Kenneth Builders and Developers Ltd Vs Uoi and ors.

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Court : Delhi

Decided On : Jul-30-2010

Judge : Mr. Badar Durrez Ahdmed ; Ms. Veena Birbal ,. J J.

Acts : Delhi Development Act, 1956 (61 to 1957) - sections (3),11-A,44 ; Delhi Development Act, 1957 - Sections 3, 6 , 7(2),8,8(2),11,11(3),4, 11A.

Appeal No. : WP(C) 10647/2009

Appellant : Kenneth Builders and Developers Ltd

Respondent : Uoi and ors.

Advocate for Def. : Mr Shanmuga Patro, Mr C. Mohan Rao, Ms Zubeda Begum with Ms Sana Ansari, Advs.

Advocate for Pet/Ap. : Mr A. M. Singhvi , Mr Mukul Rohtagi, Sr, Mr Rishi Aggarwal , Mr Akshay Ringe, Advs.

Judgement :
1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

ORDER

1. The Delhi Development Authority issued an advertisement on its website on 20.03.2006 announcing DDAs first public-private participation project involving auction of prime residential land at Tehkhand in South Delhi. As per the said announcement, the new initiative to involve the private sector in Delhis development was taken to meet the new challenges of an ever evolving capital city and its growing housing needs. By virtue of the said announcement, the DDA invited private parties for the development of the composite project area of 14.3 hectares of prime land at Tehkhand in South Delhi for building 750 premium residential flats to be sold by private real estate development on free sale basis, with a maximum FAR of 80000 sq. metres and maximum ground coverage of 15000 sq. metres. As regards the location of the project area, it was mentioned that Tehkhand is located in the heart of South Delhi next to Kalkaji Extension near the sprawling commercial complex of Nehru Place and Okhla Industrial Estate. The private real estate companies were free to develop, construct and market these 750 high quality homes in a self contained community with facilities like school, community centre, neighbourhood convenience store and other spaces as per the DDA norms.

2. In addition to the above, the developer would have to construct 3500 re-settlement houses for the economically weaker sections of society, of 26 sq. metres each (super area) as per the DDAs specification with facilities like schools, neighbourhood playground, park community hall, health centre, convenience store etc. It was also stipulated that all re- settlement houses and the developed common facilities would be handed over to the DDA for allotment. The said project was to be allotted through auction to be held on 26.04.2006 at 10:30 am at the DDA Auction Hall, Vikas Sadan, New Delhi.

3. The general terms and conditions of the auction required that the same would be held on "as is where is basis" as per the terms and conditions prescribed in the document entitled "general terms and conditions of the auction". Clause 2(iii) of the said general terms and conditions was as under:-

"(iii) The bid shall be for the amount of the premium offered for the plot to execute the project. The project is being offered on as is where is basis. It is presumed that

the intending purchaser has inspected the site and familiarized himself with the prevalent conditions in all respects including status of infrastructural facilities available etc. before giving the bid." By virtue of clause 2(i) of the said terms and conditions, the intending bidders were required to deposit a sum of Rs 1 crore with the officer conducting the auction immediately on entering the auction hall, as a condition to participate in the auction. As per Clause 2(vi) of the said general terms and conditions, it was stipulated that the person whose bid is accepted by the officer conducting the auction, shall be required to pay at the fall of hammer, that is, latest by 4:00 pm on the day of auction, a sum equivalent to 25% of the bid offered as earnest money deposit. Clause 4 of the terms and conditions of the auction provided that the allotment-cum- demand letter would be issued by the DDA to the highest bidder after acceptance of the bid by the authority and the highest bidder would be required to deposit the balance 75% amount of the bid offered for the project within 90 days of the issuance of the allotment-cum-demand letter. Clause 5 of the terms and conditions of the auction stipulated that the possession of the project area excluding approximately 4 hectares on which there is a JJ cluster, would be given after payment of the balance 75% of the bid and the execution of the developmental agreement.

4. Clause 8 of the said general terms and conditions of the auction required the developer to comply with all statutory provisions, rules and regulations, bye-laws etc. in all respects, including paying of all fees, taxes WPC 10647/09 Page No.3 of 29 in accordance with the statutory provisions. It was also provided by virtue of Clause 8(iii) that :-

"(iii) Each developer will be required to seek approvals / clearances in respect of their project for all services from the concerned local authorities including Fire Department, Electricity Boards, Agencies, Civil Aviation, and abide by all conditions as per their guidelines."

5. Amongst others, the petitioner made a bid at the said auction held on 26.04.2006. The petitioners bid of Rs 450.10 crores was the highest and as per the condition of the auction, the petitioner deposited a sum of Rs 111.52 crores representing 25% of the bid amount by way of earnest money deposit on that date

itself. This was, of course, in addition to the sum of Rs 1 crore already deposited for the purposes of participating in the auction. Thereafter, the DDA issued a demand-cum-allotment letter dated 15.06.2006 in favour of the petitioner. It is relevant to note that the nature of property in the demand-cum-allotment letter was shown to be "residential". The balance amount of Rs 3,37,50,75,016/- was required to be paid by the petitioner. The same was paid by the petitioner on 11.09.2006. Consequently, the petitioner had paid the entire bid amount of Rs 450.01 crores to DDA by 11.09.2006.

