

Nagaraju Vs. Andhra Pradesh State Financial Corporation and ors.

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Court : Andhra Pradesh

Decided On : Jul-27-1989

Reported in : [1991]71CompCas616(AP)

Judge : Sardar Ali Khan, J.

Acts : State Financial Corporation Act, 1951 - Sections 29

Appellant : Nagaraju

Respondent : Andhra Pradesh State Financial Corporation and ors.

Advocate for Def. : Y. Sivarama Sastry, ;V. Krishna Murthy and ;C.V. Mohan Reddy, Adv.

Advocate for Pet/Ap. : P. Ram Shah, Adv.

Judgement :

Sardar Ali Khan, J.

1. The petitioner prays for a writ of prohibition restraining the respondents from accepting the tender of Rs.3,35,000 for the petitioner's shed and plot (plot No.81, shed No.19, I.D.A.Cherlapally.

2. The salient facts of the case are that the petitioner is the sole proprietor of Vijaya Engineering Enterprises. He was allotted plot No.81 in Industrial

Development Area, Cherlapally, wherein he constructed a shed and installed machinery to run a glass- moulding small scale industry in the name and style of 'M/s Vijaya Engineering Enterprises.' The first respondent-State Financial Corporation lent Rs.2,15,000 to the petitioner for the purchase of the plot, erecting the shed, purchase of machinery, etc. The total amount agreed to be lent to the petitioner according to the contract is Rs.3,60,000. The first respondent-Corporation wanted to initiate action under section 29 of the State Financial Corporations Act, 1951, against the petitioner for recovery of the amount due from him. The petitioner filed O.S.No.286 of 1986 in the Court of the Principal District Munsif (East and North), Rangareddy District, and obtained a perpetual injunction against the defendants restraining them from committing breach of their loan agreement dated August 8, 1984. Thereafter, it seems that the petitioner filed an interlocutory application seeking directions to the first respondent- Corporation not to prevent him from manufacturing or running his factory, which was also granted. Then, he filed a petition for appointment of a Commissioner to remove the obstructions placed by the respondents in the running of his factory and a Commissioner was also appointed. He also moved the same court to commit the officials of the first respondent-Corporation to civil jail for two months for disobedience of the orders of injunction. The trial court passed orders committing the respondents to civil jail for two months as requested by the petitioner. However, the first respondent-Corporation filed C.R.P.No.3269 of 1986 against the order appointing the Commissioner and Transfer C.M.A.No.217 of 1988 against the order committing the respondents to jail. The civil revision petition and the Transfer C.M.A. were heard jointly by the High Court and were allowed by an order dated February 26, 1988. Thus, the litigation initiated by the petitioner in the civil court had come to an end by the orders passed in the civil revision petition and in the Transfer C.M.A. by the High Court.

3. The Corporation then seized the factory of the petitioner and kept it under lock and key in April, 1988, in exercise of the powers vested in it under section 29 of the State Financial Corporations Act. The petitioner makes a grievance of the fact that, during the last 12 months, the respondents invited tenders for the shed and plot of land only twice, while charging exaggerated items of expenditure in the account of the petitioner. The petitioner submits that, while, the Corporation had

