
(2012) 09 MAD CK 0108

In the Madras High Court

Case No : W.A. No. 1510 of 2009 and M.P. No's. 1 and 2 of 2009 and W.P. No. 11288 of 2009 and M.P. No. 1 of 2009

S. Abdul Rasheed

APPELLANT

Vs

The Tamil Nadu Housing Board and N. Thangavel
N. Thangavel Vs The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2012) 09 MAD CK 0108

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Hemasampath, for M/s. A. Ansar in W.A. No. 1510 of 2009 and M.P. Nos. 1 and 2 of 2009 and Mr. A.R.L. Sundaresan, for M/s. T.K.S. Gandhi in W.P. No. 11288 of 2009 and M.P. No. 1 of 2009, for the Appellant; C. Kasirajan (TNHB) for Respondents 1 and 2, Mr. A.R.L. Sundaresan Senior Counsel for M/s. T.K.S. Gandhi for 3rd Respondent in W.A. No. 1510 of 2009 and M.P. Nos. 1 and 2 of 2009 and Mr. S.T.S. Moorthy Special Government Pleader for 1st Respondent and Mr. R. Jayaseelan, TNHB for RR 2 and 3 in W.P. No. 11288 of 2009 and M.P. No. 1 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.

W.A. No. 1510 of 2009:

1. The Appellant/Petitioner has projected the present Writ Appeal as against the order dated 30.04.2008 passed by the Learned Single Judge in W.P. No. 6764 of 2006 in dismissing the Writ Petition. The Learned Single Judge, while passing the orders in W.P. No. 6764 of 2006 filed by the Appellant/Petitioner, has, inter alia, observed that "... there is no difficulty to come to the conclusion that the remedy available to the Petitioner (Appellant) is not by filing the present Writ Petition and circumstances are not extraordinary warranting this Court to interfere. As correctly pointed out by the learned Advocate General, by cancelling

the confirmation of sale it does not make the Petitioner (Appellant) to lose his right of participation in the subsequent auction sale to be conducted by the Housing Board. Even otherwise, if at all there is any damage caused due to the conduct of the respondent Housing Board in not executing the sale deed by passing the impugned order, it is for the Petitioner to work out his remedy before the appropriate forum" and resultantly, dismissed the Writ Petition without costs, leaving it open to the Petitioner (Appellant) to avail the remedy in the manner known to law.

2. The Learned Senior Counsel for the Appellant contends that the Learned Single Judge in the Writ Petition should have held that the cancellation of the allotment is against the conditions prescribed under the Tamil Nadu Housing Board Act.

3. It is the further submission of the Learned Senior Counsel for the Appellant that the Learned Single Judge has failed to appreciate that after confirmation of sale, the Respondents 1 and 2 have no right to cancel the tender and in short, the said order of cancellation is, per se, illegal.

4. The Learned Senior Counsel for the Appellant urges before this Court that the Appellant is the highest bidder and further, he has paid the full consideration amount as determined by the Respondents 1 and 2.

5. Yet another submission of the Learned Senior Counsel for the Appellant is that after confirmation of sale and payment of the entire sale consideration by the Appellant, it is the duty of the Respondents 1 and 2 to execute the sale deed and the act of non-execution of sale deed is in violation of Article 14 of the Constitution of India.

6. That apart, the Learned Senior Counsel for the Appellant projects an argument that the Learned Single Judge has erroneously held that the subject matter in issue is purely contractual in nature and dismissed the Writ Petition for want of extraordinary jurisdiction.

7. Finally, the Learned Senior Counsel for the Appellant contends that the Hon'ble High Court can exercise the power of Judicial Review in contractual matters and also that the Respondents 1 and 2 are, in law, estopped from cancelling the sale, which was confirmed in favour of the Appellant.

8. In response, the Learned Counsel for the Respondents 1 and 2 submits that the 3rd Respondent filed W.P. No. 11288 of 2009 against the order dated 08.05.2009 passed by the 1st Respondent on the Appeal Petition filed by him questioning the order dated 10.06.2002 passed by the Executive Engineer and Administrative Officer, Special Division-II, Coimbatore in respect of tender-cum-auction sale of Plot No. 2B, Sowripalayam Scheme that took place on 28.05.2002.