6. On 05.09.2007, the petitioner and the DDA entered into the development agreement. By a letter dated 06.11.2006, the DDA, in view of the fact that the balance 75% had also been paid by the petitioner, issued a no objection certificate in favour of the petitioner for submission of building plans in respect of the Tehkhand project to the building department of the DDA. Possession of an area of 11.70 hectares had also been handed over to the petitioner, leaving out an area of approximately 2.60 hectares which was covered by a JJ Cluster, on 04.12.2006.

7. On 21.11.2007, the DDA issued a letter to the petitioner that the work was to be completed within a period of three years, that is, up to 04.09.2010 and that the possession had been handed over on 04.12.2006 but the work had not been started and it appeared that the petitioner would be unable to complete the work on time and, therefore, a show cause notice was given to the petitioner as to why a penalty of 0.5 % of the bid amount should not be imposed on the petitioner in terms of clause 57 of the agreement. By a letter dated 27.03.2008, the petitioner informed the DDA that although the DDA had permitted the petitioner to establish the site infrastructure facilities including the construction of a sample flat for the economically weaker sections, the Forest Department had raised objections to the petitioner carrying out any work on the ground that the said area falls within the ridge area and consequently all activities had to be suspended. The petitioner indicated that because of the said suspension of work, it was incurring huge losses on account of idle manpower and equipment.

8. Again, a letter was written on 15.04.2008 by the petitioner to the DDA indicating that the land clearance documents had not yet been passed on to the petitioner by

the DDA so as to enable the petitioner to proceed with the establishment of site infrastructural facilities and also to ensure timely completion of the project. A further letter was written on 22.04.2008 to the Vice Chairman, DDA, informing him that during the past several weeks officials from the Forest Department had been visiting the project site and had cautioned the petitioners representatives not to carry out any activity thereon as the same was a prohibited area. Consequently, it was requested that the matter be taken up with the Forest Department and the DDA should issue a letter in favour of the petitioner permitting the petitioner to continue the development activities at the project site.

9. By a letter dated 28.04.2008 addressed to the Secretary (Environment)-cum-Chairman, Delhi Pollution Control Committee, the DDA referred to the meeting the said Secretary had with the Vice Chairman, DDA on 08.04.2008 when the issue of land use of Tehkhand housing project being developed by the DDA on public-private partnership was discussed. As per the said letter, the matter had been examined in detail by the DDA and it was confirmed that as per the Delhi Master Plan (MPD- 2021), the site under reference was designated under "residential" use complying with the gazette notification dated 08.01.2002 in respect of land measuring 12.4 hectares and gazette notification dated 23.02.2006 for 3.6 hectares. The relevant notifications dated 08.01.2002 and 23.02.2006 were annexed along with the said letter.

10. The notification dated 08.01.2002 reads as under:- "Gazette of India Extraordinary Part II-Section 3-sub Section (ii) Published by Authority New Delhi, Tuesday, January 8, 2002 /Pausa 18, 1923 Ministry of Urban Development and Poverty Alleviation (Delhi Division) Public Notice New Delhi, the 8th January, 2002 S.O. 37(E) Whereas certain modifications which the Central Government proposed to make in the master Plan for Delhi Zonal Development Plan regarding the area mentioned hereunder were published as a Public Notice by DDA vide dated 07.08.1999 in accordance to the provisions of Section 44 of the Delhi Development Act, 1956 (61 to 1957) having objections / suggestions as required by sub-section (3) of Section 11-A of the said Act, within thirty days from the date of the said notice. (2) Whereas after considering objections / suggestions received with regard to the proposed modification and whereas the Central Government

have after carefully considering all aspects of the nature, decided to modify the Master Plan.

(3) Now, therefore, in exercise of the powers conferred by sub- section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi with effect from the date of Publication of this Notification in the Gazette of India. Modification:- The land use of the area measuring above 12.4 hectares (30.6 acres) falling in Planning Division F (South Delhi; and bounded by existing road in the North, District Park in the east and south and existing Hot Mix Plant (District Park) in the West is changed from "Recreational" (District Park) to Residential.

(No. K-1301130/95-DD-II) Devendra Kumar Goel Under Secy."

The notification dated 23.02.2006, which is in virtually identical terms relates to the area measuring 3.6 hectares at village Tehkhand.

11. By a letter dated 07.05.2008, the Delhi Pollution Control Committee (DPCC) requested the petitioner to submit an application for WPC 10647/09 Page No.7 of 29 "consent to establish" and a copy of the environmental clearance issued by the Ministry of Environment and Forests (MOEF).

