
(2019) 05 RAJ CK 0170

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12961, 12976, 12977 Of 2015

Pushkarlal Jain And Ors

APPELLANT

Vs

Urban Improvement Trust And Ors

RESPONDENT

Date of Decision : 16-05-2019

Acts Referred:

Haryana Civil Services (Punishment And Appeal) Rules, 1987 — Rule 4(3), 9, 90(2)
Code Of Civil Procedure, 1908 — Order 21 Rule 90
Constitution Of India, 1950 — Article 12, 14, 226

Citation : (2019) 05 RAJ CK 0170

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Sharad Kothari, Deelip Kawadia

Final Decision : Dismissed

Judgement

1. These writ petitions under Article 226 of the Constitution of India have been preferred claiming, in sum and substance, the following reliefs:

"(i) the impugned order dated 18.09.2015 (Annexure 5) returning petitioners bid issued by respondent No.3 may be quashed and set aside.

(ii) the File Note No.76 to 79 (Annexure-7) deciding to re-auction Plot No.6, 7, 8 & 9 of MP Colony, while confirming the auction of other 46 plots in the same breath may be quashed and set aside.

(iii) Respondent UIT may be directed to accept remaining amount from the petitioners and execute a lease deed in their favour.

(iv) Any other order or direction which this Hon'ble Court deems just and proper may kindly be passed."

2. For the purpose of the present adjudication, the pleadings and facts are being taken from the lead case being S.B. Civil Writ Petition No.12976/2015.

3. The respondent-Urban Improvement Trust (UIT), Udaipur issued an auction

notice proposing to auction 66 residential plots situated in various parts of the City of Udaipur.

4. According to the terms and conditions of the aforesaid auction, the interested party was required to deposit earnest money of Rs.25,000/- for the residential plot and Rs.50,000/- for the commercial plot in cash on 03.09.2015.

5. The petitioners jointly participated in the auction proceedings in relation to Plot No.8, Revenue Village Savina Khera, Khasra No.614 known as 'MP Colony', for which they deposited a sum of Rs.25,000/- in cash on 03.09.2015. As mentioned in the said auction notice, the size of Plot No.8 was 1576'-3" and the reserve price was fixed at Rs.2650/- per sq. feet.

6. The auction proceedings were held on 03.09.2015 and the petitioners having offered the highest bid of Rs.4091/- per sq. feet, were declared as successful bidders. The petitioners thereafter, immediately deposited a sum of Rs.15,88,000/-, being requisite amount of 25% of the total amount, vide Challan No.1312 dated 04.09.2015.

7. The petitioners having deposited a total sum of Rs.16,13,000/- in relation to the subject plot were having a legitimate expectation of having the plot in question.

8. The petitioners, however, received a registered letter dated 18.09.2015 from the respondent No.3-Secretary, UIT, Udaipur regarding return of the amount of Rs.16,13,000/- vide Cheque No.33006814 dated 23.09.2015 drawn on the Union Bank of India. Vide the said letter, the respondent No.3 informed that the offer in relation to the said plot has not been approved by the respondent No.2-Chairman, UIT, Udaipur, and thus, the auction proceedings have been cancelled.

9. As per the pleaded case of the petitioners, upon enquiry, the petitioners came to know that during the period from 01.09.2015 to 03.09.2015, a total number of 66 residential plots were put to auction, out of which, except in relation to Plots No.6, 7, 8 & 9 of Savina Khera, Khasra No.614, the auction proceedings were approved by respondent No.2. However, as far as Plots No.6, 7, 8 & 9 are concerned, the respondent No.4-Land Acquisition Officer, UIT, Udaipur, in his Note No.76, observed that though the bid was higher than the reserve price, but these plots are to be re-auctioned as higher bids are expected. The respondent No.4 thus, recommended that the bids in relation to the remaining 26 residential plots and 20 commercial plots be approved. Respondent No.3-Secretary UIT, Udaipur and the respondent No.2-Chairman UIT, Udaipur have approved the said proposal made by respondent No.4-Land Acquisition Officer, UIT, Udaipur.

