IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12231-2024
Date of Decision: 29.05.2024

Jagdish Parshad

….Petitioner

Versus

Haryana State Industrial and Infrastructure Development Corp. Ltd. and Another

....Respondents

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

Present: Ms. Monika Beriwal, Advocate, for
Mr. Rohit Mittal, Advocate, for the petitioner.

Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate,
Ms. Saanvi Singla, Advocate and
Mr. Siddharth Arora, Advocate for HSIIDC.

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1. A writ of certiorari is prayed for to quash the order dated 08.01.2024 (Annexure P-8) vide which the action of the respondents in rejecting the highest bid of the petitioner *qua* convenience shop No.CS-59 of Informal Sector, Narnaul (hereinafter referred to as the 'shop in dispute') measuring 40.5 square meters has been upheld and his claim for allotment of the disputed shop has been rejected. A writ of mandamus is also prayed for directing the respondents to give possession of the shop in dispute to the petitioner being the highest bidder.

2. The basic controversy in this case is that the petitioner had participated in an E-auction conducted by the respondents for allotment of commercial sites (Booths/SCOs/shops) in Bahadurgarh, Barhi, Bawal, Manesar, Narnaul, Narwana and Saha. The petitioner had applied for a convenience shop in Informal Sector, Narnaul.

3. The petitioner emerged as the highest bidder *qua* the property/shop which he had bid for. He received e-mails confirming that he was the highest bidder. He deposited a total of 10% of the total consideration as per the terms and conditions laid down in the brochure. However, no letter of intent was issued and instead, the amount deposited by the petitioner was refunded in his bank account. The petitioner approached this Court by way of ***CWP-21298-2023.*** The said writ petition was disposed of on 07.12.2023 as the respondents stated that they would pass a speaking order in accordance with law and would also afford an opportunity of hearing to the petitioner. Now by way of the impugned order, the claim of the petitioner has been rejected, leading to the filing of the instant writ petition.

4. An advertisement was issued on 23.06.2023 (Annexure P-1) for allotment of commercial sites (Booths/SCOs/Shops) through E-auction in Bahadurgarh, Barhi, Bawal, Manesar, Narnaul, Narwana and Saha. The registration was to start on 23.06.2023 and was to end on 13.07.2023. The E-auction was to be conducted on 20.07.2023. For a convenience shop in the Informal Sector, Narnaul, the reserve price was fixed as ₹58,300/- per square meters and the earnest money deposit was ₹1,18,058/-. The highest bidder was required to remit the amount equivalent to 10% of the quoted bid. The detailed terms and conditions were laid down in the brochure (Annexure P-1).

5. The petitioner, being desirous of participating in the E-auction, submitted his application and was registered on the web portal of the respondents. He participated in the E-auction and gave a bid of ₹64,300/- per square meters and emerged as the highest bidder as would be clear from the bid history sheet (Annexure P-2) and the e-mail received by the petitioner dated 20.07.2023 (Annexure P-3). In this e-mail, the petitioner was informed that a plot had been

auto booked in the HSIIDC E-auction of convenience shop measuring 40.5 square meters in Informal Sector, Narnaul and that the last date for making the H-1 payment would be intimated shortly. An e-mail of even date (Annexure P-4) was also received that the EMD payment of ₹1,18,058/- was successful and that further details would be sent subsequently.

6. However, vide e-mail dated 27.07.2023 (Annexure P-5), the petitioner was informed that his bid had not been accepted and that the earnest money deposit would be refunded shortly. Aggrieved by this action, the petitioner preferred a representation dated 29.07.2023 (Annexure P-6) which evoked no response, which led the petitioner to file ***CWP-21298-2023,*** which was disposed of by this Court on 07.12.2023 (Annexure P-7).

7. Thereafter, the impugned order dated 08.01.2024 has been passed leading to the filing of the instant writ petition.

8. Learned counsel for the petitioner as also learned counsel for the respondents, who were present on advance notice having been served were duly heard.

