

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7883 OF 2024

Bhagwati Akshar Empire LLP]
Formerly known as Bhagwati Empire LLP,]
a limited liability partnership firm, having its]
registered address at 303/304 Kailash Palace,]
Upashraya Lane, Hingwala, Lane, Ghatkopar]
East, Mumbai – 400077.]...Petitioner

Versus

1. City and Industrial Development Corporation]
of Maharashtra Ltd, having its registered office]
at : Nirmal, 2nd Floor, Nariman Point, Mumbai -]
400021 and having Head Office at: CIDCO]
Bhavan, CBD Belapur, Navi Mumbai-400614.]
2. Managing Director]
City and Industrial Development Corporation]
of Maharashtra Ltd. having its registered]
office at Nirmal, 2nd Floor, Nariman Point,]
Mumbai – 400021.]
3. Marketing Manager (Commercial)]
City and Industrial Development Corporation]
of Maharashtra Ltd., having its registered]
Office at : Nirmal, 2nd Floor, Nariman Point,]
Mumbai:- 400021 and having Head Office at:]
CIDCO Bhavan, CBD Belapur, Navi]
Mumbai – 400 614.]
4. The State of Maharashtra through the]
Department of Urban Development.]...Respondents

Mr. Akhilesh Dubey with Mr. Vagish Mishra, Mr. Amit Dubey,
Mr. Uttam Dubey, Mr. Rajuram Keleriya, Mr. Shubham Sharma,
Mr. Emad Khan, Mr. Alex D'Souza and Mr. Eram Baig,
Advocates, i/by Law Counsellors, for the Petitioner.

Mr. Soham Bhalerao with Mr. Harshit Tyagi, Advocates, i/by DSK Legal, for Respondent Nos.1 to 3 – CIDCO.

Ms. Neha S. Bhide, Government Pleader with Mr. O.A. Chandurkar, Additional Government Pleader and Mrs. G.R. Raghuwanshi, Assistant Government Pleader for Respondent No.4 – State of Maharashtra.

**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

Judgment is reserved on : 27th November 2025

Judgment is pronounced on : 22nd December 2025

Per, Gautam A. Ankhad, J.

The petitioner's grievance is that more than twenty-one months after being declared as the highest bidder in an e-auction, the respondent no.1 has cancelled the tender purportedly to avoid loss to the public exchequer. Impugning this action as arbitrary and illegal, the petitioner has filed this writ petition seeking the following reliefs:

- “a) This Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of certiorari or any other appropriate writ order or direction, calling for records of auction related to Plot No. 2A, Sector-54, 56 and 58 admeasuring to 25138.86 sq. m at Nerul Navi Mumbai, through E-auction cum E-tender process bearing Scheme No. MM/SCH-28/2022-23 and the letter dated the 17th May 2024 (Exhibit-F) cancelling the auction of the Plot and after going into legality and the validity of the same quash and set aside the impugned letter dated the 17th May 2024 (Exhibit-F) issued by the Respondent No. 3;*
- b) This Hon'ble Court be pleased to issue a Writ of Prohibition or a writ in the nature of prohibition or any other appropriate order or direction against the Respondents prohibiting the*

Respondents by themselves, their servants agents officers and subordinates from in any manner acting upon the impugned letter dated the 17th May 2024 (Exhibit-F) issued by the Respondent No.3;

- c) *This Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction against the Respondents No. 1 to 3 ordering and directing Respondent No. 1 to 3 forthwith withdraw and/or cancel and/or set aside its decision to cancel the auction related to Plot No. 2A, Sector-54, 56 and 58 admeasuring to 25138.86 sq. m at Nerul Navi Mumbai, through E-auction cum E-tender process bearing Scheme No. MM/SCH-28/2022-23, as per the impugned letter dated the 17th May 2024 (Exhibit-F) issued by the Respondent No. 3 and be further pleased to direct the Respondents to issue allotment letter to Petitioner as per the tender condition.”*

2. On 13th July 2022, an advertisement was published by the respondent no. 1, offering lease of sixteen plots for residential-cum-commercial plots at Navi Mumbai through an e-auction-cum-e-tender process. In this publication, the respondent no.1 projected that the plots are at prime locations of Vashi, Ghansoli, Nerul, Kalamboli and Panvel. It was further indicated in e-tender notice that the plots are well equipped with all infrastructure facilities and have greater connectivity. A time schedule for the requisite fees and the Earnest Money Deposit (in short “EMD”) for the bid and for the e-auction were indicated in e-tender notice. The online e-auction started on 4th August 2022 at 11:00 hours and was to continue till 18:00 hours the same day. The petitioner-Firm participated in the bidding process for Plot No.2A under sectors-54, 56 and 58 admeasuring 25,138.86 square meters at Nerul, Navi Mumbai (“said plot”).