12. On 13.06.2008, the Secretary (Environment)-cum-Chairman, DPCC, issued a letter to the Delhi Development Authority in response to the latters letter dated 28.04.2008. The contents of the said letter constitute the very basis of the controversy at hand and, therefore, it would be appropriate to set out the same in its entirety. The said letter reads as under:- "J. K. DADOO, I.A.S.

Secretary (Environment)

Cum-Chairman,

Delhi Pollution Control Committee

Dear Sir, Dt. 13.06.2008 Kindly refer to the letter No. 3 (60)/05/MP/58-G dated 28.04.2008 of Jt. Director (MP) DDA. I have had the entire matter carefully researched. You are aware that Honble Supreme Court has prohibited any

construction of Delhi Ridge which is to be preserved in its pristine glory. The word, "Ridge" has been defined in the Master Plan for Delhi Perspective 2001 and its extent indicated in the maps contained in its Preamble. Maps clearly show the Ridge extends of the North of Mehrauli Badarpur Road and east of Tughlakabad Fort (copy of relevant portions of MPD 2001 are enclosed for ready reference). The project site at Tehkhand, is thus clearly a part of Ridge, as described in MPD 2001. This fact has also been ascertained by a field visit myself with the officers of Forest Department. In view of the provisions contained in the MPD 2001 and orders passed by Honble Supreme Court in Writ Petition (Civil) No. 4677/1995, the Notification S.O. 37(E) dated 8th January, 2002 could not have been issued. MPD 2001 prescribes no change vis-a-vis Ridge. It, however, recognizes that there are discrepancies between the notified areas and exact boundaries of the Ridge. It requires the exact boundaries of the Ridge to be identified by the Forest Department. Forest Department has already initiated the process for identification, survey and demarcation of the exact boundaries of the Ridge. Survey of the Ridge area is beginning shortly from Andheria Mor and will be carried out in consultation with Revenue Department and DDA.

In this regard, the Action Report dated 28.07.2006 of the Ridge Management Board jointly filed by Chief Secretary, GNCTD, Commissioner, MCD Vice-Chairman, DDA, Secretary (E&F;), Divisional Commissioner and Conservator of Forest (copy enclosed) in CW No. 4582 of 2003 in the matter of Kalyan Sanstha Social Welfare Organization v. UOI and others in the Honble High Court may also kindly be referred to, wherein it was submitted that DDA will take measures for protection of ridge areas under its control, against encroachment and new construction. May I, therefore, request you to order for immediate cessation of all construction activity on the project site till clearance for the same is obtained from competent authorities including the Ridge Management Board and the Honble

Supreme Court. With regards.

Yours sincerely:

Sd/-

(J. K. DADOO) Shri Ashok Kumar Nigam, IAS

Vice Chairman Delhi Development Authority,

Vikas Sadan, INA New Delhi."

13. The DDA issued a letter dated 30.06.2008 to the Director, Government of India, Ministry of Environment and Forests, New Delhi informing that the "land use of the land where DDA has proposed to take up residential construction is recreational" for which gazette notifications were issued by the Ministry of Urban Development on 08.01.2002 and 23.02.2006. Consequently, as per MPD-2021 the land in question was stated to be not part of regional park/ ridge.

14. The ministry of Environment and Forests, Government of India, by a letter dated 15.07.2008 issued to the petitioner on the subject of construction of residential housing project at Tehkhand, informed that the Expert Appraisal Committee constituted by the competent authority, after due consideration of the relevant documents, had accorded environmental clearance as per the provisions of the Environment Impact Assessment Notification, 2006 and its subsequent amendments, subject to strict compliance of the terms and conditions mentioned in the said letter. One of the conditions specified in the letter was that "consent for establishment" shall be obtained from the DPCC in respect of air and water management and a copy thereof shall be submitted to the Ministry before start of any construction work at the site.

15. Another important letter is that of 17.10.2008, which was sent by the DDA to the Secretary (Environment)-cum-Chairman, DPCC, New Delhi. In the said letter it was stated that in the Master Plan for Delhi, 2001, "ridge" had been defined as an area of 7777 hectares which is to be preserved in its pristine glory. It was further stated in the Preamble of the said Master Plan that one conceptual sketch indicating the ridge has been shown as one of the eight concepts only, whereas the land use plan is the legal document showing the details which are to be referred for the purposes of establishing the land use. It was further stated in the letter that the land pocket where DDA has proposed residential development, was clearly shown as a District Park in MPD-2001 and the land use of the same had

already been changed from recreational use (District Park) to residential vide Gazette of India notifications dated 08.10.2002 and 23.02.2006. It was also pointed out that the said notifications were issued after following the due process of law and after taking all relevant facts into consideration. Furthermore, no objection in respect of the land use of the project land was raised by any department including the Forest Department at that stage. It was further stated in the said letter that the Ministry of Environment and Forests, after considering and taking on record the representation from both the DPCC and the DDA with respect to land use of the project land, had accorded the environmental clearance to the said project on 15.07.2008. It was, therefore, requested that the "consent to establish" be granted by the DPCC under the Air (Prevention and Control of Pollution), Act, 1981 and the Water (Prevention and Control of Pollution), Act, 1974 to the petitioner at the earliest. A similar letter was also written by the petitioner on 04.11.2008 requesting the DPCC to grant the said "consent to establish" under the Air and Water Acts.