9. The Learned Counsel for the Respondents 1 and 2 also adds that the 3rd Respondent was an allottee of Bunk stall on rental basis in Sowripalayam Scheme, Coimbatore and that the Bunk was abutting the scheme road and that

he encroached the adjacent vacant space and put up additional structures for running Tiffin centre and after giving notices due, the unauthorized structures were removed by eviction proceedings with the help of police.

10. The Learned Counsel for the Respondents 1 and 2 brings it to the notice of this Court that the Housing Board decided to dispose of all commercial sites, school sites in various schemes, through sealed tender cum open auction and the commercial site No. 2B, measuring 4 grounds and 1368 square feet at Sowripalayam Scheme was one among them. Further, the upset price for the commercial site No. 2B at Sowripalayam was fixed at Rs. 66,06,000/- and press notification was issued fixing the auction date as 28.05.2002. In the meanwhile, before the auction date, the 3rd Respondent was requested to vacate the bunk stall, put up in the aforesaid commercial site and hand over possession to the Board. But, the 3rd Respondent filed W.P. No. 9762 of 2002 and sought orders from this Court not to disturb him from occupation of the bunk. On 10.04.2002, this Court directed the 3rd Respondent to vacate the bunk stall within 10 days time and to settle his entire rental arrears and thereafter, he complied with the same.

11. According to the Learned Counsel for the Respondents 1 and 2, the 3rd Respondent submitted his sealed offer together with EMD of Rs. 5000/- and that the sealed tenders were opened on 28.05.2002 in the presence of participants and in the open auction, he became the highest bidder with a bid amount of Rs. 66,15,451/-. But the 3rd Respondent failed to remit the 15% of the bid amount and as a result, the auction proceedings held on 28.05.2002 were cancelled and he was informed of the same by means of Letter No. R1/4868/90 dated 10.06.2002.

12. At that stage, the 3rd Respondent filed W.P. No. 24656 of 2002 praying for issuance of an order by this Court to cancel the auction proceedings dated 10.06.2002 and also to allot the commercial site No. 2B at Sowripalayam Scheme in his favour. This Court, on 11.07.2002, directed the 3rd Respondent to file an Appeal as provided in law before the appellate authority within 10 days and granted interim injunction till the appeal is disposed of.

13. The 3rd Respondent was informed vide Letter No. A4/4848/90 dated 14.07.2003 that as eleven months had lapsed for filing the appeal to the Government and therefore, the office of the Housing Board was proceeding to dispose of the commercial site. Also, that the Housing Board in Letter No. Allotment 3(2)/11479/02 dated 08.09.2003 addressed to the Secretary to Government (Housing and Urban Development) sought information as to whether any Appeal was filed by the 3rd Respondent as per the Court directions, for which the Government replied in Letter No. 23955/HB 5(1)/2003-01 dated 11.12.2003 that no Appeal Petition was received from the 3rd Respondent. As such, the Government in G.O. Ms. 263 dated 22.10.2003 issued orders to dispose the Commercial/School/Public purpose sites through auction by determining the upset price based on the market value. The Board fixed the

upset price for the site in question based on the upset price available for all the non-residential sites available with the Coimbatore Housing Unit. Accordingly, on the basis of approved upset price, press notification was issued on 24.06.2004 for the disposal of the non-residential units including the 2B Commercial site at Sowripalayam Scheme. As a matter of fact, an auction was conducted on 28.07.2004. The highest bidder was one M/s. Sree Annapoorna Gowrishankar Hotels Private Limited which was confirmed for the sale price of 46,17,000/- as against the upset price of Rs. 46,11,000/-. Thereafter, the said action sale was cancelled due to the contempt proceedings.

14. The 3rd Respondent initiated contempt proceedings in Contempt Petition No. 891 of 2004 because of the reason that the Tamil Nadu Housing Board conducted the auction when there was an interim injunction (in W.P. No. 24656/2002) and the contempt proceedings were closed, as unnecessary, by the Court on 29.10.2004, for the reason that the Housing Board had already cancelled the sale confirmation order on 27.10.2004.

15. While closing the Contempt Petition No. 891 of 2004, this Court, on 29.10.2004, issued directions to the Appellate Authority to dispose of the Appeal Petition preferred by the 3rd Respondent within 30 days from the date of receipt of the order.

