

Harpal Singh Vs. Haryana Urban Development Authority

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Court : Punjab and Haryana

Decided On : Feb-15-2001

Reported in : AIR2001P& H328

Judge : Jawahar Lal Gupta and; N.K. Sud, JJ.

Acts : Haryanan Urban Development (Disposal of Land and Buildings) Regulations, 1978 - Regulations 4, 5 and 6

Appeal No. : CWP No. 14199, 14537, 12811, 14469 and 15602 of 2000

Appellant : Harpal Singh

Respondent : Haryana Urban Development Authority

Advocate for Def. : Mr. Ashutosh Mohunta and; Ms. Palika Monga, AAG, Haryana

Advocate for Pet/Ap. : Mr. J.K. Sibal, Sr. Adv. and; Mr. Kumar Sethi, Adv.

Judgement :

Jawahar Lal Gupta, J.

1. These five writ petitions raise a common issue - Is the action of the Chief Administrator in refusing to accept the bid arbitrary Counsel for the parties have referred to the facts in CWP No. 14199 of 2000. These may be briefly noticed.

2. The Haryana Urban Development Authority published a notice indicating its intention to sell certain commercial plots by open auction. The auction was fixed for May 30, 2000. A reserve price of Rs. 7.55lacs had been fixed for Plot No. 42, Sector 21-C, Faridabad. The petitioners participated in the auction. They gave the bid of Rs. 16.40 lacs. 10% of the amount viz. 1.64 lacs were deposited at the spot. When the petitioners did not get a letter of allotment, they served a legal notice on the respondents on July 31, 2000. This was followed by a suit in the Court of Civil Judge (Jr. Division), Faridabad. However, the suit was withdrawn. Vide letter dated August 24, 2000, the petitioners were informed that their bid had not been accepted by the competent authority. A copy of this communication has been produced as Annexure P.7 with the writ petition. Aggrieved by the action, the petitioners have approached this Court through the present writ petition. It is alleged that the action of the authority is arbitrary and unfair. There was no material on the basis of which the authority could have come to the conclusion that the offer made by the petitioners should be rejected. Consequently, the petitioners pray that the impugned order/action be quashed.

3. A written statement has been filed on behalf of the respondents. It has been inter alia averred that about 20 sites had been auctioned. Various offers were received. These offers were 'much below the current market price.....' Thus, the auction 'with regard to all the 20 double storeyed service shops in Sector 20-C Faridabad' was cancelled. It has been further averred that '10% amount deposited by the petitioner was refunded to him on 14.8.2000 through cheque but the same was received back by the respondent as undelivered with the remarks of the postal authority that the petitioner does not reside at the given address'. The respondents have further pointed out that '3 sites were re-auctioned after a period of two months and on re-auction, the sites fetched a price ranging between Rs. 27 to 28 lacs whereas in the earlier auction, they had given a bid of only 16 lacs approximately'. On these premises, the respondents maintain that the writ petition deserves to be dismissed.

4. Counsel for the parties have been heard.

5. Mr. J.K. Sibal, learned counsel for the petitioners in CWP No. 14199 of 2000 has contended that the respondents could have rejected the offer of the petitioners only for good reason. In the present case, no relevant reason has been disclosed. An auction held after the passing of the impugned order cannot furnish a valid basis for the impugned action. Counsel has referred to the observations of a Full Bench of this Court in Surja Ram v. State of Haryana, 1984 PLJ 282 to contend that the Court has the jurisdiction to go into the validity of the action of an administrative authority.

6. In CWP No. 15602 of 2000 which is fixed for preliminary hearing today, Mr. M.S. Jain, learned counsel for the petitioner has contended that the Administrator of the respondent-authority has been delegated the powers of the Chief Administrator vide office order dated September 18, 1989. Thus, he should be deemed to have accepted the bid given by the petitioner.

7. Mr. Sanjeev Sharma, who appears for the petitioners in CWP Nos. 12811 and 14537 of 2000, has contended that in terms of Regulation 6 of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978, the authority could have exercised the power to reject an offer only before the closure of the bid sheet and not thereafter.

8. The claim made on behalf of the petitioners has been controverted by Mr. Ashutosh Mohunta, learned counsel appearing for the respondents.

9. Counsel for the petitioners have placed strong reliance primarily on the provisions of Regulation 6 to contend that a reserve price is fixed by taking relevant factors into consideration. Once the reserve price has been fixed and the intending purchasers give a bid for an amount higher than the reserve price, the Chief Administrator can reject it only for a valid reason. Not otherwise.

10. Before proceeding further, it is apt to notice the provision contained in Regulation 6 Clauses (1) and (2). It reads as under :-

6. 'Sale or 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 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 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'.

A perusal of the above provision shows that under Clause 1, the competent authority has to fix the reserve price by taking the various factors into consideration. Thereafter, the property is auctioned. The successful bidder can be allotted the site only on the 'acceptance of the bid by the Chief Administrator'. This provision has a two-fold purpose to serve. Firstly, the property can't be given away for a song. A minimum price has to be fixed. The purpose is to secure public funds. It is to guarantee that the authority does not give away the property at a loss. Secondly, even, after the auction has been conducted, the bidder gets no right even on deposit of 10% of the bid money till the offer is accepted by the Chief Administrator.

