IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16848-1994 (O&M)
Date of decision : 24.02.2025

MOHD. ISMAIL KHAN (DECEASED) THROUGH
HIS LRs.

…Petitioners

Versus

THE STATE OF HARYANA THROUGH
THE JOINT SECRETARY AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Suresh Verma, Advocate
for the petitioners.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. Som Nath Saini, Advocate
for respondents No.4 and 5.

HARSH BUNGER, J.

Petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking setting aside of order dated 27.04.1994 (Annexure P-2) passed by the learned Additional Settlement Officer, Karnal (Camp at Gurgaon); order dated 22.09.1994 (Annexure P-6) passed by the learned Settlement Commissioner, Haryana and also the auction notice dated 07.11.1994 (Annexure P-7).

2. Briefly, the land comprised in *Rectangle no.21*, *Killa no.8/1/2 (4-10)* and *Rectangle no.43, Killa no.14/1(0-7), measuring 4 kanals-17*

marlas situate at Village Khanpur Ghati, Tehsil Ferozepur Jhirka, District Gurgaon, was an evacuee property, which vested in the Re-habilitation Department, Haryana.

2.1 It appears that the afore-said property was auctioned by the Re-habilitation Department on 13.08.1981; however, the same was not accepted and the property was again put to auction on 23.12.1993, wherein the present petitioner turned out to be the highest bidder for Rs.26,000/-. The petitioner deposited 25% of the bid amount i.e. Rs.6,500/- vide Receipt dated 23.12.1993 (Annexure P-1).

2.2 The present respondent No.4 (Ibrahim) and respondent No.5 (Shakila) submitted their objections to the auction on 30.12.1993, stating that they are willing to purchase the property for Rs.32,000/-. However, the challenge money of Rs.8,000/- was deposited only by respondent No.5 (Shakila).

2.3 The Additional Settlement Officer, vide order dated 27.04.1994 (Annexure P-2), ordered re-auction of the property.

2.4 Feeling aggrieved against the afore-said order dated 27.04.1994 (Annexure P-2), the petitioner preferred a revision petition before the learned Settlement Commissioner, Haryana; however, the same was also dismissed vide order dated 22.09.1994 (Annexure P-6).

2.5 Thereafter, a fresh auction notice dated 07.11.1994 (Annexure P-7) was issued.

3. In the afore-mentioned facts and circumstances, the present writ petition has been filed before this Court for seeking relief/s, as noticed here-in-above.

4. Learned counsel for the petitioner submits that the petitioner was the highest bidder in the auction of the afore-said property and had also

deposited 25% of the bid amount; however, the learned Additional Settlement Officer, without recording any reason, ordered re-auction of the property. It is submitted that the concerned authority was required to record reasons, for not accepting the highest bid submitted by the petitioner and in this regard, he places reliance upon the judgment of Full Bench of this Court in case titled as ***Surja Ram vs State of Haryana, 1984 AIR (Punjab & Haryana) 282***. It is further submitted that the learned Additional Settlement Officer, while passing the impugned order dated 27.04.1994 (Annexure P-2) had wrongly entertained the objections from respondents No.4 and 5 as the said objections were submitted beyond the period of seven days, as envisaged under Rule 92(2)(a) of the Displaced Persons (Compensation and Rehabilitation) Act, 1955. It is next submitted that the auction in favour of the petitioner could not be set aside, merely on the basis of inadequacy of the amount or the higher price being offered by the objector(s). It is also submitted that even the learned Settlement Commissioner has failed to appreciate the issues raised before him and has wrongly passed the impugned order dated 22.09.1994 (Annexure P-6).

5. With the afore-said submissions, prayer has been made for setting aside the impugned orders and also the subsequent auction notice dated 07.11.1994 (Annexure P-7).

6. Per contra, learned State counsel as well as learned counsel appearing for respondents No.4 and 5 have opposed the submissions made on behalf of the petitioner by submitting that the auction, in question, was not conducted under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1955 but under the State Rules framed for the disposal of Rural Surplus Evacuee Property. It is submitted that the authorities below have considered all the aspects of the matter and

have ordered re-auction of the land, which is in accordance with the provisions of the State Rules. It is submitted that since respondents No.4 and 5 had offered Rs.32,000/- instead of Rs.26,000/-, which was the bid amount of the petitioner, accordingly, the auction in question was rightly set aside and no interference is required to be made in the same. It is also submitted that the auction, in question, was subject to the approval by the competent authority i.e. the Chief Settlement Commissioner, Rehabilitation, which was not done, therefore, no right of the petitioner has been infringed.

