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

WRIT PETITION NO. 10004 OF 2024

Bhagwati Signature LLP,
a Limited Liability Partnership firm
duly registered as a limited liability
partnership having its Registered
Office at Room No.101, Hari Niwas
Plot No.223, Sector 21, Nerul,
Navi Mumbai – 400 614

... Petitioner

Versus

1. The City and Industrial
Development Corporation of
Maharashtra Limited
Having its registered office at
'Nirmal', 2nd Floor, Nariman Point,
Mumbai – 400 021
And also Head office at CIDCO
Bhavan, CBD Belapur,
Navi Mumbai – 400 614
2. The Managing Director,
CIDCO, having his
office at 'Nirmal', 2nd Floor,
Nariman Point,
Mumbai – 400 021
3. The Manager Marketing (Commercial)
Having his office at
CIDCO Ltd, 3rd Floor, Raigad Bhavan,
CBD Belapur, Navi Mumbai-400 614
4. The State of Maharashtra
Through the Principal Secretary
Urban Development,
Mantralaya, Mumbai-400 032

... Respondents

Mr. Atul Rajadhyaksha, Senior Advocate a/w Mr. Arun Paniker, Ms. Shweta Yadav, Mr. Aditya Sharma i/b. Juris Salvation, for the Petitioner.

Dr. Birendra Saraf, Advocate General a/w Mr. Rahul Sinha, Mr. Soham Bhalerao i/b. DSK Legal, for Respondent Nos.1, 2 and 3.

Mrs. Neha S. Bhide, Government Pleader a/w Mr. O. A. Chandurkar, Additional Government Pleader, Ms. G. R. Raghuwanshi, AGP, for Respondent No.4.

**CORAM : ALOK ARADHE, CJ &
M. S. KARNIK, J.**

RESERVED ON : 7th APRIL, 2025

PRONOUNCED ON : 17th APRIL, 2025

JUDGMENT (PER M. S. KARNIK, J.) :

1. The petitioner - Bhagwati Signature LLP, a Limited Liability Partnership firm invokes the jurisdiction of this Court under Article 226 of the Constitution of India and prays for setting aside the e-tender cum e-auction issued by Respondent No.1-City and Industrial Development Corporation of Maharashtra ('CIDCO', for short) in respect of subject plot i.e. Plot No.25, Sector 9, Ghansoli Node, Navi Mumbai ('subject plot', for short). It is further prayed that CIDCO be directed to comply with the order dated 16th February 2023

passed by this Court and accept the highest bid offer put in by the petitioner in respect of the subject plot in the auction held in 2022.

2. Mr. Atul Rajadhyaksha, learned Senior Advocate for the petitioner placed the following facts for our consideration before advancing his submissions. CIDCO invited bids through a public advertisement for 20 plots in September 2021. The base rate per sq. meter in respect of each plot was mentioned. In respect of the subject plot the base rate was fixed of Rs.47,273/- per sq. meter and plot No.26 had a higher base rate of Rs.58,017/-. The closed bids were to be submitted on or before 13th October 2021. The bids for e-auction were to be submitted by 14th October 2021. The bids were opened on 18th October 2021.

3. The Petitioner submitted its bid for the subject plot making an offer of Rs.1,51,812/-. This was the highest offer. The total EMD payable for the subject plot was Rs.1,22,57,400/- which the petitioner deposited. CIDCO accepted the EMD as per the tender conditions. There were 11

other bidders for the plot, but the petitioner's bid was the highest as can be seen from the letter dated 24th December 2021 of CIDCO. The letter further stated that CIDCO had evaluated the rates received taking into consideration the subjective attributes and the potential of each plot and after evaluation came to the conclusion that the rate at which the subject plot should be leased is Rs.2,12,589/- given that the adjacent Plot No.24 had received that amount as the bid amount. CIDCO therefore called upon the petitioner to increase its bid from Rs.1,51,812/- to Rs.2,12,589/- in 15 days or else the bid would be cancelled in order to avoid loss to CIDCO. An identical letter was issued to M/s. Juhi stating that plot No.26 for which M/s. Juhi was the highest bidder had the same potential and evaluation as plot No.24 for which CIDCO received a bid of Rs.2,12,589/-. M/s. Juhi was therefore asked to raise its bid from Rs.1,72,245/- to Rs.2,12,589/-. A letter identical in content to the letter addressed to the petitioner was also sent to various other highest bidders in respect of other plots asking them to revise their bids.

