

Haryana Urban Dev. Authority and Ors. Vs. Orchid Infrastructure Developers P.Ltd.

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Court : Supreme Court of India

Decided On : Jan-27-2017

Judge : Arun Mishra and Amitava Roy

Appellant : Haryana Urban Dev. Authority and Ors.

Respondent : Orchid Infrastructure Developers P.Ltd.

Judgement :

ITEM NO.1A COURT NO.9 SECTION IVB S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS CIVIL APPEAL No.1016 OF2017((Arising out of
SLP(C) No(s). 12166/2011) HARYANA URBAN DEV. AUTHORITY & ORS.
Petitioner(s) VERSUS ORCHID INFRASTRUCTURE DEVELOPERS P.LTD.
Respondent(s) Date :

27. 01/2017 This MATTER was called on for Judgment today. For Petitioner(s) Mr. Shyam Devan, Sr. Adv. Mr. Anish Kumar Gupta, Adv. Mr. Chandra Shekhar Suman, Adv. Mr. R.K. Rajwanshi, Adv. Ms. Deepshikha Bharati, Adv. Mr. Sanjay Kumar Visen, Adv. Mr. Anil Grover, AAG For Respondent(s) Mr. Raja Chatterjee, Adv. Ms. Nandini Ram Chandran, Adv. Ms. R. Bhuyan, Adv. Mr. Satish Kumar, Adv. Hon'ble Mr. Justice Arun Mishra pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Amitava Roy. The appeal is allowed. The judgment and decree passed by the High Court is set aside and

that of the first appellate court is restored. In the facts and circumstances of the case, we impose costs of Rs.5 lakhs on the plaintiff/respondent to be deposited as : Rs.2.5 lakhs in the Advocates Welfare Fund and Rs.2.5 lakhs in the Supreme Court Employees Welfare Fund within a period of two months from today. | (NEELAM GULATI) | (TAPAN KR. CHAKRABORTY) | |COURT MASTER |COURT MASTER | (Signed Reportable Judgment is placed on the file) Reportable IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.1016 OF2017(Arising out of SLP [C]. No.12166/2011) Haryana Urban Development Authority & Ors. Appellants Vs. Orchid Infrastructure Developers P. Ltd. Respondent

JUDGMENT

ARUN MISHRA, J.

1. Leave granted.

2. The appeal arises out of judgment and order dated 17.1.2011 passed by the High Court of Punjab & Haryana at Chandigarh thereby setting aside the judgment and decree of District Judge dated 29.11.2010 and restoring the judgment and decree of Civil Judge passed on 14.10.2010. The plaintiff Bhudeep Builders and Exporters Pvt. Ltd. were later renamed as M/s. Orchid Infrastructure Developers P. Ltd. The plaintiff-respondent filed a suit for declaration with consequential relief as against the appellants with regard to rejection of bid relating to the commercial tower situated in Sector 29, Urban Estate, Gurgaon, in area admeasuring 9.527 acres. The bid submitted by the plaintiff was the highest of Rs.11,17,50,000/-. The reserve price was Rs.106.65 crores. The main terms and conditions of the auction were as under : (i) 10% of the bid amount to be tendered on the spot at fall of hammer. (ii) 15% of the bid money to be deposited within 30 days from the date of issuance of allotment letter. (iii) 75% of the amount to be paid within 60 days from issuance of allotment letter as one time interest free payment or with interest in the manner prescribed. (iv) The Presiding Officer (Administrative Officer) reserved the right to withdraw any property from the auction or reject any bid without assigning any reason.

3. It is further averred in the plaint that the auction held on 24.5.2004 was presided over by the Administrator, Haryana Urban Development Authority (for short HUDA). Reserve price had been approved by Chief Administrator, HUDA. Though the reserved price for the other sites were approved by the Administrator. In the plaint it was further averred that 27 persons deposited the security amount of Rs.50 lakhs for bidding and various bidders actively participated in the bids. Ultimately the bid of the plaintiff amounting to Rs.111.75 crores being highest was accepted. Petitioner deposited 10% amount by various drafts on the fall of hammer. Formal letter of allotment was not issued inspite of efforts made by the plaintiff. Officials of HUDA were dragging their feet over the issue without any rhyme or reason. Plaintiff ultimately received memo dated 24.9.2004 purporting to refund 10% amount Rs.11,17,50,000 deposited by the plaintiff at the time of auction held on 24.5.2004 on the ground that the bid had not been accepted.