ARGUMENTS FOR THE PETITIONER

9. Learned counsel for the petitioner submitted that the action of the respondents in not accepting the bid of the petitioner and unilaterally refunding the amount deposited by him is completely arbitrary and illegal. Reference was made to the impugned order dated Annexure P-8 and it was submitted that the same is not sustainable. Detailed reference was made to the brochure (Annexure P-1) and various clauses thereof. It was submitted that the bid given by the petitioner in this case was higher than the reserve price and, therefore, there was no occasion for the respondents to reject or to not accept the H-1 bid of the petitioner.

10. Learned counsel further submitted that Clause J (1) of the brochure is arbitrary, irrational and illegal and it cannot be construed to mean that after a bidder having been declared as the highest bidder, the bid could be rejected.

11. It was submitted by learned counsel that the petitioner had altered his position financially and that for no fault of his, he is being made to suffer. It was submitted that if the reserve price had been wrongly calculated by the respondents, they could have given a counter offer to the petitioner which was not done and, therefore, the same has caused grave prejudice to the petitioner.

12. Learned counsel, therefore, submitted that the impugned order deserves to be set aside and a direction deserves to be issued to the respondents to allot plot the petitioner.

ARGUMENTS FOR THE RESPONDENTS

13. Per contra, it was submitted by learned counsel representing the respondents that the impugned order has been passed in accordance with law and, therefore, calls for no interference.

14. Learned counsel submitted that as per Clause J (1) of the brochure, the competent authority reserves the right to accept or reject any bid without assigning any reason and, therefore, the petitioner would have no right to contend that since he had been declared to be the highest bidder, he would be entitled to the allotment of plot.

15. Learned counsel also submitted that it is well settled that merely because a person is declared as the higher bidder, there would be no right for allotment. Reliance in this regard was placed upon the judgment passed by the Supreme Court of India in '***Haryana Urban Development Authority and Others Vs. Orchid Infrastructure Developers Private Limited' 2017(2) RCR (Civil) 145*** as also the judgments passed by this Court in '***Dr. Sarika Gautam and Others Vs.***

Haryana Shehari Vikas Pradhikaran (HSVP) and Others' 2022(1) PLR 277 and '***Mahavir Singh Vs. Haryana Shehari Vikas Pradhikaran (HSVP) and Others' 2023(4) RCR (Civil) 121.***

ANALYSIS AND FINDINGS

16. We have given our thoughtful consideration to the arguments addressed by learned counsel for the parties and have also perused the paper book.

17. The brochure (Annexure P-1) lays down the detailed terms and conditions. Clause J(1) lays down that the competent authority 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.

Clause J(1) lays down as under:-

> ***"HSIIDC reserved the right to accept any bid subject to approval of the Competent Authority or reject any bid (even the highest bid) or withdraw any or all the plots/sites from bidding process or cancel/postpone the e-auction at any stage without assigning any reason."***

18. Now coming to the law on the subject, it is by now well settled that in the absence of a concluded contract, no right would accrue to the highest bidder. The Supreme Court of India was dealing with one such issue in the case of '***Haryana Urban Development Authority and Others Vs. Orchid Infrastructure Developers Private Limited'*** (supra) where after the rejection of the bid of M/s Orchid Infrastructure Developers Private Limited, a suit for declaration had been filed. In that case, the plaintiff had given the highest bid which, as per the plaintiff had been accepted. Formal letter of allotment was, however, not issued and ultimately, the 10% amount deposited by the plaintiff was refunded on the ground that the bid had not been accepted. This action was challenged by way of a suit which was decreed by the trial Court. However, appeal against the same was

allowed by the Court of the District Judge and the suit was dismissed. The High Court then allowed the second appeal and restored the judgment and decree of the trial Court after which the matter reached the Apex Court and the Apex Court ultimately upheld the decision of the First Appellate Court and held that no right had accrued to the highest bidder. The Supreme Court of India while relying upon other decisions in the case of '*State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others'*, (1982) 2 SCC 365, '*Laxmikant and Others Vs. Satyawan and Others'*, (1996) 4 SCC 208, '*Meerut Development Authority Vs. Association of Management Studies and Another',* (2009) 6 SCC 171, '*M/s Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Limited and Others'*, (1990) 3 SCC 280 and '*Kalu Ram Ahuja and Another Vs. Delhi Development Authority and Another',* (2008) 10 SCC 696, held as under:-

