

inderjeet Singh Vs. Mcd

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Court : Delhi

Decided On : Apr-16-2009

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Judge : Hima Kohli, J.

Acts : Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - Sections 4, 5 and 7; Code of Civil Procedure (CPC) - Sections 11; [Constitution of India](#) - Articles 14 and 226

Appeal No. : WP (C) No. 1107/1991

Appellant : inderjeet Singh

Respondent : Mcd

Advocate for Def. : Amita Gupta, Adv.

Advocate for Pet/Ap. : A.S. Chandhiok, Sr. Adv.,; Ritesh Kumar and; Nikhil Bhalla

Judgement :

Hima Kohli, J.

1. The present writ petition is filed by the petitioner praying inter alia, amongst others, for issuance of a writ of mandamus, directing the respondents No. 1 and 2,

MCD to execute a lease in perpetuity (99 years) in respect of shop No. 3635, Ward 11, Faiz Bazar, Netaji Subhash Marg, Daryaganj, New Delhi in favour of the petitioner, for quashing the notice dated 24/25.09.1990 calling upon the petitioner to hand over vacant possession of the aforesaid shop and pay damages for unauthorized use thereof w.e.f. 11.12.1981, till the date of vacation and for quashing the proceedings pending before the Estate Officer, respondent No. 3 herein.

2. Briefly stated, the facts of the case are that pursuant to an auction in respect of the aforesaid shop held by the respondent No. 1 on 15.04.1971, the petitioner was declared the highest bidder and allotted the shop by virtue of an indenture dated 04.08.1971, for a period of five years at the rate of Rs. 900/- per month. Thereafter, the petitioner continued in occupation of the aforesaid shop on the basis of extension granted by the respondent No. 1 for a period of 11 months. In September, 1977, the petitioner approached the respondent No. 1 with a request that the shop should be given to him on a 99 years leasehold basis. The said request was considered by the Standing Committee of the respondent/MCD, which passed Resolution No. 102 on 01.09.1977 (Item No. 65), to the effect that the mode of disposal of the said shop shall be changed on rent from 5 years license basis, to 33 years through open public auction.

3. On 17.01.1978, the respondent issued a letter to the petitioner calling upon him to hand over vacant possession of the shop to the MCD. As the petitioner failed to do so, the respondent issued him a letter dated 18.04.1978, followed by a petition filed under Sections 4 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the Act'). The aforesaid petition was disposed of by the Estate Officer vide order dated 31.03.1980 in favour of the respondent(the petitioner herein). The operative para of the said order is reproduced hereinbelow:

I have gone through the records filed by the petitioner MCD and its pleadings and the defence taken by the respondents. After judging the pros and cons of the case I am of the firm opinion that the duly allotted shop in a bid cannot be taken back without the due process of law and until and unless there is any infringement of

the terms and conditions of allotment and the allotment is cancelled after providing due opportunities and then assigning reasons to the cancellation of the shop. This aspect is totally missing in this case. On the other hand, the respondent's credence cannot be disbelieved as he is ready to cooperate with the petitioner MCD in every respect according to its preference of choice.

I, therefore, in the interest of principles of natural justice and finding law and equity in favour of the respondent hereby remand the case back to A.C. (L&E;) for taking fresh proceedings in this case in accordance with the laid down procedure of law.

4. It is an undisputed position that the respondent herein, did not challenge the aforesaid order by preferring an appeal or any other proceedings. Thus the said order became final between the parties. On 09.04.1981, a resolution was passed by the Standing Committee of the respondent No. 1 changing the mode of disposal of the shop in question and deciding that the said shop be allotted on leasehold basis for a period of 99 years, instead of 33 years. This was followed by a letter dated 08.05.1981 issued by the respondent/MCD to the petitioner informing him as below:

Dear Sir,

The Corporation vide decision No. 1029/GW/Corpn. dated 18.4.1981 have decided to allow you to continue in the above shop at the already fixed licence fee of Rs. 900/- p.m. plus a security of Rs. 10,000/- on your undertaking that the shop in question would be vacated at the time of re-auction if the bid does not come in your favour and the security money would be forfeited in case the shop is not vacated on the date of auction and the bid not going in your favour.