4. Plaintiff questioned the rejection of the bid on the ground of its being illegal, unlawful, mala fide, arbitrary, discriminatory and violative of principles of natural justice. The bid for the commercial tower was adequate and above the reserved price. The plaintiff relied upon Regulation 6 regarding issuance of allotment letter by Chief Administrator. The rejection of the bid is without any rhyme or reason. The order is non-speaking. There was no material available with the defendant to conclude that auction of property in question was made at a lower rate or that the same would fetch a higher price in the event of re-auction. The Chief Administrator alone was competent to decide about the bid and no delegation of power to Administrator has been shown to the plaintiff. Mere baseless apprehension harboured by the defendant that the auction could fetch a higher rate, could not be said to be in public interest. If such action is permitted, auction process shall be a never ending exercise. The plaintiff valued the suit for declaration and consequential relief of mandatory injunction at Rs.400 and paid the court fee of Rs.55. Plaintiff has prayed for a declaration that memo dated 24.9.2004 rejecting the bid of the plaintiff to be void ab initio, non est and illegal, and that plaintiff is successful bidder of commercial tower measuring 9.527 acres situated in Sector 29, Urban Estate, Gurgaon. Plaintiff further prayed for mandatory injunction directing the defendants to issue formal letter of allotment pertaining to the suit property in favour of the plaintiff and to complete requisite formalities of allotment

including delivery of possession and sanction of site plan. Plaintiff further prayed for an injunction restraining defendants from re-auctioning the suit property and from creating any third party interest of any nature in respect of the suit property.

5. The defendant HUDA in its written statement raised preliminary objection that the civil court has no jurisdiction to entertain the present suit in view of section 15(2) of Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act). It was also submitted that the suit was not maintainable in the present form, that the plaintiff has no cause of action to file the suit and has not come to court with clean hands, suit is liable to be rejected under Order 7 Rule 11 of the C.P.C., plaintiff is liable to pay ad valorem court fee on the sale consideration of Rs.111.75 crores of the commercial site in question, the suit is barred under section 41(h) of the Specific Relief Act. The plaintiff has not availed the remedy of arbitration as per the rules, regulations and bye-laws of HUDA. There is no concluded contract between the parties. Plaintiff has accepted the terms and conditions of the auction in which it was mentioned that the competent authority is entitled to accept or reject the bid without assigning any reason. The auction was presided over by the Administrator, HUDA. After auction in question was held complaints were received regarding intimidation and threatening of bidders. The bid was not accepted for the reason that the price of urban estates at other places like Faridabad, Panipat, Panchkula etc. for similar kind of property was higher. The bid in question was not acceptable as per prevalent market price of the similar property in Gurgaon. The Presiding Officer i.e. Administrator is fully competent to refuse or accept the bid. Competent authority after going through the individual reports/comments/opinion of the members of the Auction Committee comprising of Estate Officer, HUDA, Gurgaon, Senior Accounts Officer, District Town Planner and District Revenue Officer (representative of the Deputy Commissioner, Gurgaon) as members under the Chairmanship of Administrator, HUDA. Administrator thoroughly examined the observations and recommendations of the members of the Auction Committee regarding not to accept the bid prices of big commercial sites since these prices being apparently on the lower side which was also examined by the Government at the Headquarters level. The records of the entire auction proceedings including opinion of the Estate Officer, Gurgaon, other members of the Auction Committee, Deputy Commissioner and also after studying

the reserve price and auction price trends, a decision was taken by the competent authority not to accept the bid prices vide their written report. It was further contended by HUDA that Administrator is the competent authority. Power to accept bid has been delegated to him by the competent authority.

6. In view of the written statement the plaintiff filed a rejoinder. It was denied that the civil court has no jurisdiction and bid price was not inadequate. It also denied the delegation of power to Administrator, HUDA, Gurgaon.

7. The trial court - Civil Judge, Junior Division, Gurgaon decreed the suit vide judgment and decree dated 14.10.2010. Three witnesses were examined by the plaintiff and on behalf of defendant HUDA. Shri P.K.Ramanand, Assistant was examined. The trial court held that Administrator, HUDA was not competent to reject the bid of the plaintiff. As per Regulation 6 of Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 (hereinafter referred to as the Regulations of 1978), the authority to accept or reject a bid was vested with Chief Administrator, HUDA and delegation of power to Chief Administrator can only be made by the State Government vide notification as per section 51(4) of the Act. No notification has been placed on record to prove that the power of Chief Administrator has been delegated to Administrator, HUDA. The report on the basis of which bid had been rejected was not placed on record. The trial court held that the plaintiff is entitled to mandatory injunction for issuance of formal letter of acceptance of bid. The trial court further held that the suit is maintainable. The payment of court fee by the plaintiff was adequate as the suit was not for specific performance of contract. The trial court further directed the defendants to issue formal letter of allotment on completion of requisite formalities within two months.