10. Learned counsel for the petitioners submitted that the amount of Rs.16,13,000/- so deposited by the petitioners was the highest bid and being successful bidders, they have also deposited the requisite 25% of the total amount. Learned counsel for the petitioners further submitted that the said amount was much above the reserve price.

11. Learned counsel for the petitioners also submitted that the respondents authorities have cancelled the auction in question, without assigning any reason, which is arbitrary.

12. Learned counsel for the petitioners has drawn the attention of this Court towards condition No.2 of the Conditions of Auction, which reads as under:-

"2- नीलामी के अंत में सर्वाधिक राशि के बोलीदाता जो सफल बोलीदाता कहलायेगा उसके लिए यह अनिवार्य होगा कि :-

A. भूखण्ड हेतु लगाई गई बोली की कुल राशि की 1/4 राशि तत्काल ही न्यास कोष में जमा करा दें। ऐसा करने में असफल रहने पर पूर्व में जमा धरोहर राशि जब्त समझी जावेगी तथा भूखण्ड पर उसका कोई अधिकार नहीं होगा।

B. सफल बोलीदाता द्वारा 1/4 राशि जमा कराने के पश्चात मामले को न्यास अध्यक्ष के समक्ष रखा जावेगा तथा उनके अनुमोदन के उपरान्त ही शेष राशि जमा कराने हेतु मांग पत्र जारी किया जा सकेगा। 3. यह नीलामी हर दशा में न्यास अध्यक्ष के अनुमोदन के अधीन है ! न्यास अध्यक्ष द्वारा बिना कारणों बताये इस नीलामी को स्वीकार या अस्वीकार किया जा सकता है ! नीलामी का अनुमोदन अध्यक्ष न्यास द्वारा नहीं किये जाने पर जमा राशि बिना ब्याज के लौटा दी जायेगी !"

13. Learned counsel for the petitioners further submitted that even if such discretion was available to the Chairman of the UIT, then also it could not have been arbitrarily exercised.

14. Learned counsel for the petitioners also submitted that there was neither any cogent reason given nor any assessment done by the respondents authorities, which could justify their decision to cancel the auction process in question.

15. Learned counsel for the petitioners further submitted that the petitioners' offer was the highest bid in the auction and much higher than the reserve price, and therefore, the respondent-UIT was bound to accept and approve the auction, and thus, the re-auctioning so proposed and approved, as also returning of the amount of the petitioners was unlawful, illegal and arbitrary act of the respondents.

16. Learned counsel for the petitioners also submitted that in number of cases pertaining to the same auction, the auction proceedings were confirmed, except for these four plots, which shows the prejudice on the part of the respondents.

17. Learned counsel for the petitioners also tried to demonstrate that there is a total lack of application of mind, and even if the condition, giving complete discretion to the Chairman, UIT, which is in consonance with the Rules, is there, then also such discretion is saddled with certain responsibility and has to have a reason for cancelling the auction in question.

18. Learned counsel for the petitioners has also drawn the attention of this Court towards the note-sheet (Annexure-7), which was the total consideration made by the respondents before cancelling the auction in question, relevant portion of which reads as under:-

"राजस्व ग्राम सवीना खेड़ा के खसरा नम्बर 614, M.P. Colony एम पी कोलोनी में स्थित भूखण्ड संख्या 6, 7, 8

व 9 पर न्यास द्वारा तय न्यूनतम बोली से अधिक बोली तो प्राप्त हुई, परन्तु यदि इन भूखण्डों को पुनः एक बार नीलामी में रखा जावे तो और अधिक बोली आने की सम्भावना है, अतः M.P. Colony वाले 4 भूखण्डों को छोड़कर शेष बचे 20 व्यावसायिक व 26 आवासीय भूखण्डों की प्राप्त अधिकतम बोली वास्ते अनुमोदनार्थ प्रस्तुत है।"

