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

116, 118, 201, 249 and 251 ***2023:PHHC: 102148-DB***

**CWP Nos. 13656, 14587, 14589, 13343,
13362, 13366, 13580, 13587, 13599,
13638, 13682, 13633, 13707 and 13820 of 2023**
Reserved on: 24.07.2023
Date of Decision: 07.08.2023

Mahavir Singh .....Petitioner(s)

Versus

Haryana Shehari Vikas Pradhikaran and others ....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Sunil Chadha, Senior Advocate, with
Mr. Akshay Chadha, Advocate,
for the petitioner(s) in CWP-13362 and 13366-2023.

Mr. S.S. Mor, Advocate,
for the petitioner(s) in CWP-13707-2023.

Mr. Kartar Singh, Advocate,
for the petitioner(s) (in CWP-13682 and 13633-2023).

Mr. Sukhdeep Singh, Advocate,
for the petitioner(s) (in CWP-14587 and 14589-2023).

Ms. Gehna Vaishnavi, Advocate,
for Mr. Gaurav Bakshi, Advocate,
for the petitioner(s)
(in CWP-13580, 13599, 13587 and 13656-2023).

Mr. Onkar Singh, Advocate,
for Mr. P.K. Chugh, Advocate,
for the petitioner(s) in CWP-13682-2023.

Mr. Sachin Gupta (Ladwa), Advocate,
for the petitioner(s) in CWP-13343-2023.

Mr. Deepak Sabherwal, Advocate,
for the respondent-HSVP.

Mr. Arvind Seth, Advocate,
Ms. Parul, Advocate, for the respondent-HSVP
(in CWP-13638-2023).

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of 14 cases i.e. 13656, 14587, 14589, 13343, 13362, 13366, 13580, 13587, 13599, 13638, 13682, 13633, 13707 and 13820 of 2023 since the issue in consideration is common. Facts have been taken from ***CWP-13656-2023, Mahavir Singh vs. Haryana Shehari Vikas Pradhikaran and others*** whereby affidavit has been filed on behalf of the respondents and pleadings have been completed. The factual matrix in essence being the same, the said judgment would be applicable to all the cases as the principle of law being common.

2. The relief sought in the present writ petition is for quashing the e-auction which was sought to be fixed for 27.06.2023 whereby, the reserve price of the booth in question bearing Booth No.128, Sector 57, Gurugram-II was fixed at Rs.97,79,000/-. The challenge was on the ground that in an earlier e-auction held on 19.01.2023, the petitioner had auctioned for the said property at Rs.1,33,44,800/- and being the highest bidder, he should have been declared successful. The action of refunding the amount deposited by the petitioner was stated to be without any rhyme or reason and illegal against the e-auction policy dated 20.07.2022 (Annexure P-1).

3. As per the pleaded case of the petitioner, public notice for e-auction of the booth in question i.e. Booth No.128, Sector 57, Gurugram-II, was issued for 19.01.2023 and the base price had been fixed at Rs.97,64,800/-. The earnest money to be deposited was Rs.4,89,300/-. In the auction held accordingly, the petitioner had made a bid at Rs.1,33,44,800/- against the base/reserve price of Rs.97,64,800/ and he had been informed of the said fact from the mail received (Annexure P-4) of the same date. The sum of Rs.8,46,180/- was thereafter deposited on 20.01.2023 (Annexure P-5)

to make the total deposit to Rs.13,34,480/-, which was 10% of the bid amount. However, after a period of 4 months and 15 days, the whole amount was re-deposited by the Haryana Shehari Vikas Pradhikaran (in short 'the HSVP') in his account on 05.06.2023 in two installments as deposited by the petitioner. No intimation was given as to why the amount had been refunded and why the letter of intent had not been issued. Thereafter, fresh e-auction notice was issued for 27.06.2023 and the base price of the booth in question was fixed at Rs.97,79,000/-.

4. Resultantly, challenge was raised that there was no need to auction as the petitioner had already bidded much higher than the reserve price and there was no valid reason and neither he had been communicated for cancellation except refunding the amount. Reliance was placed upon Clause No.31 of the policy dated 20.07.2022 (Annexure P-1) that the earnest money of the unsuccessful bidders was to be refunded in three days except the highest bidder and the competent authority was to take a decision within 30 days from the date of e-auction and, therefore, it amounted to a concluded contract.