8. On first appeal being preferred in the court of District Judge, Gurgaon the same was allowed vide judgment and decree dated 29.11.2010. The suit was dismissed by the first appellate court. The first appellate court has opined that the power of Chief Administrator has been delegated to Administrator, HUDA. As is apparent from the letter written by Chief Administrator to the Administrator. No legal and vested right accrued in favour of the plaintiff by submission of the highest bid and 10% of the amount on fall of hammer. Bid has not been finally accepted. The

plaintiff ought to have paid ad-valorem court fee. The first appellate court also observed that no responsible officer of HUDA has entered the witness box and only a junior ranking Assistant has been examined who was not present when the auction was held. He was posted at Gurgaon on 2.10.2008. The first appellate court has observed as under :

However, the defendants have not produced any document whatsoever to prove the above averment and nor has any responsible officer, including defendants No.2 and 3, cared to step in the witness box to substantiate the above referred plea and instead only one witness, and that too an Assistant named P.K. Ramanan from the office of HUDA, Gurgaon who is a junior ranking official was examined as DW1 who was admittedly not even present at the time of the impugned auction because he has admitted during his cross-examination that he came to be posted at Gurgaon only w.e.f. 8.8.2008. Non-appearance of any responsible official of HUDA thus indicates some sort of unholy news between certain quarters for which reason a copy of this Judgment is ordered to be forwarded to the Chief Secretary to the Government of Haryana for getting conducted an enquiry as to why such course of conduct was adopted despite huge stakes running into several crores. Was it intended to benefit the plaintiff by default. The Chief Secretary to Government of Haryana be requested to acknowledge receipt of the copy of the judgment.

9. On the second appeal being preferred on 2.1.2011 in the High Court as against the judgment and decree, the same has been allowed on 17.1.2011 within 15 days of it being filed. The High Court has restored the judgment and decree of the trial court on the ground that there is no delegation of power to the Administrator. The rejection by the Administrator was inconsequential and was not a valid decision in the absence of irregularity in auction the bid ought to have been accepted by the Chief Administrator, HUDA and letter conveying acceptance ought to have been issued in favour of the plaintiff. In view of Regulation 6(2) the Chief Administrator was competent authority to take a final decision on the bid. No notification has been issued by the State Government under section 51(4) of the Act. The suit has been held to be maintainable. It has been rightly valued and adequate court fee has been paid.

10. The judgment and decree of High Court has been questioned by filing the appeal in this Court. An application has also been filed on behalf of the appellant to take additional documents on record. HUDA for the first time has filed notification dated 13.9.1989 issued by it under section 51 of the Act, delegating the functions in favour of various officers indicating that the power has been delegated to the Administrator to accept the auction bids for commercial/residential/industrial sites. Apart from that, a judgment of Division Bench of the High Court of Punjab & Haryana in CWP No.12753/2010 - Jitender Singh v. Haryana Urban Development Authority has been placed on record in which the impugned decision of the High Court in the present appeal has been held to be not laying down a good law and has been overruled.

11. It was urged by Shri Shyam Divan, learned senior counsel appearing on behalf of the appellant that Administrator was Presiding Officer, thus, had the authority to accept or to refuse the bid not only as per terms and condition No.4 of the tender notice but also as per the delegation made by HUDA on 13.9.1989 under section 51 of the Act. Since the letter of allotment has not been issued, there was no concluded contract between the parties. Thus suit was not maintainable in the absence of concluded contract for its enforcement. No allotment order was issued by the Chief Administrator as per Regulation 6(2). Chief Administrator was only required to issue allotment letter. Once bid has been rejected, there was no occasion for the court to issue mandatory injunction. The rejection of the bid was fully justified as prices fetched of 7 items were not adequate, and no right accrued on the basis of submitting the highest bid.

12. Shri Abhishek Manu Singhvi and Shri Raju Ramchandran, learned senior counsel appearing for the respondent strenuously contended that the Administrator had forwarded the bid to the Chief Administrator for acceptance. However, the Chief Administrator wrote back to the Administrator that the Administrator should decide about the bid as power was delegated to him. As per Regulation 6(2) the Chief Administrator was required to decide about the acceptance or rejection of the bid. The rejection of bid is not only arbitrary, unreasoned and no report has been placed on record by HUDA as to why bid had been rejected. The bid was above reserve price and there were several bidders.