You, are, therefore, requested to pay a sum of Rs. 38,482.26 p. being the licence fee upto 31.5.1981 in addition to the sum of Rs. 10,000/- as surety money for the above purpose as a bank draft within 3 days of the receipt of this letter and execute a bond to this effect.

5. It is not disputed by the parties that the petitioner deposited a sum of Rs. 10,000/- with the respondent as security deposit. It is also not denied that the shop

was put to auction twice. On the first occasion, it was put to auction on 18.10.1981. Though a bid of Rs. 3,05,500/- was received for the shop, it is stated that the said bidder backed out and the auction could not, therefore, materialize. As a result, a second auction notice was given by the respondent No. 1 for holding an auction on 22.11.1981. The shop of the petitioner was put to auction on a 99 years leasehold basis. The conditions of the auction included the requirement of additional Rs. 2,000/- as security payable before the start of the auction. It, however, mandated that in case of shops put to auction on a 99 years leasehold basis, 25% of the bid amount would be payable at the fall of hammer and the balance within 30 days of the date of issue of acceptance letter in cash or bank draft/cheque good for payment. The petitioner deposited a sum of Rs. 2,000/- against the receipt dated 22.11.1981 issued by the respondent.

6. Though the petitioner was the highest bidder at Rs. 1,51,000/- and he tendered 25% of the bid amount in cash on the spot, the said amount was not accepted by the respondent. The respondent has stated in its counter affidavit that it refused to accept the said amount on the ground that the same was on a low side and as a result, the bid of the petitioner was rejected. Thereafter, in the very next month, i.e., on 10.12.1981, the Dy. Commissioner, MCD is stated to have cancelled the license of the shop in question. However, the stand of the petitioner is that the petitioner did not receive the said cancellation notice. As the petitioner failed to vacate the said shop in question, the respondent No. 1 initiated proceedings under Sections 4, 5 and 7 of the Act against him. The said proceedings culminated in an order dated 21.03.1986, passed by the Estate Officer whereby the petition filed by the respondent was dismissed. The operative paras of the aforesaid order are reproduced hereinbelow:

13. That after judging all pros and cons, I am of the considered opinion that the duly allotted shop in a bid cannot be taken back without fulfilling all requirements of law until and unless there had been any infringement of the term and conditions of allotment and allotment cancelled after providing due opportunity and assigning reasons to the cancellation of the allotted shop. This process of action had been totally ignored by the petitioner. On the contrary the Respondent's credence cannot be disbelieved as he co-operated with the petitioner, MCD in every respect

and the former acted lawfully throughout unto satisfaction of the petitioner. Also, the respondent is paying the licence fee meant for running the confectionery establishment and another licence is invariably got renewed annually by the Police Authority. He has been never taken to task for the infringement of any term and condition as laid down for running the confectionery establishment.

14. That with a view to equate the principles of natural justice and finding law and equity is in favour of the respondent, I decide the case accordingly against the petitioner. Also, with regard to Section 7 of the P.P. Act, 1971 (as amended from time to time) I hereby order that the security money of Rs. 10,000/- and the subsequent payments made after the auction held on 22.11.1981 be adjusted towards the highest bid of the auction.

Since the respondent has been in legal possession of the allotted shop without any lapse on his part, the bid preferred by him in the auction held on 22.11.81 must be honoured. On the basis of document filled by the parties it is established that the respondent has been in rightful possession of the shop undersuit. The letter purported cancellation of the allotment of the shop No. 3635, Daryaganj, Delhi had never been served upon the respondent against his signatures and as such the alleged cancellation stands nonest in the spirit of law. The petition filed by the petitioner under Sections 4, 5 & 7 of the P.P. Act, 1971 is hereby dismissed.

Pronounced in the open court today the 21st March, 1986.

