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WA No.2791 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

WA No.2791 of 2022

1.The Tamil Nadu Housing Board,
Rep. by its Managing Director,
Nandanam, Chennai 600 035.

2.The Executive Engineer & Administrative Officer,
Coimbatore Housing Unit,
T.N.H.B., Tatabad, Sivanandacolony,
Coimbatore 641 012.

3.The Manager, Marketing & Service,
Coimbatore Housing Board Unit,
Tatabad, Coimbatore 641 012.

: Appellants

versus

1. M.Vishnukumar

2.The Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.

: Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order dated 30.06.2022 in WP No.1091 of 2022.

For the Appellants : Mr.D.Veerasekaran

For Respondent No.1 : Ms.G.Thilakavathy,
Senior Counsel,

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For respondent No.2

:

for Mr.B.Sivaraman
Mr.R.Shunmugasundaram,
Advocate General,
Assisted by Ms.A.G.Shakeena

JUDGMENT

(Made by the Hon'ble Chief Justice)

We have heard Mr.D.Veerasekaran, learned counsel for the appellants, Ms.G.Thilakavathi, learned Senior Counsel for the first respondent and Mr.R.Shunmugasundaram, learned Advocate General, for the second respondent.

2. The first respondent herein had filed WP No.1091 of 2022. The appellants had invited quotations for sale of plots. The first respondent/writ petitioner submitted quotation in respect of plot SI.No.107 CHU 040 Commercial site at Kovaipudur Scheme. The first respondent/writ petitioner was the highest bidder. The first respondent/writ petitioner had deposited 10% of the earnest money deposit. Subsequently, the first respondent/writ petitioner was called upon to deposit 15% of the amount. It is the case of the first respondent/writ petitioner that he had deposited 15% of the amount. However, subsequently, the appellants, (hereinafter referred to as, 'the appellant/Housing Board') cancelled the sale process. Aggrieved thereby, the first respondent had filed the writ petition. The learned single Judge of this Court allowed the writ petition setting aside the order dated 07.01.2022, cancelling the sale process, in respect of the subject writ plot.



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The learned single Judge directed the first respondent/writ petitioner to pay the balance sale consideration of Rs.7,05,75,000/-, (Rupees Seven Crore Five lakh and Seventy Five Thousand only) within six weeks from the date of receipt of a copy of the order and further directed the appellant/Housing Board to execute a sale deed in favour of the first respondent, immediately. Aggrieved thereby, the present appeal has been filed.

3. The contention of the learned standing counsel for the appellant/Housing Board is that no vested right was accrued in favour of the first respondent/writ petitioner inasmuch as the Sale Confirmation Committee had not confirmed the sale. This aspect ought to have been considered by the learned Single Judge. It is submitted that only single tender was received. Though originally two bids were received, the second bidder did not deposit the earnest money deposit. As such, there was only one bid. Clause 26 of the terms and conditions is relied by the learned Standing counsel for the appellant which states that single tender will not be entertained.

4. The learned Senior Counsel for the first respondent submits that the learned single Judge disbelieved the contention of the appellant/Housing Board that the plot was agreed to be sold to the first respondent at a throw away price. According to the learned Senior Counsel, the price offered was 2½ times the price



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expected by the appellants. It is further submitted that implied contract has come into existence. Initially, 10% amount was deposited. The appellant/Housing Board asked the first respondent/writ petitioner to deposit 15% of the amount. It is only because the Housing Board had accepted the bid of the first respondent/writ petitioner, he was directed to deposit 15% of the amount. The learned Senior Counsel submits that as per Section 9 of the Contract Act, the contract may be expressed or implied. By asking the first respondent/writ petitioner to deposit 15% additional amount, the appellant/Housing Board has impliedly accepted the quotation of the first respondent/writ petitioner, thus, resulting in a concluded contract. The learned Senior Counsel further submitted that the act of the appellant/Housing Board is arbitrary. No reasons are given while cancelling the sale process. In the decision of the committee, it is said that the committee has decided to reject the sale and go for re-auction to fetch more revenue to the Housing Board; whereas in the Court, stand is taken that only single tender was received. No consistency exists in the stand of the Housing Board. The learned Senior Counsel to substantiate the contention relies upon the judgment of the Division Bench of this Court in the case of *A.R. Safiullah vs. Managing Director and ors. WA No.1139 and 1140 of 2008, decided on 30.04.2010*. It is submitted that in the said case, the Division Bench has held that the order of cancellation is arbitrary.