There being no better bid as such the bid of the plaintiff ought to have been accepted. Rejection of the bid without any reason cannot be said to be valid for which reliance has been placed on *M/s. Star Enterprises & Ors. v. City and Industrial Development Corporation of Maharashtra Ltd. & Ors.* (1990) 3 SCC280 *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* AIR 1978 SC851 and *Kalu Ram Ahuja & Anr. v. Delhi Development Authority & Anr.* (2008) 10 SCC696 In the absence of any notification being issued by the State Government under section 51(4) of the Act, the power of the Chief Administrator could not have been delegated to the Administrator. Thus rejection of the bid by the Administrator was unauthorised. The delegation of power by HUDA was made under section 51(1) whereas delegation was required under section 51(4). In re : Maintainability of suit in absence of concluded contract :

13. Firstly, we examine the question whether there being no concluded contract in the absence of acceptance of bid and issuance of allotment letter, the suit could be said to be maintainable for the declaratory relief and mandatory injunction sought by the plaintiff. The plaintiff has prayed for a declaration that rejection of the bid was illegal. Merely by that, plaintiff could not have become entitled for consequential mandatory injunction for issuance of formal letter of allotment. Court while exercising judicial review could not have accepted the bid. The bid had never been accepted by concerned authorities. It was not a case of cancellation of bid after being accepted. Thus even assuming as per plaintiffs case that the Administrator was not equipped with the power and the Chief Administrator had the power to accept or refuse the bid, there had been no decision by the Chief Administrator. Thus, merely by declaration that rejection of the bid by the Administrator was illegal, the plaintiff could not have become entitled to consequential relief of issuance of allotment letter. Thus the suit, in the form it was filed, was not maintainable for relief sought in view of the fact that there was no concluded contract in the absence of allotment letter being issued to the plaintiff, which was a sine qua non for filing the civil suit.

14. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue.

We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. As per Regulation 6(2) of the Regulations of 1978, allotment letter has to be issued on acceptance of the bid by the Chief Administrator and within 30 days thereof, the successful bidder has to deposit another 15% of the bid amount. In the instant case allotment letter has never been issued to the petitioner as per Regulation 6(2) in view of non-acceptance of the bid. Thus there was no concluded contract. Regulation 6 of the Regulations of 1978 is extracted hereunder :

6. Sale of lease of land or building by auction.- (1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in sub-regulation (1) of Regulation 4 or any higher amount determined as a result of bidding in open auction. (2) 10 per cent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub-regulation (2) of Regulation 5. The successful bidder shall be issued allotment letter in Form CC or C-II by registered post and another 15 per cent of the bid accepted shall be payable by the successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Administrator; failing which the 10 per cent amount already deposited shall stand forfeited to the Authority and the successful bidder shall have no claim to the land or building auctioned. (3) The payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in sub-regulations (6) and (7) of Regulation 5. (4) The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot.

15. We are fortified in our view by a decision of this Court in *Uttar Pradesh Avas Evam Vikas Parishad & Ors. v. Om Prakash Sharma* (2013) 5 SCC182 the questions arose for its consideration that : whether there is any vested right upon the plaintiff/bidder until the bid is accepted by the competent authority in relation to the property in question?. Merely because the plaintiff is the highest bidder by

depositing 20% of the bid amount without there being approval of the same by the competent authority and it amounts to a concluded contract in relation to the plot in question; and whether the plaintiff could have maintained the suit in the absence of a concluded contract ?. Considering the aforesaid questions, this Court has discussed the matter thus :

30. In support of the said proposition, the learned Senior Counsel for the defendant, Mr Rakesh Dwivedi has also placed reliance upon another decision of this Court in State of U.P. v. Vijay Bahadur Singh (1982) 2 SCC365 The learned Senior Counsel has rightly placed reliance upon the judgment of this Court in Rajasthan Housing Board case (2007) 1 SCC477 which reads as under: (SCC p. 483, para

9) 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.

x x x x x In State of Orissa v. Harinarayan Jaiswal (1972) 2 SCC36 case, relevant paragraph of which reads as under: (SCC pp. 44-45, para

13) 13. x x x x x There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids (see Union of India v. Bhim Sen Walaiti Ram (1969) 3 SCC146. By merely giving bids, the bidders had not acquired any vested rights. ...

(emphasis supplied) x x x x x 31. In view of the law laid down by this Court in the aforesaid decisions, the learned Senior Counsel Mr Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid

amount along with the earnest money with the Board. In the absence of acceptance of bid offered by the plaintiff to the competent authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26-5-1977 and 8-7-1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff.

(emphasis supplied). This Court has held that in the absence of a concluded contract which takes place by issuance of allotment letter, suit could not be said to be maintainable as there is no vested right in the plaintiff without approval of the bid by the competent authority. Thus, in the wake of aforesaid decision, in the absence of a concluded contract, the suit could not have been decreed for mandatory injunction. It amounted to enforcing of contract in the absence thereof.