agreed to lend him a sum of Rs.3,60,000 in all, they gave only Rs.2,15,000, due to which he could not operate the industrial unit started by him. The total amount due from the petitioner now is said to be Rs.4,35,000 odd. The respondent-Corporation invited tenders for the purchase of the unit of petitioner in July, 1988, but no tenders were submitted by anybody. Again, they invited tenders in January, 1989, and the highest tender received was for a sum of Rs.3,65,000. In the estimate of the petitioner, his shed and plot of land are likely to fetch not less than Rs.5,00,000 and his machinery is supposed to be worth another Rs.2,50,000. The petitioner states that he has been kept completely in the dark about the procedure adopted by the Corporation to bring the unit of the petitioner to sale to realise the dues of the Corporation. The petitioner further states that the respondent-Corporation has been discouraging persons to submit tenders with higher rates and cites examples of several such persons who are supposed to have approached the Corporation with higher offers which were not heeded by the respondent-Corporation. It is stated by the petitioner in his affidavit that one Sri B.Naga Malleswara Rao and Sri K.B.Prasad also approached the respondent-Corporation on February 2, 1989, with an offer of Rs.4,60,000 for his unit excluding the machinery and the stock-in-trade, which was not accepted by the Corporation. Thereafter, Sri A.Jagadish, an advocate practicing in the High Court, made an offer of Rs.4,25,000 for the shed and plot on January 20, 1989, which also evoked no response from the respondent-Corporation. The petitioner sent a letter dated January 27, 1989, to the respondent-Corporation stating that his plot and shed alone will easily fetch Rs.5,00,000 and, therefore, the tender of Rs.3,65,000 which is the figure originally given to the petitioner by the Corporation should not be accepted. Later on, the respondent-Corporation has informed the petitioner that the highest bid they have received is Rs.3,35,000 only and not Rs.3,65,000. The Corporation addressed a letter dated February 3, 1989, rejecting the plea of the petitioner that the tender of Rs.3,65,000 should not be accepted. The petitioner, therefore, assails the proposed acceptance of the offer of Rs.3,35,000 for the plot and shed as inequitable and mala fide on the part of the respondent-Corporation and further submits that he should have been taken into confidence at every stage of the proceedings leading to the sale of the shed and plot belonging to the petitioner.

4. By order dated March 20, 1989, Capt.D.Ramanaiah, who is the highest tenderer, was impleaded as party respondent No.4. Later on, counsel for the petitioner filed another W.P.M.P.No.10521 of 1989 to impleaded Sri T.Srinivas as party respondent No.5 in the writ petition on the ground that he is prepared to pay Rs.4,00,000 for the plot and shed of the petitioner by depositing 1/4th of the amount, namely, Rs.1,00,000 within 45 days. In that view of the matter, the petitioner states that Sri T.Srinivas is a necessary party to the writ petition, and he is impleaded as respondent No.5 in W.P.M.P.No.10521 of 1989.

5. In the counter-affidavit filed on behalf of the first respondent- Corporation, the stand taken is that the Corporation sanctioned a term loan of Rs. 3,67,000 to the petitioner on March 6, 1985, and a sum of Rs.2,16,400 was released on March 29, 1985. After the release of the above said sum of money, the petitioner entered into a partnership with another person, S.Ramesh, and got the firm registered with the Registrar of Firms. He expressed his inability by himself to implement the project without the assistance of another partner. This change of constitution from proprietor to partnership with another person was approved by the 1st respondent-Corporation subject to completion of legal formalities in view of the change of constitution. The petition has not completed the legal formalities as yet in spite of the fact that reminders have been given to him. It also came to light during inspection that he had let out a portion of the building to M/s Lakshmi Chemicals without prior permission of the first respondent-Corporation. A notice dated April 10, 1986, was issued recalling the loan and asking the petitioner to make payment of the outstanding loan amount on or before April 28, 1986, in default of which action was to be initiated under section 29 of the State Financial Corporations Act, 1951. The unit was seized on July 14, 1986, and possession of the assets was taken over by the Corporation. The petitioner filed O.S.No.286 of 1986, on the file of the Principal District Munsif, East and North, Rangareddi District at Saroor Nagar, and obtained a perpetual injunction. The course of this civil litigation has already been indicated in the narration of facts as given in the affidavit filed in support of the writ petition and need not be repeated here. Suffice it to state that, as a result of the orders passed in C.R.P.No.3269 of 1986 and C.M.A.No.54 of 1986, redelivery of possession of the unit to the Corporation was ordered thereby saying that there have been lack of bona fides on the part of the petitioner.