16. The Learned Counsel for the Respondents 1 and 2 proceeds to submit before this Court that pending disposal of the original petition dated 25.07.2002, the 3rd Respondent submitted a fresh petition dated 19.07.2004 to the Government wherein he requested the Government to allot the Commercial Plot No. 2B at Sowripalayam based on the highest bid sum of Rs. 46,17,000/- offered by M/s. Sree Annapoorna Gowrishankar Hotels Private Limited in the auction that took place on 28.07.2004, which was subsequently turned down by the Government in Letter No. 28577/HB5 (1)/2004-05 dated 21.12.2004. The 3rd Respondent was allowed to participate in the auction as and when the Tamil Nadu Housing Board advertise for sale of the Plot No. 2B at Sowripalayam in the Newspaper. The 3rd Respondent had not questioned the Government order dated 21.12.2004 before a Court of Law. Subsequently, a paper notification was issued on 02.08.2005 determining the auction date as 19.08.2005. In this auction, the Appellant (S. Abdul Rasheed) gave an offer of Rs. 54,65,000/- as against the upset price of Rs. 46.11 lakhs. The Sales Confirmation Committee confirmed the said offer price. On 30.12.2005, the confirmation order was cancelled because of the reason that the earlier price was determined by mistake, instead of fixing the increased upset price. Against this cancellation, the Appellant preferred W.P. No. 6764/ of 2006.

17. The Learned Counsel for the Respondents 1 and 2 submits that a successful bidder was to remit the bid amount as specified by the auction holder and the participants to an auction ought to be aware of the remittance schedule. It is also contended on behalf of the Respondents 1 and 2 that as per the auction terms and conditions, the highest bidder - 3rd Respondent had not paid the 15% bid

amount i.e., Rs. 9,92,318/- on the closure of auction and this was informed to the bidder as per the letter dated 10.06.2002.

18. The Learned Counsel for the Respondents 1 and 2 apprises this Court that the whole sum paid by the Appellant was returned to him by the Housing Board, but he had refused to accept the said sum and returned the cheque sent by the Board.

19. The primordial contention advanced by the Learned Counsel for the Respondents 1 and 2 is that the Tamil Nadu Housing Board is formed under a statute for welfare of the poor people and it was not possible for the Board to auction the property for lesser price which would result in huge revenue loss and also that the auction would be confirmed only when the Sales Committee confirm the same.

20. The Learned Counsel for the Respondents 1 and 2 contends that presently the commercial Site No. 2B at Sowripalayam Housing Scheme of the Tamil Nadu Housing Board (subject matter in issue) was free from encumbrance for conducting a fresh auction and the Appellant and 3rd Respondent can also take part and bid in the public auction. Facts in W.P. No. 11288 of 2009:

21. The 3rd Respondent (in Writ Appeal) as Petitioner had preferred W.P. No. 11288 of 2009 before this Court praying for an issuance of the order by this Court to call for the records relating to Letter No. 3409/HB5(1)/09-5, dated 08.05.2009 and to quash the same [as regards the rejection of Appeal by the 1st Respondent filed by him]. Also, he had sought a consequential relief in issuance of directions to the Respondents 2 and 3 to allot and execute the sale deed in his favour in regard to the commercial site No. 2B, Sowripalayam Housing Scheme of the Tamil Nadu Housing Board, Special Division II, Coimbatore for the highest bid quoted by him in the tender-cum-auction held on 28.05.2002.

22. According to the Learned Senior Counsel for the Petitioner (3rd Respondent in W.A. No. 1510/2009), the Petitioner submitted his bid and participated in the auction for purchase of commercial site No. 2B, Sowripalayam Scheme, Coimbatore and he submitted his application on 24.05.2002 together with Demand Draft for Rs. 5000/- and that he was declared the highest bidder in the auction in respect of the commercial site as he had offered the highest price of Rs. 66,15,451.70 paise.

23. The Learned Senior Counsel for the Petitioner submits that the Petitioner, although gave a representation to the 3rd Respondent on 14.06.2002 stating that he was ready to pay the entire bid amount, he was shocked to receive a letter on 19.06.2002 from the 3rd Respondent bearing No. R1/4868/90 dated 10.06.2002 wherein he was informed that his bid was rejected inasmuch as he had failed to remit the 15% of the quoted sum.