16. The DPCC sent a letter dated 27.01.2009 to the petitioner requesting the petitioner to submit the "ridge demarcation report". Consequently, the petitioner wrote a letter on 29.01.2009 to the Vice Chairman, DDA, New Delhi requesting that the "ridge demarcation report", as required by the DPCC, be provided to the petitioner in order to enable the petitioner to submit the same to the DPCC. Shortly thereafter, the petitioner also sent a letter to the DPCC on 10.02.2009, indicating that the approach of the DPCC was apparently of jeopardizing the prestigious flagship public- private partnership endeavour of the DDA inasmuch as the issue of the project land falling within the ridge, already stood clarified and settled by the DDA as per the letter dated 17.10.2008 addressed to the Secretary (Environment)-cum-Chairman, DPCC. The petitioner also stated in the said letter that the issue had time and again been clarified by the DDA. However, it seemed that the DPCC was bent on ensuring that the JJ dwellers rehabilitation project undertaken by the Delhi Government is derailed for reasons best known to them. The petitioner, once again, requested the DPCC to issue the "consent to establish" under the Air and Water Acts for the project at the earliest so that construction activity could be commenced without any further delay.

17. In reply to the petitioners request for supply of the "ridge demarcation report", the DDA sent a letter dated 10.02.2009 to the petitioner, stating that the reply dated 17.10.2008 earlier sent to the Secretary-cum-Chairman, DPCC clarified all the issues. The petitioner, being frustrated in its endeavour to obtain the "consent to establish" from the DPCC and the clearance to go ahead with the project, sent a letter to the Vice Chairman, DDA on 18.02.2009 indicating that the project had been floated at least three years ago and it had been represented by the DDA that the land measuring 14.3 hectares was residential in nature. The petitioner had responded to the said notice for auction and was the highest bidder in the said auction at Rs 450.01 crores. The petitioner had also, as mentioned above, paid the entire sum of Rs 450.01 crores. Yet, the petitioner was not able to go ahead with the project because of the dispute with regard to the land use of the project land. The DDA had throughout represented the project land to be residential in nature but the same had been challenged and rejected by the Secretary (Environment)-cum-Chairman, DPCC by asserting the same to be falling within the ridge area and, therefore, entailing that no construction could be carried out thereon. Despite repeated requests, the petitioner had not been able to obtain the consent from the DPCC under the Air and Water Acts for the said project. It was further pointed out that the petitioner had been made to run from pillar to post to obtain various other clearances, permissions, consents. It was further stated that the DDA, as the owner of the project land, had not only failed to get the title of the project land cleared inasmuch as the nature of the land being residential or part of the ridge still remains an issue in limbo, with the Environment Department, Government of NCT of Delhi claiming it to be a ridge. The petitioner thereby called upon the DDA to ensure that all the necessary permissions specifically linked with the land use be obtained within 15 days from the date of the said letter and the other obligations pertaining to clearance of the project land rendering it suitable for development of the prestigious project be fulfilled, failing which the petitioner would be left with no other option but to initiate legal action against the DDA and also claim damages.

18. On 24.02.2009, the DDA, once again, wrote to the Secretary (Environment)-cum-Chairman, DPCC, Delhi that the clarification on the land use had already been furnished by virtue of the DDAs letter dated 17.10.2008 and that in the light

of the contents of the said letter, it was clear that the land in question was not part of the ridge land and had been legally converted from recreational use (District Park) to residential. Consequently, it was requested that the "consent to establish" under the Air and Water Acts be granted to the petitioner at the earliest so that the construction activity could be commenced without any further delay as the project had already been substantially delayed.

19. Since the impasse with regard to the status of the project land continued and the petitioner was neither being permitted to continue with the construction activity nor was the DDA ready to refund the amount paid by the petitioner and/ or cancel the auction/ tender, the petitioner filed the present writ petition, inter alia, seeking the setting aside of the tender/ auction notice dated 20.03.2006 as also the allotment letter dated 15.06.2006 and sought a declaration that the project was incapable of performance and, consequently, that the auction had become void. The petitioner also prayed for refund of the sums paid by the petitioner to the DDA under the said auction along with interest at the rate of 18% till realization.