6. Apart from the above, the crucial aspect of the case which needs consideration is with regard to the proceedings taken for the sale of land and buildings and plant and machinery of the petitioner's unit. The advertisement for sale of land and buildings and plant and machinery was published in Eenadu and Deccan Chronicle on January 11, 1989. The last date for receipt of tenders was fixed as January 24, 1989, at 2.30 p.m. The offer made by Group Captain, D.Ramanaiah, for Rs.3.35 lakhs was accepted after negotiations and a letter dated February 27, 1989, was issued to him communicating the acceptance in principle subject to certain terms and conditions. The machinery was shifted from the premises to a godown to hand over the land and buildings alone to the successful bidder. The first respondent- Corporation vehemently denied that they have failed to carry out their part of the contract by not releasing the entire amount of Rs.3,60,000 to the petitioner. It is alleged that, after the release of a sum of Rs.2,16,400, the petitioner changed the constitution of the concern from proprietor to partnership but failed to carry out the legal formalities required for the same. He committed a further breach of the agreement by leasing out a portion of the premises to M/s Lakshmi Chemicals without obtaining prior permission from the first respondent- Corporation had no option but to initiate action under section 29 of the State Financial Corporations Act. The first respondent- Corporation is of the view that the figures quoted by the petitioner of the cost of land, building and plant and machinery are highly imaginary and exaggerated. It is submitted in their behalf that they had advertised the unit on August 26, 1988, for sale. Since there was no response to the said advertisement, once again an advertisement was made on January 11, 1989, fixing the last date for receiving the tenders as January 24, 1989. Only two tenders were received from Shri V.Arjun for Rs.3,50,000 for land and buildings and machinery and from Group Captain D.Ramaniah for Rs.2,57,000 for land, buildings and machinery. After negotiations with both the tenderers, the second tenderer, Group Captain D.Ramanaiah, raised his offer to Rs.3,35,000 for land and buildings only and expressed his inability to increase his offer for machinery. It is specifically denied by the Corporation that the petitioner was ever informed that the highest offer received was Rs.3.64 lakhs. According to the valuation of the Corporation itself, the value of the land and shed is Rs.2,78,000. The first respondent-Corporation, vide its letter dated February 3,

1989, had given the details of the finalisation of the offer, valuation of the properties under sale etc., to the petitioner.

7. The case of the 1st respondent-Corporation is that the petitioner cannot dictate his own terms in regard to the statutory recovery proceedings initiated under section 29 of the State Financial Corporations Act and the Corporation is not under an obligation to entertain any private offers made by the petitioner or by some other persons on his behalf. Therefore, in a nutshell, the case of the first respondent-Corporation is that the Corporation has strictly complied with the procedure for bringing the unit to sale. It had issued notices and published the notifications in daily newspaper and invited tenders for the sale of the assets. The two tenderers, who responded to the notification, were called for negotiations and offers were finalised in accordance with the norms and procedure to be observed for such transactions. The first respondent-Corporation specifically denies that any private persons have made any offers for the purchase of the assets of the petitioner. The only offer in response to the advertisement is from the two persons whose tenders were considered by the Corporation. The tender of Group Captain D.Ramanaiah was accepted in principle and the acceptance of the Corporation was communicated by the letter dated February 27, 1989, specifying the terms and conditions of sale of the unit. A separate advertisement for sale of machinery was published on March 21, 1989, for which no tender has been received. The plant and machinery were shifted from the premises to a godown after finalisation of the offer for land and building so that the same may be handed over to the purchaser after compliance with the terms and conditions stipulated in the letter dated February 27, 1989. Respondent No.4 has paid 25% of the amount and has submitted documents for completion of legal formalities which have been kept in abeyance in view of the interim orders passed in W.P.M.P.No.5283 of 1989, dated March 31, 1989.

8. It would be pertinent to reproduce here section 29 of the State Financial Corporations Act, 1951 (Act No.63 of 1951), which will hereinafter be referred to, for short, as 'the Act', which is in the following terms:

'29. Rights of Financial Corporation in case of default.- (1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any installment thereof, or in meeting its obligations in relation to any guarantee given by the corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of the powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) The Financial Corporation shall have the same rights and powers with respect to goods manufactured or produced wholly or partly from goods forming part of the security held by it as it had with respect to the original goods.