19. In support of his submissions, learned counsel for the petitioners relied upon the precedent law laid down by the Hon'ble Supreme Court in *Indian Oil Corporation Limited & Ors. Vs. Shashi Prabha Shukla & Anr.*, reported in 2017(14) SCALE 395, relevant portion of which reads as under:-

"25. In re, the duties, responsibilities and obligations of a public authority in a system based on rule of law, unfettered discretion or power is an anathema as every public authority is a trustee of public faith and is under a duty to hold public property in trust for the benefit of the laity and not for any individual in particular. The following excerpts from the *Foulkes Administrative Law*, 7th Edition at page 174 provide the elaborate insight:

"A true trust exists when one person, the trustee, is under a duty to hold the trust property vested in him for the benefit of other persons, the beneficiaries. The term 'trust' is, however, used in a much wider sense. We may speak of government being 'entrusted' with power, of Parliament as the trustee which the nation has authorized to act on its behalf. The purpose of the use of the concept in such contexts is of course to emphasize that the powers and duties of such bodies should be exercised not for the advancement of their own interest, but that of the others, to underline their obligation to others.

26. The distinction between the power of a public authority and a private person has since been succinctly brought about in the following quote from the celebrated work "*Administrative Law*", Tenth Edition by H.W.R. Wade and C.F. Forsyth: "The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust not absolutely - that is to say, it can validly be used only in the right and proper way which parliament when conferring it is presumed to have intended. In a system based on rule of law, unfettered governmental discretion is contradictory in terms The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest."

28. In his work *Administrative Law* (6th Edn.) Prof. H.W.R. Wade highlighted the distinction between powers of public authorities and those of private persons in

the following words: "The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, no absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms."

33. Jurisprudentially thus, as could be gleaned from the above legal enunciations, a public authority in its dealings has to be fair, objective, non-arbitrary, transparent and non-discriminatory. The discretion vested in such an authority, which is a concomitant of its power is coupled with duty and can never be unregulated or unbridled. Any decision or action contrary to these functional precepts would be at the pain of invalidation thereof. The State and its instrumentalities, be it a public authority, either as an individual or a collective has to essentially abide by this inalienable and non-negotiable prescriptions and cannot act in breach of the trust reposed by the polity and on extraneous considerations. In exercise of uncontrolled discretion and power, it cannot resort to any act to fritter, squander and emasculate any public property, be it by way of State largesse or contracts etc. Such outrages would clearly be unconstitutional and extinctive of the rule of law which forms the bedrock of the constitutional order."

20. Learned counsel for the petitioners has also placed reliance on the precedent law laid down by the Hon'ble Supreme Court in *Olga Tellis & Ors. Vs. Bombay Municipal Corporation & Ors.*, reported in (1985) 3 SCC 545, relevant portion of which reads as under:

"55. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribe for, how reasonable the law is, depends upon how fair is the procedure prescribed by it, Sir Raymond Evershad says that, from the point of view of the ordinary citizen, it is the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work", [`The influence

of Remedies on Rights' (Current Legal Problems 1953, Volume6.)].

Therefore, He that takes the procedural sword shall perish with the sword. "[Per Frankfurter J. in *Viteralli v. Seton* 3 L.Ed. (2nd Series) 1012] Justice K.K.Mathew points out in his article on 'The welfare State, Rule of Law and Natural Justice', which is to be found in his book 'Democracy, equality and Freedom', that there is "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power wherever it is found". Adopting that formulation, Bhagwati J., speaking for the Court, observed in *Ramana Dayaram, Shetty v. The International Airport Authority of India*, [1979] 3 S.C.R. 1014,1032 that it is "unthinkable that in a democracy governed by the rule of law, the executive Government or any of its officers should possess arbitrary power over the interest of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement".

21. Reliance has also been placed by learned counsel for the petitioners on the precedent law laid down by the Hon'ble Supreme Court in *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.*, reported in AIR 1978 SC 851, relevant portion of which reads as under:-

"15. 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* (1) "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 Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect 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."