20. Before us, the DDA (respondent No. 5), the Department of Forests, Government of NCT of Delhi (respondent No. 4) and the Delhi Pollution Control Committee (respondent No. 2) filed separate counter- affidavits. The Delhi Development Authority, in its counter-affidavit filed on 22.10.2009 categorically stated in paragraph 1(b) that the land use of the land in question was shown as recreational use (District Park) in MPD- 2001, which had been notified on 01.08.1990. It was further stated that the land use of the said area measuring 14.2 hectares, after following the procedure laid down in the Delhi Development Act, 1957, had been changed from recreational use (District Park) to residential vide notifications dated 08.01.2002 and 23.02.2006. It was stated that at that point of time, no suggestions/ objections were received in respect of the land use from any department of Government of NCT of Delhi, including the Forest Department or by the DPCC. No objections were received either at the time of preparation of MPD-2001/ preparation of zonal plan of zone F or while processing the change of land use of the land at Tehkhand.

21. It was further stated in the affidavit filed on behalf of the DDA that zonal plan for zone F was prepared under the provisions of MPD- 2001 which were notified for inviting objections/ suggestions on 15.01.1994 and in response to this notification, 72 objections / suggestions were received, which were considered by the authority in its meeting held on 09.06.1997 and thereafter, the plan document was approved on 15.06.1998 by the Ministry of Urban Development, Government of India. It was further stated that as per MPD-2001, the area of the ridge was recognized as 7777 hectares and in the land use plan of MPD-2001 such ridge was identified. Therefore, at that time, the boundary of the ridge had been delineated. It was further denied that the DDA at the time of the tendering process had wrongfully or intentionally misrepresented the land use of the land of the proposed project. This is so because the land use of the area in question was residential as per the said notifications modifying the Master Plan. In paragraph 25 of the said affidavit, it has been stated that the land use of the project land was residential and the said area was never identified as the ridge nor was any reference received by the DDA from the Ridge Management Board (created under orders of the Supreme Court) in respect of the said land nor was there any objection or reference received from the DPCC. It was stated that the DDA had initiated the project based on the notification issued by the Government regarding change of land use from recreational use to residential use. It was further stated in the affidavit that as per MPD-2021 the ridge demarcation exercise was to be taken up by the Government of NCT of Delhi and till such time the provisions of MPD-2001 were to continue. Consequently, the stand taken by the DDA is that the project land was not part of the ridge and the land use for the same was residential. The further stand of the DDA is that it had not made any misrepresentation with regard to the land use of the project land and, therefore, there is no reason for it to scrap the tender/ auction.

22. The counter-affidavit filed on behalf of the Department of Forests (respondent No.4) reveals that during the month of March, 2008, a complaint had been received in the Environment and Forest Department that trees were being felled by developers at the project site. On inspection, it was found by the Forest Department officials that the site was morphologically part of the Delhi ridge and was contiguous to the extension of the Aravalis extending up to and beyond the

remnants of Tughlakabad and Adilabad Forts. Consequently, the DDA was advised to proceed further with the project only after obtaining approval of the competent authority for use of land in the ridge for the project. The said affidavit then goes on to refer to the Supreme Court directions in WP(C) 4677/1985 with regard to preservation of the ridge. A reference was also made to the provisions of MPD-2001 and particularly to the observations therein that no further infringement of the ridge is to be permitted and that it should be maintained in its pristine glory. Paragraph 9.2.2 of the said Master Plan deals with regional park and the same is as under:-

"The Aravali Range in the NCT of Delhi comprises of the rocky outcrop stretching from the University in the North to the NCT Border in the South and beyond, and sizable areas of the same have been designated as the Ridge. This is not a continuum as various intervening stretches have, over a period of time, been brought under urbanization-for example the Central Ridge area was planned as an integral part of New Delhi as the Capital in the early part of the twentieth century. The Master Plan of Delhi-2001 identified the Regional Park into four parts as below:

1. Northern Ridge : 87 ha.

2. Central Ridge : 864 ha.

3. South Central Ridge (Mehrauli) : 626 ha.

4. Southern Ridge : 6200 ha. Subject to verification the area of Regional Park is 7777 hectares. Part of this has been notified as Reserve Forest under the India Forest Act, 1927 vide notification dated 24.05.1994 and 02.04.1996. There are discrepancies between the area notified and the physical boundaries of the total area owned by various agencies DDA, CPWD, NDMC, MCD, Forest Department, and the Ministry of Defence. Till the exact boundaries are identified by the Forest Department, the boundary indicated in the Master Plan for Delhi (land use plan) as Regional Park shall continue."