3. On 22nd August 2022, the respondent no,1 shortlisted three Bids, which were submitted by (i) M/s Bhagwati Empire

LLP (Bid amount – Rs.1,51,200/-); (ii) Thalia Investment Pvt. Ltd. (Bid amount – Rs.1,49,400/-) and (iii) Nitya Developers (Bid amount – Rs.1,38,339/-). As the petitioner's bid was almost 29% above the reserve price of Rs. 1,17,339/- per sq. mts, it was declared highest bidder on 22nd August 2022. It made a payment of Rs. 29,49,76,869/- as EMD, but thereafter did not receive any communication from the respondent no.1 for 21 months.

4. Meanwhile, Original Application No.74 of 2022 (WZ) with Original Application No.75 of 2022 (WZ) titled "*Navi Mumbai Environment Preservation Society versus City and Industrial Development Corporation of Maharashtra and others*" was filed by six individuals, namely, Rekha Sankhala, Manmeet Singh Khurana, Ritu Mittal, R.K. Narayan, Mahendra Singh Panghaal, Anjali Agarwal before the National Green Tribunal (in short, "Tribunal"). On the same day, when the respondent no.1 declared the petitioner as the highest bidder i.e, 22nd August 2022, an injunction order was passed by the Tribunal. The Tribunal on a *prima facie* observation that Plot No.2A falls under CRZ-I and CRZ-II (in part) passed an order restraining the respondent no.1 to proceed with the tendering process in respect of said Plot 2A.

5. On 28th December 2022, the respondent no.1 filed an additional affidavit before the Tribunal stating that it had decided to cancel the subject tender. The relevant portion of the affidavit is quoted below:-

"4. I further say that the Tender floated vide Scheme No.MM/SCH-28/2022-23, CIDCO has decided to cancel the bid received for Plot

No.2A, Sector 54-56-58 admeasuring 25,138.86 Sqm as the offer received for the said plot is far below the prevailing market rate considering the development potential and its advantageous location.”

5. I further say that while retendering Plot NO.2A, Sector 54-56-58 the specific condition as directed in the aforesaid Order of the Hon’ble Tribunal, shall be incorporated clarifying that in respect of areas, which fall in 50m Mangrove buffer zone (“the Buffer Zone”), as delineated by the competent authority, the successful bidder / allottee shall not disturb the buffer zone and adhere to the provisions of law as applicable to such buffer areas and that it would be the responsibility of the successful bidder / allottee to maintain the mangrove buffer zone, in accordance with the provisions under the prevailing laws/rules/regulations. In addition to the certain conditions which were a part of the earlier marketing booklet (Scheme No.MM/SCH-28/2022-23), the following disclosure conditions shall also be laid down as under :-

(i) As per the CZMP of 2011, approved in 2019, the Plot NO.2A, Sector 54-56-58, Nerul partly falls in CRZ-IA and CRZ-II as is indicated in the Marketing Drawing. The said plot is on the landward side of existing road and there are no mangroves within the said plot. The CRZ-IA area within the plot lies in the mangrove buffer area and not within mangroves area.

(ii) That the allottee shall be responsible for obtaining necessary clearance / NOC from respective local authorities as required from time to time, including obtaining prior Environmental Clearance from MoEF, wherever mandated as per EIA Notification 2006 and other applicable laws.

(iii) The allottee shall take all necessary permissions prior to obtaining Development Permission from competent authorities for development in the CRZ affected area.

6. I further say that CIDCO’s decision of cancellation of tender in respect of Plot No.2A, Sector-54-56-58 Nerul in light of reason mentioned at point (4) above, and further retendering the same plot with conditions mentioned in point no.(5) above with due regard to the Orders of Hon’ble National Green Tribunal be accepted.”

6. On 11th October 2023, upon consideration of the materials on record including the map submitted by NCSCM, the Tribunal

passed its final judgment. It held that Plot No.2A falls within CRZ-II, except a small portion of it, which should be preferably used for garden or social facilities as per the Navi Mumbai Municipal Corporation Draft Development Plan. The Tribunal issued directions to the respondent no.1 not to sell, transfer or grant any leasehold rights in Plot No.2A, Sectors 54, 56 and 58 of Nerul (West), Navi Mumbai for the purposes of construction of residential and commercial buildings/structures except the area falling outside CRZ. The relevant portions of the said order read as below:-

“31. In view of above findings, we are of the view that these applications deserve to be allowed to the extent that we direct respondent no.1 – CIDCO that it shall not sell, transfer or grant any leasehold rights in Plot No.2A, Sectors 54, 56 and 58 of Nerul (West), Navi Mumbai for the purposes of construction of residential and commercial buildings/ structures except the area falling outside CRZ.”