> ***"27. This Court in the case of State of Uttar Pradesh & Ors. v. Vijay Bahadur Singh & Ors. (1982) 2 SCC 365 has laid down that there is no obligation to accept the highest bid. The Government is entitled even to change its policy from time to time according to the demands of the time. It was observed thus :***
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> > ***"3. It appears to us that the High Court had clearly misdirected itself. The Conditions of Auction made it perfectly clear that the Government was under no obligation to accept the highest bid and that no rights accrued to the bidder merely because his bid happened to be the highest. Under Condition 10 it was expressly provided that the acceptance of bid at the time of auction was entirely provisional and was subject to ratification by the competent authority, namely, the State Government. Therefore, the Government had the right, for good and sufficient reason, we may say, not to accept the highest bid but even to prefer a tenderer other than the highest bidder. The High Court was clearly in error in holding that the Government could not***

refuse to accept the highest bid except on the ground of inadequacy of the bid. Condition 10 does not so restrict the power of the Government not to accept the bid. There is no reason why the power vested in the Government to refuse to accept the highest bid should be confined to inadequacy of bid only. There may be a variety of good and sufficient reasons, apart from inadequacy of bids, which may impel the Government not to accept the highest bid. In fact, to give an antithetic illustration, the very enormity of a bid may make it suspect. It may lead the Government to realise that no bona fide bidder could possibly offer such a bid if he meant to do honest business. Again the Government may change or refuse its policy from time to time and we see no reason why change of policy by the Government, subsequent to the auction but before its confirmation, may not be a sufficient justification for the refusal to accept the highest bid. It cannot be disputed that the Government has the right to change its policy from time to time, according to the demands of the time and situation and in the public interest. If the Government has the power to accept or not to accept the highest bid and if the Government has also the power to change its policy from time to time, it must follow that a change or revision of policy subsequent to the provisional acceptance of the bid but before its final acceptance is a sound enough reason for the Government's refusal to accept the highest bid at an auction…"

28. In Laxmikant & Ors. v. Satyawan & Ors. (1996) 4 SCC 208, this Court has laid down that in the absence of completed contract when the public auction had not culminated to its logical end before confirmation of the bid, no right accrued to the highest bidder. This Court has laid down as under :

"4. Apart from that the High Court overlooked the conditions of auction which had been notified and on basis of which the aforesaid public auction was held. Condition No. 3

clearly said that after the auction of the plot was over, the highest bidder had to remit 1/10 of the amount of the highest bid and the balance of the premium amount was to be remitted to the trust office within thirty days "from the date of the letter informing confirmation of the auction bid in the name of the person concerned". Admittedly, no such confirmation letter was issued to the respondent. Conditions Nos. 5, 6 and 7 are relevant:

"5. The acceptance of the highest bid shall depend on the Board of Trustees.

6. The Trust shall reserve to itself the right to reject the highest or any bid.

7. The person making the highest bid shall have no right to take back his bid. The decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be binding on the said person. Before taking the decision as above and informing the same to the individual concerned, if the said individual takes back his bid, the entire amount remitted as deposit towards the amount of bid shall be forfeited by the Trust."

From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in the cases of Trilochan Mishra v. State of Orissa (1971) 3 SCC 153, State of Orissa v. Harinarayan Jaiswal (1972) 2 SCC 36, Union of India v. Bhim Sen Walaiti Ram (1969) 3 SCC 146 and State of U.P. v. Vijay Bahadur Singh (1982) 2 SCC 365. It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article

12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held."

29. In Meerut Development Authority v. Association of Management Studies & Anr.(2009) 6 SCC 171, this Court has laid down that a bidder has no right in the matter of bid except of fair treatment in the matter and cannot insist for further negotiation. The Authority has a right to reject the highest bid. This Court has laid down thus :

> ***"27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.***
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> ***x x x x x***
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> ***29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting***

or refusing the bid must be free from arbitrariness or favouritism."

