

(2002) 02 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11390 of 1992

Kartar Singh

APPELLANT

Vs

Patiala Improvement Trust, Patiala and Others

RESPONDENT

Date of Decision : 08-02-2002

Acts Referred:

Citation : (2002) 2 RCR(Civil) 313

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Sh. Kartar Singh son of Shri Ujjagar Singh, earlier filed a writ petition against the Patiala Improvement Trust but subsequently S/Shri Satnam Singh and Balwinder Singh were added as respondents as they were the auction purchasers at the subsequent auction. At one point of time vide order dated 15.3.1993 the Hon"ble Single Judge of his Court allowed the writ petition and the resolution of the Trust to offer Shop-cum-Flats sites No. 1 and 2 in Shaheed Sewa Singh Thikriwala Nagar Scheme, to the petitioner after getting 2,85,000/- each and it was also directed that the possession be delivered to the petitioner by the Trust after completing all the legal formalities. Yet this order dated 15.3.1993 was set aside by the Hon"ble Division Bench and the observations of the Hon"ble Division Bench can be reproduced as follows;-

"During the course of hearing of the writ petition, it appears that respondent-writ petitioners offered higher price and the learned Single Judge accepted the said offer and directed the appellant Trust to sell both these plots to the respondents writ petitioner. This was with a view to avoid further litigations and complications".

It is admitted position that the second auction purchasers of both the plots were not impleaded as parties to the writ petition. The rights, prima facie, appear to have accrued to the two auction-purchasers and unless they are impleaded and

heard in the writ petitioner, it will not be proper to adjudicate upon the rights of the respondent-writ petitioner as well as two other auction purchasers. It is in these circumstances that we are constrained to set aside the impugned judgment and remit the matter back to the learned Single Judge.

The appellant-Trust shall provide the names and addresses of the second auction-purchasers to the respondent-petitioner counsel within two weeks from today. The respondent-petitioner will move an application for impleading them as a party. As soon as the newly added respondents are served the matter will be placed before the Court for appropriate directions as regards the date of hearing having regard to the facts and circumstances of the case, it is desirable that the writ petition be disposed of within three months, from the date it become ripe.

The impugned judgment dated 15.3.1993 is quashed and set aside. The appeal is partly allowed and the matter is remitted back to the learned Single Judge for disposal, in accordance with law. In the circumstances, there will be no order as to costs.

Sd/-

S.P.Kurdukar Chief Justice.

January 11, 1995

Sd/- Swatanter Kumar"

2. Hon"ble Mr. Justice R.S.Mongia, who delivered the judgment dated 15.3.1993 has already been transferred to Guwahati High Court and now he is Hon"ble Chief Justice of the said Court, therefore, as per the present Roster, I am now disposing of the writ petition.

3. The brief facts of the case are that respondent, Improvement Trust, Patiala, published a proclamation for auction of some sites for shop-cum-flats, booths in Shaheed Sewa Singh Thirkriwala Nagar Scheme, Truck Stand Scheme, Gurdwara Dukh Niwaran Sahib Scheme and Chhoti Baradari Scheme, Patiala. The reserved price fixed for the shop-cum-flats sites in Shaheed Sewa Singh Thirkriwal Nagar Scheme was Rs.. 1,25,000/-. On 26.6.1992 when the auction took place, four show-room sites were auctioned in the development scheme of Chooti Baradari and two shop-cum-flat sites Nos.1 and 2 were sold by auction in Shaheed Sewa Singh Thirkriwala Nagar Scheme.-Four -shop-cum-flat sites No. 1 and 2 were sold by auction in Shaheed Sewa Singh Thikriwala Nagar Scheme. For shop-cum-flat sites No. 1 and 2 the petitioner was the highest bidder, the price offered being Rs. 2,40,000/- and Rs. 2,01,000/- respectively. These highest bids for both the plots were accepted and as per the terms and conditions, the petitioner deposited 1/4th of the price so offered. The trust, however, vide its Resolution No. 772, dated 6.7.1992, did not approve the bids in favour of the petitioner. It is this resolution of the trust that has been impugned in the present writ petition.

4. It is mentioned in the impugned resolution that earlier auction had taken place

in the same scheme on 29th January, 1992 and 28th February, 1992. On 29th January, 1992 for the similar shop-cum-flat sites, the minimum price fetched was Rs. 1,65,000/- and maximum Rs. 2,63,000/- whereas on 28th February, 1992, the minimum price offered was Rs. 2,63,000/- and the maximum was Rs. 2,81,000/-. It is not disputed that the minimum and maximum bids in respect of shop-cum-flats sites on 29th January, 1992 and 28th February, 1992 (the figures have already been given above) were approved by the Trust. In the Resolution, dated 6th July, 1992, the Trust has not given any reasons as to why the bids of shop-cum-flat sites No. 1 and 2, which were Rs. 2,40,000/- and Rs. 2,01,000/- respectively, were not being approved.

