IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.250

CWP No.29916 of 2019 (O&M)
Date of decision : 29.11.2019

Sanjay Garg and another ..... Petitioners

VERSUS

State of Haryana and another ..... Respondents

CWP No.31126 of 2019 (O&M)

Virbhan and others ..... Petitioners

VERSUS

State of Haryana and others ..... Respondents

CWP No.30105 of 2019 (O&M)

Vijay Kumar and others ..... Petitioners

VERSUS

State of Haryana and another ..... Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Pankaj Bali, Advocate, for the petitioners.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana
in CWP Nos.29916 and 30105 of 2019 and

Mr. Ankur Mittal, Addl. AG, Haryana in
CWP No.31126 of 2019.

Mr. Rajesh K. Sheoran, Advocate for HSIIDC in
CWP No.31126 of 2019 and

Mr. Ankur Mittal, Advocate for HSIIDC in
CWP Nos.29916 and 30105 of 2019.

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SUDHIR MITTAL, J.

This judgment shall dispose of aforementioned writ petitions as common questions of facts and law are involved therein. The facts are being extracted from CWP No.29916 of 2019 titled as Sanjay Garg and another Vs. State of Haryana and others.

Respondent No.2-Haryana State Industrial & Infrastructure Development Corporation (for short 'HSIIDC') issued an advertisement dated 8.3.2019, inviting applications from the general public for auction of plots in a number of Industrial Estates in the State of Haryana. Industrial Estate, Kundli, was also part of the advertisement. The petitioners applied for plots in the said industrial estate and the last date for receipt of application was 22.3.2019. The last date was extended to 31.7.2019, vide a subsequent advertisement. E-auction was conducted on 25.8.2019 and 26.8.2019. The petitioners' bid for 1000 sq. mtr. plots for which the reserve price for Rs.23,905/- per sq. mtr. They made the highest bid of Rs.34,905/- per sq. mtr. and Rs. 35,105/- per sq. mts., respectively. The bid was not accepted and HSIIDC issued a letter dated 26.9.2019, informing the petitioners about the rejection of their bids. In the said letter, it was mentioned that highest bids of all sizes of industrial plots in Industrial Estate, Kundli, had been rejected and that the same would be offered for allotment through a fresh advertisement.

Learned senior counsel for the petitioners has submitted that plots in as many as 23 Industrial Estates were the subject matter of advertisement dated 8.3.2019. Auctions held in all the other industrial estates have been confirmed, but the applicants of plots in Industrial Estate, Kundli, have been discriminated against. The HSIIDC being an instrumentality of State, could not have singled out the applicants of Industrial Estate, Kundli, for a different treatment. Apart from that, it is submitted that the bids submitted by the petitioners were almost Rs.11,000/- per sq. mtr. higher than the reserve price and the rejection of the bids appears to be mala fide. He thus, prays that the rejection of the highest bids of the petitioners be quashed and HSIIDC be directed to issue letters of allotments to the petitioners as has been done in the case of applicants of other industrial estates. He also places reliance upon a Division Bench judgment dated 13.2.2019, passed in CWP No.31711 of 2018 titled as Ashish Jain Vs. HSIIDC and another.

A short written statement has been filed on behalf of the HSIIDC and based thereupon, learned counsel for respondent No.2 submits that although, a single advertisement was issued in respect of plots in various industrial estates, a separate auction was conducted in respect of each industrial estate and hence, it is factually incorrect to submit that all auctions took place on the same day and that the applicants of Industrial Estate, Kundli, have been discriminated against. A table has been given in Para No.3(ii) of the short written statement indicating the dates on which auctions were held in the different industrial estates. It is further stated that the auction of Industrial Estate, Kundli, was not confirmed because the prices fetched in the E-auction were much lower than those fetched in a manual auction conducted earlier. A chart has been annexed as Annexure R-3 with the short written statement showing the difference between the present bids and the bids received in the manual auction, according to which, the difference in the bids ranges from approximately Rs.770/- per sq. mtr. to Rs.5,500/- per sq. mtr. If the bids had been accepted, the HSIIDC would have suffered a substantial loss and thus, in larger public interest, it was decided to reject the bids received in Industrial Estate, Kundli. It is further argued that mere submission of the highest bid does not clothe a person with any right and the bid may be cancelled or rejected for any reason whatsoever. Reliance is placed upon Haryana Urban Development Authority and others Vs. Orchid Infrastructure Developers P. Ltd., 2017 (4) SCC, 243.