(4) Where any action has been taken against an industrial concern under the provisions of sub-section.(1), all costs, charges and expenses which in the opinion of the Financial Corporation have been properly incurred by it as incidental thereto shall be recoverable from the industrial concern and the money which is received by it shall, in the absence of any contract to the contrary, be held by it in trust to be applied firstly, in payment of such costs, charges and expenses and, secondly, in discharge of the debt due to the Financial Corporation, and the residue of the money so-received shall be paid to the person entitled thereto.

(5) Where the Financial Corporation has taken any action against an industrial concern under the provisions of sub-section (1), the Financial Corporation shall be deemed to be the owner of such concern, for the purpose of suits by or against the concern , and shall sue and be sued in the name of the concern.'

9. The above section deals with the rights of the Financial Corporation in cases of default and provides that, if any industrial concern makes any default in payment of any loan or advance or any installment, the Financial Corporation shall have the

right to take over the management or possession of the industrial concern as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation. Under sub-section (2) of section 29 of the Act, any transfer of the property made by the Financial Corporation vests in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property. The main object of section 29 is to provide the Financial Corporation with an effective remedy for the realisation of its debts from the defaulting industrial units by bringing the property to sale and to realise the property pledged or mortgaged or assigned to the Financial Corporation. If such a power is not given to the Financial Corporation, then it would stand in danger of losing the loan amounts which may become due from the industrial concerns which have committed default in repayment of the loans. The operation of the section further provides that any transfer so made by the Corporation shall be deemed to have been made by the owner of the property. Therefore, it is quite clear that the Financial Corporation is empowered to exercise its right to transfer, by way of lease or sale, the assets of the industrial concern which has committed default in the repayment of the loan or committed a breach of the terms of the agreement under which such a loan has been advanced to the industrial concern. The power so vested in the Corporation has to be exercised in a bona fide and legal manner in accordance with the rules prescribed for effective transfer of the property belonging to the industrial concern. Once this power is exercised lawfully without committing any breach of the rules and regulations which are applicable to such cases, then it is not liable to be challenged on extraneous grounds. The question, therefore, to be considered is whether the Financial Corporation has exercised the power vested in it in this case under section 29 of the Act in lawful manner or not.

10. It is an accepted principle established by a catena of decisions on the point that public property, owned by any instrumentality of the State, should be generally sold by public auction or by inviting tenders. This is with a view to secure the highest price for the property and ensure a fair dealing on behalf of the public authorities. In *Haji T.M.Hassan v. Kerala Financial Corporation*, : [1988]1SCR1079, precisely the same question has been considered in the following manner. It was held by the Supreme Court in the above case that public auction by inviting

tenders should be the general rule followed by the State Financial Corporation and any departure from such rule must be justified by compulsion and not by compromise. The ratio decided of the above case is that the instrumentality of the State is under an obligation to sell the property of a defaulting concern by public auction after inviting tenders. Observance of this rule not only fetches the highest price for the property but also ensures fairness in the activities of the State and the public authorities. The State and the Public authorities are supposed to deal fairly and justly and their dealings should be above board. Nothing should be done by them which gives an impression of bias, favoritism or nepotism. It may be necessary to refer to the decision in *Kayjay Industries P. Ltd. v. Ashew Drums P.Ltd.*, : [1974]3SCR678 , which lays down another fundamental principle which throws light on the controversy arising in the instant case. The properties which were brought to sale by court auction in that case consisted of land, factory, building, plant and machinery. The court auction was adjourned on various occasions. It was held that the court auction has been held in a conscientious and equitable manner. Mere inadequacy of price cannot demolish the court sale. Having tried its best to get the highest price, the sale was finalised. Under these circumstances, the Supreme Court came to the conclusion that the matter cannot be postponed indefinitely for the recovery of the dues on baseless expectations and distant prospects. The principle to be deduced from a reading of the above decision is that if the first respondent-Corporation has adopted the mode of public auction of the properties of the defaulting concern for the recovery of its dues and if such auction has been held in accordance with the procedure prescribed and in a fair and equitable manner, then there will be no illegality attached to such an auction and it cannot be assailed on the ground that a higher price could be fetched for the unit which has been brought to sale. This is a sound principle which has been laid down in order to put a seal of finality on the proceedings taken for the sale of the property and assets of a defaulting industrial unit. In fact, perhaps, in a majority of cases, if not all, it could always be said, after a public auction of any property , that it could have fetched a higher price and that the price obtained through the public auction is not an adequate price considering the value of the property. It may even be said that in some cases it may be quite true also that perhaps a property is capable of getting a higher price than what it fetched in a

