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

**CWP-18708-2024
Date of Decision: 06.08.2024**

Sunita Kumari

….Petitioner

Versus

State Of Haryana and Others

....Respondents

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

Present: Mr. Anshul Gupta, Advocate for the petitioner.

Mr. Deepak Sabherwal, Advocate for the respondents.

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VIKRAM AGGARWAL, J.

1. A writ of certiorari is prayed for to quash the order dated 04.03.2024 (Annexure P-16) vide which the action of the respondents in rejecting the highest bid of the petitioner *qua* residential plot Nos.399 and 401 at Sector-5, Urban Estate, Karnal (hereinafter referred to as the 'plots in dispute) measuring 144 square meters has been upheld and her claim for allotment of the disputed plots has been rejected. A writ of mandamus is also prayed for commanding the respondents to issue letter of intent to the petitioner.

2. The basic controversy in this case is that the petitioner had participated in an E-auction conducted by the respondents for allotment of residential, commercial, institutional and independent commercial sites. The petitioner had applied for two residential plots measuring 6 marlas each in Sector-5, Urban Estate, Karnal.

3. The petitioner emerged as the highest bidder *qua* the plots which she had bid for. She received e-mails confirming that she was the highest bidder. She deposited a total of 10% of the total consideration as per the terms and conditions laid down in the policy (5% at the time of Registration and balance 5% after

having been declared H-1). 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-22400-2023.*** The said writ petition was disposed of on 02.11.2023 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 20.07.2022 (Annexure P-1) for allotment of residential, commercial, institutional and independent commercial sites. The E-auction was to be conducted on 11.05.2023. For the residential plots in Sector-5, Urban Estate, Karnal, the reserve price was fixed as ₹80,87,000/- per square meters and the earnest money deposit was ₹4,04,350/-. 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 policy (Annexure P-1).

5. The petitioner, being desirous of participating in the E-auction, submitted her application and was registered on the web portal of the respondents. She participated in the E-auction and gave a bid of ₹81,07,000/- per square meters and emerged as the highest bidder for two residential plots bearing numbers 399 and 401 measuring 6 marlas each situated in Sector-5, Urban Estate, Karnal as would be clear from the e-mail received from the respondents dated 11.05.2023 (Annexures P-7 and P-8). In this e-mail, the petitioner was informed the last date for making the H-1 payment was 15.05.2023. The petitioner deposited a sum of ₹8,10,700/- against each plot (Rs.4,06,350/- having been deposited against each plot initially as earnest money) to make a total of 10% of the total sale consideration.

6. However, the petitioner was informed that her bid had not been accepted because the collector rate was erroneously taken at ₹27,508/- per square meter whereas the correct collector rate was ₹29,900/- per square meter. Thereafter, the amount deposited was refunded back in the bank account of the petitioner. Aggrieved by this action, the petitioner preferred a representation dated 13.09.2023 (Annexure P-12) which evoked no response, which led the petitioner to file ***CWP-22400-2023,*** which was disposed of by this Court on 02.11.2023 (Annexure P-15). It was undertaken by the respondents that the representation would be decided within a period of four weeks after affording an opportunity of hearing to the petitioner.

7. Thereafter, the impugned order dated 04.03.2024 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.

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-16 and it was submitted that the same is not sustainable. Detailed reference was made to the policy (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 17 of the policy 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 her position financially and that for no fault of her, she 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.

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 17 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.***

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 policy (Annexure P-1) lays down the detailed terms and conditions. Clause 17 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 17 lays down as under:-

> ***"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."***

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.***
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> ***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.***
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> ***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.***
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> ***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.

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.

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.

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.

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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.

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

21. Coming to the impugned order, the same is well reasoned and relies upon Clause 17 of the policy. 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:-

"4. It is the case set up by the petitioner that the residential plot numbers 399 and 401, Sector-5, Karnal (6 marla category) was auctioned on 11.05.2023 as per the policy dated 20.07.2022. The base price of both the plots was kept as Rupees 80,87,000/- The 5 %

amount towards earnest money deposit was Rupees 4,04,350/- which the petitioner deposited for both the plots separately on 10.05.2023. The petitioner participated in the auction and gave the bid of Rupees 81,07,000/- for each of the plot. As per the petitioner she was declared H1 bidder in the auction held on 11.05.2023 and she deposited Rupees 8,10,700/- each for both the plots on 12.05.2023, As per the petitioner she was waiting for issuance of. LOI and when no intimation was received, she approached the respondents to enquire about the status of LOI and she was informed that LOI will be issued shortly. She sent letter dated 13.09.2023 to issue LOI. However she received back the amount in her account on 13.09.2023 deposited by her towards 10% amount. The petitioner has taken the ground that her bid was accepted and she was declared as highest bidder. The petitioner has also submitted that LOI was issued to the other successful bidders and she has been discriminated She has been refunded the amount without assigning the reason and informing her and thus, against the e-auction policy. The petitioner has taken the stand that as per e-auction policy dated 20 07.2022, the decision to accept or reject the bid was to be taken within a period of 30 days of the auction which was not taken, hence petitioner is deemed to be allottee of the plots. She was declared as the successful bidder. She has requested to issue LOl of the plot numbers 399 & 401, Sector-5, Karnal.