7. The respondent no.1 filed Review Application No.13 of 2023 (WZ), which came to be dismissed by order dated 22nd April 2024. We are informed that the petitioner did not file any intervention application in the matter before the Tribunal and the respondent no.1 did not file any further appeal against the Tribunal's order.

8. On 17th May 2024, the respondent no.1 by the impugned letter cancelled the tender and informed the petitioner (Bhagwati Empire LLP) that its bid for the subject plot was far below the prevailing market rate considering the development potential and its advantageous location. The cancellation of the tender was to avoid loss to the public exchequer. The petitioner was informed that the EMD paid would be refunded to its bank account. On

18th May 2024, the respondent no.1 informed the petitioner that its refund of EMD failed on 17th May 2024 due to “account freeze” at the petitioner’s bank. The respondent no.1 forwarded cheque no. 000588 dated 18th May 2024 for Rs. 29,49,76,869/- towards refund of the EMD which has not been encashed till date. Being aggrieved by the cancellation of the tender, the petitioner has filed the present petition impugning the cancellation and seeks a further direction that allotment letter be issued by the respondents.

9. Mr. Akhilesh Dubey, the learned counsel for the petitioner submits that arbitrariness and mala fides are writ large as the tender could not have been cancelled once the petitioner was declared as the highest bidder and, that too, when the petitioner’s bid is almost 29% above the reserve price. Thus, there is no question of any loss being caused to the exchequer and the cancellation cannot be said to be in public interest. Merely because an enhanced offer may be received in a future auction, that does not by itself serve the public interest. The respondents’ attempt to rely upon the order passed by the Tribunal in *“Navi Mumbai Environment Preservation Society v. City and Industrial Development Corporation of Maharashtra (CIDCO)”* order is misconceived since the Tribunal has permitted the respondent no.1 to sell, transfer or grant leasehold rights in the areas that fall outside the CRZ and the petitioner is ready and willing to accept the lesser area after excluding the CRZ areas. The petitioner is a *bona fide* bidder and retention of its EMD of Rs.29.49 crores for 21 months itself creates substantive legitimate expectation in favour of the petitioner. Respondent

no.1, being a State instrumentality cannot escape the constitutional mandate of Article 14 by restricting the dispute to a narrow contractual interpretation. The sanctity of a public tender process is undermined and warrants interference from this Court. Mr. Dubey relied on the judgments in “*Subodh Kumar Singh Rathour v. Chief Executive Officer and Others*”¹ and “*Vice-Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Limited & Anr. v. Shishir Realty Private Limited & Ors.*”² in support of his submissions.

10. Mr. Soham Bhalerao, learned counsel for the respondent nos.1 to 3 opposed the petition and submits that the petition is not maintainable either on facts or in law. The respondent no.1 has challenged locus-standi of the petitioner on the ground that the bid for the subject plot was submitted by “Bhagwati Empire LLP” and the petitioner is not the same entity. As per clause 11 of the tender conditions, the bid document is non-transferable and the petitioner has failed to demonstrate that “Bhagwati Empire LLP” and “Bhagwati Akshar Empire LLP” are the same entities. The communication dated 17th May 2024 has been made to Bhagwati Empire LLP and the bid amount was refunded to the same entity. However, this writ petition has been filed by Bhagwati Akshar Empire LLP, which in the circumstances of the case cannot raise any objection to the communication dated 17th May 2024 by which Bhagwati Empire LLP was informed that e-auction for the subject plot has been cancelled.

