

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

Writ Appeal Nos.988, 982 & 994 of 2023

The Vice-Chairman and Housing Commissioner,
Andhra Pradesh Housing Board, Vijayawada,
Krishna District & another.

... Appellants in all the Appeals

Versus

Smt. C. Hima Bindu, w/o C. Mohan Das,
Aged about 37 years, Resident of H. No.4/65,
Chowdeswari Temple Street, Moragudi,
Kadapa, Y. S. R. District & another.

...Respondents in W.A. No.988 of 2023

Smt. B. Aruna, w/o B. Subhas Chandra Reddy,
Aged about 45 years, R/o MIG H.No.01,
APHB Colony, STM Township,
near New RIMS, Putlampalli, Kadapa & another.

...Respondents in W.A. No.982 of 2023

Smt. B. Rajeshwari, w/o B. Bayapu Reddy,
aged about 45 years, Occ. Lecturer in Chemistry,
Govt College for Men, Kadapa,
R/o Kadapa, Y.S.R. District & another.

...Respondents in W.A. No.994 of 2023

Mr. Y. V. Srinivasan, Standing Counsel for A.P. Housing Board, for
the appellants.

Mr. Shaik Mohammed Ismail, Counsel for respondent No.1.

Government Pleader for Housing, Counsel for respondent No.2.

Dt.: 23.02.2024

PER DHIRAJ SINGH THAKUR (CJ) (Oral):

Since common question of law and facts are involved in all these writ appeals, the same are taken up together for disposal by way of a common judgment and order. For purposes of convenience, facts in writ appeal bearing No.988 of 2023 are being referred to.

2. The Andhra Pradesh Housing Board invited bids from eligible persons including institutions, societies and companies to participate in the sale of house sites in A.P.H.B Colony, Putlampalli, Kadapa, through a process which involved sealed tenders/auction of the houses in question. Respondent No.1 in W.A. No.988 of 2023 also submitted her bid along with Earnest Money Deposit for the MIG house bearing No.84 in the said colony. Whereas the minimum reserve price fixed by the Board for the said house was fixed at Rs.31,00,000/-, respondent No.1 submitted a bid only for Rs.31,05,000/- i.e., Rs.5,000/- above the minimum reserve price.

3. At this stage, it would be apt to refer to some of the relevant terms and conditions which were contained in the auction

notice. Clauses 5(k), 5(l) and 5(o) are material in the present case and reproduced hereunder:

“5(k). On acceptance of the highest bid/tender as the case may be, hereinafter called the accepted rate and such amount as arrived at shall become the sale price.

5(l). 25% of such sale price shall be payable towards initial deposit. This Initial Deposit (I.D) shall be payable as follows:

The first highest bidder should deposit 10% of the sale price (after adjusting Rs.1,00,000/-) and 1% auction expenses on sale price within 48 hours from the time of completion of auction, and another 15% of the sale price within (7) days from the time of completion of auction. The balance sale price shall be paid within (30) days from the date of receipt of confirmation cum provisional allotment without interest or within (60) days with interest @ 18% per annum commencing from the date of receipt of confirmation cum provisional allotment.

5(o). The accepted rate as knocked down by the Auction Officer shall be subject to confirmation by the Vice-Chairman and Housing Commissioner, APHB.”

4. In the present case, the writ petitioner did deposit an amount of Rs.8,07,300/- within seven days from the date of the auction notice on 30.10.2018. However, by virtue of the decision taken by the Vice-Chairman of the Andhra Pradesh Housing Board, dated 10.12.2018, the auction of 8 MIG houses bearing Nos.76, 77, 80, 82, 83, 84, 85 and 86 was cancelled on account of the fact that only single bids had been received, which were

neither competitive nor reasonable. Accordingly, the decision was to submit fresh proposals with the revised upset price along with House No.MIG-81 for which no bids had been received. Needless to say that all the writ petitioners had submitted their bids, which were single bids received by the Housing Board and therefore, stood rejected.

5. in the background of the aforementioned facts, writ petition came to be filed by the writ petitioner/respondent No.1 herein challenging the decision taken by the Housing Board for cancelling the auction in regard to MIG house No.84 and to declare the same as illegal, arbitrary and in violation of principles of natural justice.

6. The writ petition was allowed by the learned single Judge by holding that the writ petitioner ought not to have been instructed to pay an amount of Rs.8,07,300/- after the auction and having accepted the said amount, the bid could not have been cancelled on the ground that writ petitioner was a single bidder. It was held that there was no such condition in the notification that the auction process would be cancelled in regard to a particular house on account of submission of only a single bid. While allowing

the petition, the learned single Judge placed reliance on 5(k) of the terms and conditions of the auction notice and held as follows:

“11. On perusal of the Terms and Conditions for auction of Houses/Flats/Plots by way of Sale in Public Sealed Tender Cum Public Auction Basis, more particularly, condition 5 (k), it is clear that the highest bid would be the accepted rate and such amount shall become the sale price. Nowhere, it is stated in the tender conditions that the single bid would be rejected. Therefore, cancellation of the bid submitted by the petitioner on the ground that the petitioner was sole bidder is illegal and arbitrary.”