16. In the light of the aforesaid discussion, it is evident that in the absence of a concluded contract, i.e. in the absence of allotment letter and acceptance of highest bid, the suit by the plaintiff was wholly misconceived. Even if non-acceptance of the bid was by an incompetent authority, the court had no power to accept the bid and to direct the allotment letter to be issued. Merely on granting the declaration which was sought that rejection was illegal and arbitrary and by incompetent authority, further relief of mandatory injunction could not have been granted, on the basis of findings recorded, to issue the allotment letter, as it would then become necessary to forward the bid to competent authority - Chief Administrator - for its acceptance, if at all it was required. In re : Competency of Administrator to accept/reject bid :

17. The plaintiff has come to the Court with the case that there was no delegation of power to the Administrator. No doubt about it that the delegation of power made by HUDA under section 51 of the Act has not been placed on record before the courts below. It has been filed for the first time in this Court. However, HUDA has placed on record delegation of power to the Administrator by it as is apparent from the order dated 13.9.1989 issued by the Chief Administrator of HUDA in which it is

mentioned that in exercise of power conferred under section 51 of the Act, for the sake of efficiency, speedy development and with a view to decentralize the powers/functions the delegation at Annexure A were made by HUDA in its meeting held on 3.1.1989 in favour of various officials/officers of HUDA. The relevant portion of delegation made in order dated 13.9.1989 along with Index is extracted hereunder :

HARYANA URBAN DEVELOPMENT AUTHORITY MANIMAJRA (UT),
CHANDIGARH

ORDER

. In exercise powers conferred under section 51 of the Haryana Urban Development Authority Act, 1977, in the interest of efficiency, speedy development and with a view of decentralise the powers/functions, the delegations at Annexure A (Pages 1-16) are hereby made in favour of various Officers of HUDA by the Haryana Urban Development Authority in its meeting held on 03.01.1989. Dated, Manimajra, the 13th Sep.

1989. R.K. SINGH CHIEF ADMINISTRATOR HARYANA URBAN DEV. AUTHORITY INDEX DELEGATION OF FUNCTIONS/POWERS OF AUTHORITY AS INCORPORATED IN HARYANA URBAN DEVELOPMENT AUTHORITY ACT, 1977. Delegation of Administrative and Financial powers made under Section 51 of HUDA Act, 1977 on behalf of the Haryana Urban Development Authority:-

Sr.	No.of	Nature of	Authority to	Extent of power	No.	item in	power:	who	
delegated	delegated	Annexure II	of the	proposal	1	2	3	4	5
xxx	xxx	xxx	xxx	60	70	Powers to	Chief	Full Powers.	
								accept the	
								Administrator	
								auction bids	
								for Administrator	
								commercial/	
								Full powers	
								residential	
								provided the	
								/ industrial	
								highest bid is	
								sites	
								more than the	
								reserve price and	
								minimum of 3 bids	
								have been	
								received. If a	
								site is not sold	
								even after three	
								attempts at a	
								price higher than	
								the reserve price	
								the administrators	
								may revise the	
								price downwards	
								upto maximum	
								of 10% of the reserve	
								price.	

18. It is apparent that there had been delegation of power by HUDA to the Administrator with respect to the power to

accept the auction bids for commercial/residential/industrial sites provided the highest bid is more than the reserve price and minimum of three bids have been received. The Administrator has also the power if the site is not sold in 3 attempts, to revise the price downwards up to a maximum of 10% of the reserve price. Thus plaintiff has not come to the court with clean hands and has suppressed for the reasons best known to it, the aforesaid order of HUDA by which delegation of power has been made. The fact that there was delegation of power is also crystal clear from the communication exchanged between the Administrator and the Chief Administrator. As the Administrator was reluctant to accept the bid, as was the case in the case of fixation of reserve price also, the Administrator considering the huge property, said that the auction involved prime and big commercial sites, huge revenue is involved and such a big auction has been carried out for the first time in the State of Haryana, therefore, all the record pertaining to the auction was sent to the Chief Administrator for scrutiny and approval at the level of Chief Administrator, HUDA, Gurgaon. However, the Chief Administrator also washed off his hands. He wrote back to the Administrator on 28.7.2004. The decision to confirm or otherwise of a bid, should be taken only by a competent authority whose order is appealable. Therefore, bids should be considered by the competent authority and as the Administrator is the competent authority to take the follow-up action, the Headquarters be apprised of the decision taken. Thereafter, the Administrator had taken the decision not to confirm the seven bids of seven properties. It is apparent from the order dated 21.9.2004 that the Administrator after examining the relevant aspects and the report, had decided to reject the seven bids mentioned therein. The said letter of the Administrator is extracted hereunder :