The admitted facts are that the E-auction was held on 25.8.2019 and 26.8.2019 and that the petitioners were the highest bidders. Thereafter, vide communication dated 26.9.2019, the petitioners were informed that their bids had been rejected and that the plots would be put to auction at a later date. The averment on behalf HSIIDC that the manual auction held earlier had fetched higher prices has not been controverted by the petitioners. Under the circumstances, can it be said that the action of HSIIDC in rejecting the highest bids of the petitioners was illegal being arbitrary and mala fide ?

According to us, the answer is in the negative. It is beyond cavil that the highest bidder does not get clothed with a right to issuance of an allotment. This is because a bid is an offer, which is subject to acceptance or rejection by the authority inviting the bid. Before acceptance of a bid, there is no concluded contract between the parties and a bidder is not entitled to seek issuance of a letter of allotment as a matter of right. In the case of Orchid Infrastructure Developers (supra), the Supreme Court held that a suit instituted by the highest bidder for a declaration that he should be issued a letter of allotment was held to be not maintainable based on the reasoning that a concluded contract had not come into being on the making of the highest bid. The observations of the Supreme Court are reproduced below:-

> '14. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. As per Regulation 6(2) of the Regulations of 1978, allotment letter has to be issued on acceptance of the bid by the Chief Administrator and within 30 days thereof, the successful bidder has to deposit another 15% of the bid amount. In the instant case allotment letter has never been issued to the petitioner as per Regulation 6(2) in view of non-acceptance of the bid. Thus there was no concluded contract. Regulation 6 of the Regulations of 1978 is extracted hereunder :
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> "6. Sale of lease of land or building by auction.- (1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in sub-regulation (1) of Regulation 4 or any higher amount determined as a result of bidding in open auction.
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> (2) 10 per cent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub-regulation (2) of Regulation 5. The successful bidder shall be issued allotment letter in Form 'CC' or 'C-II' by registered post and another 15 per cent of the bid accepted shall be payable by the successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Administrator; failing which the 10 per cent amount already deposited shall stand forfeited to the

> Authority and the successful bidder shall have no claim to the land or building auctioned.
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> (3) The payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in sub-regulations (6) and (7) of Regulation 5.
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> (4) The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to tome and announced to the public before auction on the spot."

In view of the above settled provision of law, we have no hesitation in holding that the judgment in Ashish Jain (supra) is not applicable in the present case. This is more so because the contention of learned counsel for the HSIIDC that the operation of the aforementioned judgment has been stayed by the Supreme Court in a SLP filed by the HSIIDC, has not been controverted by learned senior counsel for the petitioners.

The rejection of the bids of Industrial Estate, Kundli, has been satisfactorily explained by HSIIDC by submitting that the manual auction held earlier had fetched much higher prices. An auction is conducted for generation of revenue and if the competent authority has come to a conclusion that acceptance of the highest bids would cause a loss of revenue, it is a valid reason for rejection of the highest bids unless it can be shown that the decision is mala fide or is motivated by the extraneous consideration. No such allegation has been made by the petitioners.

Under the circumstances, the submission of learned senior counsel for the petitioners that the HSIIDC has acted in a high handed and arbitrary manner so far as the applicants of Industrial Estate, Kundli are concerned, merits rejection.

The writ petitions are accordingly, dismissed.

(DAYA CHAUDHARY) **(SUDHIR MITTAL)**
JUDGE **JUDGE**

29.11.2019
Ramandeep Singh

Whether speaking / reasoned Yes / No

Whether Reportable Yes/ No