5. The Chief Controller of Finance, HSVP has admitted the fact of auction of the plot numbers 399 & 401, Sector-5, Karnal with reserve price of Rupees 80,87,000/-, where the petitioner was the highest bidder for an amount of Rupees 81,07,000/- in respect of each plot. The fact of deposit of earnest money deposit i.e. 5% of reserve price and further, 5 % of the quoted bid amount to complete 10% of the bid amount is admitted. It has been submitted that thereafter, when the matter was under process for decision on bids, it came to notice in June, 2023 that while calculating the reserve price of Rupees 80,87,000/-the collector rate was erroneously taken at Rupees 27,508/- per square meter which was the rate fixed for year 2022-2023 situated in Sector-5, Karnal. The correct collector *rate was Rupees 29,900%- per square meter for the year 2023-2024 as per which correct reserve price come to Rupees 83,76,400/. Hence, bid given by the petitioner was rejected by the then Chief Administrator and amount has been refunded vide memo no. 188898 dated 01.09.2023. Thus, no Letter of Intent could have been issued.*

6. In the light of above factual position, claim of the petitioner for issuance of Letter of Intent is liable to be rejected. No doubt, the petitioner emerged as the highest bidder in the e-auction held on 11.05.2023 and she completed payment towards 10 % of the quoted bid amount. The said deposit was a mandatory requirement before the bid could have been evaluated and thus, the said deposit conferred no right upon the petitioner for allotment except to extent of her bid being considered and evaluated. It is a fact that her bid was not accepted by the competent authority as it came-to light that auction has been held on the reserve price which was erroneously calculated by applying the wrong collector rate. The said action was in conformity with the clause no. 17 of the e-auction policy dated 20.07.2022 which provided 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. The Petitioner was aware of all the terms and conditions and having accepted the same had submitted her bid. Having participated in the auction process and thereafter having come to know that her bid was not accepted and amount was refunded, it would not lie in her mouth, to turn around and contend in terms not in consonance with the policy.

7. That consequent to the rejection of bid by the competent authority for the above reasons, letter bearing memo no. HSVP-CCF-(e-Auction)/2023/188853 dated 01.09.2023 has been issued to the HDFC Bank, Chandigarh to refund the earnest money deposit and post event amount alongwith registration charges to 39 bidders including the present petitioner. The amount refunded to the petitioner was Rs. 811700/- each qua the plots. As admitted by the petitioner, she got the refund of the amount through RTGS on

13:09.2023. The contention of the petitioner that she was not informed of the reasons for refund of the amount is not made out from e-auction terms. However, at same time, it is a fact that now bidders have been started to be informed of the reasons for rejection of bid or cancellation of auction. I am of the considered view that had the action to reject the bid not being taken in the matter, the public exchequer would have suffered. The correct reserve price come to Rupees 83,76,400/- and bid of the petitioner for Rupees 81,07,000/-on comparison show that the higher bid was even less than the correct reserve price. Thus, the bid given by the petitioner for an amount of Rupees 81,07,000/- can never be said to be true and proper value of the plot in question. The auction after all is a price discovery mechanism and is basically an exercise in raising revenues for the Government. In view of these principles of law, bid in the present case was rightly not accepted as not only the price that the plot fetched in auction held in present case was not the proper price but same would have affected the auction price of the similar plots in future as ultimately, the auction price plays an important part in fixation of the reserve price. It is a well settled law that where private interest is weighed against the public interest, the public interest shall prevail. Therefore, the bid was rightly not accepted. In view of these reasons, the stage of issuance of Letter of Intent never arose in the present case. Hence, plea to issue Letter of Intent is not sustainable in the eyes of law.

8. The plea of the petitioner that it was mandatory to accept or reject the bid within a period of 30 days of the auction and on expiry of 30 days period bid is deemed to have been accepted and HSVP was mandated to issue the Letter of Intent, cannot be accepted. Such a plea is not borne out from any of the clauses of the e-auction policy and will be devastating for the revenue of the State. Such a plea, if allowed to sustain would mean automatic acceptance of any bid. The plea of the petitioner that a legally binding and enforceable contract came into existence thereby, is also liable to be rejected. The Hon'ble Courts have accepted that even where Letter of Intent is issued, it is not an "offer". It is

> ***merely an "intended offer". It was a stage prior to giving the offer. The inference can be raised from the terms and conditions of the LOI that it was an "invitation to offer" and the intended buyer was to accept the said invitation by way of adhering to the schedule of payment. The intended buyer was required to give an "offer" by way of making 100% payment of the bid amount which was to accept by the authority by way of issuance of "letter of allotment." The law is settled on the point that merely being the highest bidder and without there being, an allotment letter, the contract between the parties is not complete. In the present case, even the bid had not been accepted hence plea of the petitioner that there have arisen legal and binding contract merits rejection."***

A Perusal of the order shows that the matter was considered from all angles and a well reasoned speaking order has been passed by the respondents. Applying the principles laid down in the judgments referred to in the preceding paragraphs and considering the facts of the case, we do not find any reason to interfere in the said order.

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

06.08.2024
Prince Chawla

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