7. It is pertinent to note that the aforesaid order of the Estate Officer was also not assailed by the respondent/MCD by filing an appeal or any other proceedings. After completion of the aforesaid two rounds of litigations, the respondent No. 1, after a gap of about four years, issued a notice to the petitioner calling upon him to hand over vacant possession of the shop in question and pay damages for unauthorized use of the shop at the rate of Rs. 4950/- per month w.e.f. 11.12.1981, till the date of vacation. In the aforesaid notice dated 24/25.09.1990 issued by the Addl. Dy. Commissioner(L&E;), MCD, mention was made of the earlier order dated 10.12.1981, passed by the Dy. Commissioner, MCD cancelling the license of the said shop. It was further asserted in the notice that the allotment of the shop in question stood cancelled since 10.12.1981. The petitioner sent a

reply dated 13.10.1990 to the aforesaid notice, denying the fact that he was an unauthorized occupant of the shop in question and was liable to be evicted therefrom. Despite the same, in December, 1990, the respondent No. 1 again filed a petition under Sections 4, 5 and 7 of the Act seeking eviction of the petitioner and damages for unauthorized occupation. Aggrieved by the said action, the present petition was filed by the petitioner.

8. Vide order dated 08.04.1991, notice to show cause was issued in the writ petition and simultaneously, the petitioner was granted an ex parte ad interim injunction that he would not be dispossessed from the shop in question till further orders and further, the respondents were restrained from cancelling the bid of the petitioner till the next date of hearing of the petition. The aforesaid interim order was confirmed vide order dated 15.11.1991, when 'Rule' was issued in the writ petition.

9. Counsel for the petitioner submitted that the impugned notice dated 24/25.09.1990, issued by the respondent/MCD is liable to be quashed as it is based on a cancellation notice dated 10.12.1981 issued by the Dy. Commissioner, MCD, which was the foundation of the second round of proceedings initiated by the respondent before the Estate Officer, under Section 4, 5 and 7 of the Act, and ultimately decided in favour of the petitioner herein. He drew the attention of this Court to the order of the Estate Officer dated 21.03.1986, where in para-2, reference was made to the very same order dated 10.12.1981 passed by the Dy. Commissioner, MCD, whereby he cancelled the license of the shop. It was stated by the counsel for the petitioner that in the order dated 21.3.1986, the Estate Officer categorically held that the notice for cancellation of allotment of the shop had never been served upon the petitioner against his signatures and as such, the said cancellation notice was non est. He submitted that as the respondent chose not to assail the findings of the Estate Officer, by going in appeal or preferring any proceedings to challenge the said findings, the same had attained finality and were binding on the parties.

10. On the other hand, counsel for the respondent/MCD disputed the aforesaid position and submitted that the respondent was well within its right to initiate fresh

proceedings under the Act since, as per the respondent/MCD, the petitioner was an unauthorized occupant. She submitted that such a right was granted by the Estate officer even in the first round of litigation which culminated in the order dated 31.03.1980. In this context, she drew the attention of this Court to the operative paras of the aforesaid order, wherein the Estate Officer remanded the case back to the MCD for taking fresh proceedings in the case in accordance with the procedure laid down in law. She stated that it was only thereafter that the respondent issued the cancellation order dated 10.12.1981 in respect of the license of the shop and initiated the second round of proceedings under the Act, against the petitioner. She submitted that the bid of the petitioner made in the auction held on 22.11.1981, not having been accepted by the respondent, it was well within its right to take out proceedings against the unauthorized possession of the shop by the petitioner under the Act.

11. This Court is unable to agree with the contention of the respondent that it could have based the subsequent proceedings initiated by it under the Act, on the strength of a cancellation notice dated 10.12.1981, which was tested in the earlier proceedings initiated by the respondent MCD under the Act and was held to be non est, by the Estate Officer in his order dated 21.03.1986. It is also undisputed that after suffering an adverse order at the hands of the Estate Officer in the second round of litigation, no appeal was preferred by the respondent. The aforesaid proceedings had thus attained finality. Hence, the said order dated 21.03.1986 would operate as res judicata and the subsequent proceedings sought to be initiated by the respondent by relying on the very same cancellation notice dated 10.12.1981, would not be maintainable, by application of the doctrine of res judicata, which is based on the salutary principle of attaching finality to a litigation and ensuring conclusiveness of a judgment, where both the proceedings filed, are based on the same cause of action. Reference may be made in this regard to the following judgments:

(i) Daryao v. State of UP : [1962]1SCR574

(ii) Hope Plantations Ltd. v. Taluk Land Board, Peermade and Anr. : (1999)5SCC590 .