6.1 With the afore-said submissions, prayer for dismissal of the writ petition has been made.

7. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

8. The primary contention raised by learned counsel for the petitioner is that although, the petitioner was the highest bidder in the auction held on 23.12.1993 and he had also deposited 25% of the bid amount; however, the Additional Settlement Officer did not accept the highest bid of the petitioner and without recording any reasons, ordered re-auction of the property, vide impugned order dated 27.04.1994 (Annexure P-2).

8.1 Here it would be apposite to refer to the impugned order dated 27.04.1994 (Annexure P-2), the relevant extract of which reads as under :-

> *"The purchaser Mohd. Ismail Khan presented a written application in which he has said that the publicity has been properly done of the auction and the auction has taken place according to the fixed programme. Therefore the auction be confirmed. The objector Sh. Ibrahim has said the auction has not been properly done. Therefore, the auction be cancelled. Sh. Deen Mohammad the husband of Shakila Begam*

appeared on behalf of her. He has also deposited the challenge money of higher price. He has also submitted written application alongwith an affidavit. In this situation the land be re-auctioned publicity be also got done properly. The order pronounced."

8.2 A perusal of the above extracted order passed by the Additional Settlement Officer, would manifest that no reasons for not accepting the highest bid of the petitioner, is forthcoming therefrom nor there is any reasoning as to why the re-auction of the property has been ordered. Apparently, the property was ordered to be re-auctioned only on account of the fact that respondents No.4 and 5, herein had submitted their objections and the challenge money of higher price was also submitted.

8.3 Evidently, the revision petition filed by the petitioner also came to be dismissed by the learned Settlement Commissioner, Haryana vide order dated 22.09.1994 (Annexure P-6) by observing that when an objection petition is filed with the challenge money, normally the re-auction has to be allowed.

9. The issue as to whether the learned Settlement Officer is required to give reasons for not accepting the highest bid, is no more *res-integra* as the same was considered by the Full Bench of this Court in ***Suraj Ram***'s case (*supra*), wherein, the following question was framed :-

"Is the Settlement Commissioner or other Officer under Rule 5(i) of the Rules for Sale of Surplus Rural Properties, bound to give reasons for not accepting the highest or other bids ?"

9.1 Upon considering the matter, the Hon'ble Full Bench held thus:-

"7. To get a correct and plausible answer to the question arising out of the contentions of the learned counsel for the parties, which has been formulated in the earlier part of the judgment, Rule 5 of the Rules for Sale of Surplus Rural

Properties, (hereinafter referred to as the 'Rules'), may be noticed :-

> *"Procedure for Sale of Property by Public Auction. - Where any property is to be sold by public auction :-*
>
> *(a) The property shall be sold through the officers appointed by the State Government in this behalf.*
>
> *(b) The Settlement Commissioner or any other officers empowered to sell any such property shall cause a proclamation of the intended sale to be made in the language of the principal Civil Court of the original jurisdiction within whose jurisdiction the property is situated.*
>
> *(c) Notice of the intended sale shall be given at least 15 days before the proposed sale and every such notice should state the date, time and place of the proposed sale, the description of the property to be sold, the location and boundaries, where possible, the terms and conditions of the sale and any other particular which the Settlement Commissioner or other officer considers material. One copy of the notice shall be affixed in a conspicuous place in the village(s) where the property is situated e.g. the Panchayat Ghar, Gurdwara, Mandir, School, etc. It shall be within the discretion of the Settlement Commissioner or other officer to advertise the sale in newspaper and in such other manner as he may deem fit.*
>
> *(d) No sale shall take place until after the expiry of the period of fifteen days from the date of publication of the notice.*
>
> *(e) Every auction of a property shall be subject to a reserve price fixed in respect of the property, but such reserve price shall not be disclosed.*
>
> *(f) The Officer conducting the auction may in his discretion withhold sale of any property without assigning any reasons therefor.*

(g) The Officer conducting the sale may, at his direction for reasons to be recorded in writing, adjourn the sale to a specified date and hour and an announcement to that effect shall be made at the time of the adjournment of the sale. Provided that where a sale is adjourned for a period exceeding fifteen days, a fresh notice shall be published.

(h) The person declared to be the highest bidder at the public auction shall pay in cash immediately at the fall of hammer the whole amount of the highest bid if it does not exceed Rs. 500/- and if it exceeds this figure, an amount equal to 25% of the highest bid, as earnest money.

If this amount is not paid, the bid shall be cancelled and the property put to re-auction. The loss, if any, resulting from the re-auction shall be recoverable from the previous bidder.