In paragraph 10 of the said affidavit, it is provided that the Forest Department has undertaken the task of identification and demarcation of the ridge and the work is going on and based on preliminary findings, the Department of Environment and Forests found the project site to be part of the extension of Aravali hills and, therefore, part of the Delhi ridge. It was also pointed out in paragraph 11 of the said affidavit that certain features have been identified as being relevant for classifying any area as being part of the ridge. One of the relevant features was to consider whether the land in question was recorded as gair mumkin pahar in the revenue record. It is further stated in the counter-affidavit that the project site is situated in Khasra Nos. 444 and 445, village Tehkhand and is shown as gair mumkin pahar in the revenue record and, therefore, the said area would be within the morphological ridge as per the geological survey of India map. The affidavit further clarifies that the area in question is not part of a notified forest and is outside the regional park as per existing land use plan contained in MPD-2021. It is further stated in the said affidavit as under:- "13. That due to the above facts the Department of Environment & Forests has taken the position/ stand that the land is part of Delhi Ridge and prior approval of Honble Supreme Court will be required for undertaking any construction activity in the area. DDA has contested this position and held that being out of the regional park as per land use plan contained in MPD 2021, the area is not Ridge.

14. That in view of the above stated stand of DDA it was decided during the meeting held at the Raj Niwas, Delhi on 23.06.2009 that the whole issue should be referred to the Ministry of Environment and Forests, Government of India, which has already accorded Environmental clearance to the project, for consideration. The decision of the Ministry shall be final and binding upon both Department of Environment and Forests and DDA. However, in the intervening period the developer has filed the present writ petition. The present writ petition is therefore premature."

23. In view of the statements contained in the aforesaid paragraphs 13 and 14 of the counter-affidavit filed on behalf of the Forest Department (respondent No. 4), this Court, in the course of hearing of the petition on 27.10.2009 felt that it would be appropriate to be informed about the decision taken by the Ministry of

Environment and Forests, Government of India and Mr Chandhiok, the learned Additional Solicitor General, who was present in Court, had sought time to take instructions in this regard. On 05.11.2009, Mr Chandhiok submitted that some more time be given to him to receive final instructions. Two weeks further time was granted. On that date, that is, on 05.11.2009, the learned counsel appearing on behalf of the petitioner submitted that they had a proposal whereby the principal amount of approximately 450 crores be returned to the petitioner upon them giving an undertaking that in case the permissions are obtained by the DDA and there is clearance to construct, they would return the money within two weeks. This Court had directed that the concrete proposal containing all the details be submitted to the Vice Chairman, DDA within two days and that the response of the DDA in respect of the proposal be placed before Court. As noted in the order dated 25.11.2009, the concrete proposal had been submitted by the petitioner to the Vice Chairman, DDA on 06.11.2009 and that even a personal hearing had been granted but no response had been received from the DDA till then. As recorded in our order dated 04.12.2009, the learned counsel for the DDA informed that after the meeting of the representative of the petitioner with the Vice Chairman, DDA and after the proposal submitted by the petitioner was considered, a letter has been issued by the Vice Chairman, DDA to the petitioner on 01.12.2009, which is self-explanatory. Thereafter, as no further instructions were received from the Union of India, the matter was heard.

24. At this juncture, it would be relevant to note the contents of the communication dated 01.12.2009 issued by the Vice Chairman, DDA to the petitioner in response to the proposal submitted by the petitioner on 06.11.2009 seeking refund of Rs 450.01 crores. In the said letter, it is clearly indicated that before the auction all the bidders including the representative of the petitioner had acquainted themselves in detail about the project, the status of the land for the project and all the terms and conditions governing the auction. A reference was made to clauses 6.1 to 6.3 of the general terms and conditions and it was stated that it was the responsibility of the petitioner to get the necessary clearances from the concerned agencies, namely, DJB, MCD, Electric Supply Agency, Delhi Fire Services, DUAC and also environmental clearances from the concerned departments. More importantly, the said letter clearly stated as under:- "The land use of the project site is residential.

The project land was earlier under Recreational Use (District Park) as per the MPD-2001 and the land use plan of which was notified on 1.8.1990. Subsequently, by following the statutory procedure as per the Delhi Development Act, 1957, land use was changed from Recreational Use (District Park) to Residential vide Gazette of India notification No. K-13011/30/1995/DDIB dated 08.01.2002 and 23.02.2006. There were no objections in respect of the land use of the project land from the Forest Department or DPCC or the NNCT, at any stage either at the time of the preparation of MPD-2021/ Preparation of Zonal Plan of zone F or while processing the change of land use of the two pockets at Tehkhand where the project land is located for which public notices were issued by DDA.

In the Land Use Plan of Master Plan 2001, as well as 2021, which are statutory documents for the urban development of Delhi, the site under reference has never been shown as Regional Park/ Ridge. DPCCs view that project site at Tehkhand is a part of Ridge is, therefore, not tenable. In fact, DPCC is required to confine itself to the issue of clearance under Air and Water Act and not to get into the definition of the land use plan of the site under reference which is defined as per the provisions of Master Plan land use which is the only statutory document for definition of use of the land. The interpretation of Master Plan is the responsibility of the Delhi Development Authority. Accordingly, with the approval of L.G/ Chairman, DDA, Ministry of Environment & Forest, Govt. of India have been requested issue clearance under Air and Water Act only and not to get into the definition of Land Use Plan of the site under question.

