(2008) 11 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Amrit Lal Mahajan APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 04-11-2008

Acts Referred:

Citation : (2009) 154 PLR 105 : (2009) 1 RCR(Civil) 322

Hon'ble Judges : M.M Kumar, J;Jora Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—In this bunch of three petitions (details of which have been given in the footnote*) a short question of law has been raised as to whether the improvement Trust, respondent No. 3 refused to confirm the auction of the site in question, on the ground that the price fetched by it is diminutive. It is appropriate to mention at the outset that when the matter came up for consideration, the Division Bench has confined issuance of notice of motion to prayer ''B'' made in the writ petition. According to prayer ''B'' quashing of resolution No. 43, dated 31.05.2006 (Annexure P-5) as also letters dated 28.09.2006 and 28.12.2006 (Annexures P-6 and P-7) have been sought. The Improvement Trust respondent No. 3, has refused to accord approval to Shop-cum-Flats site No. 3, 4 and 5 on the ground that the price of these site at Rajiv Gandhi Nagar, Bathinda is diminutive.

2. Brief facts of the case necessary for disposal of the instant petition are that improvement Trust, Bathinda, respondent No. 3 (hereinafter to be referred as ''Trust'') issued advertisement on 10.052006 for the sale of shop-cum-Flats (SCFs) and booths by way of auction in the Rajiv Gandhi Nagar Scheme and Transport Nagar Scheme framed by the Trust. In Rajiv Gandhi Nagar Scheme, three SCFs site Nos. 3 to 5 measuring 120 sq. yards were advertised to be sold by way of auction at a reserve price of Rs. 5,40,000/-each. Likewise, five booths (site No. 11 to 15), each measuring 22.41 sq. yards were also advertised to be sold by an open auction at the reserve price of Rs. 1,01,000/- each. According to

Clause (iii) of the advertisement, it was expressly provided that the highest bid was to be subject to approval to be accorded by the Trust. The petitioner deposited Rs. 60,000/- as earnest money on 10.05.2006 to enable him to participate in the auction of SCF No. 3 vide receipt dated 10.5.2006 (Annexure P-3). The petitioner being the highest bidder at Rs. 6.5 lacs had deposited a sum of Rs. 1,62,500/- representing 25% of the total auction price was deposited by him on 11.5.2006 (Annexure P-4). It is appropriate to mention that the SCF Site No. 4 & 5 were auctioned for Rs. 7 lacs each. On 31.05.2006, the Trust passed a resolution No. 43 (Annexure P-5) rejecting the auction in respect of SCF site Nos. 3 to 5 of Rajiv Gandhi Nagar on the ground that the price fetched was too less in comparison to the price fetched in the earlier auction.

3. The petitioner has claimed that no auction of SCF had taken place on 9.11.2005, and therefore, it is erroneous on the part of the Trust to rely upon the auction held on 9.11.2005. However, it has been averred that the sale price of SCFs site fetched in the auction held on 3.8.2005 is totally erroneous and misplaced. The petitioner has pleaded with the help of auctions held on 03.08.2005, 09.11.2005, 10.05.2006 and 08.09.2006 that there was boom in the prices of property as would be evident from the auction held on 03.08.2005. In respect of auction held on 03.08.2005, following table has been prepared which reads thus:

"RAJIV GANDHI NAGAR GURUKUL ROAD BATHINDA, AUCTION HELD ON 3.8.2005."

Site No. Reserve price Maximum Bid Booth Site No. 1 Rs. 1,01,000/- Rs. 4,50,000/- Booth Site No. 2 Rs. 1,01,000/- Rs. 4,65,000/- Booth Site No. 3 Rs. 1,01,000/- Rs. 4,30,000/- Booth Site No. 4 Rs. 1,01,000/- Rs. 4,20,000/- Booth Site No. 5 Rs. 1,01,000/- Rs. 4,00,000/- SCF Site No. 1 Rs. 5,40,000/- Rs. 16,75,000/- SCF Site No. 2 Rs. 5,40,000/- Rs. 16,00,000/- TRANSPORT NAGAR, BATHINDA Site No. Reserve Price Maximum Bid Shop Site No. 31 Rs. 1600/- per Sq. Yard. Rs. 14,000/- per sq. yd. Shop Site No. 32 Rs. 1600/- per Sq. Yard. Rs. 14,000/- per sq. yd. Shop Site No. 33 Rs. 1600/- per Sq. Yard. Rs. 13,900/- per sq. yd. Shop Site No. 34 Rs. 1600/- per Sq. Yard. Rs. 14,000/- per sq. yd.