public auction but that does not mean that mere inadequacy of price, in a notional sense of the term, or an expectation of a higher price vitiates the proceedings taken for bringing the property to public auction. In order to drive home the point that the sale is illegal or that the property has been grossly undervalued, it will have to be established beyond any doubt that there is something wrong in the proceedings adopted for the conducting of public auction or that breach of certain rules and regulations has been committed while bringing the property to sale or that a mistake has committed which clearly shows that it has resulted in not getting an adequate price for the property in public auction. In other words, the allegation must be concrete and specific to show that there has been a short-circuiting of the procedure adopted by the authority for bringing the property of the defaulting unit to sale.

11. The intrinsic merit of the submission made by learned counsel for the petitioner will have to be tested by examining the procedure adopted by the 1st respondent-Corporation for bringing the property of the industrial concern to sale by inviting tenders.

12. The first respondent-Corporation had advertised the unit on August 26, 1988, for sale and since there was no response, another advertisement was issued on January 11, 1989, fixing the last date as January 24, 1989. Two tenders were received, one from Sri V.Arjun for Rs.3,50,000 for land, building and machinery and the second from one Group, Captain D.Ramanaiah for Rs.2,57,000 for land, buildings and machinery. After negotiations with both the tenderers, the second tenderer, D.Ramanaiah, raised his offer to Rs.3,35,000 for land buildings only. It is difficult to find fault with the procedure followed by the Corporation in this regards. Wide publicity has been given to the sale of the property in two newspapers, viz., Eenadu and Deccan Chronicle. Tenders have been invited from the members of the public and the two tenders received have been considered in an impartial and just manner. The negotiations entered into with the second tenderer have in fact resulted in getting a higher offer of Rs.3,35,000 for the land and buildings only. Under these circumstances, there is no force in the argument that the respondent-Corporation has committed an irregularity in complying with the rules and regulations in accordance with which such industrial concerns are to be brought to

sale

13. Sri P.Ram Shah learned counsel for the petitioner, has submitted that while one composite tender was called for for the land, building and machinery, the first respondent-Corporation has accepted the tender for lands and buildings only from the fourth respondent-Group, Captain D.Ramamanaiah, for a sum of Rs.3.35 lakhs. They have removed the machinery from the premises and have finalised the tender only with regard to land and buildings. The essential point of his submission seems to be that had it been known that the machinery is going to be a separate part and tenders were called for only for land and buildings as distinct from the machinery, then several other persons also would have submitted their tenders. Therefore, according to learned counsel, having invited tenders for land, building and machinery, it was not open to the 1st respondent-Corporation to accept the tender only with regard to land and buildings leaving the machinery aside. An examination of the records in this case clearly shows that the above statement does not stand to scrutiny. The sale notice as published in the Deccan Chronicle dated January 11, 1989, reads as follows:

Sl. Name and address Line of Assets E.M.D. Date and Date and

No. of the unit activity Rs. time of time of

receiving opening

tenders tenders

1. M/s. Vijaya Engi- Glass Land 10,000 24-1-89 24-1-89

neering Enterpri- moulds (1906.07 at at

ses, Shed no.19, sq.yards) 2.30p.m. 3.00p.m.