11. Mr. Bhalerao further submitted that the respondent no.1

1. (2024) 15 SCC 461

2. (2022) 16 SCC 527

has not issued a letter of allotment and there is no concluded contract between the parties. The respondent no.1 has exercised its right and discretion under the bid document and cancelled the tender for valid reasons. In the realm of contract, there is no law of universal obligation that the highest bidder has a vested enforceable right to claim the award of tender in his favour. A conditional offer or acceptance does not lead to a concluded contract. By making an offer and having been declared highest bidder, the petitioner does not acquire right in law to compel the Employer to award the tender in its favour. The respondent no.1, being an instrumentality of the State is entrusted with the planning and development of urban infrastructure and industrial areas in the State of Maharashtra. It is its duty-bound to ensure that no loss is caused to the public exchequer. The tender was cancelled as the petitioner's bid was substantially below the market potential. The decision to cancel the tender is neither arbitrary nor discriminatory. On 22nd August 2022, when the petitioner was declared the highest bidder, on that same day the Tribunal passed an interim order in Original Application No.74 of 2022 (WZ) restraining the respondents from proceeding with the tender process. On 11th October 2023, the Tribunal passed its final judgment directing the respondent no.1 not to grant leasehold rights for construction except for buildings within the area falling outside CRZ. After the respondent no.1's Review Petition was dismissed on 22nd April 2024, the cancellation letter dated 17th May 2024 was issued and the petitioner's EMD was sought to be refunded. Hence, the allegation of mala fides or arbitrariness is untenable. Mr. Bhalerao relied on the judgments in *"Aditya Enterprises v. City Industrial and Development*

Corporation of Maharashtra Ltd.”³ and “*Infinity Infra & Anr. v. City and Industrial Development Corporation of Maharashtra Limited*”⁴ passed by this Court and submits that the petition ought to be dismissed with costs.

Reasons and Findings:

12. We have perused the record and heard the learned counsel for the parties. The objection raised by the respondent no.1 that the bid was submitted by “Bhagwati Empire LLP”, whereas the present petition has been filed by “Bhagwati Akshar Empire LLP”, on the premise that they are distinct entities, is wholly devoid of merit. As clarified by the petitioner in its affidavit in rejoinder dated 21st November 2025, the entity remains the same and has merely undergone a change of name in full compliance with the statutory procedure prescribed under the Limited Liability Partnership Act, 2008. At page no.258 of the paper-book, the petitioner has placed on record a fresh Certificate of Incorporation dated 4th August 2022 issued consequent upon change of name under Rule 20(3) of the LLP Rules 2009. This statutory document confirms the new name of the Petitioner as “Bhagwati Akshar Empires LLP”. In our view, a mere change of name does not amount to any “transfer” of rights or liabilities under the bid document. We may note that the petitioner has not produced any document on record which shows that it intimated the name change to the respondent no.1. However, we have proceeded to decide this matter on merits.

3. 2023 SCC OnLine Bom 876

4. 2025 SCC OnLine Bom 434

13. The short question that arises for determination is whether this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, ought to set aside/quash the cancellation of tender at the behest of a highest bidder? The answer must be in negative. It is well settled that the scope of judicial review in tender matters is extremely limited. Interference is warranted only where the petitioner can establish arbitrariness, mala fides, or perversity in the State action. Absent such grounds, this Court would not be justified in intervening in the tender process, much less quash an order of cancellation of tender or in other words, revive a cancelled tender by directing the authority to issue an allotment letter.

14. We note that the respondent no. 1 is incorporated under the Companies Act, 1956. It is a government company within the meaning of section 617 of the Companies Act, 1956. It is entrusted with the responsibilities for planning and development of urban infrastructure and industrial areas in the State of Maharashtra. It has been notified as a New Town Development Authority and started functioning with the subscribed capital of Rs.10 lakhs. It was made a subsidiary of the State Industrial and Investment Corporation of Maharashtra Limited (in short, “**SIICOM**”), which provided a loan of Rs.270 lakhs. It has also borrowed Rs.16,60,068.05/- from SIICOM. The respondent no.1 has been conceived as a multi-disciplinary organization with the objectives to:—

- (i) Reduce the growth rate of population in Greater Mumbai;

(ii) Reduce Traffic congestion and burden of Mumbai's physical Infrastructure such as road, transport, mass transportation system, etc.

(iii) Provide physical and social services to raise living standards and mitigate disparities in amenities provided to different sections of the societies and to facilitate efficient and rational distribution of industries over industries and a balanced development of urban centers in the hinter land.

15. A Division Bench of this Court in *"Hare Krishna Enterprises v. City Industrial and Development Corporation of Maharashtra Limited"*⁵ whilst declining a similar challenge has considered the role of the respondent no.1 as a public authority and as a commercial entity. It is in performance of this dual role that the respondent no.1 is required to ensure that public resources are utilized efficiently and that it fetches the maximum possible rates for its land. The relevant portion read as below:

"16. CIDCO is a New Development Authority empowered by the Maharashtra Regional & Town Planning Act, 1966 ("MRTP Act" for short). CIDCO has the authority to dispose of land for development as it deems expedient, subject to the terms and conditions it considers appropriate. This power is exercised by its Board of Directors. The New Bombay Disposal of Land Regulations, 1975, framed under the MRTP Act, govern these disposals, giving CIDCO the statutory authority to manage land disposal. Therefore, CIDCO's actions must be viewed in the context of its dual role as a public authority and a commercial entity.