4. The petitioner has made an attempt to show that SCF Site No. 1 in Rajiv Gandhi Nagar, Gurkul Road, Bathinda had fetched over 16 lacs as against the reserve price of Rs. 5,40,000/-. Likewise, in respect of booth sites, the prices were quite high and it fetched Rs. 4 lacs as against the reserve price of Rs. 1,01,000/-.

5. The petitioner has further pleaded that there were lower trend in the price and the booth sites in the Rajiv Gandhi Nagar were sold approximate for Rs. 2 lacs as is evident from the following table:

"RAJIV GANDHI NAGAR GURUKUL ROAD BATHINDA AUCTION HELD ON 9.11.2005" Site No. Reserve Price Maximum Bid Booth Site No. 5, Rs.

1,01,000/- Rs. 2,36,000/- Booth Site No. Rs. 1,01,000/- Rs. 2,15,000/- Booth Site No. 8 Rs. 1,01,000/- Rs. 2,12,000/- Booth Site No. 9 Rs. 1,01,000/- Rs. 1,96,000/- Booth Site No. 10 Rs. 1,01,000/- Rs. 1,81,000/- No SCF auctioned on 9.11.2005. TRANSPORT NAGAR, BATHINDA Site No. Reserve Price Maximum Bid Shop Site No. 11. Rs. 1600/- per sq. yard. Rs. 71,00/- per sq. yds. Shop Site No. 12 Rs. 1600/- per sq. yard. Rs. 56.00/- per sq. yds. Shop Site No. 13 Rs. 1600/- per sq. yard. Rs. 58.00/- per sq. yds. Shop Site No. 14 Rs. 1600/- per sq. yard. Rs. 59.00/- per sq. yds. Shop Site No. 15 Rs. 1600/- per sq. yard. Rs. 55.00/- per sq. yds.

6. The petitioner has thus pleaded that in the auction held on 10.05.2006 there were lower trend in price and the same booth sites fetched approximately for Rs. 2 lacs. and the Shop-cum-Flats site fetched approximately for Rs. 7 lacs. The petitioner has sought to prove the aforementioned facts by the following table which reads thus:

"RAJIV GANDHI NAGAR GURUKUL ROAD BATHINDA AUCTION HELD ON 10.05.2006. Site No. Reserve Price Maximum Bid Booth Site No. 11 Rs. 1,01,000/- Rs. 1,86,000/- Booth Site No. 12 Rs. 1,01,000/- Rs. 1,92,000/- Booth Site No. 13 Rs. 1,01,000/- Rs. 2,01,000/- Booth Site No. 14 Rs. 1,01,000/- Rs. 2,08,000/- Booth Site No. 15 Rs. 1,01,000/- Rs. 2,12,000/- SCF Site No. 3 Rs. 5,40,000/- Rs. 6,50,000/- SCF Site No. 4 Rs. 5,40,000/- Rs. 7,00,000/- SCF Site No. 5 Rs. 5,40,000/- Rs. 7,00,000/- TRANSPORT NAGAR, BATHINDA Site No. Reserve Price Maximum Bid Shop Site No. 16 Rs. 1600/- per sq. yard. Rs. 6200/- per sq. yd. Shop Site No. 17 Rs. 1600/- per sq. yard. Rs. 6100/- per sq. yd. Shop Site No. 18 Rs. 1600/- per sq. yard. Rs. 6200/- per sq. yd. Shop Site No. 19 Rs. 1600/- per sq. yard. Rs. 6300/- per sq. yd. Shop Site No. 20 Rs. 1600/- per sq. yard. Rs. 6400/- per sq. yd. Shop Site No. 41 Rs. 1600/- per sq. yard. Rs. 9500/- per sq. yd. Shop Site No. 42 Rs. 1600/- per sq. yard. Rs. 9650/- per sq. yd. Shop Site No. 43 Rs. 1600/- per sq. yard. Rs. 9900/- per sq. yd. Shop Site No. 44 Rs. 1600/- per sq. yard. Rs. 9900/- per sq. yd. Shop Site No. 45 Rs. 1600/- per sq. yard. Rs. 11400/- per sq. yd. Shop Site No. 46 Rs. 1600/- per sq. yard. Rs. 12200/- per sq. yd.