The highest bid in respect of which an initial deposit has been made shall be subject to the approval of the Settlement Commissioner or an Officer appointed by him for the purpose; provided that no bid shall be accepted until after the expiry of fifteen days from the date of the auction.

(i) Procedure for acceptance of the highest bid. - (1) The Settlement Commissioner or other Officer shall not be bound to accept the highest or other bids and shall not be bound to disclose his reasons therefor. Every bidder shall be bound by his bid and shall if he resiles from such bid, be liable to forfeit his deposit of earnest money. The decision of the Settlement Commissioner with regard to the forfeiture of the deposit shall be final.

If a bid has been accepted by the Settlement Commissioner or other officer, the bidder shall produce before the Tehsildar (Sales) or any other officer appointed by the Settlement Commissioner for the purpose within thirty days of the receipts of such *intimation to him of the acceptance of the bid, a Challan showing a deposit into the Treasury of the balance of the purchase money."*

8. An analysis of the aforesaid rule shows that it provides a detailed procedure for the sale of the property by public auction. Without dilating in detail on clauses (a) to (h), reference may straightaway be made to clause (i), on the interpretation of which the fate of the case would depend. Under this sub-rule, a Settlement Commissioner or other officer is not bound to accept the highest or other bids nor are they bound to disclose reasons therefor. The question that arises for consideration is whether the Settlement Commissioner or other officer is also within his power to decline to accept a bid without giving reasons. In my view the answer has to be in the negative and is available in the sub-rule itself. As earlier observed, under this sub-rule, the Settlement Commissioner or other officer has an absolute power not to accept the highest or other bids and not to disclose his reasons therefor, but refusing to disclose reasons can by no stretch of imagination be interpreted to mean that the Settlement Commissioner or other officer is not bound to give reasons. There is difference between 'not disclosing the reasons' and 'non giving of reasons'. In Black's Law Dictionary, the meaning of the word 'disclose' is - 'To bring into view by uncovering; to expose; to make known, to lay bare, to reveal to knowledge; to free from secrecy or ignorance, or make known'. A thing can be disclosed only when it so exists; but in case it does not exist, then the question of disclosure does not arise. By using the word 'disclose', the intention of the rule-making authority is absolutely clear that while declining to accept the highest bid or other bids, the officer concerned is bound to give reasons and the only right available to him is not to disclose those reasons. Moreover, this non-disclosure of reasons, in my view, is meant for the bidders, i.e., that the Settlement Commissioner or other officer is not bound to tell them as to on what grounds has he not *accepted their bid. If the intention of the rule-making authority had been to vest the officer concerned with a power to refuse to accept the highest bid without assigning any reasons, then instead of 'shall not be bound to disclose his reasons', the words would have been 'shall not be bound to give his reasons'. In this view of the matter, I hold that the Settlement Commissioner or other officer is bound to record reasons for declining to accept the highest or other bids. Once this conclusion is arrived at, there can be no gainsaying that such reasons have to be relevant and not whimsical or arbitrary. As observed by their Lordships of the Supreme Court in* ***Ramana Dayaram Shetty v. The International Airport Authority of India and others, AIR 1979 Supreme Court 1628****, every order of the State or its functionary has to meet the twin test of 'reason and relevance'. They just cannot arbitrarily pass an order for any or no reason. The officer concerned is duty bound under the rules to record relevant legal reasons for refusing to accept the highest or other bids.*

9. Further the contention that no legal right vests in a highest or other bidder so as to entitle him to challenge an action of the appropriate authority in refusing to accept the highest or other bids, is not legally tenable. The aggrieved person whose right to the property as a result of non-acceptance of the highest bid, is being taken away, can certainly challenge the action on the ground that the order of the appropriate authority is arbitrary or has come in existence as a result of extraneous considerations and in case it is so proved, then the order of non-acceptance would certainly be liable to be quashed. The State Government or the appropriate authority can defend its action by disclosing reasons given for non-acceptance of the bid and if the same are found relevant, relief would straightaway be declined. But there is no warrant for this proposition that even if the order of the authority in not accepting the bid is arbitrary and does not disclose any reasons, then also the legality of the same cannot be challenged in a Court of law…"

9.2 Further, the correctness of the Full Bench judgment of this Court in the case of ***Surja Ram*** (supra), was tested by another Full Bench of this court in ***Subhash Chand v. State of Haryana, 2007(3) RCR (Civil) 548*** and upon considering the matter, the Full Bench of this Court observed thus:-

