : AIR 1963 SC395 , it was held that a communication of the order to the concerned person(s) is the essence of the order and to make the opinion amount to a decision of the Government, it must be communicated to the person concerned. Till such communication is made, the order cannot be regarded anything more than provisional in character. In the present case, it is not even an order but a matter of contract and the acceptance not being communicated.

24. Learned counsel for the respondents has supported the stand of the respondent DDA even in respect of the issue of allotment of alternative plot on the aforesaid proposal and submitted that merely because a proposal was made to that effect by a subordinate officer did not imply that a decision was taken in that behalf since the matter was considered and it was not found possible to accede to the request of the petitioner. It is further stated that the four illustrations given by the petitioner are of not much relevance, as it is not known in what facts and circumstances the decision was taken.

25. Learned counsel has further submitted that, in any case, since no rights have accrued in favor of the petitioner, the petitioner cannot enforce the same. It is submitted that the petitioner, if had claimed the original plot, would be seeking specific performance and by the present writ petition, the petitioner cannot be permitted to seek specific performance of an alternative plot, which was never auctioned to him.

26. Learned counsel has submitted that the auction was only an invitation to offer. The petitioner made an offer in pursuance thereto, but there was never any acceptance of the same communicated to the petitioner. Thus, no concluded contract came into being. Learned counsel has, thus, submitted that the letter refusing to accept was sent in terms of Section 5 of the Indian [Contract Act, 1872](#) (hereinafter to be referred to as 'the said Act'). Learned counsel, in this behalf, referred to judgment of the Supreme Court in Haridwar Singh v. Bagun Sambrui & Ors., : [1972]3SCR629 . The said case also dealt with an auction sale and it was held that there could not be said to be a concluded contract in view of the fact that a provisional or conditional acceptance would not make any difference since it

cannot itself make a binding contract.

27. The original records have also been produced, which do show that the proposal was put up to the Vice-Chairman for acceptance of the bid of the petitioner since it was marginally over the reserve price which was accepted by the Vice-Chairman. However, before the said decision could be communicated to the petitioner, soon after the approval of the Vice-Chairman, it was noted that the plot had apparently never been transferred to DDA by the Ministry of Rehabilitation and was being used as a neighborhood park. It has been noted that residents of the locality also moved a representation to the Lieutenant Governor, Delhi and the Vice-Chairman, DDA. Thus, the proposal was put up for cancellation / non-acceptance of the bid of the petitioner. Thereafter, the matter was discussed with the Office of L&DO.; Similarly, the issue of an alternative plot was also discussed. The Patwari of Kanungo of Survey Branch also noted that the plot did not vest with DDA. The proposal put up by the dealing assistant for alternative plot was also further considered. The lapse on the part of the respondent DDA in putting up the plot for auction was noted. It was, however, decided that there could be an issue of alternative plot as there would be different areas and values and it would be appropriate to refund the money with 8% per annum interest. This decision was finally approved by Vice-Chairman, DDA. The verification also came from L&DO; soon thereafter and it was found that the site referred to, which was apparently sought to be auctioned was plot No. E-34, which had already been auctioned and plot No. E-38A did not form part of the site transferred to DDA.

28. I have considered the submissions advanced by learned counsel for the parties.

29. The first issue, which arises for consideration, is in respect of the title itself. The title was transferred by the Ministry of Rehabilitation vide letter dated 02.09.1982 in respect of a number of areas in Delhi including Jangpura A, B and Extension. However, I am unable to accept the contention of learned counsel for the petitioner that all the areas in discriminatorily in those colonies were transferred other than the one forming part of Annexure- C, which referred to the details of the land retained by the said Department. A perusal of Annexure- A

would itself show that 29 plots and 7/46 pockets were transferred. The communication between L&DO; and DDA shows that what was presumed to be the plot in question and forming part of site No. 20 was, in fact, plot No. E-34 which already stood auctioned. Plot No. E-38A never stood vested with DDA. The additional affidavit filed by the petitioner, in fact, fortifies the stand as the same very plot was subsequently allotted by L&DO; to Sanatan Dharam Jangpura Temple Committee.

30. The petitioner has not claimed any relief, and cannot really claim any relief, against L&DO; since the auction was held by DDA. Not only this, the dispute whether the plot should be a park or not and what should be its use can have no effect on the rights of the petitioner. The proceedings before the Senior Sub-Judge referred to by learned counsel for the petitioner only show the dispute about the nature of utilisation of the site in which L&DO; had taken a stand that it was not for a park. The DDA in its nothings had only considered the fact that the plot in question was being used as a neighborhood park. It appears that subsequently it ceased to be so used. The plot was sought to be allotted to the Sanatan Dharam Jangpura Temple Committee and certain persons have grievances in respect of the said allotment. L&DO; in those proceedings took the stand that the plot could not be used as a park. Thus, those proceedings are of little use to the petitioner insofar as the rights of the petitioner are concerned.

31. The petitioner participated in an open auction on the terms and conditions of the said auction. The petitioner deposited more than 25% of the bid at the fall of the hammer. However, the petitioner knew that the auction was subject to acceptance of the bid by the Competent Authority of DDA. This is even apparent from the terms and conditions of auction, more specifically clause II(5). The Vice-Chairman, DDA has the discretion to reject or accept any bid without assigning any reasons. This does not imply that the power has to be exercised arbitrarily and the Court can go into the reasons forming basis of the rejection of the bid. In the present case, the rejection is based on the fact that the title itself did not vest with DDA. If the title was not with DDA, the DDA had no right to auction the plot. Thus, the reason for cancellation of the bid is real and cogent.