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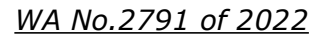
5. Learned Advocate-General appearing for the second respondent submits that the contract was not concluded. The committee has not confirmed the sale, and as per the terms and conditions of sale, the sale process was rightly rescinded.

6. We have considered the submissions canvassed by the parties.

7. It is trite that in matters of contract, the scope of judicial review lies in a narrow compass. This Court, exercising its power of judicial review, would not sit as an appellate authority over the decision taken by principal; however, would be more concerned with the decision making process. This Court would invoke its powers of judicial review if it is demonstrated that the act and the action of the authority is arbitrary. Arbitrariness has no place in the society governed by the rule of law. Arbitrariness is anti-thesis to the rule of law, justice, equity, fair play and good conscience. An arbitrary order cannot be sustained.

8. The facts of the present case will have to be considered on the touch stone of the aforesaid principle.

9. It is not disputed that the appellant/Housing Board had called for quotation for sale of its various plots. The first respondent/writ petitioner had bid



10. The terms and conditions of sale would also be relevant to be considered.

“Clause 10 : The auction sale is subject to the confirmation of the auction Sale Confirmation Committee of the Board. The payment of 15% of the bid amount is only to ensure earnestness on the part of the bidder and it will not confer any right on him/her to claim confirmation of the sale. If the sale is not confirmed, the application money and 15% of the bid amount paid by him/her will be refunded without interest.

Clause 26 : Single tender will not be entertained.”

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sale is subject to the confirmation of the auction Sale Confirmation Committee of the Housing Board. The payment of 15% of the bid amount is only to ensure earnestness on the part of the bidder and it will not confer any right on him/her to claim confirmation of the same. If the sale is not confirmed, the application money and 15% of the bid amount will be refunded without interest. Clause 26 further states that single tender will not be entertained.

13. In the present case, Auction Sale Confirmation Committee did not confirm the sale; on the contrary, took a decision not to confirm the sale and proceed further to re-auction the plot, so as to fetch more revenue to the Housing Board.

14. In view of clause 10 of the terms and conditions of sale, as produced supra, the contention of the first respondent/writ petitioner that he was directed to deposit 15% amount and as such, that amounts to implied contract, cannot be sustained. The 15% of the bid amount is only to ensure earnestness on the part of the bidder and nothing more. The deposit of 15% would not create a vested right in favour of the first respondent/writ petitioner; nor it can be said that the sale stands concluded. No jural relationship is created only on account of deposit of 15% of the amount.



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15. One of the grounds of challenge was that the order cancelling the sale was without reasons. In matters of contract, it is not expected that the reasons should always be stated. Reliance can be had to the Judgment of the Supreme Court in the case of *Silppi Constructions vs. Union of India*, (2020) 16 SCC 489. The learned single Judge while dealing with the matter has not considered the aforesaid aspects.

16. The other aspect is also not irrelevant. Only two bids were received. However, the second bidder did not even deposit the earnest money deposit. As such, he stood disqualified and only one tender remained to be considered. Clause 26 of the terms and conditions of sale is explicit. It states that the single tender will not be entertained. On this count also, the appellant/Housing Board would be justified in not proceeding with the sale and taking a decision to re-auction the said plot.

17. For all the aforesaid reasons, it does not appear that the action of the appellant/Housing Board smacks of arbitrariness.

18. It is to safeguard the revenue, or to fetch more revenue for the appellant/Housing Board, decision has been taken in tune with the terms and conditions of the sale.



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19. It also needs to be considered that the object of inviting tenders is to procure the highest price. The procurement of the highest price is in public interest. And it is for the same reason that a clause is inserted in the terms and conditions of sale that single tender will not be entertained.

20. In light of all the above said facts and circumstances, the judgment of the learned single Judge is quashed and set aside. The appeal is allowed. There will be no order as to costs. Consequently, CMP Nos.22673 and 22984 of 2022 are closed.

21. The appellants shall refund the amount collected, within a period of four weeks from today, to the first respondent.

22. It is needless to state that in case of fresh auction, it is open for the first respondent/writ petitioner to participate in the said proceedings.

(S.V.G., CJ.)

(P.D.A., J.)

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Index : Yes/No
Neutral Citation : Yes/No
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To
The Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai 600 009.



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