> *"12. On a plain reading of the Full Bench decision in Surja Ram's case (supra), we find that the said judgment, to the extent it obligates the competent authority to give reasons for non-acceptance of the highest or the other bid, notwithstanding the fact that the relevant rules do not expressly require so, requires no reconsideration. The aforesaid view is totally consistent with what the Apex Court has held from time to time.*
>
> *13. We are, however, of the view that the observations made by the Full Bench in para 9 of its judgment in respect of taking away of "Right to Property as a result of non-acceptance of the highest bid" and which appears to be the sole cause of this reference, need to be clarified.*
>
> *14. In our view, the above quoted observations in Surja Ram's case (supra) have been made in the context of locus standi of the petitioner. The highest bid, per se, unless it is accepted by the competent authority, and consequential sale-certificate is issued, does not grant the highest bidder "right to property" of the type which is protected under Article 300A of the Constitution of India. It, however, also does not mean that even if the highest bid is not accepted by the competent authority, either without citing any reason and/or for totally arbitrary or irrelevant reasons, the highest bidder does not even acquire a right to assail the action of the competent authority. The highest bidder who had a legitimate expectation to acquire ownership of the property, unless his bid was found to be suffering from any legal infirmity, has an indefeasible right to knock at the doors of an appropriate forum including a Constitutional Court and to question the legality of the*

decision of the competent authority on grounds like it being contrary to the Statute or the rules or the Constitution. In other words, the refusal to accept the highest bid cannot foreclose the right of the highest bidder to put the action of the competent authority to judicial scrutiny. We are, thus, of the considered view that observations of the Full Bench in Surja Ram's case (supra), in respect of "Right to Property" are limited to confer the highest bidder the right to challenge an action of the appropriate authority in refusing to accept the highest or other bids.

15. The view taken by the Full Bench in Surja Ram's case (supra), therefore, is not derogatory to or inconsistent with the view taken by the Apex Court in M/s. Bombay Salt and Chemical Industries's case (supra).

16. Adverting to the questions referred for our consideration, we find that the same are no longer res integra. There can hardly be any room for quarrel with the fact that the State is free to enter into a contract just like any other individual; and the contract shall not change its legal character merely because the other party to the contract is the State. Though no citizen possesses a legal right to compel the State to enter into a contract, yet the latter can neither pick and choose any person arbitrarily for entering into such agreement nor can it discriminate between the persons similarly circumstanced. Similarly, where the breach of the contract at the hands of the State violates fundamental rights of a citizen or its refusal to enter into a contract is contrary to the 'statutory provisions' or 'public duty', the judicial review of such State action, is inevitable.

Likewise, if the State enters into a contract in consonance with Article 299 of the Constitution, the rights of the parties shall be determined by the terms of such contract, irrespective of the fact that one of the parties to it is a State or a Statutory Authority. (Ref. :- (i) ***Achutan v. State of Kerala, AIR 1959 Supreme Court 490;*** *(ii)* ***Lekh Raj Sant Ram DassLalwani v. N.M. Shah, AIR 1966 Supreme Court 334;*** *(iii)* ***Hanif Mohd.***

v. State of Assam, 1969(2) SCC 782; *(iv)* ***Uma Kant Saran v. State of Bihar, 1973(1) SCC 485;*** *(v)* ***Ramana Dayaram Shetty v. The International Airport Authority of India and others, AIR 1979 Supreme Court 1628;*** *(vi)* ***M/s. Kasturi Lal Laxmi Reddy etc. v. The State of Jammu and Kashmir and another, AIR 1980 Supreme Court 1992;*** *(vii)* ***Divisional Forest Officer v. Biswanath T. Company, 1981(3) SCC 238;*** *(viii)* ***Gujarat State Financial Corporation v. Lotus Hotels, 1983(3) SCC 379;*** *(ix)* ***Brij Bhushan and others v. State of Jammu and Kashmir and others, 1986(2) SCC 354*** *and* ***Bareili Development Authority v. Ajai Pal Singh, 1989(2) SCC 116.***

17. It is well-known that the State, while entering into contracts with individual parties invokes its executive power under Article 298 of the Constitution and its decision is assailable on the ground that it is arbitrary or is de hors of Article 14 and/or is contrary to 'public law'. In other words, though the State or its instrumentalities are free to enter into a contract with any person yet they cannot act whimsically and their freedom to enter into business etc. is subject to the conditions of 'reason', 'fair play' and 'public interest', as observed by the Apex Court in a plethora of cases (Ref. :- (i) ***Kasturi Lal Luxmi Reddy v. State of J&K, 1980(4) SCC 1;*** *(ii)* ***Mahabir Auto Stores v. Indian Oil Corporation, 1990(3) SCC 752;*** *(iii)* ***Mahender Kumar Gupta v. Union of India, 1995(1) SCC 85*** *and (iv)* ***Krishanan Kakkanth v. Government of Kerala, 1997(9) SCC 495).***

