IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Neutral Citation No. 2023:PHHC:126800 -DB

CWP-19853-2018
Decided on: 20.09.2023

Pardeep Vats

....Petitioner

Versus

Haryana State Industrial & Infrastructure Development Corporation Ltd. & others

.... Respondents

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

Present: Ms.Sukhbir Gill, Advocate, for
Dr.Surya Parkash, Advocate, for the petitioner.

Ms.Shubhra Singh, Advocate, for the respondent-HSIIDC.

Mr.Arun Beniwal, DAG, Haryana.

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G.S. Sandhawalia, J.

The petitioner in the present writ petition, filed under Article 226/227 of the Constitution of India seeks quashing of the letter dated 06.03.2018 (Annexure P-1) whereby the benefit of allotment of plot No.97, Sector 4, Phase-I, IMT, Manesar measuring 1012.50 sq.meters has been rejected by the respondents for which he had participated in the e-auction on 30.12.2016.

2. The reasoning given in the said communication is that the petitioner was aware of the terms of e-auction and the Managing Director of the Haryana State Industrial & Infrastructure Development Corporation Ltd. (HSIIDC) is the final authority to accept or reject any bid without assigning any reason and the case was placed before the competent

authority for consideration who had decided to re-auction the said plot and liberty was given to the petitioner to apply for the plot as and when the advertisement was issued.

3. While issuing notice of motion on 10.08.2018, further allotment was directed to be without prejudice to the petitioner's rights.

4. The case of the petitioner as pleaded in the writ petition is that as per the Estate Management Procedure (Annexure P-3) and the terms and conditions of the on-line industrial plot allotment, he had applied for the industrial plot on the prescribed format since the Corporation had called applications along with project reports. The petitioner being in the business of fabrication work had submitted his project reports (Annexures P-5 & P-6) and deposited the application money of Rs.22,85,625/- while participating in the e-auction. The applications being received more than the number of plots offered for allotment, the petitioner had been advised to get himself registered on the portal for participating in the e-auction and the minimum reserve price for the plot had been fixed @ Rs.22,500/- per sq.meter, as per e-mail dated 22.12.2016 (Annexure P-7). It is his case that he had quoted the highest bid of Rs.22,600/- per sq.meter against the said reserve price towards plot No.97. No bids had been received against 2 plots bearing Nos.37-B and 65-A and the remaining 7 plots including the plot of the petitioner were allotted to the successful bidders who participated in the e-auction. The necessary details were given in paragraph No.6 of the writ petition.

5. It is the specific case of the petitioner that his bid was not accepted for the extraneous considerations and he had received communication dated 09.02.2017 (Annexure P-2) that the counter-offer had been offered for allotment @ Rs.23,400/- per sq.meter. It was averred

that vide letter dated 27.02.2017 (Annexure P-9), counter-offer given by the Corporation was accepted and request was made to send the allotment letter and the payment schedule. E-mail was also sent regarding the acceptance of the counter-offer (Annexure P-10). The reminder was sent on 06.03.2017 (Annexure P-11) regarding the issuance of the allotment letter @ Rs.23,400/- per sq.meter. Reference was made to the proceedings register dated 06.03.2017 (Annexure P-12) wherein the case of the petitioner had been approved for the issuance of the regular allotment letter. Resultantly, it was pleaded that the rejection done on 06.03.2018 (Annexure P-1) thus was not justified. It was further averred that industrial plots had again been put to auction on 08.03.2017 and 17.03.2017 fixing the reserve price @ Rs.23,400/- per sq.meter and vide advertisement dated 07.07.2017, it had not got any response. The respondents thereafter had remitted the amount in the account of the petitioner on 19.06.2018.