22. Learned counsel for the petitioners also relied upon the judgment rendered by the Hon'ble Punjab & Haryana High Court in *Raghubir Singh Vs. State of Haryana & Ors.*, reported in 2014(173) PLR 160, relevant portion of which reads as under:-

"8. It is undisputed on record that the objection moved by the respondent No.3 was beyond the period of 10 days, provided under Rule 9. In this view of the matter, ASO (sales) was not even competent to entertain the objection raised by respondent No.3 vide Annexure P-1. There is not even a passing reference about the second objection, which was allegedly filed on 31.12.1990, in the impugned order dated 22.04.1991 (Annexure P-2). Even if filed, it would be also beyond

the time stipulated in Rule 9, reproduced above. Having said that, this Court feels no hesitation to conclude that the impugned order dated 22.04.1991 (Annexure P-2), which is stated to have been passed on objection, vide Annexure P-1, was an order without jurisdiction.

11. Under similar circumstances, this Court in Gurcharan Singh's case (supra), held as under:-

"I have considered the respective stand of the parties' counsel and have gone through the paper book. There is no dispute that the auction was conducted by the Managing Officer when the property was knocked down in favour of Gurcharan Singh petitioner being the highest bidder for Rs.4150/- against reserve price of Rs.3750/-.

Against the same, nobody had filed any objection. I am of the considered view that under Rule 90(2) of the Rules, the auction could be cancelled only if there is any material irregularity/fraud in conducting the same and because of which somebody had sustained substantial injury. The law is well settled that mere inadequacy of price paid by a purchaser does not justify the setting aside of sale even under Order 21 Rule 90 of the Civil Procedure Code and even proof of substantial injury by itself does not empower the Settlement Authorities to reopen the sale. Harkishan Singh V. State of Punjab and others. In this case respondents were not able to show that some material irregularity or fraud in public auction or sale had been committed."

23. On the other hand, learned counsel for the respondents submitted that the very variation in the offer prices for plots No. 6, 7, 8 & 9 in question was the basis of passing the orders of cancellation of the auction.

24. Learned counsel for the respondents has shown to this Court the Disposal of Urban Land Rules, 1974, relevant portion of which reads as under:-

"(g) The bid shall be subject to the sanction of the Chairman of the Trust in whom are reserved the rights to accept or reject any bid without assigning any reason thereof."

25. Learned counsel for the respondents further submitted that once the rule of discretion is there and such rule has not been challenged, then such a discretion has been deemed to be accepted by the petitioners with an open eye, which was also one of the conditions of auction, and therefore, the petitioners cannot now challenge the same.

26. Learned counsel for the respondents also submitted that a thoughtful consideration was made, and only thereafter, the right reserved by the Chairman of the UIT to reject the bid, without assigning any reason, was exercised.

27. Learned counsel for the respondents further submitted that since the discretion was absolute and it was envisaged in the Rules of 1974, and that, the same was also there in the conditions of auction, therefore, it was not open for

the petitioners to now challenge the absolute discretion available with the respondent-Chairman, UIT.

28. Learned counsel for the respondents also submitted that the discretionary power enjoyed by the UIT was absolute and was not bridled with the condition of assigning any reason for approving the proposal made by the Land Acquisition Officer, UIT for cancelling the auction and making re-auction, while returning the amount back.