17. CIDCO's actions are guided by public interest. The income derived from land disposal is used to build infrastructure and fulfil development commitments. Allowing competitive bidding ensures maximum returns for public benefit. In our opinion, the public interest has to supersede any private or personal interests. We are in agreement with Mr. Kapadia, learned Senior Advocate when he

5. 2025 SCC OnLine Bom 1252

contends that by rejecting the petitioner's representation, CIDCO has taken a conscious decision in commercial terms and in the interest of general public. As a public body, CIDCO is responsible for ensuring that public resources are utilised efficiently and that it fetches the maximum possible rates for its land. In "Shree Ganesh Enterprises v. City and Industrial Development Corporation of Maharashtra Limited" 2024 SCC OnLine Bom 2346, it was held by this Court in paragraph 23 that the commercial aspect of the tender process cannot be lost sight of, and CIDCO is not at fault for trying to fetch maximum rates. In "Sterling Computers Limited v. M & N Publications Limited" (1993) 1 SCC 445, the Supreme Court in paragraph 11 held that when there are commercial elements, authorities need to have some discretion to enter into contracts, keeping in mind the goal of revenue augmentation. In "Air India Ltd. v. Cochin International Airport Ltd." (2000) 2 SCC 617, the Supreme Court in paragraph 7 held that the award of a contract/tender is a commercial transaction and commercial considerations are paramount. It is well settled that the Court should exercise restraint and avoid interfering in tender or contract matters, unless there is unmistakable evidence of arbitrariness, bias or irrationality. In "Tata Cellular v. Union of India" (1994) 6 SCC 651, the Supreme Court in paragraphs 91, 100 and 111 held that the Courts do not have expertise to correct administrative decisions and judicial review would amount to substituting the Court's decision for the administrations. In "JSW Infrastructure Limited v. Kakinada Seaports Limited" (2017) 4 SCC 170 in paragraphs 8 to 10 Their Lordships held that superior Courts while exercising their power of judicial review must act with restraint while dealing with contractual matters so long as evaluation of tenders if the decision of awarding contracts, which is essentially commercial function, is bona fide and taken in the public interest."

16. A perusal of the bid documents issued by the respondent no.1 reveals that the Vice-Chairman and Managing Director of the Corporation reserves the right to reject or cancel any or all bids/plots without assigning any reasons. The allotment letter to successful bidders is to be issued only upon approval of the Vice-Chairman and Managing Director. The final price of the plot is required to be paid in two equal instalments, after adjustment of the EMD. The time stipulated for payment of the final price was expressly declared to be the essence of the contract and any

failure to adhere to the prescribed timeline rendered the allotment liable to cancellation with forfeiture of the EMD, though the Managing Director is vested with the power to extend the period for payment in deserving cases. It is further stipulated that possession of the plot will be handed over only upon receipt of full payment in the prescribed mode. The acceptance of any bid is at the sole discretion of the Corporation. The intending bidders were also specifically informed under clause 28, captioned “Risk Factors”, that the Corporation reserved the right to amend, revoke, or modify the conditions of the scheme or to reject or cancel any or all offers/plots without assigning any reasons, and that in the event of cancellation of the scheme, the bidders would have no say in the matter. Clause 3(d), 3(e), 11, 13, 15, 21, 27 and 28 are relevant and read as under:

“3(d) The issue of this BID document does not imply that CIDCO is bound to allot the said Plots to the Bidder and it reserves the right to reject all or any of the Bids without assigning any reasons in respect thereof.

3(e) CIDCO reserves the right not to proceed with the Bidding Process as per time table without liability or to reject/cancel any or all plot/Bid(s) without assigning any reasons in respect thereof. “

“11) The BID DOCUMENT is non-transferable.

13) The Vice Chairman and Managing Director, CIDCO reserves all rights to reject/cancel any or all bids/plots without assigning any reason thereof.

15) The Allotment Letter will be issued to successful bidders after approval of Vice Chairman and Managing Director.

21) The possession of the Plot shall be given only on receipt of payments in full in accordance with the mode of payment prescribed.