24. The Learned Senior Counsel for the Petitioner contends that the order of the 1st Respondent in Letter No. 3409/HB5(1)/09-5 dated 08.05.2009 was against

law and further, the 1st Respondent had not supplied a copy of the letter dated 18.03.2009 furnished by the 2nd Respondent to him, which was relied upon while dismissing the Appeal.

25. Advancing his arguments, it is the submission of the Learned Senior Counsel for the Petitioner that the 1st Respondent, who was holding the office of the 2nd Respondent, should not have heard the Appeal filed by the Petitioner in a hurried manner and dismiss the same by bestowing his personal knowledge of the matter.

26. The Learned Senior Counsel for the Petitioner urges before this Court that the 1st Respondent should have held that the purported requirement of remitting the 15% of the highest bid would have been insisted by making a demand later on before passing the order dated 10.06.2002 rejecting the allotment.

27. Yet another submission of the Learned Senior Counsel for the Petitioner is that the 1st Respondent failed to appreciate that the later auctions held on 28.07.2004 and 19.08.2005 were in breach of the order of injunction passed by this Court and therefore, the Petitioner could not be found fault with in not taking part in the said auctions.

28. Lastly, it is the submission of the Learned Senior Counsel for the Petitioner that the reason invented by the 3rd Respondent (Executive Engineer, Tamil Nadu Housing Board, Coimbatore) in rejecting the offer of the Petitioner was a baseless one and the 2nd Respondent issued the notification dated 30.01.2009 only to cover up the mistake of the 3rd Respondent.

29. It is the submission of the Learned Counsel for the Respondents 2 and 3 (RR 1 and 2 in W.A. No. 1510/2009) that Circular No. R2/7423/90 dated 30.01.1990 was issued by the Housing Board which stipulated that 15% of the highest bid amount should be collected on the spot, immediately after the auction was over.

30. Furthermore, it is the contention of the Learned Counsel for the Respondents 2 and 3 that before the commencement of auction on 28.05.2002, the participants were given the copies of auction conditions, whereby and whereunder, it was categorically mentioned that the highest bidder should pay 15% of the bid amount. Unfortunately, the Petitioner had failed to remit 15% of the bid amount on the closure of the auction.

31. Another contention advanced on behalf of the Respondents 2 and 3 is that the Petitioner's fresh petition dated 19.07.2004 was disposed of by the Government and as such, he could not lay his claim over his former petition dated 25.07.2002.

32. At this juncture, we deem it appropriate to point out that one of the auction conditions published on 09.05.2002 in "Daily Thanthi" (A Tamil Daily) visualises that "the highest bidder should remit 15% of the bid amount immediately. 35% of the bid amount should be remitted within three weeks from the issue of order confirming the auction proceedings and the last 50% of the bid amount within 45 days of confirmation of the auction proceedings of three months from the date of

auction whichever is earlier, should be remitted". Further, yet another condition was that "if the highest bidder fails to remit the bid amount as scheduled in pre-para, the auction proceedings will be cancelled and the entire amount remitted by the tenderer shall be forfeited".

33. A perusal of the Letter No. A4/9012/04 dated 28.10.2004 of the Executive Engineer (2nd Respondent in W.A. No. 1510/2009) addressed to M/s. Sree Annapoorna Gowrishankar Hotel Private Limited, Coimbatore shows that the Housing Board, as per 3rd Reference, Board's memo Allot. III (2)/11479/2002 dated 27.10.2004, had ordered to cancel the confirmation order of auction sale dated 01.10.2004 issued in favour of the said hotels for Rs. 46,17,000/- and further, the said hotel requested the refund of the amount paid by it.

34. Furthermore, the Executive Engineer (2nd Respondent in W.A. No. 1510/2009), in its letter No. A4/9012/04 dated 23.11.2004 addressed to Sree Annapoorna, Sree Gowrishankar Hotels (P) Limited, Coimbatore had stated that in view of the order dated 11.07.2002 in W.P. No. 24656 of 2002 wherein interim stay was granted in respect of further proceedings relating to Commercial Plot No. 2B at Sowripalayam, the auction sale confirmed as regards the said site, which was confirmed, had been cancelled. Further, the hotel was informed that the commercial site would be auctioned in due course and requested it to participate at the time of auction to be conducted by the Tamil Nadu Housing Board.

