IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 25.09.2024
Pronounced on: 04.12.2024

1) CWP No.20393 of 2024

Nisha Taneja ....Petitioner

V/s

HSIIDC and another ....Respondents

2) CWP No.20482 of 2024

Nisha Taneja ....Petitioner

V/s

HSIIDC and another ....Respondents

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

Present: Dr. Surya Parkash, Advocate with
Mr. Vikram Amarnath Garg, Advocate, for the petitioner(s).

Mr. Ankur Mittal, Advocate
Ms. Kushaldeep Kaur, Advocate, for respondent No.1.

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Karan Jindal, AAG, Haryana, for respondent No.2.

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VIKRAM AGGARWAL, J.

1. For, the issue involved is identical in both the writ petitions, they shall be disposed of by way of a common judgment. The facts are primarily being derived from CWP-20393-2024, though reference to the facts of CWP-20482-2024 shall also be made wherever necessary.

2. The petitioner prays for the issuance of a writ of certiorari quashing the order dated 22.03.2023 (Annexure P-7) and order dated 24.03.2023 (Annexure P-9), vide which the bid submitted by the petitioner for an industrial plot was not accepted and the earnest money deposited by

her was ordered to be refunded. The petitioner also seeks that the respondents be restrained from further auctioning/allotting Plot No.20, measuring 500 sq. mtr. situated in Sector 15, Industrial Estate, Dharuhera (for short the "the disputed plot") to anyone else.

3. The facts, in brief, are that pursuant to e-auction announced in September, 2022 for the allotment of industrial plots at Dharuhera, District Rewari, the petitioner participated in the e-auction. Registration for the same was to start from 18.10.2022 and was to continue till 16.11.2022. The tentative date of start of e-auction was stated to be w.e.f. 30.11.2022 onwards. Petitioner applied for two plots 450 sq. mtr. and 500 sq. mtr. As per the E-Brochure (Annexure P-3), an applicant was supposed to pay 5% of the reserve price as earnest money. The base price for the plots was fixed at Rs.24,450/- per sq. mtr. The petitioner registered within the stipulated period and deposited earnest money of Rs.5,50,125/- and Rs.6,11,250/- respectively along with process fee. The e-auction was conducted on 10.03.2023. Petitioner opted for non-preferential plot of 500 sq. mtr. and gave a bid of Rs.24850/- per sq. mtr. She was declared successful and emerged as the highest bidder and the disputed plot was booked for her. She received e-mail dated 10.03.2023 (Annexure P-6) from the respondent-Corporation, confirming the booking of the disputed plot in her name and she was informed that payment schedule shall be informed to her after conclusion of e-auction. Thereafter, she received e-mail dated 22.03.2023 (Annexure P-7), vide which she was informed that her H1 bid for the disputed plot had not been accepted and that her earnest money would be refunded. The last date for the H1 payment being 29.03.2023, the petitioner tried to make the said payment but the payment option was deactivated.

Petitioner received another email dated 24.03.2023 (Annexure P-9), stating that H1 bid for the disputed plot category had not been accepted by the competent authority and the earnest money deposited by the petitioner was being refunded. Petitioner visited the office of the respondent-Corporation and sent representations dated 29.03.2023 (Annexure P-10) and 24.05.2023 (Annexure P-11) intimating that she was ready to pay Rs.27050/- per sq. mtr. for the disputed plot i.e. the highest bid accepted by the respondent-Corporation against the disputed plot it being a non-preferential plot. In case of non-allotment of the disputed plot, earnest money along with interest @ 12% per annum was demanded by the petitioner.

4. It is the case of the petitioner that despite her having given the highest bid which was in any case more than the reserved price, her bid for the disputed plot was not accepted by the respondent-Corporation. Total 17 categories of plots were shown in the e-brochure, however, plots in Category 1, 2 and 3 were put to auction. The petitioner applied for Category 1 plot, i.e. 500 sq. mtr. The reserve price for plots in all categories was fixed @ Rs.24450/- per sq. mtr. The plots in each category were further divided into three categories, i.e. having preference of park facing and corner, having preference of park facing or corner and non-preferential plot. The plot having preference of park facing and corner fetched bid of Rs.31450/- against the reserve price of Rs.24450/-. The plot having preference of either park facing or corner fetched bid of Rs.31050/- and the non-preference plot fetched bid of Rs.24850/- against reserve price of Rs.24450/-. The petitioner gave a bid of Rs.24850/- and the disputed plot was booked in her name. However, the bid given by the petitioner was not accepted by the respondent-Corporation and her claim was rejected vide order/emails dated

22.03.2023 and 24.03.2023. The representations sent by the petitioner on 29.03.2023 and 24.05.2023 against the aforesaid orders also evoked no response. The petitioner also offered to pay Rs.27050/- per sq. mtr. for the disputed plot which is the highest bid for a non-preferential plot in the category 450 sq. mtr. but to no avail, leading to filing of the present petition.

5. Dr. Surya Parkash, learned counsel for the petitioner and Mr. Ankur Mittal, learned Addl. Advocate General, Haryana representing the respondents, who had caused appearance on advance copy having been served, were heard.