I.D.A. building

Cherlapally (2009.25

sft.) and

machinery

14. By Andhra Pradesh State Financial Corporation, Rangareddy Branch- I

5-8-342, Chirag Ali Lane, Hyderabad-500 001.

Exercising rights under section 29 of SFC Act.

The assets of the above mentioned units are offered for sale in 'as is where is' condition. The intending purchasers may contact our Branch at the above address for inspection from January 12, 1989, and submit their individual offers separately on plain paper in sealed covers superscribed 'Tenders for the purchase of the assets of above mentioned units separately with E.M.D., as shown above by bank draft so as to reach our office on or before the date indicated above. The tenderer must also state the price offered for land and buildings as item (1) and plant and machinery as item (2) separately. The Corporation reserves the right to accept any tender or reject all without assigning any reason. In case any tender is accepted, the successful tenderer must deposit 25% of the bid amount including the earnest money deposit on the same day or on or before the day specified by the Corporation, failing which the amounts that may have been paid or deposited will be forfeited including the earnest money deposit.

The Corporation reserves to itself the right to vary the terms of this advertisement/sale without notice at its discretion.

For further details, our branch office may be contacted during office hours on any working day.

(sd.)..... Branch Manager R.R.Branch-I.'

15. It is quite clear from a reading of the publication that the tenderer has been asked to submit the price offered by him for land and buildings at item No.1 and plant and machinery at item No.2 separately. The Corporation had reserved the right to accept any tender or reject all without assigning any reasons. Therefore, the fourth respondent herein had submitted a tender in the following manner, viz., land and building Rs.2.30 lakhs and machinery Rs.0.27 lakhs, total 2.57 lakhs. On

negotiations, he has agreed to increase his offer for land and buildings from Rs.2.30 lakhs to Rs.3.35 lakhs and expressed his inability to raise his earlier offer of Rs.0.27 lakhs for machinery further. The authorities felt that they can obtain a better offer later for plant and machinery when the same is sold separately. Therefore, after considering the entire matter, they accepted the offer of Rs.3.35 lakhs for land and buildings (excluding plant and machinery) made by the fourth respondent. Therefore, it is not correct to say that only one composite tender was invited for the land, buildings and the machinery. In fact, it has been made clear that the tenders are to be submitted separately for the land and buildings and for the plant and machinery. Respondent No.4, in compliance with the terms of the tender, has submitted two separate tenders, as indicated above. After negotiations, his tender for land and buildings has been accepted and the tender for plant and machinery has been rejected in the hope that it may fetch a higher price later on. Therefore, even a minute examination of the procedure adopted by the first respondent- Corporation does not reveal any inherent defect under which it can be said that the sale is vitiated and that it should be set aside in the hope of getting a better price.

16. Sri P.Ram Shah , learned counsel for the petitioner, relied heavily on the decision in Ramana Dayaram Shetty v. International Airport Authority of India, : (1979)IILLJ217SC , stating that, in that case, it was held that the notice required was that only a person running a registered second class hotel or restaurant and having at least five years' experience as such should be eligible to submit a tender. That was construed to be a condition of eligibility and it was not held to be satisfied by any person who did not have five years experience of running a second class hotel or restaurant. The test of eligibility laid down was an objective test and not a subjective one. There cannot be any quarrel with well-laid principle of the Airport Authority's case, : (1979)IILLJ217SC . But, it is difficult to see how it is applicable to the facts of the instant case where the publication of the tender notice clearly states that tenders are to be submitted separately for land and buildings and for plant ad machinery and the fourth respondent has submitted his tender accordingly in compliance with the terms and condition of the said notification.