30. Reliance has been placed on behalf of the respondent on a decision of this Court in M/s. Star Enterprises & Ors. v. City and Industrial Development Corporation of Maharashtra Ltd. & Ors. (1990) 3 SCC 280. The relied upon portion is extracted hereunder:

> ***"10. In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so."***

No doubt about it that there have to be some reasons for rejection of the bid which are adequately present in the

instant case as discussed hereinabove. The decision is of no help to espouse the cause of the plaintiff.

31. Reliance has also been placed on a decision of this Court in Kalu Ram Ahuja & Anr. v. Delhi Development Authority & Anr. (2008) 10 SCC 696 in which this Court has laid down that the highest bid was rejected without assigning any reason and there was no record showing that the decision was based on rational and tangible reasons and was in public interest. In the instant case we are satisfied from the order that the reports were considered and what were the reports, has been made clear in the reply filed by the respondents which has not been controverted. In the instant case merely the bid being above the reserve price, was not a safe criteria to accept the same.

32. In Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.(1978) 1 SCC 405, this Court has laid down that when a statutory functionary makes an order, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. This Court has held thus :

> ***"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji AIR 1952 SC 16 :***
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> ***"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have***

public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older."

There is no dispute from the aforesaid proposition. However, in the instant case reasons have been mentioned in the rejection order and the nature of reports has also been sufficiently explained. Thus the rejection of seven different bids in the auction reflects that there was due application of mind by the concerned authority and rejection could not be said to be illegal, arbitrary or sans of reason.

33. We are constrained to observe in the instant case that with respect to reserve price also, there was a hitch to fix and approve it right from the word go. It was a case of auction of big commercial tower having a huge area of 9.527 acres. Only the reserve price of the same was forwarded for fixation to the Chief Administrator, whereas the reserve prices of other properties were fixed by the Administrator. When the bids were received, the Administrator considering the huge stakes involved, forwarded the matter to the Chief Administrator. However, the Chief Administrator washed off his hands and did not decide it and sent the matter back to the Administrator, clearly indicating that the Administrator was delegated with the power to decide the bids. Thus, under compelling circumstances and duly considering the reports, the Administrator had taken the decision to reject the bids not only of the plaintiff but also six others. For the first time in the history of State of Haryana, such big properties were put to hammer on the prices indicated. The hitch in fixing the reserve price also indicates that the reserve price was not determined in a fair manner in the instant case. Not only the plaintiff but HUDA also did not place the delegation of power on record of the courts below. None of the officials of HUDA had been examined. Only an Assistant – a junior ranking person had been examined who was not posted there when the auction was held

and came only in 2008. As the property was a commercial tower in Sector 29, Gurgaon, with huge commercial complex, the first appellate court was right in dismissing the suit.

34. Plaintiff came to the court for mandatory injunction, for issuance of allotment letter without payment of court fee also. It was incumbent upon the plaintiff to pay the ad valorem court fee as prevailing and the valuation of the suit should not have been less than the bid amount of Rs.111.75 crores, as rightly held by the first appellate court. The plaintiff is directed to pay the ad valorem court fee not only before the trial court but also before the High Court. Plaintiff is directed to deposit the court fee within two months from today, as payable.

35. Resultantly, the appeal is allowed. The judgment and decree passed by the High Court is set aside and that of the first appellate court is restored. In the facts and circumstances of the case, we impose costs of Rs.5 lakhs on the plaintiff/respondent to be deposited as : L 2.5 lakhs in the Advocates' Welfare Fund and Rs.2.5 lakhs in the Supreme Court Employees' Welfare Fund within a period of two months from today.

19. A similar issue arose before a Co-ordinate Bench of this Court in the case of ***Dr. Sarika Gautam and Others Vs. Haryana Shehari Vikas Pradhikaran (HSVP) and Others*** (supra). The petitioner therein had submitted an online bid for a plot in Sector 38, Gurugram for ₹1,87,99,300/-. Despite being the highest bid, the same was not accepted nor was any specific order passed informing the petitioners as regards the fate of the bid. Here also, the clauses of the E-auction policy were considered and it was held that there would be no vested rights with with petitioner which would obligate the respondents to accept the highest bid of the petitioners. It was held that to the contrary, the highest bidder only had a right of consideration for such bid to be evaluated against the reserve price determined by the committee. The contention regarding deemed acceptance of the highest bid was rejected. Clause 28 of the said policy which obligated the acceptance or

rejection of the H-1 bid within a period of 07 working days was also examined and it was held that such provision were not mandatory and they are incorporated only to prevent undue delays on the part of the competent authority in taking a final decision:-

