

(2004) 11 DEL CK 0132

Delhi High Court

Case No: WP (C) 10705 and 10706 of 2004

Anil Kumar Sharma and Another

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision: Nov. 2, 2004

Citation: AIR 2005 Delhi 97 : (2005) 2 BC 297 : (2004) 115 DLT 75

Hon'ble Judges: Pradeep Nandrajog, J

Bench: Single Bench

Advocate: R.P. Lao and Bobby Lao, for the Appellant; Sujata Kashyap and Saba Khan, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Public auction for plot No:19, site No.4, Block No.5 Geeta Colony was held on 24.9.1996. Petitioners were the highest bidders. Bid in sum of Rs.10,70,045/- was confirmed. Petitioners paid the bid amount as per time granted. Full payment was made on 9.12.1996. Possession of the plot was handed over on 19.12.1997.

2. Auction of the plot was on "as is where is basis". Bidders were thus presumed to have acquainted themselves with the site.

3. According to the petitioners, when they visited the site in January 1998 they found that Delhi Jal Board (DJB) authorities were constructing a sewer plant on the western side of the plot with some part of the foundations inside the plot. Sewer pipes and angles were lying scattered all around. Petitioners claim to have met officials of DDA with a request that site of the plot be relocated. Since personal interaction was not yielding the desired result, on 9.9.1999 petition No.1 wrote a letter as under:

""To

The Commissioner,

Land Management, DDA,

New Delhi.

Sub: File No.S-15(15) 1996 OSB Geeta Colony.

Sir,

For the last four months, I am approaching for the change of my Plot No.19, Block-5, Site 4 in Geeta Colony due to the reason that a big sewer plan has been constructed at the corner of my plot with the result I am unable to do any further work. The plot is full of boulders and silt excavated.

The plot is situated on the bank of a big nalla flowing near to plot and candidly it is 6"-0'" only.

A survey has also been carried out at no. of times. I request you, Sir, that the plot be changed to some other site suitably fit for rehabilitation specially preference to either Pitampura, Rohini area.

With regards.

Thanks""

4. On 25.12.1999, petitioner wrote another letter as under:

""To

Sri K.S. Verma,

Dy.Director (OSB),

Vikas Sadan,

"A" Block, 2nd Floor,

New Delhi.

In ref. to my letter dated 25.12.1999, I again request you that my residential plot No.19, Geeta Colony is being used by DDA/Jal Board for the construction of a sewer plant inside my plot on the West side corner. This may pl. be got stopped immediately.

The silt taken out from Nala running nearby is spreaded over my plot. Hume pipes are also brought at site to be laid in the plot. It will be difficult to construct the house under the above noted circumstances, hence immediate action is needed.

Thanks""

5. Matter lingered on. On 25.2.2001 petitioner wrote another letter as under:

""The Commissioner

Land Disposal

Delhi Development Authority,

Vikas Sadan I.N.A.,

New Delhi-110 023.

Sub: Residential Scheme in Geeta Colony.

Ref.: File No.S-(15) 96-OSB.

Respected Sir,

With all the best regards I request your honour as under for your kind consideration.

I, S.D. Sharma a retired Divisional Engineer from Railways purchased a residential plot of 100 sq.yard in the name of my son Anil Sharma in an auction conducted by DDA on 24/05/1996.

After my retirement I thought to built a small house and will live in to it. I spent all the amount received after my retirement and also spent all the savings during 38 years of service. Here I am very much surprised when I started boring a Hand Pump for water, and came to know that the area is full of silt only which was thrown on the plot at the time of desalting the nala running just near by the plot.

A sketch is attached herewith for your perusal sir and you will find that the size of the plot is 60" x 15" which has been hardly adjusted between Nala Bank and a Road in front of the plot. The depth of the Nala is too much and approximately it is 30 feet which will never allow the back wall of the plot to remain stand and the house if so constructed will either collapsed or give crackers or cracks in the house which nobody would like to construct the house on such plot.

There are 14 plots which have been proposed to be sold in this area. I am referring sight No.4 in which my Plot No.19 has been shown in the sketch and nobody has so far deposited the due amounts against the plots accept myself. I am the only man left alone in this area of sight no.4. I being a needy person I started the boring the HP after depositing all the dues and registration etc. a Hand Pump was bore with the result, only silt was available up to the depth of nearly 24" feet. The bearing capacity of silt is very poor and it is unable to take any load of any construction on this ground. Therefore, I being a qualified Civil Engineer from Roorkee University I do request you to cancel this sight for any future residential purposes.