From Administrator HUDA, Gurgaon To The Estate Officer HUDA, Gurgaon Memo No.709 Dated:

21. 9.04 Sub: Auction of Commercial Sites-5 sites of Shopping Mall, One Site of Multiplex and one Site of Commercial Tower held on 24.5.2004 at Gurgaon. Ref: Your letter No.11592 dated 28.6.2004 and the comments submitted by your office in the case files. After examining the relevant aspects and reports submitted by your office as well as keeping in view the contents of the letter No.26559 dated

21. The learned counsel representing the plaintiff-respondent vehemently contended that there was no delegation of power under section 51(4) and it was the State Government only who could have delegated the power of the Chief Administrator as found by the High Court. As delegation had been made by HUDA under section 51(1) of the Act of 1977, it was incumbent upon the plaintiff to question it and assail the same. However, the plaintiff had feigned ignorance as to

delegation on its part which does not inspire confidence as the line of arguments advanced on its behalf that no delegation was there under section 51(4) was clearly grounded upon the fact that the delegation made under section 51(1) was in fact to the knowledge of the plaintiff that is why the aforesaid argument had been advanced and unfortunately learned counsel for HUDA also conceded that there was no delegation of power made by the State Government under section 51(4). This was done by overlooking the delegation dated 13.9.1989, the factum whereof has not been controverted by the learned counsel appearing on behalf of the respondent in any manner whatsoever. In the absence of having questioned delegation made by HUDA under section 51(1) of the Act, plaintiff could not have succeeded in the suit.

22. The plaintiff has not questioned the delegation of power before the courts below in any manner whatsoever. We decline to examine the submission raised by learned counsel for the plaintiff in this Court that there is no delegation of power under section 51(4) and the power of the Chief Administrator could have been delegated only by the State Government not by HUDA under section 51(1) as per its order dated 13.9.1989. In the absence of challenge to legality of delegation order dated 13.9.1989, and the plaintiff being guilty of *suppressio veri*, it is not entitled to urge the aforesaid submission so as to invalidate the statutory delegation of power made by HUDA under section 51(1).

23. In view of the aforesaid fact-situation, it is apparent that the Administrator had the power to reject a bid, not only being the Presiding Officer as per terms and condition NO.4 of auction but otherwise also he had the power, as discussed above. Thus, the decision of the High Court in setting aside the auction on the aforesaid ground cannot be said to be legally sustainable. In re : Legality of rejection of bid :

24. Coming to the question whether the Administrator had rejected the bid in an illegal or arbitrary manner, the learned counsel for the plaintiff has submitted that the bid had been rejected by an unreasoned order, as such it was an arbitrary rejection. Learned counsel has drawn our attention to the communication dated 24.9.2004 which has been communicated by the Estate Officer to the plaintiff in

which it has been mentioned that the bid has not been accepted, hence earnest money had been refunded. However, this communication of the decision reflects only the return of the cheque pursuant to the decision of the Administrator. The order passed by the Administrator is apparent from the communication of the Administrator made to Estate Officer, HUDA on 21.9.2004 which has been extracted above. It is apparent from the rejection order that the reports submitted were considered and decision was taken not to accept the bids with respect to auction of seven properties. It was not a case of singular rejection of the bid made by the plaintiff alone. Six other bids were also not accepted. The reason for rejection has been made clear in para 15 of the written statement filed by HUDA. The relevant portion is extracted hereunder :

The action of not accepting the bid is very much sustainable in the eyes of law as the prices fetched by the auction was not in consonance with the prices fetched in other urban estates like Faridabad and Panchkula for similar kind of property. The bid prices received for the above said site was also not on the rising trend as per the prevalent market prices of the similar property in Gurgaon. The judicial view had been taken by the competent authority to safeguard the revenue interest of HUDA. The price of the site in question fetched in Gurgaon was on lower side as compared to the prices fetched in Panchkula, Faridabad and Panipat. The statistical data for analysing the trend of price rising and revenue fetched was considered by the competent authority and it was revealed that the price fetched by the said auction was on lower side. Remaining para to the contrary is wrong and denied. x x x x x The competent authority after going through the individual report/comments/opinion of the Members of the Auction Constituted Committee, comprising of Estate Officer, HUDA, Gurgaon, Senior Accounts Officer, District Town Planner and District Revenue Officer (Representative of the Deputy Commissioner, Gurgaon) as Members under the Chairmanship of Administrator, HUDA, Gurgaon, thoroughly examined the observations and recommendations of the Member of the Auction Committee regarding not to accept the bid prices of big commercial site, since these prices being on apparently lower side which was examined by the Government at the Headquarters level. The entire records of the entire auction proceedings, including the opinion of the Estate Officer, Gurgaon, other members of the Auction Committee and Deputy Commissioner, Gurgaons

report and also after studying the reserve price and auction price trends, decision was taken by the competent authority not to accept the bid prices vide their detailed report. Remaining para to the contrary is wrong and hence denied.

