IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18966 OF 2024

M/s. Hare Krishna Enterprises]
Through its partners]
Shri. Ashok Patel]
Age 31, Occu. Business,]
O/at- A-302, Vandana CHSL,]
SVP nagar, Andheri west,]
Mumbai – 400053.] … Petitioner

Versus

The City Industrial and Development]
Corporation of Maharashtra Limited]
(through its vice chairman and]
managing director)]
O/at:CIDCO Bhavan, Sector-10,]
CBD-Belapur, Navi Mumbai-400614.] …. Respondent

WITH
INTERIM APPLICATION NO.1131 OF 2025
IN
WRIT PETITION NO.18966 OF 2024

M/s Hare Krishna Enterprises]
Through its partners]
Shri. Ashok Patel]
Age 31, Occu. Business,]
O/at- A-302, Vandana CHSL,]
SVP nagar, Andheri west,]
Mumbai – 400053.] … Applicant

In the matter between

M/s Hare Krishna Enterprises]
Through its partners]
Shri. Ashok Patel]
Age 31, Occu. Business,]
O/at- A-302, Vandana CHSL,]

SVP nagar, Andheri west,]
Mumbai – 400053.] … Petitioner

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The City Industrial and Development]
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(through its vice chairman and]
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O/at:CIDCO Bhavan, Sector-10,]
CBD-Belapur, Navi Mumbai-400614.] .... Respondent

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Mr Drupad Patil a/w Mr Prasad Keluskar, for the Petitioner.

Mr Chetan Kapadia, Senior Advocate a/w Mr Soham Bhalerao i/b. DSK Legal, for the Respondent-CIDCO.

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

DATE : 28th MARCH, 2025

JUDGMENT (Per M. S. Karnik, J.) :- :

1. The Petitioner-M/s. Hare Krishna Enterprises challenges the order dated 4th December 2024 passed by the Respondent-CIDCO in this Petition filed under Article 226 of the Constitution of India. The Petitioner further prays for direction to CIDCO to issue a letter of allotment to Petitioner in respect of Plot No.14, Sector 9E, Node-Kalamboli, Navi Mumbai (“the said plot” for short).

2. Brief facts necessary for a decision in this case are thus :-

CIDCO launched the scheme for lease of plots for commercial use in Vashi, Nerul, Kalamboli through advertisement. In the tender document CIDCO reserved its right to cancel, amend, revoke, modify the conditions of the scheme or any plot at its discretion or reject any or all offers without assigning any reasons thereof. The result of the close-bid and E-auction bids were opened on 9th May 2022. One Varniraj Group submitted bid for Rs.68,889/- per sq. mtr. for the plot. As the current market range of the rate of the plot was on the higher side, CIDCO issued a rejection letter to Varniraj Group on 25th July 2022 cancelling the auction of the said plot and decided to re-auction the plot. Varniraj Group filed Writ Petition No.9977 of 2022 on 17th August 2022 challenging the decision and for injuncting CIDCO from issuing allotment letter in favour of third party. CIDCO refunded the EMD deposit back to Varniraj Group.

3. CIDCO issued a fresh advertisement for the said plot. The Petitioner participated in the fresh auction on 2nd September 2022 and quoted the rate of Rs.92,995/- per

sq.mtr. and deposited Rs.88,86,014/- as EMD with CIDCO. The EMD payment end date is 7th September 2022. The auction end date is also 7th September 2022. The bids in the second/fresh tender was opened on 25th October 2022. Total 9 bids were received. The Petitioner emerged as the highest bidder.

4. Writ Petition No.9977 of 2022 filed by Varniraj Group was disposed of directing CIDCO to decide the representation of Varniraj Group. Till the decision on the representation, further proceedings regarding allotment were stayed. Interim relief was granted not to take further proceedings regarding allotment of the plot.

5. Varniraj Group submitted its representation on 26th December 2022 and requested to issue allotment letter in its favour. The Petitioner vide letters dated 8th May 2023 and 17th July 2023 requested CIDCO to issue allotment letter and to accept the balance amount against EMD. CIDCO rejected the representation of Varniraj Group on 18th May 2023 and confirmed the earlier decision of cancellation.

6. Varniraj Group therefore filed Writ Petition No.11732 of 2023 in this Court on 6th June 2023. This Court on 9th October

2023 orally directed CIDCO to again give hearing to Varniraj Group. Varniraj Group was heard on 16th October 2023 by VC and MD of CIDCO. During the said hearing Varniraj Group had shown its willingness to match the bid of the Petitioner. On 17th October 2023 the VC and MD of CIDCO passed a detailed order against Varniraj Group and confirmed earlier orders of cancellation. Even the contention of Varniraj Group to match the bid of the Petitioner was rejected after taking into consideration that the EMD of the Petitioner is lying with CIDCO.