35. The Principal Secretary to the Government (Housing and Urban Development Department), Secretariat, Chennai 9, in Letter No. 3409/HB5(1)/09-5 dated 08.05.2009, had informed the Writ Petitioner (3rd Respondent in W.A. No. 1510/2009), inter alia, that he had not signed in the terms and conditions sheet attached to the tender application and further, he had not remitted 15% of the bid amount after the auction was over and also that the Government, in Letter No. 28577/HB5(1)/04-6, dated 21.12.2004, informed that the Commercial Site No. 2B at Sowripalayam Village was available for reauction and that he could participate in the auction for the sale of the above commercial plot etc. Added further, he had not participated in the subsequent auction conducted on 28.07.2004 and 19.08.2005 and the above plot was still available for allotment by auction and further the order passed in the Government Letter dated 21.12.2004 is still in force and the Government rejected the appeal petition filed u/s 11 of the Tamil Nadu Transparency of Tender Act against the order dated 10.06.2002 of the Executive Engineer and Administrative Officer rejecting his sealed offer quoted for the site in issue, as it was devoid of merits.

36. On behalf of Respondents 1 and 2 (in W.A. No. 1510 of 2009), an affidavit sworn to by the District Revenue Officer, (Schemes) Tamil Nadu Housing Board, was filed wherein at paragraph 6, it was, inter alia, stated that "in the present case, the upset price for the auction of the commercial site was wrongly fixed Rs. 46,10,500/- (Rupees forty six lakhs ten thousand and five hundred only) for the year 2005-2006. While the upset price for the year 2001-2002 was fixed at Rs.

66,06,000/- (Rupees sixty six lakhs and six thousand only) By mistake inadvertently the upset price of the year 2003-2004 was fixed for the auction conducted of the year 2005 on 19.08.2005. The market price has gone up and increased in upwards in the year 2005-2006 comparing with the year 2003-2004. The increased upset price was not placed before the Board for the auction conducted on 19.08.2005. In view of the above said fact the public institution Tamil Nadu Housing Board cannot be put into loss and for the same the sale confirmation committee has decided to cancel the auction conducted on 19.08.2005 and has immediately refunded the money to the Appellant by way of Cheque for Rs. 55,17,000/- (Rupees fifty five lakhs and seventeen thousand only) on 01.01.2006".

37. Continuing further, in paragraph 7 and 8 of the affidavit dated 03.09.2012, the District Revenue Officer, (Schemes) Tamilnadu Housing Board had stated hereunder:

7. It is further submitted that in the present case the concern Executive Engineer namely MR. V.P. Selvaraj, who was in charge of Coimbatore division has wrongly fixed the upset price of the year 2003-2004 instead of fixing the upset price of the year 2004-2005. The Board after finding the said fact and also taken auction against the said person by issuing charge memo No. DC 4/858/2006 Dated 20.01.2006.

8. It is further submitted that these are the procedures followed by the Tamil Nadu Housing Board for auctioning the commercial site and all the above said procedures followed in the present case and since the upset price was wrongly fixed in order to avoid the loss to the public body Tamil Nadu Housing Board the auction conducted on 19.08.2005 was cancelled.

38. In this connection, it is apt for this Court to cite G.O. Ms. No. 263, Housing and Urban Development (HB5) Department, dated 22.10.2003 issued by the Secretary to Government (with a copy being marked to Managing Director, Tamil Nadu Housing Board, Chennai-35), in and by which, in paragraph 10, it is observed as follows:

10. The Government have examined the proposal referred to in para 9 above and after careful consideration, pass the following orders:-

i) The Government direct that the Government orders specified in paras 2, 3 and 4 are amended, in order that no premium is fixed. The Government also direct that the sites shall be sold keeping in mind the prevailing market rates.

ii) The Government hereby permit the Tamil Nadu Housing Board to take suitable action for conversion of unsold, commercial school and other public purpose sites which are unutilized without seeking the orders of Government.

iii) The Tamil Nadu Housing Board is however, directed to obtain approval of their Board in respect of each case.

39. In respect of allotted Commercial Sites/Shops sites by sealed tender-cum-auction as per the Board's Circular No. R2/7423/90 dated 30.01.1990, one of the guidelines is that "The successful bidder should deposit 15% of the Bid price at the auction site and the balance 35% within three weeks from the date of confirmation and the balance within 6 weeks from the date of confirmation. If the successful bidder backs out from payment of the balance amount or fails to pay the balance amount within the stipulated time, the allotment will be cancelled and the EMD as well as the initial Deposit of 15% of the cost already paid by the bidder shall be forfeited."