25. Thus, it is apparent that the report and recommendations of the Auction Committee consisting of 5 members, was not to accept the bids of big commercial sites as the prices fetched were on lower side which was examined by the Government at the Headquarters level. Considering the auction trends and also taking into consideration the higher prices fetched at Panipat, Panchkula and Faridabad, it was decided to reject the seven bids. Thus, there was due application of mind.

26. In our opinion when it is apparent from the communication that the reports were considered and what was contained in the report was very much pleaded in the written statement, mere non-production of report was not of any significance in the instant case. We are satisfied that the rejection of the bid by the Administrator was absolutely proper and justified and was beyond the pale of judicial scrutiny. The Administrator had the right to reject the bids and he had rejected it on sufficient ground, duly considering the materials on record as is apparent from the communication dated 21.9.2004. In the interest of the public, revenue of the State and in the interest of HUDA the huge property was saved from being plundered.

27. This Court in the case of State of Uttar Pradesh & Ors. v. Vijay Bahadur Singh & Ors. (1982) 2 SCC365 has laid down that there is no obligation to accept the highest bid. The Government is entitled even to change its policy from time to time according to the demands of the time. It was observed thus :

3. It appears to us that the High Court had clearly misdirected itself. The Conditions of Auction made it perfectly clear that the Government was under no obligation to accept the highest bid and that no rights accrued to the bidder merely because his bid happened to be the highest. Under Condition 10 it was expressly provided that the acceptance of bid at the time of auction was entirely provisional and was subject to ratification by the competent authority, namely, the State Government. Therefore, the Government had the right, for good and sufficient reason, we may say, not to accept the highest bid but even to prefer a tenderer

other than the highest bidder. The High Court was clearly in error in holding that the Government could not refuse to accept the highest bid except on the ground of inadequacy of the bid. Condition 10 does not so restrict the power of the Government not to accept the bid. There is no reason why the power vested in the Government to refuse to accept the highest bid should be confined to inadequacy of bid only. There may be a variety of good and sufficient reasons, apart from inadequacy of bids, which may impel the Government not to accept the highest bid. In fact, to give an antithetic illustration, the very enormity of a bid may make it suspect. It may lead the Government to realise that no bona fide bidder could possibly offer such a bid if he meant to do honest business. Again the Government may change or refuse its policy from time to time and we see no reason why change of policy by the Government, subsequent to the auction but before its confirmation, may not be a sufficient justification for the refusal to accept the highest bid. It cannot be disputed that the Government has the right to change its policy from time to time, according to the demands of the time and situation and in the public interest. If the Government has the power to accept or not to accept the highest bid and if the Government has also the power to change its policy from time to time, it must follow that a change or revision of policy subsequent to the provisional acceptance of the bid but before its final acceptance is a sound enough reason for the Government's refusal to accept the highest bid at an auction 28. In *Laxmikant & Ors. v. Satyawani & Ors.* (1996) 4 SCC 208 this Court has laid down that in the absence of completed contract when the public auction had not culminated to its logical end before confirmation of the bid, no right accrued to the highest bidder. This Court has laid down as under :

4. Apart from that the High Court overlooked the conditions of auction which had been notified and on basis of which the aforesaid public auction was held. Condition No.3 clearly said that after the auction of the plot was over, the highest bidder had to remit 1/10 of the amount of the highest bid and the balance of the premium amount was to be remitted to the trust office within thirty days from the date of the letter informing confirmation of the auction bid in the name of the person concerned. Admittedly, no such confirmation letter was issued to the respondent. Conditions Nos. 5, 6 and 7 are relevant:

5. The acceptance of the highest bid shall depend on the Board of Trustees.
6. The Trust shall reserve to itself the right to reject the highest or any bid.
7. The person making the highest bid shall have no right to take back his bid. The decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be binding on the said person. Before taking the decision as above and informing the same to the individual concerned, if the said individual takes back his bid, the entire amount remitted as deposit towards the amount of bid shall be forfeited by the Trust.

