ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3853 of 2017
Shiraz Khalid
Versus
Capital Development Authority through its Chairman and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	13.11.2017	Hafiz Ali Asghar, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Shiraz Khalid, seeks a direction to the respondents to deliver possession of any of plots No.402 to 407 in Sector F-11/2, Islamabad, to the petitioner in lieu of plot No.227-G, Street 75, Sector F-11/1, Islamabad ("case plot").

2. Learned counsel for the petitioner submitted that in the year 2014, the petitioner participated in an auction of plots organized by the respondents; that the petitioner purchased a copy of the brochure for the said auction on payment of Rs.2,500/-; that the petitioner also paid an amount of Rs.1,000,000/- to the respondents for participation in the auction; that in the auction, the petitioner was declared as a successful bidder for the case plot; that vide letter dated 30.05.2014, the petitioner's bid for the case plot was provisionally accepted by the respondents; that the petitioner paid an amount of Rs.1,16,00,000/- through a pay orders in the respondents' favour; that as per the representations made by the respondents, in the brochure for the auction, the plots were to have complete infrastructure facilities, including water, gas, electricity, road and sewerage, etc.; that it was on the basis of the said representations that the petitioner participated in the auction and parted with his

hard earned money; that after the auction, the petitioner discovered that there was no plot in Street No.75 that could have been handed over to the petitioner; that on the site, there was a cricket ground bounded by an iron fence; that in the year 2008, the respondents had created two plots in violation of the original layout plan; that the respondents are bound to transfer any one of plots No.402 to 407 in Sector F-11/2, Islamabad to the petitioner in lieu of the case plot; and that as regards the case plot, no infrastructure facilities have been provided, and therefore, the brochure issued by the respondents contained a false representation. Learned counsel for the petitioner prayed for the writ petition to be allowed with the direction to the respondents to allot any one of the plots No.402 to 407 in Sector F-11/2, Islamabad to the petitioner.

3. I have heard the contentions of the learned counsel for the petitioner, and perused the record with his able assistance.

4. Letter dated 30.05.2014 issued by the Estate Management Directorate of C.D.A. shows that the petitioner's bid of Rs.42,000,000/- (rupees forty two million) for the case plot was provisionally accepted by the C.D.A. The petitioner had already paid an amount of Rs.10,00,000/- (rupees one million) as token money for participation in the auction. Vide the said letter dated 30.05.2014, the petitioner was called upon to deposit Rs.16,000,000/- (rupees sixteen million) within a period of 72 hours. In the said letter, it was explicitly mentioned that "on expiry of this period, the offer will stand cancelled". The remaining Rs.29,400,000 was to be paid in two installments within a period of three months and six months,

respectively, from the date of the acceptance of the bid. Paragraph 6 of the said letter dated 30.05.2014, is reproduced herein below:-

> *"6. If any of the installments of premium is not paid on time given above, the bid shall be cancelled with immediate effect, without any notice. 10% of the premium of the plot, shall be forfeited in favour of the Authority. The Authority will be at liberty to use/sell/dispose of this property as it deems appropriate."*

5. The receipt annexed at page 33 of this petition shows that a total amount of Rs.1,000,000/- had been paid by petitioner to the respondents by 28.05.2014. The petitioner was required to pay Rs.11,600,000/- as the balance amount of the 30% installment within 72 hours. The petitioner did not pay Rs.11,600,000/- within 72 hours. Copies of the pay orders annexed at pages 34, 36 of the petition show that they were made beyond the prescribed period of 72 hours.

6. Copies of the five pay orders show that they were made between 02.06.2014 to 16.06.2014. Pay order No.02225538 for an amount of Rs.2,400,000/- in favour of C.D.A. was issued on 02.06.2014; cashier's cheque No.7894052, dated 03.06.2014 for an amount of Rs.2,000,000/- was issued on 03.06.2014; pay order No.02225551 for an amount of Rs.9,00,000/- was issued on 03.06.2014; cheque No.00998522 for an amount of Rs.5,00,000/- was issued on 03.06.2014; pay order No.0008539 for an amount of Rs.56,00,000/- was issued on 16.06.2014, and banker's cheque No.207641 for an amount of Rs.2,00,000/- was issued on 16.06.2014. All these instruments were issued in favour of C.D.A. Learned counsel for the petitioner candidly conceded that none of these pay orders/cheques were encashed by the respondents.

7. The terms of the brochure as well as the provisional letter of acceptance required the petitioner to deposit Rs.11,600,000/- within 72 hours of the issuance of the letter dated 30.05.2014. Even if it is assumed that the payment through the pay orders/cheques dated 02.06.2014 and 03.06.2014 were within 72 hours, it is an admitted position that Rs.58,00,000/- was not paid within the said period. Therefore, in terms of the said letter dated 30.05.2014, the offer stood cancelled. Furthermore, in the terms and conditions of the brochure, it has also explicitly been provided that on the expiry of the said 72 hours, the petitioner's bid would stand automatically cancelled. Since the entire amount of Rs.16,000,000/- was not deposited by the petitioner within 72 hours of the letter dated 30.05.2014, the petitioner's bid stood cancelled. Therefore, the respondents were relieved of all obligations to the petitioner. The respondents are certainly not under any obligation to provide an alternative plot to the petitioner.

8. The brochure published by the C.D.A. with respect to the auction explicitly provides that a bidder shall be bound to satisfy himself about the location, ground position and surroundings of the plots and any claim at any subsequent stage shall not be entertained as the plots are auctioned on 'as is where is basis'. Now, it is not denied that the petitioner is a prudent commercial person of business, and as such the petitioner was bound to satisfy himself as to the ground position on the site of the case plot before bidding for the same. The petitioner cannot expect the C.D.A. to keep the plot reserved for it until it takes the

petitioner's fancy to make the balance payment for the case plot.

9. It was an explicit term of the auction that in the event, the highest bidder, whose bid is accepted, does not make the balance payment within the period stipulated, is liable to have his bid cancelled and the token money forfeited. Since the petitioner admittedly did not make any payment of Rs.16,000,000/- within a period of 72 hours from the date of the respondents' letter dated 30.05.2014, there was no legal impediment before the C.D.A. in canceling the petitioner's bid and forfeiting the token money in accordance with the terms of the auction contained in the brochure issued by the C.D.A. as well as C.D.A.'s letter dated 30.05.2014. It may also be mentioned that the instant writ petition is hit by severe laches.

10. In view of the above, I do not find any merit in this petition, which is accordingly dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

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