7. This Court on 9th December 2023 in the Petition filed by Varniraj Group, passed an interim order thereby restraining CIDCO from issuing the allotment letter. The Petitioner filed an Interim Application No.15542 of 2023 dated 28th June 2024 in Writ Petition No.11732 of 2023 preferred by Varniraj Group. The Petitioner was allowed to intervene in Varniraj's Petitions.

8. The Petitioner filed a separate Writ Petition No.13836 of 2023 on 4th August 2023 for an order directing CIDCO to issue allotment letter in respect of the subject plot on the grounds that the Petitioner has already paid EMD to CIDCO. In the reply dated 5th March 2024 filed by CIDCO in Writ Petition

No.13836 of 2023, CIDCO inter alia stated that the plot should be allotted to the Petitioner.

9. This Court on 16th October 2024 dismissed the Petition of Varniraj Group, and in the Petition filed by the Petitioner, directed CIDCO to take a decision in respect of bid submitted by the Petitioner. The Petitioner submitted a detailed representation before CIDCO and requested to issue allotment letter. Vide order dated 4th December 2024 impugned in this Petition, CIDCO informed that the bid of the Petitioner is cancelled, which order led to the filing of this Petition on 12th December 2024.

10. Mr Drupad Patil, learned counsel for the Petitioner submitted that the circumstances on record warrant allotment of the plot in favour of the Petitioner. Learned counsel submitted that the CIDCO had taken a categoric stand in the Petition filed by Varniraj Group that the allotment of the plot has to be made in favour of the Petitioner. It is submitted that once a promise is made by CIDCO that the plot would be allotted to the Petitioner, CIDCO is now estopped from denying the fruits of allotment only on account of increase in the prices of the plots at this distance of time for which the

Petitioner is not responsible. Mr Patil submitted that the Petitioner had deposited substantial amount of EMD being the highest bidder and at no point of time the said EMD was returned back, on the contrary a consistent stand was taken by CIDCO that the allotment has to be made in favour of the Petitioner. The stand of the CIDCO that the allotment will have to be made in favour of the Petitioner continued till the Petition filed by Varniraj Group was dismissed on 16th October 2024. It is submitted that while disposing of the Petition filed by the Petitioner, this Court directed the Petitioner to make a representation on the matter of allotment only as a formality. Consequent to the making of the representation, CIDCO had to complete the formalities for allotment and nothing more. Mr Patil submitted that but for the Petition filed by Varniraj Group, during the course of which this Court directed that the allotment should not be made as an interim measure, CIDCO would have allotted the plot to the Petitioner. Therefore, the principles of fair play and justice demand that on the Petition of Varniraj Group being dismissed, the position as on the date when the Petition was filed by Varniraj Group should be restored. Reliance is placed on the decision in **Union of India**

and others vs. Godfrey Philips India Ltd.[1] in support of the contention where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in furtherance of it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. Mr Patil submits that the doctrine of promissory estoppel is well settled and held to be applicable against the government authorities as laid down in M/s. Motilal Padampat Sugar Mills Co. (P.) Ltd. vs. State of Uttar Pradesh and ors.[2]

11. Mr Kapadia, learned Senior Advocate, on the other hand, submitted that the informed decision of CIDCO is in public interest. It is submitted that no prejudice will be caused to the Petitioner as he can always participate in the fresh auction but on the contrary the public exchequer will suffer a huge loss if the plot is allotted at the rate as quoted on 25th October 2022.

1 (1985) 4 SCC 369
2 (1979) 2 SCC 409

It is further submitted that no vested right is created in favour of the Petitioner by virtue of submission of its bid and on being declared as the highest bidder.

12. We have heard learned counsel for the parties. We have perused the memo of the Petition, the materials on record and the affidavit in reply filed by CIDCO. In the fresh auction held on 2nd September 2022 the Petitioner was the highest bidder. He had deposited the EMD of Rs.88,86,014/-. The relevant observations of this Court while dismissing the Writ Petition filed by Varniraj Group (Writ Petition No.11732 of 2023) needs to be extracted. This Court observed thus :-

> "29. Therefore, having regard to the settled legal position, as discussed above, the commercial considerations of the respondent – Corporation cannot be lost sight of while considering the pleas raised by the petitioner in the instant case. If the market potential as per the report submitted by an expert, of the subject plot ranges between Rs.71,638/- to 1,00,067/- per square meter, the commercial considerations underneath the decision to be taken by the respondent – Corporation as to whether the bid offered by the petitioner to be accepted or not, cannot be ignored.
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> 30. As already discussed above, merely because a party is the highest bidder, it cannot be said that any right stands vested in such a party for acceptance of the highest bid offered by it. For reasonable considerations even the highest bid can be refused. When we analyze the facts of the instant case and the pleas raised by the petitioner on the touchstone of the aforementioned legal position, what we find is that the reason given by the respondent – Corporation in not accepting the highest bid offered by the petitioner in the first round of bid cannot be said to be irrelevant or unreasonable. The commercial aspect of the matter is a guiding factor for the respondent – Corporation to arrive at a just and proper decision.