4. The petitioner assailed the said letter by filing a Writ Petition in this Court. Twelve of the highest bidders in respect of 12 different plots challenged the aforesaid action of CIDCO in demanding a higher price by filing twelve Writ Petitions. Vide an order dated 7th January 2022, this Court in ten Writ Petitions including that of the petitioner allowed the petitioners to make a representation to the Managing Director of CIDCO who was then required to pass an order on the representation. In the meanwhile, further action was stayed.

5. The petitioner submitted the representation on 21st January 2022. The petitioner along with others were heard by the Managing Director. By a communication dated 23rd March 2022, CIDCO rejected the offer of the petitioner. The reason is that after evaluation of the price quoted by the petitioner for the subject plot with the bid for plot Nos.23, 24 and 26 and the evaluation by an independent agency the rate quoted is low in the bid. CIDCO relied on the rates for plot Nos.23, 24 and 26 to arrive at this conclusion. The letter stated that the EMD shall be refunded back. The petitioner has challenged this letter dated 23rd March 2022 by amending the earlier pending Writ Petition.

6. Mr. Rajadhyaksha pointed out that on 23rd March 2022 one out of the twelve petitioners received a letter that the bid at the original rate had been accepted. The said petitioner therefore withdrew the Writ Petition filed by him on 14th June 2022 as his grievance stood resolved by CIDCO. The Writ Petition filed by the petitioner was disposed of by this Court on 16th February 2023 allowing CIDCO to provide petitioner with the rates quoted by the independent expert whereupon the petitioner could make a proposal to CIDCO. By a communication dated 21st February 2023 the petitioner requested for the report. CIDCO did not provide the report. Nine out of the twelve petitioners were allotted plots at the price originally offered with no enhancement sometime on 23rd March 2022.

7. CIDCO issued a public notice in July 2024 inviting bids for 48 plots including the subject plot. The petitioner filed a Writ Petition in this Court on 23rd July 2024. This Court passed an ad-interim order protecting the petitioner. CIDCO postponed the auction but continued to invite bids for the plot. On 5th September 2024 an affidavit was filed by CIDCO. The petitioner filed an affidavit on 3rd March 2025 that plot

No.26 was allotted to the bidder at the original price bid which was lower than the price demanded by CIDCO when it had earlier threatened to cancel the bid. The petitioner offered the same price as the price accepted by CIDCO for plot No.26.

8. Mr. Rajadhyaksha, learned Senior Advocate assails the action of CIDCO while submitting that a public body is bound by Article 14 and the provisions of law requires a public body to be fair, equal, rational, not to treat equals unequally, be discriminatory in any manner and treat likes alike. Mr. Rajadhyaksha was at pains to point out that CIDCO has offered several plots of land on lease to the original highest bidder at the rate quoted by such bidder but when it came to the petitioner it has applied different standards for obvious reasons. This approach of CIDCO is not only arbitrary but discriminatory. CIDCO has adopted a different approach in respect of the similar plot having almost identical potential which were subject matter of the same tender notice. Mr. Rajadhyaksha submitted that the petitioner had quoted the highest price, but on an assumed technical evaluation which had no basis, CIDCO called upon the petitioner to increase the bid. Likewise, other bidders were called upon to do so but in

respect of those cases CIDCO offered the plot at the price originally quoted by the highest bidders. This action on the part of CIDCO is clearly discriminatory in the submission of the learned Senior Advocate. It is further submitted that invitation for fresh bids in respect of the subject plot is not in consonance with the spirit of the order of this Court dated 16th February 2023 in Writ Petition No.1367 of 2022 filed by the petitioner. The fresh tender issued is arbitrary and discriminatory. Mr. Rajadhyaksha submits that even the EMD was retained by CIDCO which has not been refunded till date though CIDCO in its communication had indicated that the EMD would be refunded. Learned Senior Advocate relied upon the decision of the Supreme Court in Tata Cellular that tenders by a public body though being in the nature of contract are subject to judicial review if the decisions taken by a person or authority issuing the tender are arbitrary, without any basis and have a colour of malafides. The action of CIDCO in cancelling the earlier auction despite the initial offer of the petitioner being almost three times the reserve price is illegal according to learned Senior Advocate. Mr. Rajadhyaksha emphasised that CIDCO has acted in a malafide and arbitrary