> ***"14. Counsel has not been able to point out any provision under the E-auction policy which would obligate the respondents to accept the highest bid. There would be no such right vested with the petitioners. To the contrary the highest bidder only has a right of consideration and for such bid to be evaluated against the reserve price determined by the Committee.***
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> ***15. In the facts of the case there is no material for us to conclude that any contract came into force between the petitioners and the respondents. The right of the highest bidder at public auctions has been examined repeatedly by the Apex Court as also this Court and the consistent view taken is that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest bid. A reference in this regard may be made to the decisions of the Hon'ble Supreme Court in Trilochan Mishra etc. v. State of Orissa (1971) 3 SCC 153: AIR (1971) 3 SC 733: State of Orissa v. Harinarayan Jaiswal (1972) 2 SCC 36: AIR 1972 SC 1816; Union of India v. Blum Sen Walaiti Ram (sic), (1969) 3 SCC 146 : AIR 1971 SC 2295 and State of U.P. v. Vijay Bahadur Singh (1982) 2 S.C.C. 365. Same view was taken by a Division Bench of this Court in Laxmi Narain Vs., State of Haryana and another (2009) 1 RCR (Civil) 556.***
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> ***16. The contention raised by counsel as regards a deemed acceptance of the highest bid and on the basis thereof a concluded contract having come into force between the petitioners and the respondents in the light of Clause 28 of the E-auction policy, is not well-founded.***
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> ***17. We are of the considered view that in a case of disposal of public property, the question whether the right of a person who has put in the highest bid in the public auction is to be preferred***

over the right of the public in ensuring that valuable public assets are not disposed of except for a fair price, public interest ought to prevail. Undoubtedly clause 28 of the E-auction policy obligated the acceptance or rejection of the H1 bid by the competent authority within a period of 7 working days from the date of e-auction. Stipulations of such nature and the question as to whether the same are to be viewed as mandatory or directory would depend upon the intent of the policy maker and the object that is sought to be achieved. We hold that such time frame stipulated in the terms and conditions governing an e-auction was only with the objective to prevent undue delay on the part of the competent authority in taking a final decision. Clause 28 and the time frame of 7 days stipulated therein cannot be permitted to be invoked to propound a theory of a concluded contract in the realm of disposal of public property by the State or State instrumentality in an E-auction process. Holding otherwise would run contrary to public interest.

18. In the facts of the present case and in the absence of any document/material reflecting acceptance of the bid submitted by the petitioners at the hands of the competent authority, no concluded contract had come into being.

19. In Afcons Infrastructure Limited Vs. Nagpur Metrol Rail corporation Limited and another (2016) 16, SCC 818, the Hon'ble Supreme court had held that interference in the decision making process of the competent authority in accepting or rejecting the bid of a tenderer is permissible only if the decision making process is mala fide or is intended to favour someone. Likewise interference in such matters would not be warranted unless it is shown that the action of the authority concerned is so arbitrary or irrational that the Court could say that such action is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words the decision making process or the decision should be perverse and not merely faulty or incorrect or erroneous.

> ***20. We find that in the facts of the present case no such ground as indicated hereinabove has been made out which would call for interference.***
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> ***21. The submission raised by counsel at the time of hearing as regards the petitioners having been denied opportunity of negotiation inspite of being a highest bidder is mis-placed and without merit. In the Eauction policy dated 16.06.2020 (Annexure P-4) pursuant to which the petitioners had participated in the auction process there was no term/condition whereby the respondents were obligated to call upon the highest bidder for negotiation. Such contention has been raised by counsel in the light of a revised E-auction policy which as per him has been issued by the respondents. Even if that be so, such revised E-auction policy would not apply to the auction process which is a subject matter of consideration in the present case. To rule out any discrimination that may have been meted out to the petitioners, we put a specific query to counsel as to whether pertaining to the other plots/sites which were a subject matter of the same auction process in which the petitioners had participated, whether the highest bidder as regards any other plot/site had been called for negotiation? The response is in the negative. As such we do not find any merit in the submission advanced by counsel as regards petitioners having a right to be called for negotiation. For the reasons recorded above, we find no merit in the instant writ petition.***
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> ***22. Dismissed."***

Another such view was taken by a Co-ordinate Bench of this Court in the case of ***Mahavir Singh Vs. Haryana Shehari Vikas Pradhikaran (HSVP) and Others*** (supra), in which it was held as under:

> ***"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.***
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> ***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 nonacceptance 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.-

(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)

"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."