In view of the facts and the circumstances mentioned above, there is/ was no impediment, legal or otherwise, in auction of the project land and its development by you as a successful bidder. The present proposal is, therefore, not tenable in the facts and circumstances mentioned above. Accordingly, the proposal for refund of the premium is not acceptable to the DDA and the same is hereby rejected."

25. Coming back to the counter-affidavits filed by the respondents, we are left to consider the counter-affidavit filed on behalf of the respondent No. 2 (DPCC). The stand taken is that the project area falls in Khasra Nos. 444 and 445 of village

Tehkhand which, according to the DPCC, falls within the ridge area as informed by the Forest Department, Government of NCT of Delhi on the ground that the land is gair mumkin pahar and is within the morphological ridge as per geological survey of India map. The said affidavit also refers to a meeting held at Raj Niwas on 20.05.2009 between the officers of DDA, Government of NCT of Delhi and the Lieutenant Governor wherein the Forest Department pointed out that the entire project falls in Khasra Nos. 444 and 445 of village Tehkhand and is within the ridge area and the revenue records also indicate the Khasra Nos. 444 and 445 as gair mumkin pahar. It was also mentioned that the land being part of the ridge came within the Supreme Court judgment relating to the ridge and hence any construction would be in violation of the Supreme Courts order on the subject. The affidavit further goes on to state that having considered the stand of the DPCC and the DDA, the Lieutenant Governor directed the DDA to verify from records the status of land in Khasra Nos. 444 and 445 observing that if the land falls within the ridge, it would be best to abandon the project in view of the Supreme Courts judgment on the subject. Finally, it was stated in the said affidavit that the DPCC would consider the project only after clarification from the DDA and the Forest Department.

26. The foregoing demonstrates the controversy between the parties. The petitioners stand is that it had made the bid for the project and had paid the entire amount of Rs 450.01 crores on the clear understanding that the project site was residential. This understanding, according to the petitioner, was based on the representation made by the DDA as the detailed facts referred to above would reveal. In fact, the DDA has maintained and continues to maintain its stand that the project site is not within the ridge area and the land use of the same has been clearly shown as residential. According to the DDA, the land in question was earlier earmarked for recreational (District Park) purposes. However, that was subsequently altered by the two notifications dated 08.01.2002 and 26.02.2006 by carrying out modifications in the Master Plan (MPD-2001). The stand of the DDA is also this that the land use of any particular area is to be determined under the Master Plan and the authority which does such determination is the DDA and not any other authority, such as the DPCC. The clear stand of the DDA is that the DPCC has no right or business to raise any objection with regard to the land use

and that is solely within the domain and powers of the DDA. The stand of the DDA is, however, not accepted either by the DPCC or the Department of Forests, Government of NCT of Delhi. In fact, both the DPCC and the Department of Forests (respondents 2 and 4 herein) along with the Government of NCT of Delhi (respondent No.3) have taken a unified stand that the land in question falls within the ridge and more so because the Department of Forests has found the said land to be part of Khasra Nos. 444 and 445 of village Tehkhand which, in the revenue record, has been shown as gair mumkin pahar. Thus, according to the said respondents, no construction activity can be carried out in the land in question inasmuch as, according to them, it falls within the ridge area. Consequently, the DPCC has refrained from issuing the "consent to establish" under Water and Air Acts, which was a requirement and a condition of the clearance given by the Ministry of Environment and Forests, Government of India.

27. It is in this backdrop that the petitioner felt that there is virtually no chance of the project going ahead in view of the stalemate between the DDA and the various governmental departments. It is on the basis of this situation that the petitioner has sought the setting aside of the tender / auction as also the allotment letter dated 15.06.2006 in its favour and has sought the return of the money paid by it along with interest thereon.

28. In deciding this writ petition, an important question which arises for consideration is who decides the land use of a particular piece of land in Delhi? If the land use is to be determined by the DDA through the publication of the Master Plan, then the question arises as to whether the DPCC or the Department of Forests can object to a particular land use? We find that the Delhi Development Authority has been constituted under Section 3 of the Delhi Development Act, 1957 (hereinafter referred to as the said Act). Section 6 sets out the objects of the DDA and they have been specified to be the promotion and securing of development of Delhi according to plan. For this purpose the DDA has been given the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for

the purposes of such development and for the purposes of incidental thereto.

