

PETITIONER:
DELHI DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
SKIPPER CONSTRUCTION AND ANR.

DATE OF JUDGMENT 25/01/1995

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
MOHAN, S. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1995 SCC Supl. (2) 160 JT 1995 (1) 571
1995 SCALE (1) 734

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. The facts leading to this interlocutory application are as under:

On 8.10.1980, an auction was held by the Delhi Development Authority
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(hereinafter referred to as the 'DDA') of the Commercial Tower Plot, Jhandewalan, Block E, New Delhi ad measuring about 540 sq. mtrs. The first respondent, M/s. Skipper Construction Co. (P) Ltd. (hereinafter referred to as the 'Skipper') was the highest bidder, its bid being Rs. 9.82 crores. As per the conditions of the auction, Skipper deposited 25% of the bid amount. The said bid was confirmed by the DDA on 14.10.1980. Skipper was called upon to make the balance of payment of 75% of the bid amount within 90 days as per the conditions of the auction.

2. The Government of India issued directions to the DDA accepting the request of Skipper and granting an indulgence to it by directing the DDA to reschedule the recovery of 75% of the bid amount with interest from the Skipper. Consequent to this, DDA called upon the Skipper to enter into fresh agreement, licence agreement and furnish bank guarantees in compliance with the directions of the Central Government.

3. On 11.8.1987, Skipper entered into a licence agreement, paid 50% of the original bid and secured payment of the balance 50% of the bid and interest at the rate of 18% per annum thereon by submitting bank guarantees for Rs. 9.82 crores, in terms of which a sum of approximately 1.944 crores was required to be paid as each instalment. A total of 5 instalments was payable every six months, the first being due on 15.9.1987 and the last on or about 15.9.1989.

4. Against the first instalment of Rs. 1.944 crores failing due on 15.9.1987, DDA recovered about Rs. 88.76 lakhs

by encashment of the bank guarantee on 7.12.1987. Thereafter the first respondent did not pay in terms of the agreement.

5. On 4.10.1988, the Lt. Governor issued a direction at the request of Skipper, deferring recovery from Skipper of the 2nd instalment as per the agreement dated 11.8.1987 till one month after the sanctioning of the building plans.

6. In August, 1989, the first respondent filed writ petition in the High Court of Delhi, being CWP No.2371 of 1989. The principal relief sought in the writ petition related to sanctioning of building plans and permission for construction. An interim order was passed directing the Skipper to furnish fresh bank guarantee since the bank guarantee furnished earlier had lapsed. The DDA did not encash the fresh bank guarantee which was defective. Time and again the DDA represented to the Court that the monies were outstanding from the Skipper and no indulgence ought to be shown to them till the payment of the outstanding amount of over Rs. 3 crores under the principal sum itself was deferred from time to time.

7. On 16.2.1990, the Lt. Governor revoked the order dated 4.10.1988 deferring the payment of instalments. As a result the entire sum became payable in one lump sum. However, this order of the Lt. Governor was stayed by the Court. Thus, it became necessary for the DDA to grant conditional and provisional sanction to plans of the building subject to the payment of monies due to the DDA.

8. On 19.3.1990, an interim order was passed by the Delhi High Court by which Skipper was permitted to commence construction without first depositing the dues
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of the DDA. Against this order an appeal was preferred. The Division Bench directed the payment of a token sum of Rs.5 lacs which was offered by the Skipper as a gesture of goodwill within 2 days; a sum of Rs.15 lacs within 15 days and Rs.1.944 crores within one month to the DDA. It was further directed that the quantum of monies and the mode of payment will be decided at the time of final disposal of the writ petition.

9. Even this order was not complied with. Notwithstanding this, the Skipper approached the Court once again for extension of time to make payment and for direction to construct. The Court extended the time by one month on 16.4.1990, affording liberty to the DDA to encash the bank guarantee. The bank guarantee could not be encashed because A was conditional. By then the entire monies had fallen due. Those amounts had not been paid. The DDA filed SLP (C) Nos. 6338-6339 of 1990 against the interim orders dated 19.3.1990 and 16.4.1990 passed by the High Court of Delhi. By an order dated 3.5.1990 the Court stayed further construction and made it conditional upon payment of Rs. 1.944 crores.

10. Suit No. 1875 of 1990 was filed by the Skipper for a direction that the DDA ought not to insist upon payment by cash or draft and ought to be directed to encash bank guarantee. The learned Vacation Judge issued orders directing the DDA to invoke the bank guarantee. However, the suit was ultimately dismissed.