18. For these precise reasons the equitable doctrine of 'promissory estoppel' has been made applicable against the Government, as against any other private individual, even in the cases where no valid contract in terms of Article 299 was entered into between the parties. Hence, if the Government makes a representation or a promise and an individual alters his position by acting upon such promise, the Government may be required to make good that promise and shall not be allowed to fall back upon the formal defect in the contract, *though subject to well known limitations like Larger Public Interest. In this regard reference can be made to the views taken by the Hon'ble Supreme Court in :-*

(i) ***Union of India v. Indo Afghan Ltd., AIR 1968 Supreme Court 718;***

(ii) ***Sanctuary Spinning and Manufacturing Ltd. v. Ulhasnagar Municipal Council, AIR 1971 Supreme Court 1021;*** *and*

(iii) ***KCP Ltd. v. State Trading Corporation of India, 1995 Supplementary (3) SCC 466;***

19. The State, thus, has no dominus status to dictate unilateral terms and conditions when it enters into a contract and its actions must be reasonable, fair and just and in consonance with the rule of law. (Ref. (i) ***Mahabir Auto Stores v. Indian Oil Corporation, 1990(3) SCC 752*** *and (ii)* ***M/s. Star Enterprises and others v. City and Industrial Development Corporation of Maharashtra Ltd. and others, 1990(3) SCC 280).*** *As a necessary corollary thereto, it is held that the State Government cannot refuse to confirm the highest bid without assigning any valid reason and/or by giving erratic, irrational or irrelevant reasons…"*

10. From the perusal of the judgments rendered in ***Surja Ram*** and ***Subhash Chand's*** cases *(supra*), there is no manner of doubt that the State Government/authorities cannot refuse to confirm the highest bid without assigning any valid reason and/or by giving erratic, irrational or irrelevant reasons.

11. In the present case, no reasons are forthcoming, either from the order passed by the learned Settlement Officer or by the learned Settlement Commissioner, for not accepting the highest bid. Therefore, when the afore-said impugned orders are tested on the touchstone of the judgments rendered by the Full Bench of this Court in ***Surja Ram*** and

Subhash Chand's cases *(supra)*, the same are un-sustainable in the eyes of law.

12. At this stage, learned State counsel by referring to the averments made in the written statement filed by them in the present writ petition, contended that the auction was set aside for good reasons as no due publicity was given about the proposed auction; there was no fair contest; reasonable price was not fetched and that there was a loss to the state exchequer.

12.1 I have considered the aforesaid submissions as well, however I am unable to accept the same for the simple reason that no such reasons are forthcoming from the impugned orders.

12.2 Hon'ble Supreme Court in the case of ***Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others, reported in (1978) 1 SCC 405*** in paragraph 8, held as under:

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji : Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to*

the language used in the order itself. Orders are not like old wine becoming better as they grow older."

13. Considering the totality of circumstances, I am of the considered view that the authorities below have erred in law and fact in not recording any reason(s) for not accepting the highest bid of the petitioner and arbitrarily ordering re-auction of the property, which is un-sustainable in the eyes of law. Resultantly, the present writ petition is allowed and the impugned orders (Annexures P-2 and P-6) are set aside. As a natural consequence, the auction notice dated 07.11.1994 (Annexure P-7), also stands quashed.

13.1 Further, keeping in view the peculiar facts and circumstances of this case and taking note of the fact that the property in question was put to auction by the Rehabilitation Department, Haryana way back in the year 1993, wherein, the petitioner had given the highest bid of Rs.26,000/- for the property in question and had deposited only 25% of the bid amount i.e. Rs.6,500/- on 23.12.1993 i.e. more than 30 years ago; and by now, the price of the said property has surely escalated; accordingly, keeping in view the interest of the State Exchequer and to do complete justice to the parties; I deem it appropriate to direct the petitioner to pay the current Collector rate of the property in question to the State/Rehabilitation Department. The concerned District Revenue Officer shall intimate the current Collector rate of the property in question to the petitioner within a period of one month from today and the petitioner shall deposit the afore-said determined Collector rate of the property in question, within a period of four months from the date he receives the intimation regarding the same from the concerned District Revenue Officer. In case, the petitioner fails to deposit the afore-said amount within the prescribed period, then the

State/Rehabilitation Department shall proceed to re-auction the property in accordance with law.

14. Pending application/s, if any, shall also stand closed.

February 24, 2025 **(HARSH BUNGER)**
gurpreet **JUDGE**

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