32. This question can also be considered from another point of view, which is as to when a contract comes into existence. There can be no doubt that an auction is only an invitation to offer and the bid submitted by the petitioner was the offer. There was only conditional acceptance of the bid when 25% amount was deposited and the final acceptance was subject to decision of the competent authority being the Vice-Chairman, DDA. This acceptance was never communicated and, thus, the contract did not come into existence. Thus, the observations of the Supreme Court in Haridwar Singh's case (supra) would squarely apply to the facts and circumstances of the present case.

33. A similar issue, in fact, arose in Shri Ravindra Mohan Aggarwal's case (supra) and at the stage of admission of the writ petition, the Division Bench Order was relied upon. However, this judgment was subsequently reversed by the Supreme Court in DDA v. Ravindra Mohan Aggarwal's case (supra). The relevant observations of the Division Bench have already been referred to above. It was also held that if the plot could not have been auctioned on the relevant date, there could be no acceptance of the same and acceptance on the file was, thus, bad. This is the same position in the present case where though initially there was acceptance by the Vice-Chairman on the file, it was found that the plot did not vest with DDA.

34. The connected aspect, in this behalf, is the claim raised by the petitioner that the decision was taken in the file, though not communicated. The observations made in the aforesaid judgment as also in Bachhittar Singh's case (supra) would, thus, also apply to the present case. The Supreme Court in DDA v. Shri Ravindra Mohan Aggarwal's case (supra) categorically held that there was no transfer or grant made by DDA in favor of the auction purchaser and the acceptance of 25% of the bid amount did not constitute transfer of the property. Even on equitable consideration, it was not deemed proper to direct providing an alternative plot at the same price after the lapse of 14 years from the date of auction. Even on this aspect, the observations of the Supreme Court in the said case are squarely applicable in the present case where the auction took place 10 years ago and to direct allotment of another plot would be to direct the performance of obligations under the contract for which there was not even a proposal.

35. The reference by learned counsel for the petitioner to the judgment in Shri Vijay Kumar Ganeja's case (supra) would be not of much use because that was a case where the same very plot was available and it was found that the basis for rejection of the bid was conversion into a park while the prescribed user under the Zonal Plan was a residential area. It was in those circumstances a direction was issued to allot the very plot to the petitioner.

36. Similarly, in Shri Joginder Nath Bhandari's case (supra), the case was one of allotment under a scheme and not in auction purchase. There is a difference between the allotment under a scheme and auction purchase, inasmuch as under a scheme, an allotment is made after the petitioner is found to be eligible and a specific flat/plot is allotted under the scheme. The only obligation on the part of the allottee is to make payment in pursuance thereof. However, in case of an auction purchase, the bid of the petitioner is dependent on acceptance of the same by the competent authority. It is only on such acceptance that a same position of allotment would arise when the only obligation would be to pay the balance amount. This is not so in the present case.

37. In view of the aforesaid position, I am of the considered view that the claim of the petitioner of an alternative plot cannot be sustained. However, this does not mean that the petitioner is to be left without a remedy and it is open to the Court in exercise of jurisdiction under Article 226 of the [Constitution of India](#) to mould the relief appropriately. In this behalf, clue can be taken from the judgment of the Supreme Court in DDA v. Ravindra Mohan Aggarwal's case (supra) itself. In the said case also, when the refund was made, the same was not accepted by the auction purchaser. This is the same position in the present case. The respondents have also taken considerable period of time to verify status of the land and the petitioner cannot suffer as a consequence thereof. In fact, there is no doubt that DDA was negligent in putting the plot in question to auction when it did not have any title. DDA being a public body is required to carry out necessary verification before a plot is put to auction so that the auction like the purchaser is not misled into bidding for something which is not capable of being sold by DDA. The petitioner, thus, must be appropriately compensated.

38. It has to be also kept in mind that the petitioner deposited excess amount since the petitioner was required to deposit only a sum of Rs.7,73,250/- at the fall of the hammer, but he chose himself to deposit a sum of Rs.12,10,000/-. The full amount has to be returned to the petitioner and the only question left would be as to the rate of interest which the petitioner would be entitled to. Undoubtedly, the respondent after a span of almost one and a half years refunded the amount to the petitioner with interest. The petitioner refused to accept the same with the result that the amount remained with DDA and has been enjoyed by DDA. I, thus, consider it appropriate to allow simple interest @ 9% per annum from the date of deposit till the date of payment as has been done in the case of DDA v. Ravindra Mohan Aggarwal's case (supra). I do not consider it appropriate to grant a higher rate of interest taking into consideration the number of facts such as the excess amount deposited by the petitioner, refusal of the petitioner to accept refund amount with interest refunded after one and a half years, as also the declining rates of interest in the market and of banks.

39. A writ of mandamus is, thus, issued directing the respondent DDA to refund the amount of Rs.12,10,000/- along with simple interest @ 9% per annum from 01.06.1993 (the amount having been deposited on 30.05.1993) till the date of payment within a maximum period of one month from today. In case of any delay on the part of the respondent DDA in refunding the aforesaid amount, apart from any other remedy available to the petitioner, he shall also be entitled to interest @ 15% per annum for the delayed period.

40. The writ petition is allowed in the aforesaid terms with costs of Rs.5,000/-.

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