It is also not understandable that how DDA propose such poor bearing capacity area for the construction of residential purpose because this area lies just on the bank of the nala and it is also nearer to the Jumana River Bank which is hardly 300 mtrs. Away from this area. This sight, from all sorts of engineering point of view is not fit for any type of construction. Even if suppose I want to construct the house on such poor bearing capacity. I would like to appreciate you not to allow me for any

construction on this plot. Due to the sight being very close not only to the nala but also close to river Jumuna and that to due fear of seismic zone.

I, Therefore, request your honour that fresh thinking the given to the points raised in this letter and I may be suitably allotted equal area suitable in some other locality of the city preferably either at Rohini area, Pitam Pura area, Punjabi Bagh area or the place where suitable for the purpose.

With regards,

Thanks.""

6. Site was inspected. On 15.5.2001 Executive Engineer DDA wrote to the Dy.Director (OSB):

""Sh.S.C. Tuteja,

Dy.Director (OSB),

Vikas Sadan, I.N.A.,

New Delhi.

Sub: Residential Scheme in Geeta Colony.

Kindly refer to your letter No.F15(15)96/OSB/955 dt. 23.3.2001 vide which a copy of the letter of Sh.S.D. Sharma/ Sh.Anil Sharma was endorsed to this office to examine the above cited matter.

It is fact that there is Nala Bank, but this Nala Bank is after the service lane i.e. just behind the plot. It is not correct that the depth and width of Nala is too much.

I would like to mention that there are two plots on which the buildings have already been constructed. No adverse effect have so far been noticed on these buildings.

Hence low bearing capacity of soil does not having any adverse effect.

It is also to worth mentioning that on other bank of Nalla, there are multi storied societies flats.

Submitted for further necessary action please.

Executive Engineer

Estn.Divn.3/DDA""

7. On 13.7.2001 following note was put up on the file:

""Sub: Joint Site Inspection Report of the Plot No.19 Site No.4, Block-5, Geeta Colony allotted by Auction to Shri Anil Sharma.

As directed by the Vice-Chairman, DDA the above site was to be jointly inspected by the Officers nominated by the Commissioner (LD) and Commissioner (Plng.). Accordingly, Sh.S.C. Tuteja, Dy.Dir. (OSB) and Sh.P.M. Parate, Jt.Dir.(Plg.) were nominated for conducting the joint inspection on behalf of the Commissioner (LD) and Commissioner (Plng.) respectively.

The site was inspected by the officers on 13.7.01 and inspection report is submitted as under:

a) The plot is lying vacant. MCD has constructed Sewer Outfall Chamber near to this plot. However, this plot is not affected by this. The building can be constructed on this plot. Buildings on the two plots have already been constructed in the nearby Site No.3. Buildings have already been constructed since long in the front side across the road in Block-5, Geeta Colony and also the multi-storeyed Group Housing Society across the Nallah. Therefore, this plot is suitable for the construction and plea of the allottee pertaining to this plot cannot be accepted.

The Ex.Engineer, ED-3, DDA vide his letter No.F.3(4)AE-I/ED-3/DDA/Misc./773 dated 15.5.01 addressed to Dy.Dir.(OSB) has also confirmed that soil has the bearing capacity and building can be constructed on this plot.

In view of this, it is hereby concluded that from technical point of view this plot is suitable for the construction and the plea of the allottee for alternative plot cannot be considered.

It is further pointed out that MCD has constructed the Sewer Outfall Chamber and Sewer Line on the adjoining plots. It is not known as to how MCD has constructed this. It was agreed that Engineering Wing may be requested to get the Sewer tank/line shifted from the site so as to enable the department to auction on the remaining plots.""

8. Petitioners made representations to the Vice-Chairman, DDA inter alias pointing out that a sewer plant constructed by DJB, adjoining their plot would create nuisance. DDA finally agreed to relocate the site of the plot.

9. This required revision in the layout plan. This process consumed time. Layout was revised and on 24.10.2002 plot was relocated to a new site under intimation to the petitioners.

10. Having got the plot re-located, petitioners moved an application before the permanent Lok Adalat of DDA praying that since due to default of DDA, petitioners could not build upon the plot originally allotted and had to be shifted to a new site, petitioners be compensated with interest on the sum of Rs.10,70,045/- deposited by petitioners by 9.12.1996.

11. On 10.10.2003, the permanent Lok Adalat, holding that it was a case of high-handedness on the part of DDA, recommended that petitioner be

compensated by way of interest to be paid by DDA. Directions were issued that Vice-Chairman, DDA should consider the matter.