6. Resultantly, it was pleaded that the earnest money had been utilized by them for 1 year 8 months depriving the petitioner from participating again. It is further averred that the plot of the petitioner was situated on a 15 meters wide road and was not considered to be in a good location whereas the plots which were situated in the 60 meters wide road and on the 30 meters wide roads had got higher bids. It was also averred that the respondents had allotted plot No.302, Sector 7 for Rs.22,600/- per sq.meter though it was situated in the 30 meters wide road and is a corner plot. On account of fresh advertisement, the writ petition was accordingly filed in August, 2018.

7. The stand of the respondents in the written statement is that the auction of the plot was not approved by the competent authority and it

was decided on 17.09.2017 to re-auction the plot as it was a prime area keeping in view the fact that it may fetch higher price. It was pleaded that there was no contract between the parties and therefore there was no cause of action and the auction was mere invitation to offer and non-acceptance of the reserve price would not give a right to the offerer. It was pleaded that the weighted average rate was Rs.23,400/- per sq.meter and vide proceedings dated 08.09.2017 recommendation had been made to offer the plot at that rate but it was not approved by the competent authority since it was a prime area. It was decided on 17.09.2017 to re-auction the plot as the commercial interest of the HSIIDC was equally important. The amount was refunded on 19.06.2018 after deducting the processing fee of Rs.7500/-. The fact that the other 7 plots had been allotted was admitted being a matter of record. Similarly, it was admitted that the office noting in favour of the petitioner was subject to approval of the competent authority. The factum of counter-offer having been made was admitted and also that the petitioner had accepted the same but no specific reply was filed that the bid was not accepted for extraneous considerations and the petitioner being the highest bidder and also having accepted the counter-offer. The only defence taken was that it was subject to the approval of the competent authority.

8. The reasoning given by the MD of the respondent-Corporation pursuant to the proceedings of the Committee dated 08.09.2017 wherein the petitioner's case of counter-offer was considered and the recommendation to issue regular letter of allotment are reproduced below:

> "Re: Issuance of RLA of Plot no.97, Sector-4, Phase-I, IMT Manesar, measuring 1012.50 sq.mtrs – M/s Sunny Enterprises

(Application D 2016OCT07384 – Auction ID 30211 – Item ID 4250.

In this case, e-auction was conducted on 30.12.2016 and there was only one applicant (Sh. Pradeep Vats Prop. M/s Sunny Enterprises) participated in the bid for the plot No.97, Sector-4, Phase-I, IMT Manesar with the bid amount of Rs.22,600/- against the reserve price of Rs.22,500/- per sqm., therefore, it was considered appropriate not to accept the same being single bid. However, instead of re-advertising the plot, it was decided by the Competent Authority (NP 9-10) to give a counter offer to the bidder Sh. Pradeep Vats Prop. M/s Sunny Enterprises at weighted average auction price of Rs.23400/-.

Accordingly, vide our letter dated 09.02.2017 (Flag "A"), the applicant/bidder was asked to give his consent in writing whether offer of allotment of captioned plot with rate of allotment @ Rs.23,400/- is acceptable to him or not. In reply of this, the bidder vide letter dated 27.02.2017 (Flag "B") had accepted the allotment of plot no.97, Sector-4, Phase-I, IMT Manesar at offered rate of Rs.23,400/- psm and had requested to issue the allotment for this plot.

Presently the rate of allotment of industrial plots in IMT Manesar for Financial Year 2017-18 is Rs.22,500/- psm.

In view of above, Committee recommended to issue the Regular letter of Allotment along with offer of possession in respect of plot no.97, Sector-4, Phase-I, IMT Manesar to Sh. Pradeep Vats Prop. M/s Sunny Enterprises at a rate of allotment of Rs.23400/- psm.

Sd/- Sd/- Sd/- Sd/- Sd/-
M(RKT) AGM(SDP) AGM (RNG) AGM (MB) DGM (SB)

Sd/-
Addl. GM (SG)
HoD (Estate)

As proposed.
Sd/-
Sunil Sharma CCI-cum-Head of Division (Estate) HSIIDC, Panchkula 08/09/2017

W/MD

We may re-auction the plot since it's a prime area.