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.”

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."

20. The law is, therefore, very clear that the highest bidder would have no right in the absence of his bid having been accepted by the competent authority.

21. Coming to the impugned order, the same is well reasoned and relies upon Clause J (1) of the brochure. It further relies upon the judgments referred to in the preceding paragraphs. All contentions raised have been duly dealt with. It was clearly stated in the impugned order as under:-

> ***"c. Regarding acceptance/rejection of H1 bids, it was clearly mentioned in the advertisement, published in leading newspapers, that the Corporation may without assigning any reason withdraw any or all the sites from e-auction process at any stage and is not bound to accept the highest bid or any or all bids even if they are above the reserve price. HSIIDC reserves the rights to accept or reject any or all the bids or cancel/postpone the bidding process without assigning any reason thereof.***
>
> ***d. Further, the Brochure containing detailed terms of e-auction and allotment thereof was uploaded on the HSIIDC web portal www.hsiidc.org.in and the e-auction portal https://hsiidc.bidx.in as well and could also be fetched/seen through scan/QR code labelled in the advertisement. Clause (1) of brochure/bid document clearly stipulated that HSIIDC reserve the rights to accept any bid subject to approval of Competent Authority or reject any or all the bid (even the highest bid) or withdraw any or all the plots/sites from bidding process or cancel/postpone the e-auction at any stage without assigning any reason.***
>
> ***e. It is admitted fact that clause B8 (i) stipulated that successful bidder has to complete 10% payment (after adjustment of the EMD amount deposited already) at H-1 bid price within 7 days (168 hours) of intimation by the HSIIDC after getting approval of the competent authority for acceptance of the H-1 bids, failing which 5% EMD deposited at the time of registration shall stand forfeited.***
>
> ***4. In view of terms stipulated in the brochure and advertisement, the petitioner before participation in e-auction was***

very well aware that her bid could be rejected even though the bid was above the reserve price.

5. Contention of the Petitioner in para 7' of Writ Petition that ...... as per clause 'D' of brochure provided that highest bidder shall be required to remit an amount equivalent to her quoted bid amount and the same has been paid by the petitioner within the time and there is no default in payment of the instalment and there is no breach of any terms & conditions on the part of Petitioner is wrong since para 'D' of brochure does not provide payment of quoted bid amount before acceptance of H1 bids. Clause B8 (i) of brochure clearly stipulated that the payment towards balance 10% of quoted bid amount shall be made by the successful bidder within seven days (168 hours) of intimation by the HSIIDC after getting the approval of the competent authority for acceptance of the H-1 bids. In this case, the Petitioner had failed to win the bid since the Competent Authority did not accept the H1 bid submitted by the Petitioner. As such the H1 bidder was not required to deposit balance towards 10% of the H1 bid price and thus contention of Petitioner that she remitted amount equivalent to her quoted bid amount is wrong.

6. The Competent Authority did not accept the H1 bid of the Petitioner in respect of the Convenience Shop no. CS-38 since the shop being corner shop and moreover the bid price fetched was much below the weighted average price fetched in the last auction held during F.Y. 2022-23 and even below minimum bid of Rs.26.10 lakh per shop accepted in the e-auction held in May 2022. The Corporation refunded the EMD amount deposited by the Petitioner to the tune of Rs.1,18,058/- on 29.08.2023."

22. Keeping in view the facts as stated above and the law on the subject as also the provisions of the brochure referred to above, it is abundantly clear that the impugned order and the impugned action of the respondents do not suffer from any illegality.

In view of the facts and circumstances aforementioned, we find the writ petition to be devoid of merit and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

29.05.2024
Prince Chawla

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*