**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-7084-2017 (O&M)
Date of decision:- 27.11.2017

Bhavika Verma

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP-8137-2017 (O&M)

Vibhuti Sharma

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP-15012-2017 (O&M)

Santosh Goyal

...Petitioner

Versus

State of Haryana and others

...Respondents

CWP-15024-2017 (O&M)

Alka Rani

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE**
**HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. Ashish Gupta, Advocate,
for the petitioner in CWP-7084-2017.

Mr. Sumit Gupta, Advocate,
for the petitioner in CWP-8137-2017.

Mr. Munish Kumar Garg, Advocate,
for the petitioners in CWPs-15012 & 15024-2017.

Mr. Ayuwan Singh, AAG, Haryana,
for respondent No. 1.

Mr. Deepak Balyan, Advocate,
for respondents No. 2 and 3 in CWPs-7084 & 8137-2017,
for respondents No. 2 to 4 in CWPs-15012 & 15024-2017.

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**S.J. VAZIFDAR, C.J. (ORAL)**

CM-16112-2017 in CWP-15012-2017
CM-16087-2017 in CWP-15024-2017

Leave is granted to place on record the replications alongwith allotment letter dated 14.07.2017 (Annexure P-11) filed on behalf of the petitioners and the applications are allowed.

CWP-7084-2017 and other connected matters

The petitioners have challenged the respondents' refusal to accept their bids at e-auctions despite their bids being the highest.

2. The facts in CWP-7084-2017 and CWP-8137-2017 are similar. The facts in CWP-15012-2017 and CWP-15024-2017 are similar. There is only a marginal difference in the facts of the two sets of petitions which we will refer to.

3. The notices inviting e-tenders and the terms and conditions thereof are identical in all the cases.

In CWP-8137-2017, the e-auction was held on 05.02.2017 in respect of certain plots of land. The petitioner was the sole bidder who submitted a bid of ₹ 28,22,500/- which was more than the reserve price. The respondents did not accept the bid and decided to re-auction the plots which they did. The re-auction was held on 09.04.2017 at which a price of ₹ 45,82,500/- was realized. Thus, within a period of about two months, the respondents obtained almost double the price for the plot.

In CWP-15012-2017, the e-auction of a plot was held on 02.02.2017. The petitioner in this case was also the sole bidder who bid an amount of ₹ 38,76,500/- which was only ₹ 10,000/- more than the reserve price. The respondents had not accepted his bid either and have decided to invite fresh bids.

4. The petitioners contend that contracts had come into existence between themselves and the respondents. They further contend that the respondents in any event ought to have accepted their bids as they were above the reserve price.

5. We have rejected both the submissions. The bids were not accepted. The mere payment of the EMD did not bring into existence a contract between the parties. We have also held that the decision whether or not to accept the bid must be left to the party inviting tenders. The petitioners were the sole bidders. The decision not to accept the bids was reasonable and in fact in two cases has been established to have been financially correct as within two months a substantially higher bid was received.

6. The respondents published a brochure containing the detailed terms and conditions for auction of residential plots on as is where is basis in Gurugram through e-auction. The petitioners relied upon the following clauses in support of their contention that upon the payment of 10% of the amount a contract was formed between the parties. The relevant terms are conditions are as under:-

> "*A. Eligibility for Participation:*
>
> *5. The Competent Authority of HUDA shall reserve to itself the right to accept any bid or reject any bid or withdraw any or all the sites from auction or cancel/postpone the e-auction, without assigning any reason thereof.*
>
> *6. No bid below the reserve price will be accepted.*
>
> *10. The e-Auction will start at 9.00 AM on 09.04.2017 at the portal*

*https://haryanaeprocurement.gov.in. However, in case any bid in respect of any site is received 10 minutes prior to time fixed for closure of the bids i.e. 2.00 PM or further extended time interval, then the time for closure of the complete auction programme would be extended automatically by 10 minutes in addition to Auction Ends Time reflecting on https://haryanaeprocurement.gov.in, so that equal opportunity is made available to the persons participating in the bidding process. Such extensions of ten minutes will continue till bids are received within next 10 minutes of last bid for any of the site, otherwise the complete auction event will get concluded.*

*D. Payment Terms:*

*14. The successful/highest bidder shall be required to remit an amount equivalent to 8% of his quoted bid amount by 5.00 PM of the day succeeding to final bid closing day by way of online payment via RTGS/NEFT by generation of "BID SECURITY CHALLAN" on portal of https://huda.haryanaeprocurement.gov.in. This link is shown only to Highest Bidder. In case the successful/highest bidder fails to deposit the said amount as specified above, his bid shall stand rejected and the EMD deposited by him for participation in the e-auction shall stand forfeited in favour of HUDA".*