manner in as much as out of the 12 petitioners who had filed various Petitions, CIDCO rejected the representation of only two parties, one of which is the petitioner though the petitioner is identically placed as the other petitioners. Mr. Rajadhyaksha submitted that considerable prejudice is caused to the petitioner as the EMD of more than Rs.1 crore is retained by CIDCO for more than three years and the petitioner being the highest bidder legitimately expected the allotment to be made in its favour and therefore planned to develop the subject plot accordingly by mobilising infrastructural resources. It is further submitted that the development potential and topography of the subject plot and adjacent plot is not the same and that the subject plot has several disadvantages and drawbacks as compared to adjacent plot. Plot No.26 being adjacent to subject plot is allotted by CIDCO to the highest bidder at the rate of Rs.1,72,245/- whereas for the subject plot, CIDCO was insisting upon a rate of Rs.2,12,589/- on par with adjacent plot. Learned Senior Advocate relied upon the decision of the Supreme Court in *Eva Agro Feeds Private Limited vs. Punjab National Bank and another*¹ that an auction sale cannot be

¹ (2023) 10 SCC 189

cancelled by the authority exercising unfettered discretion and without furnishing any reason. It is submitted that a reasonable view always is that ordinarily the highest bidder has to be accepted unless there are statutory infirmities in the bidding or the bidding is collusive in nature or there is an element of fraud in the bidding process.

9. Dr. Saraf, learned Advocate General on the other hand submitted that CIDCO has taken an informed decision to invite fresh bids in larger public interest as the plot in question on the basis of the reports placed on record had a potential to fetch a much higher rate than the one quoted by the petitioner. Dr. Saraf, learned Advocate General submitted that the petitioner has no inherent right to claim allotment in his favour only because he is the highest bidder. Dr. Saraf invited our attention to the affidavit-in-reply filed by CIDCO to justify the decision taken by CIDCO. Learned Advocate General relied on the following decisions in support of his submissions :-

(1) *Haryana Urban Development Authority and others vs. Orchid Infrastructure Developers Private*

*Limited*².

(2) *Joshi Technologies International Inc. vs. Union of India and others*³.

(3) *PSA Mumbai Investments Pte. Limited vs. Board of Trustees of the Jawaharlal Nehru Port Trust and another*⁴.

(4) *Rishi Kiran Logistics Private Limited vs. Board of Trustees of Kandla Port Trust and others*⁵.

(5) *Uttar Pradesh Avas Evam Vikas Parishad and others vs. Om Prakash Sharma*⁶.

(6) *Aditya Enterprises vs. City Industrial and Development Corporation of Maharashtra Ltd.*⁷

10. We have heard learned Senior Advocate and learned Advocate General. We have perused the pleadings and the materials on record. It is well settled that if the decision of CIDCO to cancel the tender is highhanded and an arbitrary decision is taken without any reason or malafide, this Court in the exercise of its jurisdiction under Article 226 of the

² (2017) 4 SCC 243

³ (2015) 7 SCC 728

⁴ (2018) 10 SCC 525

⁵ (2015) 13 SCC 233

⁶ (2013) 5 SCC 182

⁷ 2023 SCC OnLine Bom 876

Constitution of India is bound to interfere. The stand of CIDCO is that it has taken a calculated and conscious commercial decision after having evaluated the market conditions along with the attributes, potential of the subject plot, independent expert report after a personal hearing given to the petitioner. The reason for the termination of the earlier tender process was communicated to the petitioner vide letter dated 24th November 2021. It would be pertinent to extract the contents of the said letter to consider the submissions of learned counsel in perspective. The contents are as under :-

"The Corporation has evaluated the rates received against all the plots taking into consideration the subjective attributes and potential of individual plots. After evaluation, it is observed that the Plot No.24 is adjacent/in vicinity to your plot having similar attributes/potential and has received Highest bid amount of Rs.2,12,589/- psm."