11. On 21.12.1990, a division Bench of the Delhi High Court dismissed CWP.No.2371 of 1989 directing Skipper to pay to the DDA by cash or demand draft a sum of Rs. 8,12,68,789/- within 30 days; to stop construction till payment is made; and in the event of non-payment by the Skipper, DDA would be entitled to enter upon the property and forfeit the monies received by the DDA.

12. On 14.1.1991, detailed reasons for its operative order came to be rendered by the Division Bench of the Delhi High

Court with further direction giving effect to clause 15 of the licence agreement dated 11. 8.1987 that in the event of non-compliance of the payment by the Skipper the property shall stand vested in the DDA, free from all encumbrances, in addition to the forfeiture of the monies.

13. Against the dismissal of CWP No.2371 of 1989 Skipper filed SLP (C) No. 186 of 1991 before this Court.

14. On 29.1.1991, a Division Bench of this Court passed an interim order (in which one of us, P.B. Sawant,J., was party). It inter alia reads as under:

"(1) That the petitioners herein shall deposit a sum of Rs.2.5 crores (Rupees two crores and fifty lacs only) in cash/ bank draft with the Delhi Development Authority within one month from today and the petitioners will further deposit similar amount by cash/bank draft by 8th April 1991.

(ii) That be petitioners shall be permitted to resume the construction of the building in question only after making the first deposit as stated in clause (i) above

(iii) That if be petitions to do posit the amounts as aforesaid the Delhi Development Authority will be free to act in accordance with the impugned order dated 21st December, 1990 of High Court in CWP No.2371 of 1980.

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(iv) That the petitioners shall not induct any person in the building or create any right in favour of any third party.

(v) That the matter be listed for further orders before this Court on 9th April, 1991."

15. On 4.2.1991, in violation of the agreement and in gross contempt of the above order, the Skipper issued advertisement in the leading newspapers seeking to create 3rd party rights.

16. On 25.1.1993, SLP(C) No. 186 of 1991 was dismissed by this Court. By virtue of the above order, the DDA on 10.2.1993 re-entered and took physical possession of the said property, free from all encumbrances; monies paid by the Skipper were forfeited.

17. Notwithstanding all these, Skipper filed yet another suit on the original side of the High Court of Delhi, being Suit No.770 of 1993 for the relief of:

(i) permanent injunction restraining the DDA from interfering with the title and possession of the property;

(ii) for mandatory injunction directing the DDA to recompute the principal amount and interest payable by Skipper;

(iii) for a declaration that the present calculations are wrong;

(iv) for a declaration that re-entry/ re-possession and determination of the rights of Skipper are bad in law and nonset;

(v) for a declaration that all dues have been paid by Skipper to the DDA;

and

(vi) a declaration that clause 15 of the Licence Agreement dated 11. 8.1987 is non-est and in bad in law.

18. On service of notice, DDA filed application, I.A.No.8500 of 1993 in Suit No.770 of 1993, for rejection of the plaint as all the issues raised by Skipper were resjudicata and even otherwise the plaint was barred by law. The said application is pending disposal.

19. On 8.11.93, DDA issued notices for auction of the said property. The 2nd respondent sought to implead itself in

the suit and on 1.12.1993 filed an application for stay of auction which was opposed by the DDA.

20. On 9.10.1993, a learned single Judge of the Delhi High Court allowed the auction to proceed with and restrained the DDA from accepting or confirming the bid at the auction scheduled for 10. 12.1993. Aggrieved by this order DDA filed SLP(C) No. 21000 of 1993 against the interim order of the Delhi High Court. Besides the above proceedings, the Allahabad High Court in a writ petition stayed the notice of auction by the DDA. The City Civil (Munsif) Court at Ghaziabad (UP) passed orders of status qua in respect of a flat in the said building in November 1993. Thus, the auction to be held on 10. 12.1993 was disrupted. Once again the attempt of DDA to auction the flats could not fructify. Since the method of auction as not yielding results DDA decided to invite tenders for the sale of the said property as an alternative method. Accordingly, notice inviting tenders was published in the leading newspapers on 31.1.1994. There was only one tender that too was conditional. Therefore,

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the same was rejected.

21. On 28.9.1994, the DDA once again caused publication of notice inviting tenders. The DDA received three tenders. The highest acceptable tender was of M/s. Banganga Investments Pvt.Ltd. It is under these circumstances, I.A. No. 9 of 1994 was filed to accord permission to confirm the bid for the grant of lease hold rights in favour of M/s Banganga Investments Pvt.Ltd.