Sd/-

Dr.Raja Shekhar Vurdru, MD, HSIIDC 17/09/2017"

9. A reading of the same would go on to show that the order of the Managing Director is absolutely arbitrary and the rejection for the proposal of the counter-offer only on the ground that since it is a prime area, a decision to re-auction had been taken. Specific averments were made in para No.6 of the writ petition wherein the rates were given as to how similarly situated 7 plots of the same dimension were duly allotted. The rate of the said plots varies from Rs.22,600/- per sq.meter regarding Plot No.302 to Rs.22,900 qua Plot No.247 whereas another Plot No.77 went for Rs.23,000/- per sq.meter and similarly plot No.101 went for Rs.23,500/- and Plot No.192 went for Rs.24,700/-. Other Plot No.200 was auctioned for Rs.25,200/- per sq.meter and one plot No.343 went for Rs.26,100/- per sq.meter. The average weighting of the said plots came to Rs.23,400/- per sq.meter which was the procedure followed to give the counter-offer to the petitioner which he duly accepted. Having given one and the counter-offer being accepted, it did not lie in the mouth of the respondent-Corporation to reject the case of the petitioner vide the impugned order dated 06.03.2018 (Annexure P-1) solely on the ground that the MD of the respondent-Corporation was the final authority to accept or reject any bid. The relevant chart reads as under:

Detail of Highest Bidders:

Sr. No.	Plot No.	Sec-tor	Pha-se	Size (SQM)	Final Bid Amount (PSM)	Total cost of plot (Rs.)	Name of applicant/ Bidder
1.	343	7-II	1	450.00	26100	11745000	Rakesh Yadav (RLA 9.2.17)
2.	97	4	1	1012.50	22600	22882500	Sunny Enterprises RLA not

							issued
3.	101	5	1	1012.50	23500	23793750	Busch Vacuum India Pvt. Ltd. (RLA 9.2.17)
4.	77	5	1	1012.50	23000	23287500	Vikrant Gogia (RLA 9.2.17)
5.	192	5	1	1012.50	24700	25008750	Plastic component Industries (RLA 9.2.17)
6.	200	6	1	1012.50	25200	25515000	Plastic component Industries (RLA 9.2.17)
7.	247	6	1	1012.50	22900	23186250	Speciality Moulds & Engineering Pvt. Ltd. (RLA 9.2.17)
8.	37-B	6	1	1012.50	No Bid	22781250	No Bidden
9.	65-A	6	1	1012.50	No Bid	22781250	No Bidden
10.	302	7-II	II	1012.50	22600	22882500	Ramesh Kumar (Letter/RLA 9.2.17)
	Total			9562.50			223863750
Average weighted price per psm				Rs.223863750/9562.50=Rs.23411/-			
Say (Rounder off)				Rs.23400/- per sq.mtr.			

10. The law is settled on that issue that there has to be valid reasons for rejection of the eviction bid and the State cannot act arbitrarily and reject the offer even though the highest bidder may not have indefeasible right. The Full Bench of this Court in **Surja Ram Vs. State of Haryana & another, 1984 PLR 584** has held that there has to be reasons for refusing to accept the bid and the same may not have to be disclosed to the highest bidder but the Court can ask for the reasons for non-acceptance of the bid to find out if the same are relevant and germane for the non-acceptance.

