

ITEM NO.44

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. NOS.4-5 OF 2011 IN
Petition(s) for Special Leave to Appeal (Civil) No(s).13146/2011

(From the judgement and order dated 30/07/2010 in WPC No.10647/2009
of The HIGH COURT OF DELHI AT N. DELHI)

GOVT.OF NCT OF DELHI & ANR.

Petitioner(s)

VERSUS

DELHI DEVT.AUTH.& ORS.

Respondent(s)

(With appln(s) for directions, permission to place addl. documents
on record, exemption from filing c/c of the impugned order and office
report)

Date: 28/11/2011 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Petitioner(s) Mr. Parag P. Tripathi, A.S.G.
Mr. A. Bhandari, Adv.
Mr. Sumit Pushkarna, Adv.
Ms. Mini Pushkarna, Adv.
Mr. Jitendra Kumar, Adv.
Mr. Alok Gupta, AOR

For Respondent(s) Mr. Harish N. Salve, Sr. Adv.
Mr. Mukul Rohatgi, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agarwal, Adv.
Mr. E.C. Agrawala, AOR
Mr. Akshay Ringe, Adv.

Mr. D.N. Goburdhan, AOR
Ms. Kartika Sharma, Adv.

Mr. P.P. Malhotra, A.S.G. (NP)
Mr. T.A. Khan, Adv.

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Mr. Gaurav Sharma, Adv.
Ms. Sushma Suri, AOR

Mr. Nikhil Goel, AOR

UPON hearing counsel the Court made the following
O R D E R

In I.A. No.4 of 2011, a prayer has been made on
behalf of the respondent No.2, to direct the respondent No.1
not to demand the renewal or furnishing of the performance
bank guarantees, until the disposal of the special leave
petition and to direct the respondent No.1 to withdraw the
letters written on its behalf on 10.10.2011 to the applicant

and Union Bank of India for renewal of the performance bank guarantees aggregating Rs.50 crores.

The special leave petition has been filed against the order dated 30th July, 2010, passed by the Delhi High Court in Writ Petition (C) No.10647 of 2009, in which the High Court observed as under:

"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 along 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

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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 citizen's 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 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."

The grievance of the writ petitioner was that on the basis of a scheme started on the initiative of the Delhi Development Authority, known as Public Private Partnership Project, it had been given a certain area of land for development. Unfortunately, since 2006, it has not been able to develop the said land on account of disputes between the different government Departments, which have refused to grant permission for construction on the allotted land, upon asserting that the land in question was "forest land" on which construction was not permitted. On account of such controversy, the respondent No.2-applicant has not yet been able to undertake any construction. On the other hand, its money which had been paid to the Delhi Development Authority, amounting to Rs.450 crores, has been lying with the said Authority and the performance guarantees given in the form of Bank Guarantees of Rs.50 crores, has remained un-utilized. In the meantime, during the pendency of this

matter, the aforesaid letters have been written to the
respondent No.2, asking that the Bank Guarantees be renewed/
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revalidated.

Having heard learned counsel for the parties on I.A.
No.4 of 2011, we feel that the main matter itself needs to
be heard and disposed of. Accordingly, let I.A. No.5 of
2011 and the special leave petition, be listed for final
disposal on 4th January, 2012, after the fresh matters.

In the meantime, I.A. No.4 of 2011, is disposed of
with a direction upon the Delhi Development Authority not
to insist upon the Bank Guarantees being renewed by the
respondent No.2.

(Chetan Kumar)
Court Master

(Juginder Kaur)
Assistant Registrar