31. We are, therefore, unable to hold that the reasons given by the respondent – Corporation while rejecting the bid offered by the petitioner in the first round of bidding process are not tenable; rather the reasons given are acceptable and admissible in law.

32. The second aspect, as argued by the learned Counsel for the petitioner that the commercial consideration or the commercial interest of the respondent- Corporation does not come in the way of acceptance of the bid offered by the petitioner matching the highest bid submitted by respondent No.2 in the subsequent bid process, in our opinion, is also not acceptable for the reason that if such a course is permitted, the same would be a dent to the fairness and sanctity of the bid process. Accepting the bid submitted by the petitioner which matches the highest bid submitted by respondent No.2 in the subsequent bid will be inappropriate for another reason, and the reason is that the petitioner chose not to participate in the subsequent bid process. We are also of the opinion that in case such a course is allowed, it may result in unending process of offers being made by various parties though such parties may not have participated in the bid process. It is to be seen that the petitioner did not participate in the subsequent bid process and if in the opinion of the respondent–Corporation the bid submitted by respondent No.2 is commercially viable, there is no reason why the bid offered by respondent No.2 in the subsequent bid process may not be accepted and the petitioner’s matching bid may be accepted.

33. We are further of the opinion that even if the petitioner offers a higher bid than the bid price offered in the subsequent bid, the same cannot be accepted for such a course would be against the doctrine of fairness to be observed by a public authority in the bidding process. The petitioner, in paragraph 11 of the rejoinder affidavit filed to the affidavit in reply on behalf of respondent No.2 has stated that it is ready to offer the bid of Rs.1,09,503/- per square meter which is higher than the bid offered by respondent No.2 and equivalent to the highest base rate of the plots in the vicinity. Such an offer, at this juncture, in our opinion, cannot be accepted as the same would again dilute the sanctity of the bid process and will be opposed to the principle of fairness which a public authority, in law, is excepted to observe.

34. For the discussion made and the reasons given above, in our opinion, the writ petition No.11732 of 2023 is highly misconceived, which, resultantly, is hereby dismissed.”

13. So far as the Petition filed by the Petitioner viz. Writ Petition No.13836 of 2023 which was heard along with Writ Petition No.11732 of 2023 and decided by a common judgment, it is pertinent to note that at paragraph 35 this Court issued the following directions :-

> "35. We also direct that the respondent – Corporation shall take a decision in respect of the bid submitted by respondent No.2-M/s. Hare Krishna Enterprises (petitioner in writ petition No.13836 of 2023) pertaining to subject plot in accordance with law, rules and extant circulars with expedition, say within a period of four weeks from the date a copy of this judgment and order is produced before the authority concerned. Writ petition No.13836 of 2023 stands disposed of in these terms."

14. Accordingly, the representation was made by the Petitioner to CIDCO on 21st November 2024 for allotment of the said plot. We have carefully perused the impugned order. After considering all the relevant facts the VC and MD of CIDCO made the following observations which are relevant :-

> "9. In Scheme No 40 of 2024-25 in the same Kalamboli Node, the Corporation has received highest rate of Rs. 1,54,545/- per Sqm for Plot No 79B Sector 17, Kalamboli and Rs. 1,67,000/- per Sqm for Plot No 10 Sector 16E, Kalamboli which are evidence of the current market potential.
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> 10. Considering the current market potential, there would be a considerable loss to the public exchequer, if the plot is allotted to M/s. Hare Krishna Enterprises on this date, at the quoted rate of Rs 92,995/- per sqm in the Scheme No 29/2022, the result for the same was opened on 25/10/2022. No right is created in favour of M/s. Hare Krishna Enterprises in the subject plot by virtue of submission of its bid and being declared as the highest bidder. The Hon'ble High Court in the case of Aditya Enterprises Vs. City Industrial and

> Development Corporation of Maharashtra Ltd cited in 2023(3) Bom. C.R. 856 has held that :
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> > "24. We therefore hold that no right is created in favour of petitioners to have plots allotted to them by CIDCO by mere reason of they being the highest bidders in the tender process."
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> 11. The Corporation is required to take Commercial decision in the process of acceptance of bids to ensure that maximum revenue is generated in public interest by fetching maximum rates in the process of tender of plots.

