

Anil Mehta Vs. Dda

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Court : Delhi

Decided On : Oct-08-2002

Reported in : I(2003)BC282; 101(2002)DLT96

Judge : Sanjay Kishan Kaul, J.

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

Appeal No. : CW No. 5239/2000

Appellant : Anil Mehta

Respondent : Dda

Advocate for Def. : Monica Sharma, Adv.

Advocate for Pet/Ap. : V.K. Shali, Adv

Judgement :

Sanjay Kishan Kaul, J.

1. Rule.

2. With the consent of learned counsel for the parties the matter is taken up for final disposal .

3. The petitioner has filed the writ petition aggrieved by the non-acceptance of the bid of the petitioner for shop No. 78 situated in LSC, J Block, Vikas Puri, New Delhi.

4. An advertisement had been issued in the 'Times of India' on 28.3.2000 for auction by the DDA of shops and offices and the petitioner participated in the same on 18.4.2000. The list of successful bidders was displayed on 26.4.2000 containing the name of the petitioner. The earnest money paid by the petitioner was refunded by the respondent without assigning any reasons. The petitioner made a representation against the same on 15.6.2000 and thereafter filed the present writ petition.

5. It is not disputed that the earnest money refunded has since been encased by the petitioner during the pendency of the writ petition. In the counter affidavit filed by the respondents it is stated that the reason for the non-acceptance of the bid of the petitioner was that though shop in question was shown on the first floor in the tender document it was actually on the second floor. In view thereof all the shops bearing Nos. 63 to 79 were withdrawn and the earnest money refunded.

6. Learned counsel for the petitioner contends that the terms and conditions of the tender are arbitrary and give unbridled powers to the respondents in so far as Clause 1 and 2 under the heading Submission of Documents is concerned. The said clauses are as under:-

'1. The Officer opening the tenders/Director(CL) may without assigning any reasons withdraw all or any of the shop/kiosk/office from the tender at any stage. The tender shall be for the office/built up units are being sold on as is where is basis. It is presumed that the tenderer has inspected the property before giving tender.

2. No person whose tender has been accepted by the officer opening the tenders shall be permitted to withdraw or surrender his tender on any ground whatsoever.'

Learned counsel for the petitioner thus contends that atleast the reason for the rejection of the bid should have been communicated to the petitioner. It is the

further submission of learned counsel for the petitioner that the petitioner had no objection to accepting the shop on the second floor even though normally the prices are lower on the second floor as compared to the first floor since the petitioner had physically visited and verified area.

7. I have considered the submission advanced by learned counsel for the the parties.

8. There is no doubt about the proposition that a public authority like the respondent should act in a fair and reasonable manner. However, I am unable to agree with the submission of learned counsel for the petitioner the the condition prescribed in the terms of allotment are of such a nature that the same are liable to be quashed. The transaction in question is one of auction and the terms and conditions are normal conditions of such auctions. Further it is always open to the court to verify from the respondent by either calling upon to file an affidavit and/or by calling of the records.

9. In the present case a considered decision has been taken to withdraw a number of shops in view of the fact that the floor on which they were situated was wrongly mentioned. This Court is not concerned with the fact that the prices will be higher in different floors since what was tendered were shops on the second floor while the tenders stated that they were on on the first floor. The decision to withdraw the same cannot be said to be one as to call for interference under Article 226 of the [Constitution of India](#). In CW 2719/2002 DELHI MEDICOS v. M.C.D. and Anr. decided on 8.8.2002 similar issue arose though the shop was withdrawn on account of difference in the shop areas. Since the description of the area was wrong, it was held that the shop should be withdrawn from the auction. In view of their being delay in the refund of the amount interest was directed to be paid to the petitioner.

10. In the present case, however, the bid was made on 18.4.2000 and the refund was made on 26.5.2000. There is thus a difference of about over a month in the refund of the amount. The petitioner, however, even thereafter did not encash the amount. However, the question is not one of the quantum but of the principle. I am thus of the considered view that for the period from 18.4.2000 to 26.5.2000 the

petitioner should be entitled to interest. The petitioner has been made to participate in the auction and the allotment has not been made to the petitioner for no fault of the petitioner. The respondent did not take due care at the stage of auction to verify the position. The respondent will thus pay interest @ 15% per annum for the aforesaid period of time. The interest amount to be paid to the petitioner within a period of two weeks from today.

11. I am further constrained to observe that there are number of cases coming to the notice of this court where flats and shops and spaces are put in auction without taking prior due care with the result that persons participate in the same and are thereafter informed that such shops and spaces have been withdrawn. This is occurring as a direct result of lack of proper verification by the respondent prior to their auction. Respondent must take due care to prevent such instance.

12. The writ petition is disposed of in the aforesaid terms leaving the parties to bear their own costs.

13. A copy of this order be sent to the Vice-Chairman, DDA without process fee.

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