40. To appreciate the merits of the controversies/disputes between the parties to the litigation, it is useful for this Court to make a relevant reference to the Tamil Nadu Housing Board Circular No. R2/7423/90 dated 30.1.1990 issued by the Chairman and Managing Director, wherein in Clause (6), it is, among other things, mentioned as under:

6) The persons who have not submitted their tenders should also be allowed to participate in the auction on payment of the E.M.D. of Rs. 5000/- in cash or Demand Draft for each plot separately.

41. It is to be borne in mind that the Tender Notification dated 09.05.2002 of the Tamil Nadu Housing Board Special Division -2 / Coimbatore 2 (published in Tamil Daily Dinathanthi) shows that the Commercial Site No. 2B at Sowripalayam Scheme measuring 4 grounds viz., 1368 square feet, upset price was described as Rs. 6,60,600/-. An Errata to this advertisement was issued on 10.05.2002 which stated that the upset price for the aforesaid commercial site was wrongly mentioned as " Rs. 6,60,600/- in the Sealed Tender cum Auction Notification advertisement in the Tamil Daily Thanthi on 09.05.2002 and notified that the upset price of the site was Rs. 66,06,000/- and also it was made known that all other terms and conditions would be as published earlier.

42. At this stage, this Court, to promote substantial cause of justice, quotes the following decisions:

(a) In Rajasthan Housing Board and another V. G.S. Investments and another, [(2007) 1 Supreme Court Cases 477] at page 478, the Hon'ble Supreme Court has observed as follows:

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 meter and the highest bid made by the respondent in the present case was nearly half i.e. Rs.

5750 per square meter, 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 i.e. The highest bidder.

(b) In the decision of the Hon''ble Supreme Court in Akhil Bhartiya Upbhokta Congress V. State of Madhya Pradesh and others, [(2011) 5 Supreme Court Cases 29], it is laid down as follows:

What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

43. It is to be pointed out that it is for the Appellant and the Petitioner to establish before this Court that they have vested right in the subject matter in issue viz., Commercial Site No. 2B at Sowripalayam, Coimbatore. Admittedly, the land belongs to the Tamil Nadu Housing Board. In law, when no enforceable right has accrued either to the Appellant or the Petitioner, then, we are of the considered view that, they cannot challenge the action of the Tamil Nadu Housing Board in cancelling the bids, since the auctions did not fetch good amount to the Board, an entity of the Government/custodian of public money and properties.

44. It is to be noted that the Appellant was not put in possession of the Commercial Site No. 2B at Sowripalayam, Coimbatore notwithstanding the fact that earlier sale in his favour was confirmed as the same would not clothe him with rights. Moreover, even as per the relevant ingredients of the Tamil Nadu Housing Board Act, the Appellant was left with the remedy of filing a suit for specific performance after issuing 60 days notice.

45. It cannot be gainsaid that as per Clause 16 of the terms and conditions of the sale, if, for reasons beyond the control of the Tamil Nadu Housing Board, the possession of a plot, in respect of which sale was confirmed, could not be handed over to the successful applicant, then, he would be entitled only to refund of the

amount paid. Furthermore, no interest on any amount paid by a person would be paid. As per Clause 21, if any doubt or dispute arises between the parties to the sale proceedings, then, the decision of the Managing Director of the Tamil Nadu Housing Board shall be final and shall be accepted and acted upon by the purchaser in a given case. If damages were to be awarded as enough compensation, then, one could not be granted the relief of specific performance.

46. It is true that Section 138 of the Tamil Nadu Housing Board Act, 1961 contemplates that a person is to file a suit against the Tamil Nadu Housing Board in regard to the violation of contract, of course after issuance of 60 days clear notice.