*15. In addition to the above said payment of 10% of the quoted bid amount, the successful/highest bidder shall be required to furnish the below mentioned documents:*

*a) Self-certified copy of PAN card and passport sized photo of applicant/authorized signatory.*

*b) In the case of bid on behalf of a firm or company or an association* *etc., the bidder shall furnish the certified copies of Board Resolution/Authorization in favour of the person making the bid along with the certified copy of Memorandum of Association/Articles of Association of Company, partnership Deed, HUF etc as the case may be and that the bidder has the authority to bid and enter into an agreement on its behalf.*

*c) The above said documents would be required to be sent by the successful bidder(s) to the concerned Estate Office, HUDA within a period of 7 days of close of e-auction and the Regular Letter of Allotment in favour of the bidders would be issued only after the concerned Estate Office HUDA receives the said documents along with original challan & bank payment receipt to its satisfaction.*

*16. After acceptance of the bid, the successful bidder will further be required to deposit another 15% of the bid amount within a period of 45 days of the date of auction. In case of failure to deposit the said amount within the above specified period, the allotment shall be cancelled and the 10% amount deposited towards bid money shall stand forfeited to the Authority against which successful bidder shall have no claim for damages.*

*17. Thereafter, remaining 75% amount of the bid amount shall be paid within a period of 120 days from the date of auction without interest failing which this allotment shall stand cancelled without any notice and money deposited by successful bidder (equal to 25% of bid amount) shall stand forfeited and successful bidder shall have no claim for the damages.*

*Note: No separate notice will be sent for payment of the aforesaid payments.*

*18. All the payments shall be made either through online mode on HUDA* *website or off line mode through authorized Banks by generating challan from PPM system on the HUDA website.*

*E. Possession*

*19. The possession of the site/plot shall be offered only after full bid amount has been paid to HUDA by successful bidder. In case possession of the plot is not offered within a period of 30 days after deposit of full bid amount, HUDA will pay interest @ 5.5% per annum (or as may be fixed by Authority from time to time) on the amount deposited by successful bidder till the date of offer of Possession. However such interest shall be payable for the period calculated after expiry of 30 days as aforesaid and till the date of offer of possession.*

*29. The site shall continue to belong to HUDA until the entire bid money together with interest and other amount due to HUDA on account of sale of site is paid and deed of conveyance in favour of successful bidder is executed. The successful bidder shall have no right to transfer the site or create any right/title/interest thereon without prior written permission of the concerned Estate Officer, HUDA even after execution of Deed of Conveyance. Successful bidder may however mortgage or create any right/interest on the site only to secure the loan amount against the plot towards payment of price including dues etc. of the plot but prior written permission of the concerned Estate Officer, HUDA shall be required.*

*30. On payment of 100% of the bid amount and interest, if any, etc. the successful bidder shall get the deed of conveyance executed in his favour in the prescribed form and in such manner as may be directed by the concerned Estate Officer, HUDA. The*

> *deed of conveyance shall be executed within one year of making payment of full price of the plot/building. However, in case of failure to so execute the conveyance deed in one year period specified herein, the conveyance deed shall be executable on the stamp duty on value of site calculated at the collector rates prevailing in the year of its execution or auction price whichever is higher. The charges for the registration and stamp duty will be paid by the successful bidder.*
>
> *31. The successful bidder shall have to pay all general and local taxes, rates or cess imposed or assessed on the said site by the competent authority."*
>
> *(emphasis supplied)*

7. In all these cases, the petitioners had paid the initial amount. Thereafter, they paid an additional 8 per cent of the quoted bid. It was contended on behalf of the petitioners that upon their bids having been found to be the highest and upon the respondents accepting the payment of 8 per cent of the quoted bid, their bids are deemed to have been accepted leading to the formation of a contract between the parties for the sale of the plots by the respondents to the petitioners for the consideration represented by the said bid and to be paid in accordance with the said terms and conditions.

8. The submission is not well founded. The mere fact that the petitioners had submitted the highest bid and had thereafter paid an amount of 8 per cent of the quoted bid amount as per clause D(14) did not bring into existence an agreement of sale between the parties. The amount of 8 per cent deposited only constituted the bid security. This was to tie-down the bid submitted by the highest bidder. The highest

bidder was not entitled thereafter to withdraw his offer except on the terms and conditions stipulated in the auction notice. That an agreement cannot be said to have been entered into merely on account of the highest bidder paying the additional 8 per cent of his quoted bid amount as per clause D(14) is evidenced by the various terms and conditions themselves.

9. Firstly, clause A-5 entitles the respondents to accept any bid or to reject any bid. This itself indicates that a contract could come into existence only upon the acceptance of the bid by the respondents. Till the acceptance of the bid, the respondents were entitled to reject the same. Thus, the mere fact that the bid is higher than the reserve price would make no difference.