11. In the present set of cases, it is the admitted position that the petitioners had participated in the auction held on May 30, 2000. They had deposited 10% of the bid money also. However, their offers were not accepted by the Chief Administrator. In fact, it has been pointed out that the offers in all the 20 cases had been rejected. The reason as disclosed in the written statement is that the offer was on the lower side. This consideration was not irrelevant. The Chief Administrator has a duty to ensure that the property fetches the due price. If he rejects an offer on the ground that the price is inadequate, his action cannot be said to be arbitrary or unfair.

12. Mr. Sibal contends that the reason given by the respondents is arbitrary. In fact, on August 14, 2000, there was no material before the authority on the basis of which it could have taken the view that the offer was inadequate. On the other hand, Mr. Mohunta, counsel for the respondents points out that the authority is aware of the prevailing market price. Various properties are being sold at different places all the time and if it finds that the price is inadequate, it can refuse to accept an offer.

13. After consideration of the matter, we find that in the present set of cases, the authority had not acted arbitrarily in rejecting the offer. It is undoubtedly correct that the reserve price of atleast one of the plots was fixed at Rs. 7.55 lacs. It is also true that the petitioners in CWP No. 14199 of 2000 had undoubtedly offered an amount of Rs. 16.40 lacs. Yet, the fact remains that similar properties were auctioned on October 23, 2000 for Rs. 27 to 28 lacs. The events that have followed the passing of the impugned order have clearly supported the view taken by the authority.

14. Mr. Sibal points out that the averment in the written statement that the three sites 'were auctioned after a period of two months' is inaccurate. The auction in dispute had taken place on May 30, 2000. A subsequent auction was fixed for July 20, 2000. The petitioners' plots were not included in those auctions. The auction held on October 23, 2000 was not within 'two months' and as such, the reply filed on behalf of the respondents is inaccurate.

15. It appears that the reference to two months is relatable to the date on which the authority had rejected the offer of the petitioners viz. August 14, 2000. Looked at from that point of view, we cannot say that the averment in the written statement is inaccurate. In any event, the view taken by the authority has been borne out by the subsequent events. This is clearly indicative-of the fact that the reason given for rejection of the offer made by the petitioners was not arbitrary or unfair.

16. Mr. Sibal has referred to the decision of the Full Bench of this Court in Surja Ram's case (supra). Herein, their Lordships were pleased to hold that a person whose bid has been rejected, has the locus standi to approach the Court. It was also observed that if the decision is found to be arbitrary or based on extraneous

considerations, the Court can intervene. There is no quarrel with the proposition. However, in the present cases, we do not find that the authority had acted arbitrarily or on extraneous considerations.

17. It has been then contended by Mr. M.S. Jain that the bids made by the various persons should be deemed to have been accepted. The powers of the Chief Administrator had been delegated to the Administrator vide letter dated September 18, 1989. Reliance in support of this submission is placed on the following four lines in para 6 of CWP No. 15602 of 2000:-

'The Administrator, respondent No. 2 has been delegated powers of the Chief Administrator, HUDA vide office memo No. ADA(R)-89/26225 dated 18/9/1989 and empowered to accept auction bids and the auction and the bid in dispute.'

18. A copy of the letter dated September 18, 1989 has not been placed on the file. What was delegated To what extent? There is no answer. In any case, nothing has been pointed out to show that the Administrator had accepted the petitioner's offer. Thus, the question of the respondent-authority being bound by any action of the Administrator does not arise. Administrator was present. Who was the Administrator? For how long was he present There is nothing on the file. Thus, we cannot persuade ourselves to hold that the auction should be deemed to have been accepted.

19. Mr. Sanjeev Sharma, learned counsel for the petitioners in CWP Nos. 12811 and 14537 of 2000 has contended that respondent Nos. 1 and 3 alongwith the nominee of respondent No. 2 were present at the time of the auction. The bid sheet was closed. Thus, the 'auction' should be deemed to have been accepted.

20. We are unable to accept this contention. The statutory regulation empowers only the Chief Administrator to accept a bid. There is nothing on record to suggest that the competent authority had passed any order of acceptance. In fact, the evidence on the record clearly shows that the Chief Administrator had rejected all the offers made on May 30, 2000. It deserves notice that whenever a regulation or a rule requires a particular thing to be done in a particular manner, the authority can discharge its function only in that manner and in no other. In the present

cases, the Chief Administrator having not accepted the offer, there is no scope for introducing a fiction that he should be deemed to have accepted the offer.

21. Counsel for the petitioners have also pointed out that even 10% of the amount of money which had been deposited by them has not been refunded so far. Mr. Mohunta states that the cheques were actually sent at the addresses given by the respective petitioners. If any one of them has not received the amount, fresh cheques shall be sent within one week from today.

No other point has been raised.

In view of the above, we find no merit in these petitions. These are, consequently, dismissed.

However, there will be no order as to costs.

22. Petitions dismissed.

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