

(2011) 02 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 1314 of 2011

Shri Shubh Infra Altitude Pvt. Ltd.

APPELLANT

Vs

Gujarat Industrial Development Corporation and Another

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226

Citation : (2011) 02 GUJ CK 0054

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : Shivani Rajpurohit, for the Appellant; M.B. Gandhi and Chinmay M. Gandhi for Respondent 1 and Himanshu K. Patel, AGP for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present petition has been filed by the Petitioner under Articles 14, 19(1)(g) and 226 of the Constitution of India with a prayer to direct the Respondents to consider the case of the Petitioner on the basis of the successful bid offered by it at the time of auction conducted by the Respondent No. 1 and direct the Respondents to negotiate the bid amount on the basis of the highest per square meter rate offered per meter for the entire set of plots put to auction by the Gujarat Industrial Development Corporation and by not requiring the Petitioner to pay the amount bid by the highest bidder at the time of the auction.

2. The facts of the case briefly stated are that the Respondent No. 1-Gujarat Industrial Development Corporation by public notice dated 03.08.2010 invited interested bidders for the auction of the commercial plots mentioned therein at Annexure-B. As per the said notice, the Petitioner herein participated in the auction after depositing earnest money. One M/s. Maitri Foundation quoted the highest price of Rs. 10,41,00,000/- and stood first in the bid. However, as they declined, the Petitioner, who is second highest bidder quoting Rs. 8,31,00,000/-,

was offered to revise the bid, however, the Petitioner declined to revise bid and has contended that as he is the second highest as per the bid, the plots ought to have been offered to him and the decision for fresh action is arbitrary and illegal. It is also contended that it is opposed to Wednesbury's principles of reasonableness, the principles of promissory estoppel and the doctrine of legitimate expectation.

3. Learned Counsel, Mr. Amit Panchal for the Petitioner submitted that they have also offered to give the bid of the highest bid on that day and also revised but not to the level offered by the highest bidder. Learned Counsel, Mr. Panchal also referred to the correspondence produced at Annexures-D & E and submitted that as stated in Annexure-E, the price of other adjacent plots are quoted and what has been offered is the price or the bid offered by the Petitioner is equivalent or little more and, therefore, the Respondent No. 1 is not making any loss. He submitted that if this is permitted then anybody can quote any fancy amount and then if he is not inclined, others cannot be compelled to raise their bid as suggested by the Respondent No. 1 vide letter produced at Annexure-D. He submitted that after the bid has been invited, they have participated and, therefore, the Respondents are estopped from not proceeding further with the auction and not offering second highest bidder like the Petitioner. Learned Counsel, Mr. Panchal submitted that normally this is the procedure, which is followed and, therefore, the action of cancelling the auction is illegal. He submitted that it will also have attracted the principles of promissory estoppel and the doctrine of legitimate expectation as once bidder has given the bid, he would expect his bid as highest or next highest or he would be entitled to get such property in the auction when he is not otherwise disqualified. He has, therefore, submitted that the present petition may be allowed directing the Respondent No. 1 to consider fresh bid of the Petitioner or at-least to invite for negotiation.

4. Learned Counsel, Mr. Gandhi for the Respondent No. 1-Corporation referred to the affidavit-in-reply more particularly Para No. 4 and submitted that as stated in this affidavit, as per Annexure-B, the offer was made to the Petitioner to revise his bid as per the highest bid received as the highest bidder has declined. However, as he failed to raise bid, the decision has been taken to invite fresh bid in a fresh auction where the Petitioner can participate again. Learned Counsel, Mr. Gandhi submitted that the Petitioner cannot claim that merely because he is the second highest bidder, his bid should be accepted as it involves many aspects and the reference to the adjacent plots is also misleading in as much as it depends on many other factors like area, situation of the plot etc. He also referred to Annexure-B for that purpose to point out that there are differences in the price. He, therefore, submitted that the Respondent No. 1 is within its rights to decide whether to accept the bid or not and this Court may not entertain the present petition as the Respondent No. 1 may not be willing to accept the price offered as sufficient.

5. In view of the rival submissions, it is required to be considered whether the present petition can be entertained or not.

6. Though much emphasis has been given by the learned Counsel, Mr. Panchal appearing for the Petitioner referring to the principles of estoppel and the doctrine of legitimate expectation, one fails to understand that how the principles of estoppel and doctrine of legislative expectation would be attracted. It is required to be mentioned that after the public notice, auction has been held and when the highest bidder, who had offered particular price, is not inclined, at the same rate next highest bidder is offered like the Petitioner when he is not willing to accept offers at the same rate then, the Respondent No. 1 may have a recourse to invite fresh bid in fresh auction, which cannot be said to be unreasonable. It is well accepted that in such matters, it is for the authority to consider as to what would be the price, which would be accepted or what could be the price that could be fetched in an auction and the Court in exercise of discretion under Article 226 of the Constitution of India cannot substitute its own opinion. It is also well settled that in such matters, the Court may be slow in exercising discretion unless there is any violation of fundamental rights or there are patent defects in the procedure followed suggesting arbitrariness or favouritism. There is no dispute that same procedure has been followed and there is no discrimination in the stand or the procedure adopted for the bidders. Therefore, when the Respondent No. 1-Corporation has on consideration of the offers decided that it is not proper price for the plots and it is desirable to have a fresh auction, it cannot be said to be any unreasonable decision, which would call for any interference by this Court under Article 226 of the Constitution of India. There is hardly any say that any breach of promise has been committed, which would attract the principles of promissory estoppel as sought to be canvassed.

7. The bidders like the Petitioner have a right to participate in the bid and his right to be considered. However, it cannot have any claim or right once they offered bid that their bid should be accepted. Therefore, the Court is not inclined to entertain the petition and the present petition deserves to be dismissed in limine.

8. Accordingly, the present petition stands dismissed. Rule is discharged. Interim relief stands vacated.

9. After the order was dictated, learned Counsel, Mr. Panchal requested for the stay of the operation of this order as the interim relief has been operating. Request deserves to be granted to enable him to approach higher forum. Therefore, the operation of this order is hereby stayed upto 14th March, 2011.