5. The defence taken by the respondent authority-HSVP was that the bid of the petitioner was examined on the file and it was found that due to error in MIS (software of HSVP), wrong reserve price was fixed and, therefore, the competent authority had decided to cancel the auction and refund 10% of the amount deposited. The ICICI bank had been requested vide letter dated 25.05.2023 to refund the amount and the same had been received by the petitioner on 05.06.2023. Reliance was placed upon Clause No.17 of the e-auction policy that the competent authority reserved the right to accept or reject any bid or to withdraw any or all properties from e-auction

or cancel/postpone the e-auction without assigning any reason and neither any opportunity of hearing had to be given. The petitioner, at the time of registration for e-auction, had accepted the terms and could not now plead that there was any illegality. It was pleaded that there was no due acceptance of the allotment by the respondents and there was no concluded contract. Reliance was placed upon the judgment passed by the co-ordinate Bench in ***CWP No. 19447-2021, Dr. Sarita Gautam and others vs. HSVP and others,*** decided on 27.09.2021. Similarly, reliance was placed upon the judgment in ***Haryana Urban Development Authority and others vs. Orchid Infrastructure Developers Pvt. Ltd., AIR 2017 SC 882*** to contend that there is no vested right and on a mere deposit of the 10% of the bid amount and in the absence of any allotment letter having been issued, there was no concluded contract. The State and the Authority was not bound to accept the highest tender of bid and there is no obligation to accept the same and they could not insist for allotment in the absence of any vested right. Reliance was also placed upon the judgment in ***Rajasthan Housing Board and another vs. G.S. Investments and another, (2007) 1 SCC 477*** apart from other judgments. It was also averred that the file had gone to the headquarters and auction was dealt with at the level of the headquarters, through the E-auction Cell and no file had been maintained at the Estate Office level.

6. Replication was filed placing reliance upon the judgments cited by the respondent which was sought to be distinguished by placing reliance upon the clauses of the e-auction policy. The respondents having accepted the bid of the adjoining booth i.e. Booth No.131, Sector 58, Gurugram-II was pleaded that it was done for Rs.1,18,74,800/- and letter of intent had been issued on 06.11.2022, which was lower than the bid offered by the petitioner

on 19.01.2023. It was further pleaded that the petitioner being the highest bidder should have been called for negotiations rather than rejecting the case and refunding the amount after 5 months. The relevant clauses of the policy relied upon from both the sides, the said clauses read thus:-

> *"17. The competent authority of HSVP reserves the right to accept or reject any bid or withdraw any or all the properties from e-auction or cancel/postpone the e-auction without assigning any reason.*
>
> *31. The Earnest Money (EMD) of the unsuccessful bidders of each property will be refunded in three days by the system automatically on the closing of the auction except the Highest bidder (H1). Regarding acceptance and rejection of bids, the competent authority shall take decision within thirty days after date of e-auction.*
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> *33. After acceptance of the bid and verification of requisite documents, the successful bidder will be issued Letter of Intent (LOI) by the Estate Officer concerned. The LO1 will be sent through registered post and through email at the registered address and email id of the successful bidder. All the payment schedule of the bid amount is linked with the date of dispatch of LOI through email. HSVP will not be responsible if LOI is not received by the Successful bidder due to change in his correspondence address or email id, if any, updated from time to time. The allottee will be further required to deposit another 15% of the quoted bid amount within 30 days from the date of dispatch of LOI on the HSVP website by generating Challan or online from his Plot user ID and password which will be issued by EO concern after generation of LOI. In case of failure to deposit the said amount within the above specified period, the LOI shall stand automatically withdrawn*

> *without any further notice in this behalf and the 10% amount deposited shall stand forfeited to the HSVP against which successful bidder shall have no claim for damages.*
>
> *36. The allotment letter of the sites sold through e-auction will be issued after payment of 100% amount of the bid, but in case of independent commercial sites and institutional sites where the bidder has an option to make payment of the 75% of the bid amount in 6 half yearly installment or 3 annual installments respectively in that cases the successful bidder will be issued the allotment letter on payment of 25% of the bid amount alongwith Bank Guarantee equivalent to 75% of the bid amount."*