10. This view is supported by clauses 15 and 16. Clause 15 requires the highest bidder to furnish the documents stipulated therein. This requirement was in addition to the payment of 10 per cent of the quoted bid amount. Thus, the mere payment of the 10 per cent of the quoted bid amount does not bring into existence a contract between the parties. The doubt, if any, is set at rest by the first sentence of clause 16: "After acceptance of the bid, the successful bidder will further be required to deposit another 15% of the bid amount within a period of 45 days of the date of auction". The opening words of this sentence: "After acceptance of the bid" clearly indicate that the bid by itself does not bring into existence a contract. A contract comes into existence only after the acceptance of the bid.

11. The reliance upon clause 10 does not support the petitioners' contention to the contrary. Clause 10 merely stipulates the manner in which the bids may be made and accepted. It provides for the period within which each

successive bid is to be made. The concluding words of this clause: "……otherwise the complete auction event will get concluded" does not carry the petitioners' case further. It only refers to the completion of the auction. It has no reference to the formation of a contract pursuant to the auction.

12. The reliance upon clause D(14) itself is also not well founded. As we noted earlier, the payment of 8 per cent of the quoted amount is only towards the bid security. It does not constitute a part payment of the amount pursuant to a concluded agreement between the parties. This is clear from the second sentence of clause D(14) which states that in case the successful/highest bidder fails to deposit the said amount of 8 per cent, his bid shall stand rejected and the EMD deposited by him for participation in the e-auction shall stand forfeited in favour of HUDA. The reference is to the bid amount which does not by itself refer to an amount paid pursuant to a contract. The Earnest Money Deposit (EMD) is not towards a contract, but only for the purpose of participation in the e-auction.

13. On behalf of the petitioners, reliance was also placed on clauses E (19) and I (29 to 31). The reliance upon these clauses is not well founded either. These clauses posit a concluded agreement. They, therefore, come into operation only once the bid is accepted and a contract is entered into between the parties. Clauses 29 and 30 only protect the HUDA's rights in the event of there being any default in the payment of the price. Whereas, clause 29 stipulates the consequences of failure to pay the consideration, clause 30 stipulates the rights of the bidder upon the payment of the entire amount. This, however, would only be upon the parties entering into the

contract which, at the cost of repetition, can only be after the acceptance of the bid(s).

14. In all these cases, the petitioners were the sole bidders. They paid the amounts aggregating to 10 per cent of the bid amount. The respondents, however, never accepted the bids either in writing or orally or by contract. The contention, therefore, that a concluded agreement had been entered into between the parties is rejected.

15. It was then submitted that the respondents ought to have accepted the bids as they were above the reserve price. The respondents are not bound to accept a price bid merely because it is equal to or even higher than the reserve price. It is for the respondents to decide whether or not to accept the highest bid. These are financial decisions. The respondents are the best judges of the financial considerations in such cases.

16. There is nothing to indicate any mala fides on the part of the respondents. The record establishes that the respondents have taken a rational decision after considering all the facts and circumstances of the case. For instance, in each of the cases before us, the petitioners were the sole bidders. That is certainly a relevant consideration while deciding whether or not to accept the highest bid. Secondly, the bid in each of these cases was only marginally more than the reserve price. This is also a relevant consideration while deciding whether or not to accept the bid. The respondents' assessment at least in one case, namely, in CWP-8137-2017 was accurate. As we noted earlier, whereas the petitioner submitted a bid of about ₹ 28 lacs, within two months upon the plot being re-auctioned, the respondents realized a price of about ₹ 46 lacs. Even if the realization is not higher, the decision

cannot be said to be bad only for that reason. A wrong decision on facts is not necessarily an incorrect decision in law.

17. In CWP-15012-2017 and 15024-2017, the respondents also undertook an elaborate exercise before deciding not to accept the bids in respect of the plots in question. The respondents constituted a Committee for considering the bids in respect of these and various other plots. Where the respondents were satisfied with the bids submitted they accepted the same. In the case of the plots which are the subject matter of CWP-15012-2017 and CWP-15024-2017, the bids were only ₹ 10,000/- more than the reserve price. They, therefore, decided not to accept the bids. As we mentioned earlier, even in these cases, the petitioners were the sole bidders. The decision was arrived at after considering all the relevant facts and circumstances of the case.

18. In the circumstances, the petitions are dismissed.

**(S.J. VAZIFDAR)**
**CHIEF JUSTICE**

**(HARINDER SINGH SIDHU)**
**JUDGE**

**27.11.2017**
**Amodh**

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|---|---|
| Whether speaking/reasoned | √Yes/No |
| Whether reportable | √Yes/No |