29. In support of his submissions, learned counsel for the respondents relied upon the precedent law laid down by the Hon'ble Supreme Court in Rajasthan Housing Board & Anr. Vs. G.S. Investments & Anr., reported in 2007 (1) WLC (SC) Civil 571, relevant portion of which reads as under:

"6. The auction notice dated 3-2-2002 contained a condition to the effect that the Chairman of the Housing Board shall have the final authority regarding acceptance of the bid. The second auction notice issued on 19-2-2002 mentioned that the conditions of the auction will be same as mentioned in the earlier auction notice. In view of this condition in auction notice it is obvious that a person who had made the highest bid in the auction did not acquire any right to have the auction concluded in his favour until the Chairman of the Housing Board had passed an order to that effect. Of course the Chairman of the Housing Board could not exercise his power in an arbitrary manner but so long as an order regarding final acceptance of the bid had not been passed by the Chairman, the highest bidder acquired no vested right to have the auction concluded in his favour and the auction proceedings could always be cancelled. What are the rights of an auction bidder has been considered in several decisions of this Court. However, we will refer to only one such decision viz. Laxmikant v. Satyawani [(1996) 4 SCC 208] which is almost identical on facts as it related to auction of a plot by the Nagpur Improvement Trust. The auction notice in this case contained a condition that the acceptance of the highest bid shall depend upon the Board of Trustees and further the person making the highest bid shall have no right to take back his bid and the decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be binding on the said person. After taking note of the aforesaid conditions it was held: (SCC pp. 211-12, para 4)

"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 *Trilochan Mishra v. State of Orissa* [(1971) 3 SCC 153], *State of Orissa v. Harinarayan Jaiswal* [(1972) 2 SCC 36], *Union of India v. Bhim Sen Walaiti Ram* [(1969) 3 SCC 146] and *State of U.P. v. Vijay Bahadur Singh* [(1982) 2 SCC 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."

This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court.

7. The other question which requires consideration is what are the contours of power which the High Court would exercise in a writ petition filed under Article 226 of the Constitution where the challenge is to cancellation of an auction held by a public body where the prime consideration is fairness and generation of public revenue. This question has been examined in a catena of decisions of this Court. In a recent decision rendered in *Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd.* [(2005) 6 SCC 138] where after consideration of several earlier decisions, the Bench to which one of us was a party, summarised the legal principle as under in paras 11 to 15 of the said Report: (SCC pp. 147-48)

"11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three-Judge Bench in *Tata Cellular v. Union of India* [(1994) 6 SCC 651 : AIR 1996 SC 11]. It was observed that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (See para 85 of the Report, SCC para 70.)

12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the

modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise, which itself may be fallible. The Government must have freedom of contract. In other words, fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing of decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)

13. In *Sterling Computers Ltd. v. M&N Publications Ltd.* [(1993) 1 SCC 445 : AIR 1996 SC 51] it was held as under: (SCC p. 458, paras 18-19)

'18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the "decision-making process". ... By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Court have inherent limitations on the scope of any such enquiry. But at the same time ... the courts can certainly examine whether "decision-making process" was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then court cannot act as an Appellate Authority by substituting its opinion in respect of selection made for entering into such contract.'

14. In *Raunaq International Ltd. v. I.V.R. Construction Ltd.* [(1999) 1 SCC 492] it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of the ability to deliver the goods or services as per specifications.

15. The law relating to award of contract by the State and public sector corporations was reviewed in *Air India Ltd. v. Cochin International Airport Ltd.* [(2000) 2 SCC 617] and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was

further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

8. The sale of plots by the Rajasthan Housing Board by means of an auction is essentially a commercial transaction. Even if some defect was found in the ultimate decision resulting in cancellation of the auction, the Court should exercise its discretionary power under Article 226 of the Constitution with great care and caution and should exercise it only in furtherance of public interest. The Court should always keep the larger public interest in mind in order to decide whether it should interfere with the decision of the authority. In the present case, there was enough material before the State Government to show that in the past plots in the area had fetched a price of Rs 10,000 per square metre and the highest bid made by the respondent in the present case was nearly half i.e. Rs 5750 per square metre, which clearly indicated that the auction had not been conducted in a fair manner. If in such a case the State Government took a decision to disapprove the auction held and issued a direction for holding of a fresh auction, obviously the said decision was taken in larger public interest. In these circumstances there was absolutely no occasion for the High Court to entertain the writ petition and issue any direction in favour of the contesting respondent. The orders passed by the learned Single Judge on 4-8-2004 and the order passed by the Division Bench of the High Court on 23-9-2004 are clearly erroneous in law and are liable to be set aside."