47. The Tamil Nadu Housing Board shall sell a commercial site in open auction after inviting sealed bids and determine the upset price of the said site bearing in mind the prevailing market value, more particularly the guidelines issued in G.O. Ms. No. 263 dated 22.10.2003 wherein it is stated that the Tamil Nadu Housing Board shall not sell a commercial site in a public auction in violation of any rules and regulations or any legal right. It is to be remembered that knowledge is not an awareness of rules; it includes an art of undertaking, application, scrutiny/analysis and synthesis and lastly the evaluation. It is to be noted that managing knowledge is a key of employee's success in his avocation to achieve the desired objective. To attain the goals of justice and equality enshrined in the preamble to the Constitution of India, the State and its instrumentalities/agencies are to perform their duties through their officers/officials or through political entities at various levels. No public authority or the officers/officials under our constitutional set up of the State or public authority has an absolute or unfettered discretion. The term "Discretion", according to Lord Mansfield, in *John Wilkes (R. v. Wilkes (1770) 4 Burr 2527*, is that sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful.

48. In a Democratic Society, the Tamil Nadu Housing Board cannot sell the commercial site of a particular property for a consideration less than the maximum price that can be obtained for it. If the action of the Housing Board is unreasonable or without any public interest and when the Court is satisfied that the action is unreasonable or not in public interest, then, such action can be invalidated by a Court of Law in our processual system of jurisprudence.

49. It is relevant for this Court to refer to the decision of the Hon^{ble} Supreme Court in *LIC of India and Another Vs. Consumer Education and Research center and Others*, at special page 498 & 500, wherein and whereby in paragraphs 23, 26 & 27, it is laid down as follows:

23. Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary unjust and unfair, it should be no answer for the State its instrumentality, public authority or

person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simplicitor, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations.

26. This Court has rejected the contention of an instrumentality or the State that its action is in the private law field and would be immuned from satisfying the tests laid under Article 14. The dichotomy between public law and private law rights and remedies, though may not be obliterated by any straight jacket formula, it would depend upon the factual matrix. The adjudication of the dispute arising out of a contract would, therefore, depend upon facts and circumstances in a given case. The distinction between public law remedy and private law field cannot be demarcated with precision. Each case will be examined on its facts and circumstances to find out the nature of the activity, scope and nature of the controversy. The distinction between public law and private law remedy has now become too thin and practicably obliterated.

27. In the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest.

50. It is needless for this Court to state that every activity of the public authority or those under public duty or application ought to be informed by reason and guided by public interest. A public authority owing public duty is not supposed to take into consideration any irrelevant or irrational factors or appear to act arbitrarily, while arriving at a conclusion. No wonder, in the case of contractual relations, the State or its instrumentality/public authorities are those who must perform their acts in a manner which is fair, just and equitable and by taking into account all reasonable and relevant materials to achieve the purpose of public good and public interest.

51. Indeed, if an instrumentality of State or a public authority or the officers of the instrumentalities of any Board for that matter act in a judicious manner without any discrimination, then, it can be said that their action will come within the purview or ambit of rational and judicious one. An unfettered discretion of a public authority or an instrumentality of the State is certainly not an appropriate one and it cannot augment public good.

52. To put it succinctly, in regard to public auction of a commercial site, the Tamil

Nadu Housing Board has to follow an rational, relevant norm avoiding arbitrariness and if it departs from the well established standards or norms in a given case, then, its action can be struck down, unless, it is established that the departure made by it has been cemented on some valid ground which by itself is not irrational, unreasonable or discriminatory for that matter.

53. It is the duty of a Court of law to preserve the rule of law. A public authority or an instrumentality of State's action should be well within the limits of law. If there is any transgression, then, a Court of Law, as a reviewing authority, with its vigilance eye, can invalidate the illegal action based on unreasonableness or for want of public interest. The public element in respect of the actions of the instrumentalities of State or public authorities in contractual matters take primary seat. When a contract is entered into or when a person is the purported highest bidder or otherwise, the same can be tested before a Court of Law based on judicial review, of course, depending upon the factual matters of a given case. Duty to act fairly by any public authority/public functionary/instrumentality of a State is the touchstone of Articles 14 and 21. Allotting a commercial site by an agency/instrumentality of the State must be done in a fair and equitable manner based on proper exercise of discretion if any conferred upon a particular employee/ officer of the instrumentality/agency created by a statute.