11. CIDCO being a state entity, financial considerations are of paramount importance due to the involvement of public money and further that income from disposal of plots is the only source to fund the development in Navi Mumbai. CIDCO therefore took a decision to cancel the said tender due to the petitioner's inaction to match the highest bid amount of Rs.2,12,589/-. CIDCO duly heard the petitioner pursuant to the order passed by this Court on 7th January 2022 in the Writ

Petition filed earlier. CIDCO passed an order dated 23rd March 2022 taking into consideration all factors as mentioned by the petitioner as well as the Marketing Manager. This Court in the order dated 16th February 2023 recorded that the respondents may intimate the petitioner about the rates quoted by the independent agency. The stand of CIDCO is that they were under the bonafide impression of having a discretion of intimating the petitioner as this Court had indicated “**may** intimate the petitioner”. We have our own doubts about the interpretation placed by CIDCO on the order passed by this Court. Though CIDCO has taken the stand that this bonafide understanding of the order may not be held against them, we refrain from expressing any opinion as in this Petition we are concerned with the issues raised by the petitioner about the CIDCO’s action in initiating a fresh tender process to the detriment of the petitioner who was the highest bidder in the previous tender process. Nonetheless, the inaction on the part of CIDCO in not intimating to the petitioner the rates quoted by the independent agency is a factor that we will take into consideration while testing the action of CIDCO.

12. It is well settled that matters pertaining to tenders are subject to judicial review only on limited grounds. The relevant conditions of the bid document in Part-A Clause 5 provides that "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." Further Clause 15 provides that "The Vice Chairman and Managing Director, CIDCO reserves all rights to reject any or all bids submitted without assigning any reason thereof." Clause 10 of Part-B of the bid document provides that "CIDCO reserves the right to amend, revoke any or all the above condition or to cancel the scheme at any time at its sole discretion. The right to reject any or all the offers without assigning any reason whatsoever is reserved with the Corporation." It is material to note that in the order dated 23rd March 2022 passed by the Vice Chairman and Managing Director it was held thus :-

"I have observed that for this particular plot i.e. plot no.25, Sector 9, Ghansoli, 12 bidders have participated in the process however, the quoted rate is not comparable to existing market potential as revealed from the rates received for the adjacent plots i.e. Plot No.23, 24 and 26. The rate is also not recommended by the independent expert agency."

13. In the affidavit-in-reply it is stated that based on empirical evidence of the research conducted by CIDCO as well as the Independent Expert Agency, CIDCO considered the adjoining plot of land and the subject land on the basis of parity. Based on the evaluation of the market conditions the letters of allotment were issued to the respective bidders. It is well settled that the petitioner has no vested right in the plot only on the basis of it emerging as the highest bidder. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. This Court in *Aditya Enterprises* (supra) held that no right is created in favour of the petitioners to have the plot allotted to them by CIDCO by mere reason of they being the highest bidders in the tender process.

14. In *Uttar Pradesh Avas Evam Vikas Parishad and others* (supra) the Apex Court in paragraph 31 observed thus :-

"31. In view of the law laid down by this Court in the aforesaid decisions, 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. There is no communication of acceptance of offer by the Corporation in respect of the plot towards which the petitioner has deposited the EMD. In fact, Clause 26 of Part-A of the bid document provides that "The letter communicating the acceptance of offer by the Corporation in respect of the Plot (i.e. allotment letter) shall be mailed on registered e-mailed id of the offeror/bidder given in the offer. The letter mailed to the applicants e-mail id must be deemed to have been received by the offeror/bidder. The offeror/bidder will have no claims of any sort for delay/refusal once allotment letter is issued to the offeror/bidder." Thus, there is no acceptance of offer of the bidder and there cannot be said to be a concluded contract between the parties.

16. In our opinion the action on the part of CIDCO cannot be said to be arbitrary or capricious. We are in agreement with

the submissions of learned Advocate General that the consideration of larger public interest would prevail over the private interest of the petitioner. No doubt the petitioner's expectations and hopes were raised being the highest bidder and also having deposited the EMD but we cannot lose sight of the fact that there was no concluded contract between the parties for the petitioner to claim a vested right. The decision of CIDCO cannot be said to be arbitrary or unreasonable to warrant interference. Moreover, it is the submission of learned Advocate General that the market potential of the plot in question has materially altered since the first tender and therefore the commercial considerations of CIDCO which is in furtherance of public interest cannot be over looked. Learned Advocate General submits that the EMD which has been deposited by the petitioner will be returned forthwith. Should the petitioner have any grievance about the damages suffered by them, it is open for them to adopt the appropriate remedies to seek redressal for such claim.

17. Consequently, the Writ Petition is dismissed with no order as to cost.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

18. At this stage, learned counsel for the petitioner prays for continuing the interim protection granted during the pendency of the petition for a reasonable period. We are not inclined to grant the request. Hence, rejected.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)