The writ petition was accordingly allowed and the proceedings, dated 15.12.2018 was set aside, hence the present Appeal.

7. Learned counsel for the appellants would submit that the judgment and order impugned was contrary to not only the terms and conditions of the auction notice but also to the settled principles of law that the terms and conditions of the auction notice were binding on the parties. Reliance was placed upon **Rajasthan Housing Board v. G.S. Investments**¹. It was stated that the learned single Judge could not have passed the impugned judgment and order in the light of condition No.5(o) of the terms and conditions of the auction notice. Learned counsel for the writ

¹ (2007) 1 SCC 477

petitioners reiterated the view expressed by the learned single Judge.

8. Heard learned counsel for the parties.

9. On a perusal of the terms and conditions of the auction notice, it thus appears to be clear that the highest bidder was required to pay 25% of the sale price within seven days from the time of completion of the auction (10% of the sale price (after adjusting Rs.1,00,000/-) and 1% auction expenses on sale price within 48 hours from the time of completion of auction and another 15% within seven days from the time of completion of auction). It is also clear that according to clause 5(1), the balance sale price 75% was to be paid within 30 days from the date of receipt of 'confirmation cum provisional allotment' without interest or within 60 days with interest @ 18% per annum from the date of the receipt of 'confirmation cum provisional allotment'.

Clause 5(o), as reproduced in the earlier paragraphs, also is clear that the rate as 'knocked down' by the Auction Officer was subject to confirmation by the Vice-Chairman and Housing Commissioner of the Andhra Pradesh Housing Board. The terms and conditions of the auction notice, therefore, leave us in no doubt that while the highest bidder was required to deposit 25%

within seven days of the auction, the balance 75% had to be paid subject to the confirmation by the Vice-Chairman and Housing Commissioner of the Andhra Pradesh Housing Board. The terms and conditions of the auction notice, therefore, did not create any indefeasible right in the writ petitioner to claim any lien on the house in question in the absence of the confirmation of the rate as was accepted by the Auction Officer in the auction process in regard to a particular house.

10. In **Rajasthan Housing Board** (supra), the Apex Court held that a highest bidder 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. What was stated by the Apex Court in the said judgment was thus:

“8. 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 vs. Satyawar which is almost identical on facts as it related to auction of a plot by 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:-

"From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the right of the highest bidder at public auctions in the cases of Trilochan Mishra, etc. v. State of Orissa, State of Orissa v. Harinarayan Jaiswal, Union of India v. Mis. Bhim Sen Walaiti Ram and State of Uttar Pradesh and Ors. 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."

9. 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."

This view was subsequently reiterated in **State of Punjab v. Mehar Din**² wherein it was held:

"19. This Court has examined right of the highest bidder at public auctions in umpteen number of cases and it was repeatedly pointed out that the State or 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 of bid. The acceptance of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held. In the present

² (2022) 5 SCC 648

case, no right had accrued to the respondent even on the basis of statutory provisions as being contemplated under Rule 8(1)(h) of Chapter III of the Scheme of the 1976 Rules, and in terms of the conditions of auction notice notified for public auction.

.....

27. This being a settled law that the highest bidder has no vested right to have the auction concluded in his favour and in the given circumstances under the limited scope of judicial review under Article 226 of the Constitution, the High Court was not supposed to interfere in the opinion of the executive who were dealing on the subject, unless the decision is totally arbitrary or unreasonable, and it was not open for the High Court to sit like a court of appeal over the decision of the competent authority and particularly in the matters where the authority competent of floating the tender is the best judge of its requirements, therefore, the interference otherwise has to be very minimal.”

11. On a perusal of the record and in particular the note, which was approved by the Vice-Chairman and Housing Commissioner, Andhra Pradesh Housing Board, it can be seen that the decision was taken not just with regard to the bids submitted by the petitioners but in all eight bids, which were single bids, were held to be non-competitive and not reasonable, in view whereof, it was decided to cancel the auction in regard to the same. Needless to say that the Housing Board is within its right to ensure that maximum amounts are fetched with regard to properties sold by them on competitive rates, which is in the interest of the

exchequer. The decision to re-auction the flats including the flat for which the petitioner has submitted her bid can neither be said to be perverse nor arbitrary.

12. Be that as it may, the judgments and orders impugned are not sustainable in law and are, accordingly, set aside and consequently, the writ appeals are allowed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R. RAGHUNANDAN RAO, J

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