30. Learned counsel for the respondents also relied upon the precedent law laid down by a Division Bench of this Hon'ble Court at Jaipur Bench in Dr. Deepak Mathur Vs. State Urban Developmentors (D.B. Civil Special Appeal (Writ) No.742/2014 decided on 24.09.2014), relevant portion of which reads as under:

"It is always for the authority to decide whether the price offered in an auction is adequate and accepting or rejecting a bid it is merely performing an executive function. The correctness of its conclusion is not open to judicial review unless the decision making process is unfair or the action of the State or its instrumentality is contrary to public good, public interest, unjust or unreasonable or violative of Article 14 of the Constitution which the appellants have not been able to justify from the material on record in the instant bunch of appeals.

In the instant case as well the appellants had not acquired any right in their favour and merely because they are the highest bidders and deposited 15% of the bid with the Board and that being subject to acceptance of the competent authority and there is no concluded contract till the bid is accepted and that apart the learned Single Judge also perused & examined the records and

observed that in few cases MSP was determined without proper consideration or the rate was inadequate and it was not the case of the appellants that different standards have been adopted or there was any element of selectivity in decision making process of the competent authority for non-acceptance of the bid offered by the highest bidder and the primary reason as observed was that the bid of the appellants could not fetch price of the plot after it being due compared with the price fetched of the plot in the nearby areas in few cases and in some of the cases MSP was found to be faulty and in totality the Chairman, Rajasthan Housing Board was not satisfied with the bid which was offered by the so called alleged highest bidder and accordingly it was proposed to initiate the auction after due determination of MSP afresh and in our considered view there is sufficient material on record which could justify the decision making process adopted by the respondent in taking its final decision for non-acceptance of the bid offered by the highest bidder.

As regards the submission made by the appellants regarding auction being discriminatory and different standards were adopted by the Board we do not find any pleadings on record and initial burden was upon the appellants to establish but that was not the case ever pleaded or set up before the learned Single Judge or before this Court.

As regards the submission made regarding reason not being assigned by the competent authority in passing of the order impugned in our considered view is without substance for the reason that there is no requirement under the law to indicate reasons by the competent authority for acceptance or rejection of the bid offered by the highest bidder and this being the executive function of the competent authority no reason is supposed to be assigned while taking impugned decision and the correctness of its conclusion is ordinarily not open to judicial review unless the right conferred being infringed by action of the authority which is not the case of the appellants pleaded before the Court. The State or the other authority within the meaning of Article 12 of the Constitution is not bound to accept the highest tender/offer or bid and the competent authority could validly retain its power to accept or reject the highest bid obviously in the interest of public revenue and in absence of there being any concluded contract the conclusion reached by the authority does not infringe rights of the highest bidder and we do not find any error being committed by the learned Single Judge in passing of order impugned which may call for our interference.

As regards the judgment on which the appellants placed reliance reported in (2008) 10 696 is concerned, may not be of any assistance for the reason that it was a case where neither record was placed for perusal and the decision of the authority was not based on rational & tangible reasons and was in public interest, whereas in the instant case the respondents are able to justify their action in decision making process and taking final decision in not accepting the bid offered by the highest bidder and in absence of any right being accrued in favour of the appellants and without there being any concluded contract between the parties in

respect of the subject plot in question no right could be said to be infringed which may require interference u/Art. 226 of the Constitution.