*27) **Acceptance of offer:** The acceptance of a Bid is at the sole discretion of the Corporation.*

*28) **Risk Factors:** The Corporation reserves the right to amend, revoke, modify the conditions of the scheme at its discretion or reject/cancel any or all offers/plots without assigning any reasons thereof. In*

case of cancellation of the scheme, the bidder will not have any say.”

17. Part-B of the e-tender expressly describes the process as an “Invitation to Offer”. In law, an invitation to offer creates no enforceable rights unless an unconditional acceptance results in a concluded contract. The tender contemplates execution of an Agreement to Lease in accordance with the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008, to be executed only upon payment of the entire lease premium and ancillary charges, with possession to follow thereafter. It is settled law that a tender is merely an offer and that the terms of an invitation to tender falls within the contractual domain, ordinarily beyond judicial review. Where the tender vests the respondent no.1 with discretion to accept or reject bids, no vested right accrues to the petitioner until all stipulated conditions are fulfilled and requisite approval is obtained. Partial compliance, part payment, or an assertion of readiness and willingness does not create an indefeasible right to award of the tender.

18. In the present case, the tender was cancelled prior to even the issuance of an allotment letter. Clause 27 explicitly provides acceptance of the offer at the sole discretion of respondent no. 1. Upon cancellation, the EMD was attempted to be refunded to Bhagwati Empire LLP. No contractual or vested right accrues in favour of the petitioner. A bidder’s enforceable rights are limited to equality, fairness, and transparency in the tender process. The decision to cancel the tender to secure higher revenue from the lease of the plots falls squarely within the commercial policy and discretion of the authority and does not warrant judicial

interference. Notwithstanding its contractual liberty for not assigning reasons, the respondent no. 1 has disclosed that the bid was rejected as it is significantly below prevailing market rates, considering the development potential and location of the plots, and that cancellation was necessary to avoid loss to the public exchequer. In our view, this constitutes a valid and sufficient justification for the cancellation of the tender. The action of the respondents cannot be characterised as arbitrary, irrational, or capricious to warrant interference under Article 226.

19. We also find that the cancellation of tender does not defeat the petitioner's substantive legitimate expectation as contended by Mr. Dubey. There is no promise at the bid stage. Hence there is no question of the petitioner acting upon it or altering its position on such promise. The mere fact that the petitioner was the highest bidder does not confer upon it any vested right to seek performance or award of the tender as held by the Hon'ble Supreme Court in *"Meerut Development Authority v. Association of Management Studies"*⁶:

"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."

20. In *"Jaipur Vidyut Vitran Nigam Limited v. MB Power (Madhya Pradesh) Ltd."*⁷, the Hon'ble Supreme Court held:

6. (2009) 6 SCC 171

7. 2024 SCC OnLine SC 26

“137. It could thus be seen that this Court in *Air India case* [*Air India Ltd. v. Cochin International Airport Ltd.*, (2000) 2 SCC 617 : 2000 INSC 39] has held that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are paramount are commercial considerations. It has been held that the State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It has further been held that the State can enter into negotiations before finally deciding to accept one of the offers made to it. It has further been held that, price need not always be the sole criterion for awarding a contract. It has been held that the State may not accept the offer even though it happens to be the highest or the lowest. However, the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. It has further been held that even when some defect has been found in the decision-making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

21. The reliance placed by Mr. Dubey on “*Subodh Kumar*” (supra) to contend that the cancellation of the tender is arbitrary is misplaced, as the factual matrix in that case was materially different. The challenge to the order of termination was made on a specific ground that the action taken by the respondent-authority was at the behest of the Minister in-charge. The judgment in “*Subodh Kumar*” provides a useful and illuminating guidance to the High Courts to deal with the contractual

matters. It takes note of the plight of a bidder who might have made significant investments after the award of contract. It further held that arbitrary termination of contract is not in public interest since such termination create uncertainty and unpredictability and thus discourage public participation in the tender process. There, a letter of intent had been issued, a formal work order was executed, the contractor had commenced performance and thereafter the tender was cancelled at the behest of the Minister-in-charge. In that case, the file notings indicated that the tender was cancelled for extraneous consideration and was influenced by malice. It was in those circumstances that the Hon'ble Supreme Court examined the scope of judicial review in contractual matters and the interplay of public law principles. The present case bears no such similarity.

