

OD 2

WPO/1529/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

VISHNU ENGINEERING CORPORATION AND ANR
VS
NATIONAL JUTE MANUFACTURES CORPORATION LTD. AND ANR

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 30th August, 2023.

Appearance:

Mr. Mainak Bose, Adv.

Mr. Rishab Karnani, Adv.

Ms. Sweta Gandhi, Adv.

. . .for the petitioner.

Mr. Rahul Karmakar, Adv.

Mr. Surya Prasad Chattopadhyay, Adv.

. . .for the respondent.

The Court: The petitioner participated in an e-auction floated by the respondent authorities for disposal of movable assets of respondent no.1 that is the National Jute Manufacturers Corporation Ltd. (NJMC). Learned senior counsel appearing for the petitioner submits that the exclusion list of materials, as evident from the e-auction catalogues itself refers to buildings, boundary walls and gates as well as new electrical connections etc. However, there are several structures standing within the premises in question, which are not buildings as such but dilapidated structures, walls etc. It is argued that in the absence of roof on top of the enclosures, those cannot be termed as buildings as such. The

petitioners sought to remove the structures standing on the property, including the plant and machinery, movables as well as the internal walls and dilapidated structures, but were restrained from doing so, it is submitted that all on or sudden, the respondents started to rely on certain “red crosses” which were apparently put on some of the structures within the premises, on the plea that those could not be removed by the petitioners. It is argued that the specific mention of buildings and walls in the exclusion list indicates that the petitioners are at liberty to remove everything else on the property.

Learned senior counsel also places reliance on the clauses of the e-auction catalogue to argue that the respondents have repeatedly given out that the sale was on “as is where is basis and as is what is basis” and “no complaint basis” for the entire lot of the structures and machinery standing on the said site.

It is argued that the list of the items which were to be removed was only tentative and not exhaustive. Learned senior counsel also places reliance on certain photographs annexed to the writ petition, which apparently show that many of the structures within the premises are merely dilapidated structures and not buildings as such.

It is argued that those are also included within the materials which can be removed by the petitioners, having been sold to the petitioners.

Learned senior counsel for the petitioners places reliance on an Office Memorandum dated March 5, 2015 in support of his argument and contends that the word “industrial shed”, as per the said Memorandum, implies building (whether RCC or otherwise) which is being housed for housing plant and machinery of industrial units and shall include godowns and buildings connected

with production related and other associated activities of the unit in the same premise. It is argued that the e-auction catalogue clearly mentioned that the old dilapidated factory sheds were also to be on sale. Read in context of the Office Memorandum cited, the same has to be construed to include all the structures standing within the premises, fixed to the earth or otherwise.

Learned counsel appearing for the respondent authorities places particular reliance on the occupation of the e-auction catalogue which says that the same is for disposal of the “movable assets” of NJMC Ltd. It is further pointed that in the introductory note of the said catalogue, it is clearly mentioned that the same pertains only to the existing plant and machinery. None of the movable assets that are kept in the areas other than in the above areas, it was mentioned, are to be taken into consideration before placing a bid as they are not for sale.

Learned counsel also places reliance on certain portions of the e-auction catalogue, to indicate that the exclusion of the red crossed portions of the property also finds place in the main e-auction catalogue itself.

It is sought to be argued by the respondents that in order to escape the consequence of certain default clauses in the catalogue itself, which stipulate penal action against the purchasers in the event they cannot dismantle and remove the sold properties within six months, the present writ petition has been filed. It is also argued by the respondents that the respondents could not, even if they wanted to dispose of the immovable portions of the property, do so in view of an injunction order passed by a co-ordinate Bench of this Court.

Upon a consideration of the arguments of the parties, the clauses of the e-auction catalogue are found to be of prime importance. The respondents rightly

argue that an indication of the goods intended to be sold has been given in the very caption of the e-auction catalogue, the cover page of which refers to disposal of “movable assets” of the NJMC Limited. Under the heading “Important Note” in the introductory page of the same, it has been clearly mentioned that the detailed list of materials and items as annexed thereto are only tentative and to be considered on as is where is basis and as is what is basis at site.