So far the judgment of the learned Single Judge reported in 2014(1) WLC (Raj.) 543 on which the appellants placed reliance is concerned, the appeal against the judgment is pending before the Division Bench and it is open for the parties to address but at the same time what has been laid down by the learned Single Judge in para-13 of the judgment in 2014(1) WLC (Raj.) 543 holding that on depositing 15% amount by the highest bidder a concluded contract came into existence, apart being stayed and pending consideration before the Division Bench in our considered view what is being expressed by the Ld. Single Judge is not in conformity with law for which we have already discussed in detail, referred to supra, and we are of the considered view that the competent authority was not supposed to assign reasons while accepting/rejecting the recommendations of the subordinate authority and in the light of what has been discussed no reasons are required to be assigned while the decision being taken by the competent authority regarding non-acceptance of the highest bid offered by the bidder and in absence of any right being conferred or infringed no opportunity of hearing was required to be afforded to the bidder.

Consequently, we do not find any substance in the special appeals and the same are accordingly dismissed.

We make it clear that 15% of the bid amount, if not refunded or accepted by the appellants, the same shall be refunded to each of them within a period of four weeks. No cost."

31. After hearing learned counsel for the parties as well as perusing the record of the case alongwith the precedent laws cited at the Bar, this Court finds that the auction of plots No.6, 7, 8 & 9 at Village Savina Khera, Khasra No.614 known as 'MP Colony' was initiated by the UIT, Udaipur at the reserve price of Rs.2650/- per sq. feet.

32. It is an admitted position that the petitioners were the highest bidders, who offered bids on prices much higher than the reserve price, and being the highest bidders, they were declared successful bidders. The petitioners complied with each and every condition and also deposited requisite 25% of the total amount as well as completed all other necessary formalities and deposited the cheque of full amount to the tune of Rs.16,13,000/- in accordance with law.

33. This Court also finds that it is not disputed by the respondents that the petitioners' participation in the auction process was absolutely lawful and being the highest bidders in the initial auction, they were declared successful.

34. This Court has also carefully seen the Rules giving complete discretion to the Chairman of the UIT, who has a right to accept or reject any bid without assigning any reason and we have also seen that such rule has also been embedded in the auction conditions in the auction form itself.

35. This Court however, while following the precedent law laid down by the Hon'ble Supreme Court as well as Division Bench of this Hon'ble Court, as cited by learned counsel for the respondents and quoted hereinabove, finds that that it is settled law that the petitioners shall not acquire any right in their favour merely because they were the highest bidders and have deposited the necessary amounts as per the conditions stipulated in the auction notice. This Court has also seen that such an act of the petitioners does not bring them into the realm of a concluded contract till the bid is approved by the respondents authorities.

36. This Court further finds that the Rules and the conditions of auction give ample power to the respondents to satisfy themselves whether the bids offered by the so called highest bidders were necessarily to be accepted. The discretion to the respondents is clear and the proposal to initiate reauction was justified and the decision making process adopted by the respondent in taking its final decision for non-acceptance of the bid offered by the highest bidder is also in accordance with the precedent law laid down by the Hon'ble Apex Court as well as the Division Bench of this Hon'ble Court.

37. As regards the submission made regarding reason not being assigned by the competent authority while taking the decision impugned, in the considered view of this Court also, there was no requirement under the law to indicate reasons by the competent authority for acceptance or rejection of the bid offered by the highest bidder and this being the executive function of the competent authority, no reason is supposed to be assigned while taking impugned decision and the correctness of its conclusion is ordinarily not open to judicial review, unless the right conferred being infringed by action of the authority, which is not the case of the petitioners herein.

38. Thus, this Court finds that the authority was not bound to accept the highest tender/offer or bid and could validly retain its power to accept or reject the highest bid obviously in the interest of public revenue, and the order-sheet furnished records the reason that better revenue could have been derived out of the auction in question.

39. Thus, this Court concludes that the judgments cited by learned counsel for the petitioners are not applicable in the present case, whereas the judgments cited by learned counsel for the respondents hold the field.

39. In light of the aforesaid observations and the aforequoted precedent laws laid down by the Hon'ble Supreme Court as well as Division Bench of this Hon'ble Court, no interference is called for in these writ petitions.

40. Consequently, the present writ petitions are dismissed. The stay applications also stand dismissed accordingly.