23. Mr.Arun Jaitely, learned senior counsel for the petitioner urges that the first respondent (Skipper) has indulged in abuse of process of law more than once. The order of the Division Bench of the Delhi High Court dated 21.12.90 reported in (1991) DLT 636 at page 647 clearly enables the DDA to take over plot along with the buildings thereon free from all encumbrances and forfeit the entire amount paid by the first respondent in the event of the payment, as stated in the order of the High Court dated 21.10.1990 was not forthcoming. SLP(C) No. 186 of 1991 filed against that order was dismissed. To challenge the order of the Division Bench as confirmed by this Court is a gross abuse of the process of court.

24. The sale of space to various flat owners is in violation of law and judicial directions. That can confer no right upon the Hat owners. In view of the categorical direction of the Delhi High Court that the flat shall vest in DDA free of all encumbrances, such a sale is also in violation of the agreement between DDA and Skipper entered into August, 1987. The order of this Court made on 21.9.1992 clearly indicts Skipper for inducting any person in building or creating any right in favour of the third party. The alleged creation of third party right, is also vitiated by fraud for the following reasons:

(i) The judgment of the Delhi High Court (1991) DLT 636 at page 647 notes that the counsel for the Skipper Construction has contended that the interest of 870 buyers of space will suffer.

(ii)The association of flat owners claim to have 1200 members.

(iii)M/s. Skipper Construction in their SLP(C)No. 186 of 1991 stated that there are 815flat owners in the property.

(iv)Delhi High Court directed M/s Skipper Construction to furnish a list of flat owners and on 17.11.93 M/s Skipper Construction claimed that they have 2700 flat owners.

25. It is obvious that bulk of the interests created is

clearly vitiated by fraudulent acts of the alleged flat owners and/or the Skipper. In any case, the DDA has no liability qua the said flat owners who have entered into alleged transactions on their own risk and consequences.

26. A perusal of Application I.A.No.3 of 1994 will clearly show that the agreements filed by Mrs. Anjana Khosla are dated 26.11.1992. That itself will clearly show how the order dated 29.1.1991 has been violated. Having regard to the sanctioned space of 20,000 sq.meters there cannot be 2,700 flat purchasers, as worked out on that basis each purchaser will get 66 sq.ft. approximately.

27. Because of the attempt of the flat owners to disrupt the auction, DDA had
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no other option than to invite tenders. Fortunately, the second tender offered is made by M/s Banganga Investments Pvt.Ltd. for Rs.70 crores and 10 lacs. That is in keeping with the market rate. Hence, it is prayed that the offer may be accepted and Skipper may be debt with for abuse of process of court.

28. The learned counsel for the Skipper made an attempt to justify the filing of the second suit but later gave up that argument. By then Mr. G. Ramaswamy, learned senior counsel came and put forth a plea that as a last chance if Skipper is granted time it will pay off-the entire dues.

29. We passed the operative order on 3.1.95 stating that the reasons will be furnished later.

30. The reasons for the said operative order are furnished below:

From the above narration it is clear that the Skipper has time and again indulged in abuse of process of court. Calculated attempts have been made to circumvent even the orders of this Court.

31. This Court by its order dated 29.1.1991 specifically directed the Skipper in no uncertain terms to make the payment of Rs. 5 crores with a specified time. There was also a further restrain on Skipper from creating any rights in the property. It is most surprising that inspite of this specific order, the Skipper would issue an advertisement on 4.2.1991 to the following effect:

SKIPPER
GROUP OF COMPANIES
[ANNOUNCES]
ISSUE of Commercial Flats for retired/
Retiring Personal/Professionals/Self
employed & other persons in our
BAU MAKAHAN SINGH HOUSE
JHANDEWALAN TOWER,
JHANDEWALAN EXTN.

at highly concessional rates

it is once in a lifetime opportunity to own a commercial property of your own in Bau Makhan Singh House"

A prime project in the middle of high business environment. The location of tower is as rare as the offer itself

[SALIENT FEATURES]

* Ultra modem multi storeyed commercial complex (Shopping cum office complex)

* Ground to 3rd Floor centrally air conditioned with escalators.

* Excellent quality of construction.

* Interest free payment schedule linked with construction.

* Excellent investment returns.).

