

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 302 of 2013

- Vikash Kumar Jaiswal S/o Rajendra Prasad Jaiswal, Aged About 30 Years, R/o Village Premnagar, Manpur Road, Surajpur P.O., P.S., Tahsil & Distt. Surajpur, C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh, through Secretary, Urban Administration and Development Department, Mahanadi Bhawan, Mantralaya New Raipur, District Raipur, C.G.
2. Director, Urban Administration & Development Directorate, Raipur C.G.
3. Chief Municipal Officer, Nagar Palika Parishad, Surajpur, Distt. Surajpur, C.G.

---- Respondents

For Petitioner	Shri Sanjay Patel, Advocate
For Respondent-State	Shri S. Majid Ali, PL
For Respondent No.3	None

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

06/01/2017

1. Petitioner would call in question the impugned order (Annexure-P-5) and the order (Annexure-P-6), whereby auction of Shop No.16 of Municipal Council, Surajpur in favour of the petitioner for a sum of Rs.2,60,000/- has been cancelled and the State Government has directed the concerned Municipality to re-auction the shop.

2. Indisputably, the Municipal Council, Surajpur issued auction notice on 22.02.2012 for allotment of 33 shops by auction to be held on 13.03.2012. The petitioner deposited the earnest money and participated in the auction for Shop No.15 and 16. For Shop No.15, his bid amount of Rs.6,30,000/- has been accepted and finalized by the State Government, whereas for Shop No.16, the bid amount of Rs.2,60,000/- has been turned down by the State Government and the concerned Municipality has been directed to re-auction the shop.
3. Assailing the orders, Shri Sanjay Patel, learned counsel for the petitioner, would submit that the petitioner has not been served with any show cause notice or afforded opportunity of hearing before issuance of the impugned orders, therefore, they are patently illegal being in violation of the principles of natural justice.
4. Learned State counsel would support the impugned order on submission that for Shop No.15, the petitioner's bid for Rs.6,30,000/- has been accepted and for the adjoining Shop No.16, his bid was almost less than half of the bid for the adjoining Shop No.15, therefore, there being no competition amongst the bidders for Shop No.16, the concerned Municipality has suffered financial loss and, therefore, it was necessary for the State Government to refuse approval which cannot be termed as arbitrary being in the interest of revenue.

5. The Municipal Council, Surajpur has not filed any record of the auction proceedings to demonstrate that there was lack of competition when the auction for Shop No.16 took place. Moreover, the order passed by the State Government nowhere mentioned that Shop No.16 requires to be re-auctioned for lack of competition or for fetching less revenue than expected. It is settled law that the order passed by any administrative authority has to be adjudged on the basis of reasons assigned in the order itself and not by supplying reasons in the counter affidavit or explanation offered subsequently before this Court. (See : **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**, AIR 1978 SC 851)
6. Similarly, the order impugned has been passed in violation of principles of natural justice, inasmuch as the petitioner has not been afforded opportunity of hearing before cancellation of the auction and directing re-auction. It is in patent violation of the principles of natural justice as enshrined under Article 14 of the Constitution of India.
7. Even otherwise, bare examination of the order passed by the State Government would indicate that Shop No.15 was Unreserved, therefore, the competition for the said shop might have been more than the adjoining Shop No.16, which was reserved for Other Backward Class. There is another Shop No.31 reserved for Other Backward Class which has been

auctioned for Rs.2,51,000/-. Some more shops reserved either for SC or ST Category have fetched the amount approximately Rs.2,50,000/- to Rs.2,60,000/-. Thus, there is definite trend in the entire bidding process, wherein the shops reserved for SC, ST and OBC Category have fetched amount up to Rs.2,50,000/- to Rs.2,60,000/-, whereas the Unreserved shops have fetched an amount up to Rs.6 lacs and more.

8. If the argument raised by the learned State counsel to the effect that the adjoining Shop No.15 has been purchased by the petitioner himself for Rs.6,30,000/- is compared with the location of the shop then the order itself would indicate that Shop No.29 reserved for ST Category has fetched Rs.2,51,000/-, whereas adjoining Shop No.30, which is Unreserved, has fetched Rs.6,61,000/-, therefore, applying the same yardstick, the State Government should not have accorded approval to Shop No.29 in favour of Sant Singh. Thus, examining the issue from either angle, the impugned order appears to be arbitrary being based on without application of mind as also in violation of the principles of natural justice, therefore, it deserves to be and is hereby set aside.

9. The writ petition stands allowed.

Sd/-
JUDGE
PRASHANT KUMAR MISHRA