17. There is another aspect of the matter which needs consideration and that is the offer of Rs.4 lakhs which has been made by the fifth respondent. In an affidavit filed by the fifth respondent when he was a proposed respondent to be added as such in the writ petition, it is stated that he is an unemployed engineering graduate and had approached the petitioner in the writ petition, Sri. Ch.S.K.N.Nagaraju, and offered to him to take over the land and building of the shed bearing No.19 in I.D.A.Cherlapalli. He expresses his willingness to pay Rs.4 lakhs for the land and shed by depositing 1/4th of the amount, viz., Rs.1 lakh within 45 days. The first and the foremost thing to be considered in this regard is that respondent No.5 has not submitted any tender in response to the notification issued by the Financial Corporation. If he was desirous of purchasing the land and building of the shed No.19 in I.D.A.Cherlapalli as far back as in September, 1988, nothing prevented him from filing a tender when it was advertised for sale. It is true that the first respondent- Corporation cannot indulge in private negotiations for the sale of the properties of defaulting industrial concerns. The law is clear on the point that such properties are to be brought to sale as a matter of general principle only through public auction or by inviting tenders. Now, after the sale has been concluded in favour of the fourth respondent, respondent No.5 has come at a very belated stage at the time of hearing of this writ petition and is offering a sum of Rs.4 lakhs for the property which has fetched Rs.3.35 lakhs in public auction. In view of the earlier discussion in this judgment, the point which clearly emerges is that once the Corporation has resorted to its powers laid down in section 29 of the Act and has brought the assets of the defaulting concern to sale by public auction and if such public auction has been conducted in accordance with the norms and procedure governing such cases, then it would not be open for any one to claim cancellation of the sale on the basis that he is prepared to pay a higher price than what has been offered in the public auction. To accede to such a request would amount to putting the public auction or the tender accepted in a state of uncertainty. This, in my opinion, cannot be done under the law. If the public auction held by the first respondent-Corporation is valid and binding, then there is no question of cancelling a contract only because a higher price is offered at a later stage for the unit in question.

18. Learned counsel for respondent No.4, Sri V.Krishna Murthy, has submitted that the fourth respondent is the successful bidder and he has deposited the earnest money deposit of Rs.10,000 and after negotiations with regard to the tenders for building and land he has become the highest bidder. The second respondent communicated in his letter dated February 27, 1989, asking the fourth respondent to deposit the balance sale consideration of Rs.83,750 including the amount of Rs.10,000. Accordingly, on February 28, 1989, he has deposited Rs.73,750 and complied with all the legal formalities to take possession of the land and building as per the terms and conditions of the tender. The fourth respondent has to take possession of the unit on or before March 29, 1989, from the first respondent Financial Corporation but in view of the order of status quo dated March 19, 1989, passed by this court, he was not able to do so. In this view of the matter, the fourth respondent submits that it is a concluded contract after the payment of the balance of the sale consideration of Rs.73,750 and, therefore, the petitioner has no locus standi to challenge the sale in this writ petition. In *Jawahar Lal v. Union of India*, : [1962]3SCR769 , it is held that acceptance of offer must be absolute and unconditional. A tender was invited for the supply of coconut oil subject to certain conditions. In the acceptance letter, it was stated that the contract was concluded by the acceptance but it was subject to making a security deposit. The Supreme Court held that, reading the letter as a whole, it amounted to an absolute and unqualified acceptance of the offer or tender made by the appellant and was not intended to make a substantial variation in the contract by making the deposit of security a condition precedent instead of a condition subsequent. The essential point, therefore, is that once there is a concluded contract between the parties, it cannot be questioned. It is to be seen that, already, the deposit of Rs.73,750 has been made by the fourth respondent as required under the conditions of the contract. There is a valid and binding contract between the first respondent-Corporation and the fourth respondent which cannot be upset by a higher offer made by a person who has not been a tenderer. To the same effect is the decision in *Mahesvari Metals and Metal Refinery v. Madras State Small Industries Corporation*, : AIR1974 Mad39 , wherein it is held that there is a concluded contract between the parties when the material terms are complied with by the tenderer. The contract becomes a concluded contract even if the tenderer is

required to agreement after the acceptance of his tender. In the instant case, it is clear that there is a concluded contract between the first respondent-Corporation and the fourth respondent which does not call for any interference in this writ petition.

19. In view of the foregoing discussion, the writ petition is devoid of any merit. It is, accordingly, dismissed. No costs.

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