32. Special Leave Petition (Civil) No. 186 of 1991 as dismissed by this Court on 25.1.1993. Therefore, the matter should have normally rested at this stage. But, yet the

Skipper would file Suit No. 770 of 1993 for various reliefs for which CWP No.2371 of 1989 was preferred before the Delhi High Court which writ petition came to be dismissed on 21.12.1990 by an operative order giving detailed reasons on 14.1.1990

33. Then again, Writ Petition before the Allahabad High Court and one more suit before the City Civil (Munsif) Court at

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Ghaziabad were filed. These were nothing but attempts to set at naught the orders of this Court. No doubt, the writ petition before the Allahabad High Court and the suit before the City Civil (Munsif) Court at Ghaziabad may be third parties, yet the complicity of Skipper cannot be ruled out. The Skipper issued an advertisement to the following effect on 26.5.1992 inviting offers for confirmed booking of commercial flats within a stone throw of Connaught Place in relation to the property conforming with the subject matter in this case:

"SKIPPER GROUP
OFFERS CONFIRMED BOOKING OF
COMMERCIAL
FLATS WITHIN A STONES THROW
OF CONNAUGHT PLACE

Sale of Commercial Flats

BAU MAKHAN SINGH HOUSE, DEWALAN TOWER,
JHANDEWALAN EXTENSION,
At highly concessional rates

This offers is only for confirmed bookings, on first cum first served basis.

TOTAL COST OF FLAT: Rs. 1,00,000

BOOKING AMOUNT: Rs. 50,000/

Balance in easy construction & time linked instalments.

ONLY 50 FLAT AVAILABLE

34. The creation of rights in favour in third parties during the pendency of the proceeding is nothing but an attempt to over-reach or circumvent the orders of this Court.

35. On a perusal of the records, it is also clear that there are several individuals who have entered into the agreement to purchase the premises before and after 29.1.1991. It is most unfortunate that guiltless and innocent purchasers have been brought to this sorry situation by this crafty builder. This could have been avoided, had the D.D.A not handed over the possession of the suit land to Skipper even before receiving the amount in full in accordance with the agreement or at least in accordance with the orders of this Court. Truly, it has obliged the Skipper to further the evil designs of the Skipper.

36. The order dated 4.10.1988 passed by then Ex-Chairman of the D.D.A (the then Lt. Governor of Delhi) runs to the following effect:

"No. F.4 (1) 80/Impl.

From: Director (C.L.)

DELHI DEVELOPMENT

AUTHORITY

New Delhi 4/10/1988

M/s. Skipper Constn. Co. (P) Ltd.

23, Barakhanaba Road,
New Delhi.

Sub: Request for deferment of IInd instalment in respect of Jhandewalan Tower Plot, Block-B, Jhandewalan, N.Delhi.

Sir,

Please refer to your request on the subject noted above. It is to inform you that L.G. has been pleased to consider your request for the deferment of IInd instalment which was due on 15.3.1988 for one month from the date of approval of the building plans subject to payment of interest changes 18% per annum. It may, however, please be noted that the offer will be withdrawn if any delay/non

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co-operation for getting the building plans finalised is noticed from your side.

Yours faithfully,

Sd/

DIRECTOR (C.L.)."

37. It caused dismay to as to how the orders came to be passed by exercise of powers under Section 41 of the Delhi Development Authority Act. Where was the need to defer recovery of the second instalment from Skipper when it was admittedly in default? When the matter has hardly contested before the Court, the D.D.A. adopted a passive attitude and remained a bystander or an on-looker. If only it had taken proper steps at the appropriate time, the money of the unwary purchasers would not have fallen into the trap of the Skipper. Therefore, the conduct of the officials of D.D.A. including its ex-Chairman prima facie appears to be questionable. This can be established only by a probe into the conduct of the affairs of the D.D.A.

38. Turning to the role played by then New Bank of India which has now merged in Punjab National Bank, prima facie it appears to us that they have been 'far too so generous' with public money. The Bank has to establish that it has acted as a prudent banker. The liberality in advancement of loans and bank guarantees creates an impression that 'there is something rotten'. How, bank guarantee came to be furnished for the huge sum of the first instalment of Rs. 1,944 crores is enigmatic. Again, in September, 1989 how a fresh bank guarantee was advanced is equally enigmatic. Since, we have directed an enquiry into this, all that we are constrained to observe is that caution and care in advancement of loans-bank guarantee to Skipper Construction appear to have been thrown to winds.

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