54. As far as the present case is concerned, in the counter affidavit of Respondents 1 and 2 (in W.A. No. 1510/2009), the District Revenue Officer, Schemes of the Tamil Nadu Housing Board has, inter alia, stated that the Board had taken action against concerned Executive Engineer V.P. Selvaraj, who was in charge of Coimbatore Division and who fixed the upset price wrongly of the year 2003-2004 for the commercial site at 2B at Sowripalayam, Coimbatore (instead of fixing the upset of the price for the year 2004-2005) Board by issuance of charge memo No. DC4/858/2006 dated 20.01.2006, requiring him to submit his explanation for placing the Tamil Nadu Housing Board in an embarrassing situation in the eyes of public. It would appear that the said Engineer had determined the upset price for the said commercial site at Rs. 46,10,500/- as against Rs. 54,42,580/-.

55. One can take judicial notice of the fact that the market price of lands have gone up in a sky rocketing fashion (in spite of soaring inflation and stagflation) and a commercial site value has also gone up by leaps and bounds. In the instant case, the increased upset price for the commercial site, in question, admittedly, was not placed before the Board for the auction that took place on 19.08.2005. Therefore, the Tamil Nadu Housing Board formed under statute for the welfare of the poor people, should not be compelled to sustain loss inasmuch as if the commercial site in question is auctioned for a lesser/low value viz., below the prevailing market price, then, it would cause great revenue loss to the Board.

56. This Court worth recalls the decision of the Hon''ble Supreme Court in Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others,] wherein

the Hon"ble Supreme Court has held 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."

57. In the present case, the sale of Commercial Site No. 2B at Sowripalayam village by the Tamil Nadu Housing Board, Coimbatore through an auction sale, is primarily a commercial transaction. It cannot be forgotten that a Court of Law is to exercise its discretionary powers under Article 226 of the Constitution of India. Also, the said exercise of discretionary powers by a Court of Law should be employed with utmost care and caution and that too in furtherance of public interest and also keeping in mind the overall welfare of the Tamil Nadu Housing Board in the instant case. When a Court of law comes to a conclusion that the public interest requires interference, then, it is bound to interfere unhesitatingly, to prevent an aberration of justice.

58. On 07.09.2012, during the course of hearing of the Writ Appeal No. 1510 of 2010, this Court directed the Respondents 1 and 2/ Tamil Nadu Housing Board to arrange payment of Rs. 54,65,600/- with 12% interest till the end of August 2012 to the Appellant. On an overall consideration of the entire facts and circumstances of the case and also by taking into consideration of the fact that the Tamil Nadu Housing Board had cancelled the allotments in favour of the Appellant and also that of the Writ Petitioner (in W.P. No. 11288 of 2009) as he had not remitted 15% of the bid amount after the auction was fixed on 28.05.2002 and when he had not participated in the subsequent auction conducted on 28.07.2004 and 19.08.2005 and the appeal petition preferred u/s 11 of the Tamil Nadu Transparency of Tender Act, 1988 against the order of the Executive Engineer and Administrative Officer dated 10.06.2002 (turning down the sealed offer quoted for Commercial Site No. 2B at Sowripalayam, Coimbatore) was rejected in Letter No. 3409/HB5(1)/ 09-5 dated 08.05.2009 of the Housing and Urban Development Department, Secretariat and when the Tamil Nadu Housing Board has made it clear that still the Commercial Site No. 2B at Sowripalayam Village measuring 4 grounds, 1,368 square feet (as stated before this Court) is very much available for allotment through public auction, while dismissing both the Writ Appeal and the Writ Petition filed by the Appellant and the Petitioner, we direct the Respondents 1 and 2 to conduct a fresh auction in respect of the Commercial Site No. 2B at Sowripalayam Village, Coimbatore by adhering to the G.O. Ms. No. 263, Housing and Urban Development (HB5) Department dated 22.10.2003, Circulars of the Board and in accordance with the Rules and Regulations of the Tamil Nadu Housing Board Manual, by giving wide publicity and paper notification in vernacular and in English Dailies and to sell the said site keeping in mind the prevailing market rate and allotting it to the highest bidder in the interest of the Tamil Nadu Housing Board. It is made clear that the Appellant and the 3rd Respondent in Writ Appeal (Petitioner in W.P. No. 11288/2009) are at liberty to take part in the fresh auction to be conducted by the Tamil Nadu Housing Board, after satisfying the terms and conditions attached thereto. It is open to the Tamil Nadu Housing Board to notify the date of public

auction in respect of the commercial site in issue through sealed tender-cum-auction procedure, by inviting applications from eligible persons to participate in the said auction.

In the result, both Writ Appeal and Writ Petition are dismissed, leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are closed.