7. A perusal of the above clauses would go on to show that it was within the discretion of the competent authority which reserved the right to accept or reject any bid or to withdraw any or all properties from e-auction or cancel e-auction without assigning any reason. Similarly, as per clause No.33, it is only after the acceptance of the bid and verification of the requisite documents, the successful bidder was to be issued a letter of intent by the Estate Officer concerned. Apparently, in the present case, no such exercise was done and the successful bidder had never been issued a letter of intent and he only deposited the 10% of the amount. Clause No.17 relied upon by the petitioner only talks about the refund of the amount to the unsuccessful bidders which has to be done within three days by system automatically on closing of the auction except the highest bidder. The acceptance and rejection of the bids was to be taken by the competent authority within 30 days after the date of the e-auction. Merely because there has been delay as such would not be such a ground to make the right of the

petitioner into a vested right and give the right to seek a writ of mandamus. The same position of law has been explained by the Division Bench of this Court in *Dr. Sarita Gautam's case (supra)* while relying upon various judgments of the Apex Court.

8. The Apex Court also in *Orchid Infrastructure's case (supra)* examined the issue of the competency of the Administrator to accept or reject the bid and also the issue whether there was legality regarding the rejection of the bid and held that any action where there are sufficient reasons to indicate the stand of the authorities and there are valid reasons and on account of public money being involved, interference should be minimal. The relevant portion reads thus:-

> *"13. Firstly, we examine the question whether there being no concluded contract in the absence of acceptance of bid and issuance of allotment letter, the suit could be said to be maintainable for the declaratory relief and mandatory injunction sought by the plaintiff. The plaintiff has prayed for a declaration that rejection of the bid was illegal. Merely by that, plaintiff could not have become entitled for consequential mandatory injunction for issuance of formal letter of allotment. Court while exercising judicial review could not have accepted the bid. The bid had never been accepted by concerned authorities. It was not a case of cancellation of bid after being accepted. Thus even assuming as per plaintiff's case that the Administrator was not equipped with the power and the Chief Administrator had the power to accept or refuse the bid, there had been no decision by the Chief Administrator. Thus, merely by declaration that rejection of the bid by the Administrator was illegal, the plaintiff could not have*

become entitled to consequential relief of issuance of allotment letter. Thus the suit, in the form it was filed, was not maintainable for relief sought in view of the fact that there was no concluded contract in the absence of allotment letter being issued to the plaintiff, which was a sine qua non for filing the civil suit.

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 :

> ***"6. Sale of lease of land or building by auction.-***
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> *(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.*
>
> *(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 cant amount already deposited shall stand forfeited to the Authority and the successful bidder shall have no claim to the land or building auctioned.

(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.

(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."

15. We are fortified in our view by a decision of this Court in Uttar Pradesh Avas Evam Vikas Parishad & Ors. v. Om Prakash Sharma (2013) 5 SCC 182, the questions arose for its consideration that : whether there is any vested right upon the plaintiff/bidder until the bid is accepted by the competent authority in relation to the property in question? Merely because the plaintiff is the highest bidder by depositing 20% of the bid amount without there being approval of the same by the competent authority and it amounts to a concluded contract in relation to the plot in question; and whether *the plaintiff could have maintained the suit in the absence of a concluded contract ? Considering the aforesaid questions, this Court has discussed the matter thus :*

> *"30. In support of the said proposition, the learned Senior Counsel for the defendant, Mr Rakesh Dwivedi has also placed reliance upon another decision of this Court in State of U.P. v. Vijay Bahadur Singh (1982) 2 SCC 365. The learned Senior Counsel has rightly placed reliance upon the judgment of this Court in Rajasthan Housing Board case (2007) 1 SCC 477 which reads as under: (SCC p. 483, para 9)*
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> *"9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court."*
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> *x x x x x In State of Orissa v. Harinarayan Jaiswal (1972) 2 SCC 36 case, relevant paragraph of which reads as under: (SCC pp. 44-45, para 13)*
>
> *"13. x x x x x There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw*

their bids (see Union of India v. Bhim Sen Walaiti Ram (1969) 3 SCC 146). By merely giving bids, the bidders had not acquired any vested rights. ...” (emphasis supplied) x x x x x

31. In view of the law laid down by this Court in the aforesaid decisions, the learned Senior Counsel Mr Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid amount along with the earnest money with the Board. In the absence of acceptance of bid offered by the plaintiff to the competent authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26-5-1977 and 8-7-1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff.” (emphasis supplied).