29. Section 7 of the said Act requires the DDA to carry out a civic survey and prepare a master plan for Delhi. The master plan, by virtue of Section 7(2) of the said Act, is to define the various zones in which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used and the stages by which any such development shall be carried out. The master plan is to serve as a basic pattern of framework within which the zonal development plans of various zones are to be prepared. Section 8 provides for the preparation of zonal development plans. Section 8(2), inter alia, stipulates that a zonal development plan may contain a site plan and use plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone. The elaborate procedure to be followed in the preparation and approval of plans is given in Section 10 of the said Act. Section 11A provides for the modifications to the master plan and the zonal development plan. Section 11A(3) specifically provides that before making any modifications to the plan, the DDA or, as the case may be, the Central Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the DDA or the Central Government, as the case may be. Furthermore, sub-section (4) of Section 11A stipulates that every modification made under the provisions of this section shall be published in such manner as the DDA or the Central Government, as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the DDA or the Central Government may fix. Sub-section (6) of Section 11A stipulates that if any question arises as to whether the modifications proposed to be made by the DDA are modifications which affect important alterations in the character of the plan or whether they relate to the extent of land uses or the standards of population density, the question shall be referred to the Central Government whose decision thereon shall be final. Section 14 stipulates that after the coming into operation of any of the plans into the zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan.

30. From these provisions, it is clear that the making of the master plan and the zonal plans goes through an elaborate procedure. Even the modification carried out to any of these plans has to go through a series of steps which include the inviting of objections and the consideration thereof. From these provisions it is clear that the stand taken by the DDA that once the master plan shows the land in question as earmarked for a particular use then no other authority can challenge the same. The master plan and the zonal plans are prepared by the DDA and they have a statutory flavour. Once the DDA has gone through the formalities required under law in preparing the master plan and/ or the zonal plans and/ or in carrying out any modifications therein, the land use of a particular area would stand determined as per the said plans. The stand of the DDA throughout has been that the land in question has been earmarked for residential use and, therefore, it is clearly outside the ridge area.

31. We may also observe that when the Ministry of Environment and Forests, Government of India, gave its environmental clearance in terms of the Environment Impact Assessment Notification, 2006, one of the conditions was that the petitioner should obtain the "consent to establish" from the DPCC under the Water and Air Acts. The DPCCs role was, therefore, confined to examining the grant or non-grant of the consent to establish within the four corners of the said Acts. Instead of doing so, the DPCC, as indeed the Department of Forests, NCT of Delhi, have brought up the controversy as to whether the land in question falls within the ridge area or not. We may also point out that the Supreme Court directions with regard to maintaining the ridge relate only to those areas which have been clearly identified as part of the ridge. When the land owning agency as also the authority which prepares the master plan clearly and categorically states that the land in question does not fall within the ridge area and the land use is residential, we fail to see as to how the DPCC or the Department of Forests, NCT of Delhi can raise any objection on this account. In fact, the Department of Forests (respondent No.4) had clearly stated in their affidavit that the project land does not fall within a regional park and is also not a notified forest. That being the case, it would not be open to the Department of Forests (respondent No.4) to go on to say that the project site falls within the ridge area.

32. Therefore, we are of the view that the stand taken by the DDA that the land use of the project site is residential stands established. It cannot be said that the DDA misled the petitioner when it represented that the project site was to be used for residential purposes. Consequently, at this stage, the petitioner cannot claim that the tender/ auction be set aside and the project be abandoned and the money paid by it be returned to the petitioner along with interest thereon. However, at the same time, we feel that the petitioner would be wronged if no directions are given to the respondents 2, 3 and 4 to, stick to their brief and consider the case of the petitioner from the standpoint of granting or not granting the "consent to establish". While the DPCC has to consider this aspect of the matter, it should do so by considering the parameters under the Water and Air Acts alone and should not trespass into areas which are within the domain and control of the DDA.

33. Consequently, we feel that although the petitioner would not be entitled as of now, to the prayer of setting aside the tender/ auction as also the letter of allotment and to the return of money paid by the petitioner to the DDA, the petitioner would be entitled to a direction, though not specifically asked for in this petition, to the DPCC to examine the application of the petitioner for grant of "consent to establish" from the standpoint of the Water and Air Acts alone within two months from the date of this judgment. We also feel that it would be just and fair that in case such consent is not given by the DPCC and the project cannot be carried any further, the petitioner would be entitled to return of the entire sum paid by it to the DDA inasmuch as the project would stand frustrated and would be incapable of performance. The petitioner would be entitled to the return of the said sums along with interest at the rate of 6% per annum till realization, in such eventuality. We are making this direction because we feel that the State or any statutory body cannot appropriate any citizens money without reason. The whole object of the petitioner making the bid and paying the said amount was to go ahead with the project. When the project itself cannot be gone ahead with, for no fault on the part of the petitioner, there is absolutely no reason as to why a statutory body, such as the DDA, could be permitted to retain the amount of money paid by the petitioner. That would virtually amount to extortion by a statutory body and such a thing would clearly be onerous, arbitrary and unreasonable. The state or any statutory body performing public functions are not

expected to deprive individuals or businesses of their money without authority of law. With the aforesaid directions, the writ petition stands disposed of.