

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6454 of 2016

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Umesh Kumar Singh, S/o Late Ram Prasad Singh, Resident of Mohalla Company Sarai, near Nagarpalika Sasaram, PO+PS- Sasaram, District-Rohtas at Sasaram.

.... Petitioner/s

Versus

1. Sasaram Nagar Parishad through the Municipal Executive Officer, Sasaram Nagar Parishad, Sasaram.
2. The Chief Councilir, Sasaram Nagar Parishad, Sasaram.
3. The Municipal Executive Officer, Sasaram Nagar Parishad, Sasaram.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Advocate

For the Respondent/s : Mr. Vijay Shankar Upadhyay

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

4 26-04-2016 Heard Mr. S.B.K. Manglam, learned counsel appearing for the petitioner, counsel for the State and Mr. Vijay Shankar Upadhyay, learned counsel appearing for the Nagar Parishad, Sasaram.

The petitioner is aggrieved by the order bearing Memo No. 1068 dated 29.3.2016 whereby the Executive Officer, Nagar Parishad has ordered for the cancellation of the Sairat *bandobasti* for the period 2016-17 in respect of settlement of Bus Stand.

Facts of the case briefly stated is that a notice was issued by the Nagar Parishad seeking short term settlement from the intending applicants in respect of a number of Sairats detailed in the notice, a copy of which is present at Annexure-1 including the



settlement of the Bus Stand in question which appears at sl. no. 7 of the settlement notice. The minimum reserve jama for the settlement was fixed at Rs. 29,57,900/- and the security deposit was fixed at 10 per cent thereof at Rs. 2,95,790/-. The petitioner was an applicant for the said Bus Stand. An auction took place on 29.3.2016 and the petitioner turned out to be the highest bidder at Rs. 29,70,000/-. According to the terms and conditions of the settlement the petitioner had to deposit 50 per cent of the bid amount immediately on finalization of the auction and the remaining 50 per cent is to be deposited within two days thereafter. The petitioner complied therewith and deposited Rs. 23,00,000/- on 29.3.2016, evidence whereof is placed at Annexure-2 series. The amount deposited was much above the required 50 per cent of the bid amount. Even when the auction had been taken to its logical conclusion and the bid settled with the petitioner who has also complied with the necessities stipulated in the short term notice yet the Executive Officer has proceeded to cancel the settlement *inter alia* on grounds that the collection for the previous year i.e. 2015-16 was Rs. 34,00,000/- and hence the bid offered by the petitioner would cause loss to the Nagar Parishad. The petitioner being aggrieved is before this Court.



I have heard learned counsel for the parties and I have perused the records. It is rather surprising that even when in the opinion of the Executive Officer the collection for the previous year was at Rs. 34,00,000/- from the Bus Stand yet the Nagar Parishad has consciously fixed a reserve jama at Rs. 29,57,900/-. It is not a case where the petitioner has not met the reserve jama rather admittedly the offer is much above the reserve jama. It is again not a situation where the auction was cancelled at the bid stage itself rather it is after the finalization of the bid and after deposit has been made by the petitioner that a decision has been taken by the Executive Officer, Nagar Parishad, Sasaram to cancel the settlement itself. In my opinion, if the Executive Officer, Nagar Parishad, Sasaram wanted to secure the collection of the previous year then he should have fixed the reserve jama at Rs. 34,00,000/- but not having done so and having consciously fixed the reserve jama at Rs. 29,57,900/- that the petitioner has admittedly bid much above the reserve jama, it is an arbitrary decision on the part of the Executive Officer to cancel the settlement.

Law is well settled and an auction bid taken to its logical conclusion cannot be nullified for reasons which were well within the knowledge of the authorities on the date when the

auction was held and not having acted thereupon rather having consciously fixed a reserve jama which was much below the previous year's collection, such afterthought is an abuse of executive power. That the auction bid has reached its conclusion upon the finalization of the bid, it does not lie within the jurisdiction of the Executive Officer to cancel the settlement after it has attained finality.

For the reasons aforementioned, the order bearing Memo No. 1068 dated 29.3.2016 passed by the Executive Officer, Nagar Parishad, Sasaram in proceeding to cancel the settlement cannot be upheld and is accordingly set aside. That the petitioner has already deposited Rs. 23,00,000/- as against his bid of Rs. 29,70,000/- he shall proceed to deposit the balance amount within two days from today and whereupon the necessary orders for settlement and agreement be executed within one week thereafter by the Executive Officer, Nagar Parishad, Sasaram accordingly.

The writ petition is allowed.

(Jyoti Saran, J)

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