5. It has been averred in the petition and not denied by the respondents that Shri Harkesh Singh Sidhu, Chairman of the Trust and Deputy Director, Local Bodies Punjab Chandigarh and Shri. P.S. Gill, Executive Officer of the Trust and Sub Registrar, Patiala, as a nominee of the Deputy Commissioner, Patiala were present at the time when the auction took place. It is not the case of the respondents that there was any flaw or irregularity in the conduct of the auction. As observed earlier, the reserve price of the shop-cum-flat sites was fixed at Rs. 1,25,000/-. The highest bids of Rs. 2,40,000/- and Rs. 2,01,000/- respectively of shop-cum-flat sites No. 1 and 2 were much higher than the reserved price.

6. The case set up by the petitioner is that the officer who were conducting the auction, accepted the bid at the spot and got 1/4th price deposited from the petitioner. In these circumstances, it could not be said that the price offered at the time of the auction was lower than the reserved price.

7. The notice of the writ petition was given to the respondents. Two sets of written statement were filed. The stand taken by respondent No. 1 and 2 is that in the auction notice Annexure P-1 it was specifically provided that the sale will be approved only after the approval of the Trust and it was also provided that the Chairman will have the right to cancel the same without assigning any reason. In the present case, the petitioner in connivance with other two persons tried to purchase the shop-cum-flat etc. on a very lower price. From the auction proceedings, it has transpired that only three persons including the petitioner participated. It seems that they had pooled together and asked the other persons not to participate in the auction and due to that a very lower price was being offered for three shops -cum-flats in the auctions which were conducted earlier in time in the same scheme and in the same line of the shop-cum-flat, other plots were sold at a very higher price. In the present case, one of the plots in dispute being a corner plot and being on the main road is rather better situated and was required to fetch a higher price but because of some understanding between the parties who appeared at the time of auction a very unreasonable price was being offered. Otherwise also in the notice Annexure P-I, it has been specifically mentioned that the approval will be made only after the approval of the Trust. It was also provided in condition No. 10 that the Chairman will have a right to cancel the sale without assigning any reasons. In the present

case when the auction sale was put before the Trust, then it transpired that the plots are going to be sold at a very lower price. So keeping in view the better interest of the public institution, the sale was cancelled. It is necessary to mention here that apart from Chairman, other members who participated in the Trust meeting were Yadvinder Singh, Xen, Gurmeet Singh, District Welfare Officer and Sudershan Pal Gupta, Divisional Town Planner. The matter was discussed and the situation and sale prices of the plots earlier sold in this very scheme were taken into consideration and only thereafter the auction in dispute was ordered to be recalled. At the time of the auction except the Chairman no other official was present. With this broad defence, respondents No. 1 and 2 made a prayer for the dismissal of the writ petition.

8. Respondent No. 3 filed a separate written statement and he maintained that no constitutional or legal rights of the petitioner have been violated. In order to safeguard the public interest, the bid of the petitioner was not accepted and the same was cancelled in accordance with the terms and conditions of the auction. Further, it was submitted by respondent No. 3 that auction for the site for shop-cum-flat in question was held on 28.1.1993. A large number of persons including petitioner participated in the auction for the sites for shop cum-flat and other sites like booking agency, built-up_ booths, vacant plots for booths etc. Answering respondent is bona fide auction purchaser without any notice. He gave the bid in the tune of Rs. 3,07,000/- for shop No. 2 Saheed Sewa Singh Thikriwala Nagar which was accepted. He also deposited 1/4th of the total amount of the sale consideration. He also deposited the remaining amount. The Trust gave the approval in favour of respondent No. 3 for these auction vide resolution No. 862 dated 3.2.1993. After the approval the answering respondent approached several times to the Trust to get the balance amount deposited and hand over the possession and executed the sale deed but to no effect. In fact, the petitioner wanted to purchase booth No. 1 and 2 at a low price in collusion with other two participants. The bid which was given by the petitioner on 26.6.1992 was low. Therefore, it was rightly disapproved by the Trust in the resolution dated 6.7.1992.

9. I have heard Shri Kanwaljit Singh, Advocate, appearing on behalf of the petitioner, Shri Hemant Gupta, Advocate, appearing on behalf of respondents No. 1 and 2 and Shri Sumeet Mahajan, learned counsel appearing on behalf of the respondent No. 3 and with their assistance have gone through the record of this case.

