

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

Neutral Citation No.2023:PHHC:112806-DB

CWP-2869-2011

Jitender Kumar and others

.....Petitioner(s)

Versus

Haryana Urban Development Authority and others

.....Respondent(s)

(2)

CWP-3031-2011

Lalit Kumar and others

.....Petitioner(s)

Versus

Haryana Urban Development Authority and others

.....Respondent(s)

Reserved on : 16.08.2023

Pronounced on: 29.08.2023

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

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Shaurya Khanna, Advocate for the petitioners.

G.S. Sandhawalia, J.

Challenge in the present petitions filed under Article 226/227 of the Constitution of India is to order dated 28.01.2011 (Annexure P-7) whereby the Administrator of the erstwhile Haryana Urban Development Authority (HUDA), Rohtak rejected the bid of the petitioners against the allotment of Hotel Site No.I and II, Sector-14, Sonapat.

2. In sum and substance the petitioners case is that they had deposited 2% of earnest money as required by the advertisement and bid being the highest one @ ` 35,203/- per square meter was over and above the reserve price and, therefore, having deposited 10% of the bid amount the petitioners had a right to get issued the allotment letter. Resultantly, the order dated 16.11.2010 (Annexure P-4) whereby the bid money was refunded of ` 24,53,500/- by pay order was stated to be not justifiable.

3. Senior counsel for the petitioners has vehemently submitted that the cancellation of the bid was not justified and only the Chief Administrator, HUDA could have done so, who is the competent authority and, therefore, the impugned order passed by the Administrator dated 28.01.2011 (Annexure P-7) is liable to be quashed.

4. A perusal of the impugned order would go on to show that the auction of the commercial sites was held on 03.09.2010 in Sonapat, in pursuance of the advertisement which was issued on 24.08.2010. The reserve price of the Hotel site was shown as `32903/- per square meter instead of `35,203/- per square meter and the specification of the sites was not mentioned in the notice and only the number of sites was mentioned which were two. It was noticed that 13 people had bidden for participating in the auction and proceedings were started at 1:30 PM and all the bidders were intimated about two hotel sites and also the mistake which had inadvertently crept in the advertisement regarding the rate of per square meter. Ten bidders had participated for the bid of Hotel site No.1 and three bidders had participated for Hotel Site No.II, which is subject matter of challenge in the second petition i.e. CWP-3031-2011.

5. The authority came to the conclusion that the bidding was for `39,250/- per square meter for Site No.I and @ `39,300/- for Site No.II and both the rates were above the reserve price and, therefore, approval of the bids was subjected to the final decision of the Administrator, HUDA Rohtak. It was noticed that the complainant had never deposited the bid money and was not inclined to participate in the auction and, therefore, complaint filed by him was held to be false and appeared to be motivated. It was the opinion of the authority that there was no irregularity in

conducting the auction, since there was no malafide on the part of the officers/officials. However, since there was discrepancy in the advertisement, it was considered to cancel the bid.

6. It is pertinent to notice that the said decision as such was taken after the petitioners had approached this Court in CWP No.21470 and 21477 of 2010 wherein on account of the order being non-speaking on an earlier occasion on 16.11.2010 the same had been quashed and therefore, fresh order has to be passed after hearing opportunity of personal hearing.

7. Senior Counsel for the petitioners has vehemently argued that it is only the Chief Administrator who could have confirmed or reject the bid and therefore, the action was not justified and the petitioners were entitled for the allotment letter issued in their favour.

8. We have perused the advertisement (Annexure P-1) which would go on to show that large number of properties were put to auction including Shopping Malls and SCOs and different sites, details of which had been given regarding the fact of the location pertaining to the number of sites and the sectors in which they were situated. However, in the case of two hotel sites the sector was missing and as noticed the reserve price was fixed @ ` 32,903/- per square meter which should have been ` 35,203/- per square meter. There was a difference of ` 2300/- per square meter between the reserve price which was shown. It was on this account apparently the Administrator did not approve the recommendation of the Estate Officer and did not accept the bid in question and since the Committee had also left the approval of the bid subject to the final decision of the Administrator of the HUDA.

9. The issue stands squarely covered against the petitioners in view of the judgment passed in **Haryana Urban Development Authority & others Vs. Orchid Infrastructure Developers Pvt. Ltd., 2017 AIR (SC) 882** wherein the maintainability of the writ petition on account of being the highest bidder was subject matter of consideration in the absence of the concluded contract. Accordingly, it was held that the highest bidder has no vested right if the auction concluded in his favour. Reliance was placed upon the earlier judgment passed in **Uttar Pradesh Awasthi & others vs. Om Parkash Sharma, (2013) 5 SCC 182**. Similarly on the issue of the jurisdiction of the Administrator to accept or reject the bid, it was noticed that there was a delegation of the functions and powers by the authority to the Administrator as per the order dated 13.09.1989 issued by the Chief Administrator while exercising the power under Section 51 of the Haryana Urban Development Authority Act, 1977. Thus, the argument raised by counsel for the petitioners was also dealt by the Apex Court. Even otherwise, we are of the considered opinion that the Administrator had wisely cancelled the bid by noticing that there was a difference in reserve price also and secondly that the advertisement was not clear as the location and sectors were not shown.

10. It is apparent that the hotel sites were not properly depicted in the advertisement and the sectors were not mentioned and the number of bidders has got reduced as has been noticed that in the case of Hotel Site No.II there were only three bidders. When a commercial property is being sold wherein the reserve price is fixed @ ` 35,203/- per square meter and the plot in question is measuring 22.73 x 27.50 square meter., the least one could have accepted from the authority that there are clarity as to the sectors

and the location of the sites and also the reserve price. The Apex Court also examined the issue that where the public money is involved there should be a legality for the rejection of the bid for a good reason. The reasons, thus, are apparent on the face of the record which had weighed with the competent authority to reject the bid. Relevant portion of the judgment passed in **Orchid Infrastructure Developers Pvt. Ltd.** reads as under:-

“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.

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17. The plaintiff has come to the Court with the case that there was no delegation of power to the Administrator. No doubt about it that the delegation of power made by HUDA under [section 51](#) of the Act has not been placed on record before the courts below. It has been filed for the first time in this Court. However, HUDA has placed on record delegation of power to the Administrator by it as is apparent from the order dated 13.9.1989 issued by the Chief Administrator of HUDA in which it is mentioned that in exercise of power conferred under [section 51](#) of the Act, for the sake of efficiency, speedy development and with a view to decentralize the powers/functions the delegation at Annexure A were made by

HUDA in its meeting held on 3.1.1989 in favour of various officials/officers of HUDA.”

11. In such circumstances, we are of the considered opinion that the decision taken by the authority does not suffer from any infirmity which would warrant interference by us in our extra-ordinary writ jurisdiction. The amounts if have been duly refunded to the petitioners, they would have no further cause of action and in the absence of any vested right with them, since it has been pleaded in the writ petition that the original amounts were refunded by the authority, but returned by the petitioners vide communication dated 18.11.2010 (Annexure P-5 colly.). In case, the amounts have not been received by the petitioners, it would be the bounden duty of the respondents as such to refund the amount by way of demand draft within a period of two weeks from today. The said amounts would carry interest @ 8% per annum as the petitioners were deprived off the said amounts and secondly it is the petitioners who have been litigating for their rights with the hope and desire that they were entitled for the hotel site.

12. The writ petitions are, accordingly, disposed off with the abovesaid observations.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

29.08.2023
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes