IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 21.05.2024
Pronounced on: 29.07.2024

1) CWP No.5201 of 2023

Aldas India Private Limited and others ....Petitioners

V/s

HSIIDC ....Respondent

2) CWP No.5394 of 2023

M/s Regal International ....Petitioner

V/s

State of Haryana and others ....Respondents

3) CWP No.8936 of 2023

Small Scale Industrial Manufactures Association (Regd.)....Petitioner

V/s

HSIIDC ....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. ADS Sukhija, Advocate and
Mr. Brijesh Khosla, Advocate,
for the petitioners in CWP-5201-2023.

Mr. Raghav Bali, Advocate, for
Mr. Pankaj Bali, Advocate,
for the petitioner in CWP-5394-2023.

Ms. R. Akanksha, Advocate and
Mr. R. Kartikeya, Advocate,
for the petitioner in CWP-8936-2023.

Mr. Ankur Mittal, Advocate and
Ms. Kushaldeep Kaur, Advocate, for the respondents-HSIIDC.

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VIKRAM AGGARWAL, J.

1. The petitioners in all the three writ petitions are aggrieved of

the action of the Haryana State Industrial and Infrastructural Development Corporation Limited (for short the "respondent-Corporation"), vide which it re-fixed the e-auction pertaining to plots measuring 1800 sq. mtrs. and 4050 sq. mtrs. Situated at IMT Kharkhoda (District Sonepat), after revising the reserve price from Rs.14,200/- per sq. mtr. to Rs.28950/- per sq. mtr. For, the grievance in all the writ petitions is the same, they are being disposed of by way of this common judgment. The facts are being derived from CWP-5201-2023.

2. In the year 2021, the respondent-Corporation advertised e-auction and allotment of industrial plots at IMT Kharkhoda (District Sonepat). The registrations were to commence from 01.10.2021 at 9.00 a.m. and were to end on 30.10.2021 at 11.59 p.m. The tentative date for the e-auction was fixed as 18.11.2021. Plots measuring 450 sqm, 800 sqm, 1012.5 sqm, 1800 sqm and 4050 sqm were proposed to be put to e-auction. The reserve price for all sizes were fixed at Rs.14200/- per sqm. Earning money deposit was fixed at 5% of the reserve price. The same was duly quantified and indicated in the brochure **(Annexure P-1)**. Non-refundable process fee was also to be charged depending upon the size of the plots.

3. Petitioner No.1 applied for two industrial plots measuring 1800 sqm and 4050 sqm each. Petitioner No.2 applied for a plot measuring 4050 sqm and petitioner No.3 applied for a plot measuring 1800 sqm. Similarly, the petitioner in CWP-5394-2023 applied for a plot measuring 4050 sqm. CWP-8936-2023 has been filed by the Small Scale Industrial Manufactures Association (Regd.) which is agitating the grouse of various applicants, being an association of Small Scale Industrial Manufacturers. The requisite earnest money and the proposed fee etc. were duly deposited.

4. The e-auction schedule was issued by the respondent-Corporation. However, plots measuring 1800 sqm and 4050 sqm were excluded. It is the case of the petitioners that no reason was given by the respondent-Corporation for excluding the plots measuring 1800 sqm and 4050 sqm from the e-auction schedule.

5. Subsequently, another e-auction schedule (Annexure P-5) was issued for allotment of plots measuring 1800 sqm and 4050 sqm, as per which e-auction for plot measuring 1800 sqm was to be conducted on 14.03.2023 and for plot measuring 4050 sqm, the e-auction was to be conducted on 16.03.2023. The reserve price for these plots were enhanced to Rs.28950/- per sqm from the earlier reserve price of Rs.14200/- per sqm. The petitioners term the said enhancement in the reserve price to be arbitrary and without any application of mind, discriminatory and violative of the principles of natural justice.

6. Apart from seeking a writ of certiorari quashing the e-auction (Annexure P-5) and issuance of a mandamus commanding the respondents to auction the plots at the reserve price fixed in the public notice (Annexure P-1) @ 14200/- per sqm, the petitioners also pray for the issuance of a mandamus commanding the respondents to refund the earnest money deposited along with 12% interest per annum from the date of payment till the date of realization. This relief, of course, has been sought in the alternative.

7. The respondent-Corporation filed a short reply by way of an affidavit of the Additional Managing Director-cum-HoD (Estate). The basic stand taken in the short reply is that the e-auction for the first round for plots measuring 450 sqm commenced on 27.01.2022. It was observed that around

at 12.00 noon, the bid rate for the first round was Rs.30 lac per sqm as against the reserve price of Rs.14200/- per sqm, meaning thereby that the highest bid was more than 200 times than the reserve price, which indicated an attempt to disrupt the e-auction system. On account of this, the bids were halted. To analyze the issue, a committed was constituted. The said committee considered the date of e-auction for IMT, Kharkhoda and recommended that the e-auction for plots measuring 450 sqm category be held back and further decision be taken as events would unfold based upon further investigation etc. The e-auction for other categories was ordered to be scheduled for a particular date.

8. Since the respondent-Corporation had taken a decision for recommencement of registrations of various categories of plots, the same were recommended with the last date for registrations being 28.02.2022. A tentative date for auction was given as 08.03.2022. The auctions for plots measuring 450 sqm, 800 sqm and 1012.50 sqm were held on 09.03.2022, 15.03.2022 and 21.03.2022. However, the auctions for plots measuring 1800 sqm and 4050 sqm were not conducted. For the plots measuring 1800 sqm and 4050 sqm, a fresh schedule was issued vide **Annexure P-5**, as per which, the date for auction of plots measuring 1800 sqm was fixed as 14.03.2023 and for 4050 sqm plot as 16.03.2023. It has been stated in the reply, that as per the Estate Management Procedure 2015 (for short the "EMP-2015"), the prices of industrial plots are revised each year w.e.f. 1st of April and accordingly, the Board of Directors of the respondent-Corporation in its meeting held on 26.03.2022, approved the reserve price of Rs.28950/- per sqm and as such e-auction was proposed to be held at reserve price of Rs.28950/- per sqm. It has been averred that the auction was successfully

conducted and after conclusion of the same, the EMD of unsuccessful bidders including that of the petitioners was refunded on 17.03.2023. The petitioners did not participate in the e-auction and challenged the same before this Court. It has been averred that no right would accrue from the auction notice as it only specified the tentative reserve price and the tentative date of auction. It was within the domain of the respondent-Corporation to take a call on the reserve price and the date of auction. As regards the interest, it has been averred that no interest is payable because as per the procedure adopted by the respondent-Corporation, the application money received from applicant is deposited in ICICI Bank in an escrow account which bears no interest on the money deposited. This amount cannot be withdrawn by the respondent-Corporation and upon conclusion of the e-auction, the money of the unsuccessful bidders is refunded by the bank without any intervention of the respondent-Corporation.

9. Learned counsel for the parties were duly heard.

10. It was submitted by learned counsel for the petitioners that the respondent-Corporation had been unfair, insofar as after fixing the reserve price of the plots at Rs.14200/- per sqm and also after fixing the date of auction as 18.11.2021, the same was not conducted and in an arbitrary manner, the respondent-Corporation issued a fresh e-auction schedule with a revised reserve price of Rs.28950/- per sqm. It was submitted by learned counsel that the petitioners intended to set up their businesses on the plots for which they had moved the applications but the reserve price was doubled in an arbitrary manner, leading to shelving of the plans of the petitioners. It was submitted that the action of the respondent-Corporation is completely arbitrary and that the petitioners should be allotted plots at the reserve price

of Rs.14200/- per sqm. It was also submitted that in case the said argument does not find favour with the Court, the petitioners deserve to be paid interest @ 12% per annum on their earnest money deposit, which was Rs.12,78,000/- for plots measuring 1800 sqm and Rs.28,75,500/- for plots measuring 4050 sqm, which was retained by the respondent-Corporation for a long period of time i.e. for about 2 years.

11. Per contra, it was submitted by learned counsel representing the respondent-Corporation that the claim of the petitioners is devoid of merit. It was submitted that since e-auction of plots measuring 1800 sqm and 4050 sqm could not be conducted initially, the rates of earnest money etc. were re-fixed by the Board of Directors for the changed financial year i.e. 2022-23 and accordingly a fresh auction schedule was issued. It was submitted that the mere issuance of an advertisement and deposit of earnest money would not clothe the petitioners with any rights.

12. Having given our thoughtful consideration to the matter in hand, we find the claim of the petitioners to be devoid of merit. The initial e-auction notice (Annexure P-1) gave the tentative e-auction date as 18.11.2021 and the reserve price was fixed at Rs.14200/- per sqm. It was duly mentioned that plots whose details were given in a table in Clause B of the brochure (Annexure P-1) were proposed to be put to e-auction. Sub-clause 2 of Clause B provides that the categories indicated in the brochure were tentative and the Corporation reserved its right to withdraw any category from allotment or add any category for allotment at any stage without assigning any reason. However, auction for plots measuring 1800 sqm and 4050 sqm were not conducted and ultimately brochure (Annexure P-5) was issued, in which the e-auction for plots measuring 1800 sqm and

4050 sgm was fixed for 14.03.2023 and 16.03.2023 respectively. The reserve price was mentioned as Rs.28950/- and it was indicated that this was the reserve price for the Financial Year 2022-23.

13. In the written statement, due explanation for increase in the reserve price has been given by the respondent-Corporation. It was a decision of the Board of Directors to fix a particular reserve price for the FY 2022-23. In the considered opinion of this Court, these are purely administrative decisions, which are not liable to be interfered with until and unless the decision is shown to be perverse or is shown to have been taken for some extraneous consideration. Merely because an e-auction schedule was initially issued but the e-auction was not conducted would not clothe the petitioners with any right. Merely submission of an application form along with earnest money deposit would not be sufficient for the petitioners to claim a right of allotment or a right to participate in the auction. At the end of the day, it would be the decision of the respondent-Corporation after considering the matter from all angles, including the financial aspects. For, the respondent-Corporation would not be expected to incur losses. Eventually, the auction was conducted and plots were allotted. The petitioners chose not to participate in the said auction as probably the price did not suit them. Though this can be termed as a setback for the petitioners, the action of the respondent-Corporation cannot be termed to be illegal, warranting interference by this Court. It is well settled that the scope of judicial review of administrative actions/decisions is extremely limited and such actions can be reviewed/set aside only if they are shown to be grossly erroneous and *mala fide*. It has repeatedly been held that judicial quest in administrative matters has been to find the right balance between the

administrative discretion to decide matters whether contractual or political in nature or issues of social policy. It has repeatedly been held that it is not for the Court to determine whether a particular policy or a particular decision taken in the fulfillment of that policy is fair and it is only concerned with the manner in which those decisions have been taken. It is settled that the grounds upon which an administrative action is subject to control by judicial review are illegality, irrationality and procedural impropriety. Reference can be made to the judgments of the Supreme Court of India in the cases of ***Tata Cellular Vs. Union of India*****, 1996 AIR (SC) 11,** ***Jagdish Mandal vs. State of Orissa*** **(2007) 14 SCC 517,** ***Khoday Distilleries Ltd. vs. State of Karnataka*** **(1996) 10 SCC 304,** to name a few.

14. Applying the principles laid down in the aforesaid judgments, we find no reason to interfere in the decision to withdraw plots measuring 1800 sqm and 4050 sqm from the previous auction and then re-fixing the reserve price as their auction was held in the subsequent year.

15. As regards the interest, the stand taken by the respondent-Corporation is that the amount of all the applicants is deposited in an escrow account of ICICI Bank and the same cannot be withdrawn by the respondent-Corporation. After the auction is conducted, the amount is automatically refunded to the unsuccessful bidders, meaning thereby that the amount is not retained by the respondent-Corporation.

16. No doubt, the auction process took more time than expected and the money of the petitioners stood deposited for a period of about 1½ years and the same is stated to have been refunded on 17.03.2023. However, at the same time, it has to be borne in mind that in the brochure, it was

specifically mentioned that the dates of the auction were tentative and that the category wise dates would be decided after the closure of the registrations. It was also provided that the earnest money would not be refunded till the conclusion of the auction. Still further, in the absence of any specific provision for grant of interest on the refund of earnest money, we find no reason to give such a direction to the respondents.

17. Further, the brochure (Annexures P-1 and P-5) also mentioned that allotments shall be governed by the provisions as contained in Estate Management Procedure 2015 and Haryana Building Code 2017 and other applicable laws. As per Clause 3.4(ii)(f) of the EMP 2015, 5% of the token money of the unsuccessful applicants would be refunded directly from the e-auction portal. It is, therefore, clear that the amount deposited by the applicants is not utilized by the respondent-Corporation. Under the circumstances, the respondent-Corporation would not have any liability to pay any interest on the refunded amount.

18. In view of the aforementioned facts and circumstances, we do not find any merit in the writ petitions and the same are accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 21.05.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No