This Court has held that in the absence of a concluded contract which takes place by issuance of allotment letter, suit could not be said to be maintainable as there is no vested right in the plaintiff without approval of the bid by the competent authority. Thus, in the wake of *aforesaid decision, in the absence of a concluded contract, the suit could not have been decreed for mandatory injunction. It amounted to enforcing of contract in the absence thereof.*

16. In the light of the aforesaid discussion, it is evident that in the absence of a concluded contract, i.e. in the absence of allotment letter and acceptance of highest bid, the suit by the plaintiff was wholly misconceived. Even if non-acceptance of the bid was by an incompetent authority, the court had no power to accept the bid and to direct the allotment letter to be issued. Merely on granting the declaration which was sought that rejection was illegal and arbitrary and by incompetent authority, further relief of mandatory injunction could not have been granted, on the basis of findings recorded, to issue the allotment letter, as it would then become necessary to forward the bid to competent authority – Chief Administrator - for its acceptance, if at all it was required."

9. In the present case, we have called for the records regarding the reasoning as such why the cancellation of the auction had taken place. A perusal of the file would go on to show that the matter was examined regarding various auctions which took place in January, 2023 and February, 2023 in different urban estates in the State of Haryana. The respondent had come to the conclusion that the calculation of the software for fixing the reserve price on the basis of the Collector rate/allotment rates/land cost/average auction price for the last 1 year and 5 years was to be applied for calculating the average auction price. The basis of the last 1 year and 5 years and the calendar year was to be taken as the basis of calculation. The calendar year had been closed in December and, therefore, the calculation of

the reserve price was recalculated by noticing that in some cases reserve price had been changed. It is in such circumstances, file was put up that where there were bids, what action should be taken and decision was arrived at that where there was a difference in reserve price, the e-auction of all such plots be cancelled and the 10% amount deposited be refunded to the bidder. For the urban Estate, Hansi where letters of intent had been issued in 42 cases, it was ordered that the letters of intent be also withdrawn and where the price of corner plots was calculated without adding the preferential cost, the auction dated 22.04.2023 in respect of Sector 25, Part II, Panipat may also be cancelled.

10. The Full Bench of this Court in ***Surja Ram vs. State of Haryana and another, 1984 PLR 584*** held that there had to be reasons for refusing the non-acceptance of the bid and such reasons may not have to be disclosed to the highest bidder but the Court can ask for them to be made available and find out whether the same are relevant and germane to the non-acceptance to the bid.

11. It is in such circumstances, the respondents have taken a conscious decision to refund the amount. The reasons, thus, are apparent on the file and, therefore, in our considered opinion that the same has been done in view of the settled position of law. Merely because the petitioner was the highest bidder, there is no vested right as such on the basis of which a writ of mandamus can be issued to him for confirmation of the auction. There are no such allegations that the process of rejection of bids was *mala fide* or intended to grant benefit to another set of persons and, therefore, interference would not be warranted as one has to keep in mind the fact that the larger issue would be of public funds involved which would be affected if the

reserve price was not properly fixed. The stipulations as such of the clause which provided that the action had to be taken within a specified period cannot be held to be mandatory and binding as such and it has only been put in for the purpose of expediting the process so that the authorities should act at the earliest. The perusal of the files would go on to show that the larger picture all over the State as such was examined and a conscious decision was thereafter taken and there have been valid reasons as such in taking such stand. We do not find any reasonable ground as such to take a contrary view keeping in mind the above settled position and are also of the considered opinion that the petitioner has not been able to make out a case as such for interference.

12. Accordingly, the writ petitions stand dismissed. The records be returned to Mr. Deepak Sabherwal, Advocate, for respondent-HSVP.

(G.S. SANDHAWALIA)
JUDGE

07.08.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking Yes
Whether reportable Yes