22. The judgment in “*Shishir Realty*”, has no application to the present case as well. Mr. Dubey placed reliance on paragraph 61 of the judgment where the Hon'ble Supreme Court observed as under:-

“60. Ultimately, we need to consider whether there was any illegality or unfairness in the aforesaid transaction. The learned Senior Counsel representing the appellants have submitted that allowing sub-division of plots with change in land use, had caused substantive loss to the State largesse, as many people would have shown a proclivity to buy land with different land use. On the contrary, the learned Senior Counsel representing the respondent lessees have stated that the allotment, change in land use and transfer have taken place in accordance with law. There is no substantial deviation as sought to be projected by the appellants herein. The appellants herein have sought to invoke the doctrine of promissory estoppel to argue that Cidco could not have walked out of the bargain, merely because of the possibility of larger profits. It is pertinent to note that, Cidco has failed to prove any losses suffered.

61 When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money cannot be used to forego contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. The Courts need to have a broader understanding of public interest, while reviewing such contracts.”

23. Whilst there can be no dispute with this proposition, this judgment is distinguishable on facts. In *Shishir Realty*, the authority issued a letter of allotment in favour of the highest bidder, namely, M/s Metropolis Hotels. A request made by the bidder for change of user of the plot to commercial-cum-residential use was partly permitted and in respect thereto, the demarcation of the plot and assignment of the bidder's right to Shishir Realty Pvt Ltd in respect of residential-cum-commercial user was permitted. The authority (CIDCO) accepted Rs. 321 crores as consideration and executed 2 separate lease deeds in favour of M/s Metropolis Hotels and Shishir Realty. There were certain complaints made regarding irregularities in the allotment of the plots and change of land user. After 3 years of the allotment, the authority sought to cancel both the lease deeds with a pre-determined mind. It was assailed by the parties that this was arbitrary and done without producing any evidence of breach or violation on the part of the bidder. The cancellation order was quashed inter alia on the ground that the change of land use and sub-division of the plot had taken place with the consent of the authority. The Hon'ble Supreme Court observed that no reasons were provided as to what legal provision was violated by the bidders. The observation at paragraph 61 is in the context and continuation of paragraph 60 where the bidders

had invoked the doctrine of promissory estoppel to argue that the authority could not have walked out of the bargain for larger profits. It is in the backdrop of the failure of the authority to justify the cancellation that the Hon'ble Supreme Court held mere possibility of more money in the public coffers does not in itself serve public interest when a contract is evaluated and the tender is awarded. The Hon'ble Court also noted that the facts revealed "regime revenge" as stated at paragraph 65 which is quoted:

"65. From the contradictory submissions asserted before this Court and the concessions given regarding practice of Cidco to allow change in land use in other cases, clearly points to a "regime revenge". Such conclusion reached herein is further buttressed by the fact that no inquiry or disciplinary proceedings were initiated against the earlier Vice-Chairman, whose orders have been annulled. Such phenomenon is clearly detrimental to the constitutional values and the rule of law."

24. The facts in the present case are entirely different. In this case, letter of allotment is not issued to the petitioner. There is no concluded contract between the parties and no rights crystallized in favour of the petitioner.

25. The limited power of judicial review in tender matters is stated in several judgments of the Hon'ble Supreme Court including in "*Haryana Urban Development Authority v. Orchid Infrastructure Developers Pvt. Ltd.*"⁸, "*Silppi Constructions Contractors v. Union of India*"⁹ and recently in "*Indore Vikas*

8. (2017) 4 SCC 243

9. (2020) 16 SCC 489

*Praadhikaran (IDA) vs. Shri Humud Jain Samaj Trust*¹⁰ , wherein the Hon'ble Supreme Court held:

“12. This Court in the case of *State of Jharkhand v. CWE-SOMA Consortium (supra)* while dealing with the similar issue of annulment of tender process, in paras 21, 22 and 23 has held as under:

“21. Observing that while exercising power of judicial review, the Court does not sit as appellate court over the decision of the Government but merely reviews the manner in which the decision was made, in *Tata Cellular v. Union of India* [*Tata Cellular v. Union of India*, (1994) 6 SCC 651], SCC in para 70 it was held as under : (SCC p. 675)

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.”

22. The Government must have freedom of contract. In *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.* [*Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.*, (2005) 6

10. 2024 SCC Online SC 3511

SCC 138], SCC in para 12 this Court held as under : (SCC p. 147)

“12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)”

The Court does not have the expertise to correct the administrative decision as held in *Laxmikant v. Satyawar* [Laxmikant v. Satyawar, (1996) 4 SCC 208], the Government must have freedom of contract.

23. The right to refuse the lowest or any other tender is always available to the Government. In the case in hand, the respondent has neither pleaded nor established mala fide exercise of power by the appellant. While so, the decision of the Tender

Committee ought not to have been interfered with by the High Court. In our considered view, the High Court erred in sitting in appeal over the decision of the appellant to cancel the tender and float a fresh tender. Equally, the High Court was not right in going into the financial implication of a fresh tender.”