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 v. State of Orissa* (1971) 3 SCC153 *State of Orissa v. Harinarayan Jaiswal* (1972) 2 SCC36 *Union of India v. Bhim Sen Walaiti Ram* (1969) 3 SCC146 and *State of U.P. v. Vijay Bahadur Singh* (1982) 2 SCC365. 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.

29. In *Meerut Development Authority v. Association of Management Studies & Anr.* (2009) 6 SCC171 this Court has laid down that a bidder has no right in the matter of bid except of fair treatment in the matter and cannot insist for further negotiation. The Authority has a right to reject the highest bid. This Court has laid down thus :

27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the abovestated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations. x x x x x 29. The Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favouritism.

30. Reliance has been placed on behalf of the respondent on a decision of this Court in *M/s. Star Enterprises & Ors. v. City and Industrial Development Corporation of Maharashtra Ltd. & Ors.* (1990) 3 SCC280 The relied upon portion is extracted hereunder :

10. In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process. The submission of Mr Dwivedi, therefore, commends itself to our acceptance, namely, that when highest offers of the type in question are rejected reasons sufficient to indicate the stand of the appropriate authority should

be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so.

No doubt about it that there have to be some reasons for rejection of the bid which are adequately present in the instant case as discussed hereinabove. The decision is of no help to espouse the cause of the plaintiff.

31. Reliance has also been placed on a decision of this Court in *Kalu Ram Ahuja & Anr. v. Delhi Development Authority & Anr.* (2008) 10 SCC696 in which this Court has laid down that the highest bid was rejected without assigning any reason and there was no record showing that the decision was based on rational and tangible reasons and was in public interest. In the instant case we are satisfied from the order that the reports were considered and what were the reports, has been made clear in the reply filed by the respondents which has not been controverted. In the instant case merely the bid being above the reserve price, was not a safe criteria to accept the same.

32. In *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* (1978) 1 SCC405 this Court has laid down that when a statutory functionary makes an order, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. This Court has held thus :

8. 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* AIR 1952 SC16:

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 his mind, or what he intended to do.

Public orders made by public authorities are meant to have public effect and are intended to affect 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. Orders are not like old wine becoming better as they grow older.

There is no dispute from the aforesaid proposition. However, in the instant case reasons have been mentioned in the rejection order and the nature of reports has also been sufficiently explained. Thus the rejection of seven different bids in the auction reflects that there was due application of mind by the concerned authority and rejection could not be said to be illegal, arbitrary or sans of reason.

33. We are constrained to observe in the instant case that with respect to reserve price also, there was a hitch to fix and approve it right from the word go. It was a case of auction of big commercial tower having a huge area of 9.527 acres. Only the reserve price of the same was forwarded for fixation to the Chief Administrator, whereas the reserve prices of other properties were fixed by the Administrator. When the bids were received, the Administrator considering the huge stakes involved, forwarded the matter to the Chief Administrator. However, the Chief Administrator washed off his hands and did not decide it and sent the matter back to the Administrator, clearly indicating that the Administrator was delegated with the power to decide the bids. Thus, under compelling circumstances and duly considering the reports, the Administrator had taken the decision to reject the bids not only of the plaintiff but also six others. For the first time in the history of State of Haryana, such big properties were put to hammer on the prices indicated. The hitch in fixing the reserve price also indicates that the reserve price was not determined in a fair manner in the instant case. Not only the plaintiff but HUDA also did not place the delegation of power on record of the courts below. None of the officials of HUDA had been examined. Only an Assistant - a junior ranking person had been examined who was not posted there when the auction was held and came only in 2008. As the property was a commercial tower in Sector 29, Gurgaon, with huge commercial complex, the first appellate court was right in dismissing the suit.

34. Plaintiff came to the court for mandatory injunction, for issuance of allotment letter without payment of court fee also. It was incumbent upon the plaintiff to pay the ad valorem court fee as prevailing and the valuation of the suit should not have been less than the bid amount of Rs.111.75 crores, as rightly held by the first appellate court. The plaintiff is directed to pay the ad valorem court fee not only before the trial court but also before the High Court. Plaintiff is directed to deposit the court fee within two months from today, as payable.

35. Resultantly, the appeal is allowed. The judgment and decree passed by the High Court is set aside and that of the first appellate court is restored. In the facts and circumstances of the case, we impose costs of Rs.5 lakhs on the plaintiff/respondent to be deposited as : Rs.2.5 lakhs in the Advocates Welfare Fund and Rs.2.5 lakhs in the Supreme Court Employees Welfare Fund within a period of two months from today. .J.

(Arun Mishra) New Delhi; ..J.

January 27, 2017. (Amitava Roy)

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