10. The learned counsel for the petitioner submitted that the resolution passed by the Trust lacks reasoning and, therefore, it cannot be sustained in the eye of law. In support of his contention, the counsel for the petitioner relies upon 1992(1) RRR 302 Chhaju Ram Dahiya v. Chief Settlement Commissioner and 1996(1) RRR 232 Balkar Singh v. State of Haryana. It was observed by the Hon'ble Single Judge in Balkar Singh's case (supra) that disclosing of reasons and recording of reasons are two different things. If the Settlement Officer is not

bound to disclose the reason for not confirming the offer for highest bidder. It does not mean that he is not also bound to record any reasons. The powers of Settlement Officer to accept or reject any bid must be exercised judiciously though he is discharging an administrative function. The order must be based on reasonable grounds. In Chhaju Ram Dahiya's case (supra) it was observed that though the authority is not bound to disclose the reasons for the bidder but it is bound to record the reasons relevant to disapprove the highest bid and unless the affected person is given an opportunity it is difficult for the authority to give reasons. In my opinion both the judgments are not helpful to the learned counsel for the petitioner. In Chhajju Rain's case the Hon'ble Lordship was further pleased to observe that the highest bidder does not get a vested right by giving the highest bid but his hope should not be belied without giving him an opportunity to project his view point and considering the same before a final decision is taken.

11. It is a case of auction conducted by the Trust and before conducting the auction, there was an advertisement Annexure P-1. Conditions of auctions are governed by the advertisement Annexure P-I and for our purposes too conditions No. 9 and 10 run as follows:

"9. The approval of the sale will be made after the approval of the trust,

10. Chairman will have a right to cancel the sale without assigning any reason."

12. We all know and it is settled principle of law that by mere acceptance of the bid at the public auction does not give a vested right in favour of the auction purchaser unless that offer is further accepted by the competent authority which is the present case was the Trust and as well as the Chairman, the matter went to the Board. It discussed the matter at length before rejecting the auction proceedings. The minutes of the proceedings run as follows;-

"Development Scheme Shaheed Sewa Singh Thikriwala

1. Shop-cum-flat No. 1 2,40,000 Sh. Kartar Singh son of Shri Ujagar Singh

2. Shop-cum-flat No. I 2,01,000/- Sh. Kartar Singh Son of Shri Ujagar Singh.

In addition to the above it is brought to the notice of the Trust that before this also, plots were sold in scheme Sewa Singh Thirkriwala Nagar on 29.1.1992 and 28.2.1992 and serial wise maximum and minimum bids were as under:-

Date	Minimum	Maximum
29.1.1992	Rs. 1,65,000/-	Rs. 2,63,000-00
28.2.1992	Rs. 2,60,000/-	Rs. 2,81,000/-

The case of auction is presented for consideration and approval of the Trust.

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Unanimously decided that auction of four show rooms in Chhoti Barandari is approved. It was made clear that on three sides on show room No. 6 there were foot paths and park so its auction was higher and auction of shop-cum-flats sold in Shaheed Dewa Singh Thikriwala Nagar sold in Shaheed Dewa Singh Thikriwala Nagar is withdrawn. The Executive Officer is authorised to return the amount received in respect of these flats."

13. The reading of the above would show that the Trust made a conscious decision that the price fetched in the auction held on 26.6.1992, was less as compared to the earlier auction of these very sites. There was hardly a difference of five months between 1st auction held in January, 1992 and February, 1992 and that of June, 1992. We are examining the functioning of a public office which always is anxious to generate its sources. If no mala fides are discernible in to passing of a particular decision then the High Court should not interfere in the decision of the executive especially when the rights of third party have intervened. It is the common case of the parties that these very sites brought better price than the one offered by the petitioner and that was the reason that the Trust gave the approval to the re-auction which went in favour of respondent No. 3 and 4. In the earlier judgment passed by Hon"ble Mr. Justice R.S. Mongia, during the course of arguments, the petitioner offered to give highest price in order to avoid any further litigation but this time no such offer has been made by the learned counsel fo"r the petitioner or by the petitioner.

14. Be that as it may, we have to see what are the rights if any of the petitioner when he was declared the highest bidder. The Hon"ble Supreme Court in Delhi Development Authority Vs. Mr. Ravindra Mohan Aggarwal and Another, in para No. 7 of the judgment held as follows;-

"Reliance on Section 43 of the Transfer of Property Act is transfer misconceived inasmuch as there was no transfer or grant ever made by the DDA in favour of the respondents. Accepting of a bid amount do not constitute a transfer of property. The respondents have no basts in law to support their claim."

15. We are dealing with a authority like the Improvement Trust which has its own regulations. The condition of auction is very evident. No bid or auction proceedings, is final till it is approved by the Trust and by its Chairman and till the allotment letter is issued in favour of a highest bidder. In the present case, the auction of the auctioning authority died with the rejection by the Board. The reasons are given in the resolution it self. The attending circumstances also justify the refusal of the bid of the petitioner. Therefore, I am inclined to hold that this writ is totally devoid of any merit and the same is hereby dismissed with no order as to costs. However, the directions are given to the respondent Trust to return all the money deposited by the petitioner within two months alongwith interest at the rate of 12% from the date of deposit till payment.