Similar trend sought to be highlighted by the auction held on 08.09.2006.

7. In the written statement filed on behalf of the respondent, it has Seen pleaded that the petitioner was well aware of the terms and conditions of auction and he participated with his eyes and ears open. The respondents have heavily relied upon condition No. 3. The highest bid was to be subject to the approval to be granted by the Trust. They have also claimed that the shop-cum-flats had fetched lesser price, and therefore, it has always been the prerogative of the seller i.e. respondent No. 3 to cancel the auction of the property in accordance with the terms and conditions No. 3.

8. Mr. Shailendra Jain, learned Counsel for the petitioner has argued that it is wholly arbitrary for respondent No. 3 to accept and amend approval to all the

booth sites although the booth sites have also fetched less price than the price fetched in the auction held on 03.08.2005. According to the learned Counsel, once the diminutive price in respect of booth sites has been approved and accepted, there was no reason for respondent No. 3 to reject the highest bid in respect of Shop-cum-Flat sites. According to the learned Counsel, against the reserve price of Rs. 1,01,000/- of booth sites, the erroneous bid has been approximately Rs. 4,50,000/- on 3.8.2005 whereas the maximum bid on 10.05.2006 in respect of similar booth sites is Rs. l,86,000/-. He has maintained that the prices have crashed and same trend was available in respect of Shop-cum-Flat sites. Learned Counsel has pointed out that in respect of the SCF sites against reserve price of Rs. 5,40,000/- the bid price on 03.08.2005 was over Rs. l6,00,000/- whereas in respect of the auction held on 10.05.2006 it was about Rs. 7 lacs. He has insisted if the price fetched in respect of booth was low then position was the same in regard to Shop-cum-Flats. Granting approval to one and not according approval to Shop-cum-Flats on the ground of diminutive price is arbitrary and suffer from the vice of Article 14 of the Constitution, and, therefore, the resolution dated 31.5.2006 (Annexure P-5) and consequential letters dated 28.12.2006 and 28.9.2006 (Annexures P-6 and P-7) are liable to be set aside.

9. Mr. C.M. Sharma, learned Counsel for respondent No. 3 has, however, contended that even if the price had shown lower trend, the Trust has not committed any illegality by canceling the auction in respect of Shop-cum-Flats. According to the learned Counsel the approval accorded to the highest bid in respect of booth is entirely at a different pedestal than the price of the shop-cum-flats. Learned Counsel has maintained that both the sites can not be treated alike.

10. Having heard the learned Counsel, we are of the considered view that there is no merit in these petitions and the same are liable to be dismissed. By mere participation in the auction and depositing of 25% of the bid amount by the petitioners does not vest any right in them to claim that they being the highest bidder must get the site in question. The terms and conditions of the advertisement published by respondent No. 3 on 10.05.2006, it has been clarified that the Chairman is fully entitled to cancel the auction. Clause (iii) of the terms and conditions put the matter beyond any doubt which reads thus:

The highest bid will be subject to the approval of the Trust/Government. Under the instructions of the Government, 4% taxes shall be charged on the highest amount of bid....

11. In pursuance to the aforementioned clause, the Trust has passed resolution on 31.5.2006. After referring to the name of the bidder, the kind of property, the reserve price and highest bid in respect of Transport Nagar and Rajiv Gandhi Nagar, the Trust had approved all the booth sites except SCFs site under the Rajiv Gandhi Nagar Scheme and the resolution reads as under:

Resolution No. 43.- On careful comparative perusal of the auctions of the properties held on 3.8.2005 and 9.11.2005, the auctions of the properties of the Transport Nagar Scheme and Shri Rajiv Gandhi Nagar Scheme are approved and the auction of the Site Nos. 3,4 and 5 of Rajiv Gandhi Nagar is rejected because the price of these sites has-been found to be too less than the sites auctioned earlier.

