

Delhi Development Authority & Anr vs Maa Jagdambe Tent on 6 January, 2022

Author: Jyoti Singh

Bench: Chief Justice, Jyoti Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 9/2022

DELHI DEVELOPMENT AUTHORITY & ANR. Appellants

Through: Mr. Ashim Vachher, Standing

Counsel along with Mr. Kunal Lakhani,

Advocate for DDA.

versus

MAA JAGDAMBE TENT

..... Respondents

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% 06.01.2022 Proceedings have been conducted through video conferencing. CM APPL. 645/2022 (exemption) Allowed, subject to all just exceptions.

Application stands disposed of.

CM APPL. 646/2022 (Delay in filing) Present application has been filed by the Appellants seeking condonation of delay of 38 days in filing the Appeal.

We have heard the learned counsel and perused the reasons seeking condonation of delay. In our opinion, the Appellants have made out sufficient cause for condonation.

Accordingly, the application is allowed and the delay of 38 days in filing the Appeal is hereby condoned.

Application is disposed of.

LPA 9/2022 & CM APPL. 644/2022(Stay) Present Appeal has been preferred by the Appellants/DDA assailing the impugned orders dated 06.09.2021 and 11.10.2021 passed by the Learned Single Judge in W.P.(C) No. 9394/2021. Permission of the Court is sought to conduct e-auction for the plot in question, as described in the memo of the Appeal.

Brief narrative of facts as set out in the Appeal is that an e-auction for setting up a pandal for the site

in question was held by the Appellants on 29.10.2020 wherein the Bid of the Respondent herein was accepted and the site was allotted. Respondent was declared as H1 Bidder with the highest bid of Rs.55,10,000/- and Letter of Intent was issued on 09.11.2020, followed by an acceptance letter on 19.11.2020. The site was allotted on license fee basis for a period of 9 months and the license fee per month was Rs.6,12,223/- + GST. Possession of the site was handed over on 05.12.2020 and the 9 months period was to end on 31.08.2021.

According to the Appellants, there was default by the Respondent in making timely payments of the license fee and hence, the show cause notice was issued on 22.01.2021. Respondent made representations seeking extension of the license period, on account of pandemic COVID-19. As the Respondent was non-compliant with the conditions of the acceptance letter, Appellants issued a public notice on 15.08.2021 for fresh e-auction of the site in question. Request of the Respondent for further extension was rejected by the Appellants on 24.08.2021 and was duly communicated to the Respondent.

It is submitted by learned counsel for the Appellants that the learned Single Judge, vide the impugned order dated 06.09.2021, directed the Appellants not to take any precipitate measures against the Respondent. Since the Respondent was a defaulter and the site in question had been put to fresh e-auction, Appellants filed an application for vacation of the interim directions, however, the learned Single Judge disposed of the application, without recording any reasons for declining the request and on a mere statement of the Respondent that the requisite dues had been paid upto 06.09.2021 and also because the Appellants had encashed the bank guarantee.

Learned counsel for the Appellants contends that the dispute raised by the Respondent is with regard to breach of a contract and hence, the writ is not maintainable. It was further contended that Respondent cannot take the benefit of the pandemic as marriages were being performed in the relevant period albeit with certain restrictions and in any case, it is a settled law that contract is not frustrated merely because the circumstances under which it was made, are altered and the performance becomes onerous on account of an unforeseen turn of events.

It was further contended that the subject premises were allotted to the Respondent for a period of 9 months, which has since expired. Respondent was contractually obliged to handover the vacant physical possession of the site to the Appellants on 01.09.2021 and thus, the orders of the Learned Single Judge, impugned herein, amount to an extension of the contract, which is impermissible in law.

We have heard learned counsel for the Appellants and examined the contentions raised.

At the outset, we may note that the writ petition filed by the Respondent is pending before the Learned Single Judge and the rights and contentions of the parties to the lis are yet to be adjudicated. We, therefore, do not wish to return any findings touching upon the merits of the writ petition as to the maintainability of the writ petition or the alleged breach and/or the rights of the respective parties under the contract.

The learned Single Judge has, by the impugned order dated 06.09.2021, directed that no precipitate measures shall be taken against the Respondent. It is recorded in the order that the Petitioner in the writ petition has paid a substantial amount to the DDA and has additionally spent Rs.1.5 crores in setting up the enterprise but with virtually no returns on account of the pandemic. The case of the Petitioner in the writ petition is primarily based upon the circumstances which were beyond the Petitioner's control and invokes the force majeure clause, relying on several judgments in this context delivered by different Courts in wake of the pandemic. Taking a prima facie view in the matter, the learned Single Judge deemed it fit to protect the Respondent herein.

The order dated 11.10.2021, passed by the learned Single Judge indicates that the interim order was not vacated on the ground that the Respondent has cleared the arrears upto 06.09.2021 and also that the DDA has encashed the bank guarantee. In the considered opinion of the learned Single Judge, the amount stood paid to the DDA and hence, the prayer for vacation of the interim order was declined.

We see no reason to interfere with the view taken by the learned Single Judge in the wake of the pandemic and the fact that the Respondent was prima facie not in default of payment of the arrears. In any case, this is only an interim arrangement and needless to state that as and when the writ petition is decided, the rights of the parties shall be adjudicated.

Learned counsel, at this stage, submits that the interim order is preventing the Appellants from taking further steps towards fresh e-auction of the site in question. In our opinion, the apprehension expressed is misplaced and based on an erroneous interpretation of the order of the learned Single Judge. We do not find from the perusal of the impugned orders that the learned Single Judge has prevented the Appellants from carrying out the process of e-auctioning the plot, afresh, as sought to be contended by the learned counsel.

In view of the aforesaid, there is no merit in the Appeal and the same is accordingly dismissed along with the pending application.

We make it clear that we have not expressed any opinion on the merits of the issues raised in the writ petition and/or its maintainability.

CHIEF JUSTICE JYOTI SINGH, J JANUARY 06, 2022/sn