However, the said expression “as is where is” is circumscribed by the very next sentence which stipulates that only the existing plant and machinery were being put up for sale and none of the movable assets that are kept in the areas other than the above areas as indicated therein are to be taken into consideration before placing a bid as they are not for sale.

In the earlier portion of the same note, it is mentioned that the buyer must clearly understand that MSTC/MJMC Limited does not guarantee marketable title of the unidentified materials and movable items/machines and old dilapidated factory shed being put on sale by this bid document and/or the correctness or accuracy of any description thereof.

The said sentence itself also indicates that the subject matter of sale was only the movable items/machines and old dilapidated factory shed.

In Clause B1 in the next page, it is also specified that all the identified materials and items/machines and old dilapidated factory shed were being put on sale on “as is where is basis” at site.

Read in conjunction with the said Clauses, we find at page 64 of the writ petition, as a part of Clause 25.0 of the e-auction catalogue, a list of exclusion of materials for bid. Apart from buildings, boundary walls and gates, item 4 thereof

clearly refers to items marked as “red cross” as being “not for sale”. Hence, the argument of the petitioners that they were taken by surprise by the marking of red cross on some of the properties cannot be accepted. In any event, the e-auction document clearly stipulates that the intended purchaser is to have a full inspection of the materials put up for sale. Clause 4.0 of the said document provides inter alia that the entire lot of plant and machinery, inventories and scrap, furniture and fixture, vehicles and all miscellaneous movable items inside the factory premises only are offered for sale as one lot, on as is where is basis including dismantling, cutting etc. and whatsoever required to complete the work and transportation thereof.

It is stipulated that the bidder should thoroughly satisfy themselves about the nature, specifications, physical conditions, quantity, quality, place of existence of the materials and working conditions at site. Materials/items which are non-disposable and which are marked as not for sale, it was stipulated, do not fall under the purview of the sale.

Thus, a comprehensive reading of the auction document itself clarifies that the intention thereof was only to sell the plants and machinery and other movables including scrap, furniture and fixture, vehicles etc and none of the structures or buildings standing thereon.

The exclusion list is not exhaustive inasmuch as the same has to be read in conjunction with the goods which are actually put up for sale in the said document itself. Read in conjunction, the exclusion list as well as the materials put up for sale clearly show that the petitioners do not have any right as per the said auction document, to dismantle or take away any of the structures of

permanent nature standing on the property, including internal walls, dilapidated buildings, etc. Only the detachable factory shed was put up for sale, apart from the plant and machinery and other movables.

In fact, the list, although tentative, provided along with the said document clearly describes the items by way of example, which were put up for sale, mainly concerning plant and machinery as well as certain scrap material located at different portions of the property. For example, under the description 'plant and machinery', about 43 items were mentioned. Thereafter, godown no.1 was put up as the next heading, at which location several scrap materials as listed therein were also located. Similarly, the next list provides for furniture and fixtures located at various areas of the property. In so far as the Office Memorandum relied on by the petitioner is concerned, the same was issued, as *ex facie* clear from the said document itself, by the Ministry of Environment, Forest and Climate Change of the Government of India in connection with the clarification regarding industrial shed, in the context of climate and environment. The description of industrial shed in such context cannot be a relevant determinant of the properties put up for sale under the present auction, which is under consideration. Hence, the broad purview of "industrial shed" within the contemplation of the said Office Memorandum has no relevance or bearing in the present case at all.

Even without going into the motive of the petitioners in filing the writ petition, which would be an exercise *de hors* the scope of the present writ petition, it is clearly seen from the materials on record themselves that the

petitioner's contention as regards their rights to usurp the immovable structures on the property as well, cannot be accepted.

In view of the above observations, WPO 1529 of 2023 is dismissed on contest.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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