13. *This Court in the aforesaid case has held that while exercising power of judicial review, the Court does not sit as an appellate Court over the decision of the government but merely reviews the manner in which the decision was made [Tata Cellular v. Union of India, (1994) 6 SCC 651]. In the considered opinion of this Court, the Division Bench should not have interfered in the matter and could not have gone to the extent of fixing the base price/modifying the offer made by respondent and, therefore, in light of the aforesaid judgment as the High Court has virtually passed an order sitting in appeal over the decision of the government in absence of any mala fide exercise of power by the IDA, the judgment passed by the Division Bench of the High Court deserves to be set aside and is, accordingly set aside. This Court in the case of Haryana Urban Development Authority v. Orchid Infrastructure Developers Pvt. Ltd. (supra) again dealing with the cancellation of a bid of the highest bidder, in paragraphs 12, 13, 14, 15, 16 and 30 has held as under:*

“12. 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, the plaintiff could not have become entitled for consequential mandatory injunction for issuance of formal letter of allotment. The court while exercising judicial review could not have accepted the bid. The bid had never been accepted by the authorities concerned. It was not a case of cancellation of bid after being accepted. Thus, even assuming as per the 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.

13. *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 1978 Regulations, 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 non-acceptance of the bid. Thus, there was no concluded contract. Regulation 6 of the 1978 Regulations is extracted hereunder:*

“6. Sale of lease of land or building by auction.

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- (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 cent 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 time and announced to the public before auction on the spot.”

14. *We are fortified in our view by a decision of this Court in U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737], wherein 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 : (SCC pp. 195-97, paras 30-31)*

“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 [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* [*Rajasthan Housing Board v. G.S. Investments*, (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.’

In State of Orissa v. Harinarayan Jaiswal [*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. ... 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* [*Union of India v. Bhim Sen Walaiti Ram*, (1969) 3 SCC 146]). [Ed. : The matter between two asterisks has been emphasised in *Avam Evam Vikas Parishad case*, (2013) 5 SCC 182.] By merely giving bids, the bidders had not acquired any vested rights [Ed. : The matter between two asterisks has been emphasised in *Avam Evam Vikas Parishad case*, (2013) 5 SCC 182.]’.

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.”

15. *This Court in Om Prakash Sharma case [U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma, (2013) 5 SCC 182 : (2013) 2 SCC (Civ) 737] 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 the 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.”*

26. We may also note that this Court has consistently followed the aforesaid principles in several judgments including in “*Aditya Enterprises*” (supra), “*Infinity Infra*” (supra) and “*Diti Developers v. City and Industrial Development Corporation of Maharashtra Ltd.*” (Writ Petition No.14294 of 2025, dated 18th November 2025). We cannot take a different view in this case.

27. The petitioner’s contention that it is at least entitled to the portion of the land falling outside the CRZ zone is equally devoid of merit. Once the tender is cancelled in its entirety, the petitioner cannot claim enforcement of a part of it. The alleged

delay of 21 months in issuing the cancellation is justified by the fact that the tendered plot was the subject matter of proceedings before the Tribunal. The petitioner was declared the highest bidder on 22nd August 2022 and on the very same day the Tribunal granted an injunction restraining the respondents from proceeding with the tender process. This position was affirmed by the Tribunal in its judgment dated 11th October 2023, whereby the respondent no.1 was restrained from selling, transferring, or granting any leasehold rights in Plot No. 2A, Sectors 54, 56 and 58, Nerul (West), Navi Mumbai, for the construction of residential or commercial buildings/structures, except the areas falling outside the CRZ. Even in respect of the areas outside the CRZ, the Tribunal suggested that such areas should preferably be utilized for gardens or social facilities, in accordance with the Navi Mumbai Draft Development Plan. This litigation concluded only on 22nd April 2024 when the respondents' review petition was dismissed. In less than a month thereafter, the respondents issued the cancellation letter and initiated the refund of the EMD. The petitioner did not intervene in the pending application or assail the Tribunal's order before any forum. This appears to us that the petitioner was not interested in protecting its bid or so-called contractual rights.

28. As noted above, there is no letter of allotment or contract between the parties. No arbitrariness or mala fides can be attributed to the respondents. For the above reasons, there is no merit in this petition. **Writ Petition No.7883 of 2024 is dismissed** with no order as to costs.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]