11. The ratio of the said judgment was doubted and the matter was referred by a Division Bench leading to a decision by another Full Bench in **Subhash Chand Vs. State of Haryana & others, 2007 AIR (P&H) 167** wherein the issue was whether the highest bidder in an auction whose bid had not been accepted by the authorities acquires any right and whether the writ petition was maintainable. It was accordingly held that the State had no dominus status to dictate unilateral terms and conditions and its actions must be reasonable, fair, just and in consonance with the rule of law. The locus standi of the petitioner to maintain the writ petition was held to be heavy provided he could bring forth the arbitrary, illegal or perverse reasons. The relevant observations answering the reference read as under:

> "19. The State thus has no dominus status to dictate unilateral terms and conditions when it enters into a contract and its actions must be reasonable, fair and just and in consonance with the rule of law (Ref: (i) Mahabir Auto Stores v. Indian Oil Corporation and (ii) Star Enterprises v. City and Industrial Development Corporation of Maharashtra Ltd. . As a necessary corollary thereto, it is held that the State Government cannot refuse to confirm the highest bid without assigning any valid reason and/or by giving erratic, irrational or irrelevant reasons.
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> 20. As regards locus standi of the petitioner to maintain the writ petition we have already held that every highest bidder has a right to assail the action of the State Government or its authorities by contending that his bid has been turned down for arbitrary, illegal or perverse reasons though in such like matters, heavy onus would lie on the petitioner to establish his allegations as the State action shall always be presumed to be in accordance with law.
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> 21. We answer the reference accordingly."

12. State Counsel has also relied upon the judgment of the Apex Court in **Haryana Urban Development Authority & others Vs. Orchid**

Infrastructure Developers Pvt. Ltd., 2017 AIR (SC) 882. The question formulated regarding the maintainability and legality of rejection of the bid was decided by holding that there has to be reason for rejection of the bid and only where there are reasons sufficient to reject the stand, the writ petition was not liable to be allowed. Reliance was placed by the Apex Court upon **M/s Star Enterprises Vs. City & Industrial Development Corporation of Maharashtra Ltd., (1990) 3 SCC 280** and **Kalu Ram Ahuja Vs. Delhi Development Authority, (2008) 10 SCC 696** wherein it had been held that if there was record showing that the decision was based on rational and tangible reasons, interference was not liable to be made if the same was in public interest.

13. It is the specific case of the petitioner and as pleaded from the site-plan (Annexure P-15) also that the location of Plot No.97, Sector 4 Phase-I, IMT Manesar was on a 15 meters wide road which was never a premium location and Plot No.302 situated on a 30 meters wide road had been allotted at Rs.22,600/- per sq.meter whereas the petitioner had been declined the allotment at Rs.23,400/- per sq.meter. The respondents have failed to controvert the said averments made in para No.19 of the writ petition by only mentioning that the issue did not relate to the rate of price. It was for the respondents to justify as to what was the valid reason for the MD to decline the offer of re-allotment which had been made as decided by the Committee after it had taken into account the fact that the average weighted price worked out to Rs.23,400/- per sq.meter and the rate for the relevant year 2017-18 was even lessor @ Rs.22,500/-.

14. Resultantly, this Court is of the considered opinion that the impugned order dated 06.03.2018 (Annexure P-1) being based on untenable reasons was arbitrary and liable to be quashed. Accordingly, the

present writ petition is allowed and a writ in the nature of Mandamus is issued to the respondents to issue the regular letter of allotment to the petitioner of Plot No.97, Sector 4 Phase-I, IMT Manesar in view of the fact that there was an interim order dated 10.08.2018 in favour of the petitioner whereby further allotment was to be without prejudice to the petitioner's right. In case the said plot is not readily available, the petitioner will be offered another plot of the same size i.e. measuring 1012.50 sq.meters at Rs.23,400/- per sq.meter. The petitioner shall also be given the benefit of the deposit with the respondents for the period of 1 year and 8 months since the amount was refunded only on 19.06.2018 having been deposited on 14.10.2016. Needful be done within a period of 2 months from the receipt of certified copy of this order. The petitioner will also have the benefit of costs of Rs.50,000/- payable to him to be adjusted in the price of the plot.

(G.S. SANDHAWALIA)
JUDGE

20.09.2023 **(HARPREET KAUR JEEWAN)**
sailesh **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : Yes