6. It was submitted by learned counsel for the petitioner that the action of the respondents in not accepting the bid of the petitioner is completely illegal and arbitrary besides being unduly harsh. It was submitted that the impugned emails/orders are non-speaking and discriminatory and are contrary to the criteria laid down by the Board of Directors of the respondent-Corporation in its 375th Meeting held on 29.12.2022 (Annexure P-2). In the said meeting, it was approved that where the plots size is up to 2000 sq. mtr., all H1 bids above the reserved price be selected/approved in auto mode. It was submitted that under the circumstances, the H1 bids were required to be accepted. It was further submitted that once the respondent-Corporation had adopted the process of e-auction for the allotment of industrial plots, it could not have departed from such procedure and in the present case, the highest bid given by the petitioner was rejected by it manually on the ground of it having fetched less revenue. It was further submitted that for participating in the allotment process and depositing of earnest money for the disputed plot, the petitioner had to sell her industrial plot at SIDCUL. It was further submitted that

despite the disputed plot being a non-preferential plot, the petitioner is ready and willing to pay Rs.31050/- per sq. mtr. which is the highest bid accepted by the respondent-Corporation against a preferential plot.

7. Learned counsel for the petitioner placed reliance upon a judgment of the Supreme Court in the case of ***HSIIDC V/s Ashish Jain and others*****, 2023 SCC Online SC 1995** and a judgment of this Court in the case of ***Subhash Chand V/s State of Haryana and others*****, AIR 2007 PH 167**.

8. *Per contra*, learned counsel representing the respondents submitted that there is no illegality in the action of the respondents and that the bid of the petitioner was not accepted strictly as per terms and conditions laid down in the brochure. It was submitted that the terms and conditions of the brochure are binding upon both sides and in no manner can the respondents violate the same. As regards the minutes of the meeting (Annexure P-2), it was submitted that the same are not applicable to the auction in question, as they were to be applied to subsequent auction.

9. Having heard learned counsel for the parties, we find the writ petition to be devoid of merit.

10. The Brochure containing the procedure for e-auction and allotment of industrial plots is on record as Annexure P-3. Clause C(9)(i) reads as thus:-

> ***"The HSIIDC shall reserve to itself the right to accept any bid subject to approval of the competent authority or reject any bid, even the highest bid or withdraw the site from auction at any stage without assigning any reason."***

11. It is well settled that the terms and conditions of e-brochure as it is in the case of a prospectus in admission matters are binding upon both sides. Once an action is taken in terms of the procedure or the provisions

envisaged in such a document, the same cannot be said to be illegal, arbitrary or harsh.

12. In CWP-20482-2024, the petitioner participated for the allotment of an industrial plot measuring 450 sq. mtr. The petitioner gave a bid of Rs.25050/- per sq. mtr. against the reserve price of Rs.24450/-. It was submitted that despite the disputed plot being a non-preferential plot, the petitioner is ready and willing to pay Rs.27250/- per sq. mtr. which is the highest bid accepted by the respondent-Corporation against a preferential plot.

13. The action of the respondents is in conformity with the procedure laid down in the brochure and there is, therefore, not even an irregularity in the same much less an illegality. It needs to be mentioned that these are purely administrative decisions which are not liable to be interfered with until and unless the decisions are shown to be perverse or are shown to have been taken for some extraneous consideration.

14. 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. M/s Orchid Infrastructure Developers Private Limited, 2017(2) RCR (Civil) 145,*** 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 cases 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.***
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> ***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.***
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> ***35. Resultantly, the appeal is allowed. The judgment and decree passed by the High Court is set aside and that of the first 7 of 14 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."***

15. 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***, ***(CWP-19447-2021, decided on 27.09.2021)***. 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 the 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 found 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 rissa 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 wellfounded."

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, 2023(4) RCR (Civil) 121,*** 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."***

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

17. We have perused the judgments, reliance upon which has been placed by the petitioners. In **Subhash Chand's** case (supra), a Full Bench of this Court had held that reasons for rejection of the highest bid should be given. It was further held that even though there would not be a requirement of the said reasons being conveyed to the affected party, such reasons should be available on the file. This judgment would not help the petitioners in any manner because in the present case, the reasons have been given in the subsequent email in which it was stated that it was within the power of the HSIIDC to accept or reject the highest bid. It would be essential to state here that the authority was not required here to pass a detailed order and

reference to the relevant clause would be sufficient. As regards the judgment in **HSIIDC Vs. Ashish Jain** (supra), the issue was entirely different as in that case, a manual auction had been conducted after stating that any auction would be conducted. This judgment would also, therefore, not be of any aid to the petitioner.

18. Having considered the arguments addressed by learned counsel for the parties, the relevant Clauses of the brochure in question as has been discussed in the preceding paragraphs and the impugned orders dated 22.03.2023 (Annexure P-7) and 24.03.2023 (Annexure P-9), we are of the considered opinion that no interference is called for in the impugned orders which are well reasoned and perfectly legal and valid in view of the power vested in the respondent-HSIIDC by virtue of the clauses incorporated in the brochure. The impugned orders also do not appear to have been passed for reasons which may be found to be extraneous and *mala fide* warranting interference.

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

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 25.09.2024
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vcgarg Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No