12. DDA considered the matter. It decided to waive ground-rent paid to the DDA. Decision taken was that ground rent paid by the DDA till site was re-located would be refunded. On the issue of interest, Vice-Chairman declined.

13. On 23.4.2004, Permanent Lok Adalat recorded decision of DDA to refund the ground rent but not pay any interest. Matter was closed by the Permanent Lok Adalat leaving petitioners to seek their remedy as per law.

14. Present petition came to be filed praying that petitioners be compensation with interest with effect from 20.9.1996 to 24.10.2002 @ 10% per annum.

15. Mr.R.P.Lao, learned counsel for the petitioners submits that due to default of DDA, petitioners could not construct upon the site originally allotted. DDA realized its mistake and re-located the site. Petitioners completed payment on 9.12.1996. Re-location was effected on 24.10.2002. Accordingly, counsel contended that petitioners should get the interest demanded, more so, when the Permanent Lok Adalat has already opined against the DDA.

16. Ms.Sujata Kashyap arguing for DDA contended that the order dated 10.10.2003 passed by the Permanent Lok Adalat gives no reason as to why it was being held that it is a case of sheer high-handedness on the part of DDA. She urged that admittedly on 19.12.1997 petitioners were put in possession of the plot allotted at the first instance. There was no encumbrance on the site. It was for the petitioners to have ensured that officers of Delhi Jal Board do not keep any material on the site. She further urged that Delhi Jal Board constructed a sewer plant adjoining the plot and not on the plot. Counsel urged that the drain/nalla in question was in existence when site was auctioned and since auction was on as is where is basis, petitioners were presumed to have visited the site.

17. It is not in dispute that the auction of the plot was on as is where is basis. It is also not in dispute that the sewer nala was constructed or under construction when the plot was auctioned. Petitioners would, thus, be presumed to know the geographical location and characteristics of the plot. Dealing with an auction on "as is where is basis", Hon"ble Supreme Court in its decision dated 28.7.2004 in Civil Appeal No.2314/1998 M/s.Aggarwal Associates Promoters Ltd. Vs. D.D.A. held:-

""The plot was sold to him on "as is where is basis". It had been made clear in the terms of the auction that it would be presumed that the intending purchaser has inspected the site and had familiarized himself with the prevalent site conditions in all respects before giving the bid. The appellant cannot be heard to say that he did not familiarize himself with the prevalent conditions which existed on the site.""

18. The first written complaint of the petitioner dated 9.9.1999 (para 3 above) shows that the sewer plant was being constructed at the corner of the petitioners plot.

Grievance was that boulders and excavated silts have been put on the plot of the petitioners. It was also a complaint that plot is situated on the bank of a big nala. Second complaint dated 25.12.1999 (para 4 above) again refers to the same problem with an addition, being hume pipes brought to site.

19. When site was inspected, the Executive Engineer did not find any problem with the capacity of the soil. It was noted that the site was not under encumbrance.

20. DDA is not responsible for causing any obstruction in the construction of a building on the plot allotted. Counsel for the DDA rightly contended that on 19.12.1997, when possession was handed over, petitioners readily and willingly took possession of the plot. Having taken possession of the plot, it was for the petitioners to have ensured that officers of Delhi Jal Board do not encroach on the plot. If, a third party were to encroach on the plot allotted to the petitioners, after petitioners were but in possession thereof, remedy of the petitioners was against the said trespasser.

21. Petitioners could have obtained a mandatory injunction against Delhi Jal Board to remove the hume pipes which they had placed on the plot of the petitioners. Petitioners could have obtained an injunction against Delhi Jal Board restraining it from placing dug up earth/silt on the plot of the petitioners. They chose not to avail of the said remedies. DDA was not the offender and, Therefore, prima-facie, petitioners would have no claim against the DDA.

22. What seemed to have actually created problem for the petitioners was the erection of a sewer plant adjoining the plot. The sewer plant on one side and a nala on the other led the petitioners to believe that it was not worthwhile to construct a house and live on the site.

23. Reason for re-locating the site was not that DDA had allowed Delhi Jal Board to encroach upon the site. Reason for re-location was purely humanitarian. Since, DDA had vacant land nearby and considering that a existing nala on one side and a sewer plant had come up on the other side, as a goodwill gesture, DDA permitted re-location of the site.

24. It is not a case of deficiency in service, much less high-handedness on the part of DDA. I do not concur with the observations of the Presiding Officer of the Lok Adalat as recorded in order dated 10.10.2003 that DDA has acted with high-handedness against the petitioners.

25. The writ petition is accordingly dismissed.

26. No costs.