15. No doubt CIDCO had taken a stand in the Petition filed by Varniraj Group that the plot in question is to be allotted to the Petitioner. The Petitioner had paid the EMD amount. The Petitioner was the highest bidder. In our opinion merely because the Petitioner is the highest bidder will not confer vested right in its favour to have the bid accepted. In **Haryana Urban Development Authority and others vs. Orchid Infrastructure Developers Private Limited**[3] the Supreme Court in paragraph 13 held that the highest bidder has no vested right to have the auction concluded in their favour. In **State of Punjab and others vs. Mehar Din**[4] Their Lordships in paragraph 18 held that the State is not bound to accept the highest bid, and the right of the highest bidder is always provisional. In **Aditya Enterprises vs. City Industrial and Development Corporation of**

3 (2017) 4 SCC 243
4 (2022) 5 SCC 648

Maharashtra Ltd.[5], the Division Bench of this Court in paragraphs 24, 27 and 41 held that the highest bidders do not have an inherent right to get a plot allotted.

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 for 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

5 2023 SCC OnLine Bom 876

Mr Kapadia, learned Senior Advocate when he 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 and another vs. City and Industrial Development Corporation of Maharashtra Limited and others**[6] 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 vs. M/s. M & N Publications Limited and others**[7] 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. vs. Cochin International Airport Ltd. and ors.**[8] 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

6 2024 SCC OnLine Bom 2346
7 (1993) 1 SCC 445
8 (2000) 2 SCC 617

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 vs. Union of India**[9] the Supreme Court in paragraph 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 and another vs. Kakinada Seaports Limited and others**[10] 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 bonafide and taken in the public interest.

18. It is further well settled that the authorities are not required to give reasons for rejecting the bid. In **Silppi Constructions Contractors vs. Union of India and another**[11] supports this proposition. Nonetheless, in our opinion CIDCO rejected the Petitioner's bid for valid reasons,

9 (1994) 6 SCC 651
10 (2017) 4 SCC 170
11 (2020) 16 SCC 489

the primary reason was that the bid was below market potential. From the relevant portion of the impugned order extracted herebefore, it is seen that in the same Node, CIDCO received the highest rate of Rs.1,54,545/- per sq.mtr. for plot No.79B, Sector 17 and Rs.1,67,000/- per sq.mtr. for plot No.10, Sector 9E, which evidenced that the current market potential was much higher. If the plots were to be allotted to the Petitioner at the same quoted rate as on 5th September 2022 of Rs.92,995/- per sq.mtr., the same does not reflect the current market rate and it would have resulted in significant loss to the public exchequer. M/s. Varniraj expressed willingness to offer a higher bid of Rs.1,09,503/- per sq.mtr. considering the market potential of the plot. So also a third party, one Bhavesh Patel vide letter dated 17th October 2024 offered to pay Rs.1,20,000/- per sq.mtr. after getting knowledge of M/s. Varniraj's offer, which supports the contention of CIDCO that there has been considerable increase in the market value.

19. Mr Patil, learned counsel for the Petitioner was at pains to pursuade us that if such re-auction goes on, at this rate, the bid process will never come to an end. This contention can

only be stated to be rejected. The Petitioner has no vested right for the allotment only because he is the highest bidder or for that matter the EMD amount is deposited. The plea of promissory estoppel cannot be of any assistance to the Petitioner. No doubt it is a settled principle of law that the doctrine of promissory estoppel as explained in *Union of India and others vs. Godfrey Philips India Ltd*. (supra) was also held to be applicable against the public authorities. The decision is distinguishable on facts. For one, the position of the Petitioner is not altered. He can always bid in the re-auction. The Petitioner is entitled to the refund of the EMD, in fact the EMD has been refunded after the Petition filed by Varniraj Group was rejected. Further CIDCO's action are guided in public interest as having regard to its commercial consideration it is trying to get a maximum price for the plot. The larger public interest has to outweigh the private interest of the Petitioner. If the Petitioner does not have a legally enforceable right, the question of issuing a mandamus in the facts and circumstances of the case directing the allotment of the plot in favour of the Petitioner does not arise. In our opinion the impugned order cannot be said to be arbitrary or irrational and in fact, is well reasoned order based on sound considerations furthering public interest.

20. It is also pertinent to note that though the Petitioner had filed Writ Petition No.13836 of 2023 for a direction that the plot be allotted to them which was heard along with Writ Petition No.11732 of 2023, despite dismissal of Writ Petition filed by Varniraj Group, this Court did not issue the mandamus sought but directed CIDCO to take a decision in respect of the bid submitted by the Petitioner in accordance with law. The representation made is not granted for valid and cogent reasons.

21. The impugned order in our opinion does not call for any interference.

22. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

23. Interim Application No.1131 of 2025 does not survive and is disposed of.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**