12. A perusal of the aforementioned resolution shows that the basic reason for rejecting the auction in respect of Site No. 3 to 5 of Rajiv Gandhi Nagar is that the price has been found to be too less than the sites auctioned earlier.

13. It may be true that in respect of booth also respondent No. 3 has fetched lesser price but it does not mean that in respect of SCF, it is debarred from adopting the policy according to market trends. The petitioner does not get any right by depositing 25% of the amount before the approval is accorded by the Trust in pursuance to Clause (iii) which in fact stands rejected. Moreover, the resolution dated 31.5.2006 has been duly approved by the Chairman on 28.9.2006 (Annexure P-7) and accordingly intimation has been sent to the petitioner by respondent No. 3 on 28.12.2006 (Annexure P-6).

14. The question whether the highest bid could be rejected by the competent authority has been repeatedly considered by Hon''ble the Supreme Court. The petitioner cannot seek a direction to the respondent Trust compelling it to accept the highest bid given by him. The rights of auction purchaser were considered and determined by Hon''ble the Supreme Court in the case of Laxmikant and others Vs. Satyawan and others, . The facts of that case are akin to the facts of the present case. There the dispute had arisen out of auction of a plot by Nagpur Improvement Trust. The auction notice, like the case in hand, contained a condition that acceptance of the highest bid was to depend upon the approval of the board of trustees and its decision regarding acceptance or rejection of the highest bid was to be binding on the. bidder. Before concluding, in Para 4, their Lordships'' placed reliance on the earlier judgments rendered by Hon''ble Supreme Court in Trilochan Mishra, etc. Vs. State of Orissa and Others, ; State of Orissa and Others Vs. Harinarayan Jaiswal and Others, ; Union of India (UOI) and Others Vs. Bhim Sen Walaiti Ram, and State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, and observed as under:

From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in the cases of Trilochan Mishra, etc. Vs. State of Orissa and Others, ; State of Orissa and Others Vs. Harinarayan Jaiswal and Others, ; Union of India (UOI) and Others Vs. Bhim Sen Walaiti Ram, and State of U.P. v. Vijay Bahadur Singh (1981)2 S.C.C. 365. It has been repeatedly pointed out that State or the authority which can be held to be State within the meaning of Article 12 of the Constitution is not bound to accept the highest tender or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held.

15. The aforementioned view was followed by Hon''ble the Supreme Court in the case of Rajasthan Housing Board and Another Vs. G.S. Investments and Another, . Dealing with the rights of highest bidder and after referring to the aforementioned judgments of Hon''ble the Supreme Court, it was observed that the petitioner merely because he is a highest bidder could acquire no right to claim that the auction be concluded in his favour. Hon''ble the Supreme Court further held that the High Court would not enjoy jurisdiction under Article 226 of the Constitution to entertain challenge to the cancellation of an auction held by a public body where the prime consideration is fairness and generation of public revenue. In that regard reliance was placed on the judgment of Hon''ble Supreme Court in the case of Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another, and their Lordship''s held that the judicial review would apply to the exercise of contractual power by governmental bodies only in order to prevent arbitrariness and favouritism and the power is tampered with inherent limitation. The Government being the guardian of the finances of the State is expected to protect its financial interests, which include the right to refuse the lowest tender although the principles laid down in Article 14 of the Constitution have to be complied with. It was further held that if the power has been exercised for any collateral purposes then such an order may have to be struck down and to that extent judicial restraint in administrative action is imperative because Court does not sit as a Court of appeal and it is only to review the manner in which the decision was made. The Court does not also have any expertise to correct the administrative decision. Therefore, we are of the considered view that the instant position is liable to be dismissed.

For the reasons aforementioned, these petitions fails and the same are dismissed.