(iii) Swamy Atmananda and Ors. v. Sri Ramakrishna Tapovanam and Ors. : AIR 2005 SC2392

(iv) Hukum Chand and Ors. v. DDA. : 152(2008)DLT565

12. Pertinently, the respondent has not questioned the aforesaid order dated 21.3.1986 even in the present proceedings, which fact is borne out from a perusal of the counter affidavit filed on record by the respondent/MCD. Hence, it does not lie in the mouth of the respondent to contend that merely because vide order dated 31.3.1980, the Estate Officer had remanded the case back to the MCD for taking fresh proceedings, the very same notice dated 10.12.1981, which was declared non est by the Estate Officer in the order dated 21.3.1986, in the second round of litigation initiated by the respondent/MCD under the Act, could lay the foundation of a third round of litigation under the Act. The principles of res judicata oust the jurisdiction of the Court for deciding a lis which has been disposed of on merits by a speaking order. The notice dated 10.12.1981 issued by the respondent, cannot be permitted to be the launching pad for the respondent to trigger off another round of litigation against the petitioner under the Act.

13. In these circumstances, this Court has no hesitation in holding that the petitioner is entitled to grant of the relief as set out in prayer (b) of the writ petition, and any attempt on the part of the respondent/MCD to reopen the issue by relying on the aforesaid cancellation notice dated 10.12.1981, is misconceived. As a result, any proceedings sought to be initiated by the respondent on the strength of the said notice are also liable to be quashed. Accordingly, the notice dated 24/25.09.1990 and the subsequent proceedings initiated under the Act on the basis of the aforesaid notice are, quashed.

14. Insofar as, the first relief sought by the petitioner for issuance of a writ of mandamus to the respondent to execute a lease in perpetuity for 99 years in respect of the shop in question is concerned, counsel for the respondent stated that the aforesaid relief sought by the petitioner is founded on the order of the Estate Officer dated 21.3.1986 passed in the second round of litigation, wherein it was directed that the bid preferred by the petitioner in the auction held on 22.11.1981, must be honoured and further, the Estate Officer ordered that the

security money of Rs. 10,000/- and the subsequent payments made after the auction as held on 22.11.1981, be adjusted towards the highest bid of the auction. Counsel for the respondent stated that the parameters of the powers of the Estate Officers are well defined and laid down in the Act and that the same do not permit him to pass orders of the nature as passed by him in the present case. She contended that the Estate Officer could have either accepted the petition filed by the respondents under Sections 4, 5 and 7 of the Act, or rejected the same. However, he could not have called upon the respondent to honour the bid offered by the petitioner in the auction held on 22.11.1981 and/or directed adjustment of money paid by the petitioner, towards the highest bid. Hence, it was urged that the said order being beyond the jurisdiction of the Estate Officer, is not legally binding upon the respondent and cannot entitle the petitioner to seek any directions to the respondent, to execute a lease in perpetuity for 99 years in respect of the shop in his favour.

15. In support of her contention that if an order is a nullity, it cannot be treated as res judicata for subsequent proceedings, counsel for the respondent relied on the following judgments:

(i) Shakuntla Devi v. Kamla and Ors. : (2005)5SCC390

(ii) State of Haryana and Ors. v. M.P. Mohla : (2007)1SCC457

(iii) Rajan Ram Singh v. Mahesh : (2008)9SCC54 .

16. Reliance is placed by the respondent on the following judgments to urge that mere acceptance of bid at a public auction and deposit of a percentage of the bid amount would not constitute transfer of title till the same is approved by the competent authority and a confirmation letter issued to the bidder:

(i) Laxmi Kant and Ors. v. Satyawan JT 1996 SC 746

(ii) DDA v. Ravindra Mohan Aggarwal : [1999]2SCR706

(iii) Rajasthan Housing Board and Anr. v. G.S. Investments : (2007)1SCC477

(iv) Haryana State Agricultural Marketing Board v. Sadhu Ram : AIR 2008 SC2411

17. Opposing the aforesaid plea, counsel for the petitioner strenuously urged the Court to consider that the case of the petitioner for seeking directions to the respondent to execute a lease deed in perpetuity in respect of the shop was not based solely on the order of the Estate Officer, dated 21.3.1986. He stated that rather, the claim of the petitioner for the said relief was based on a Resolution dated 9.4.1981 passed by the Standing Committee of the MCD, on the basis of a representation made by the petitioner challenging the mode of disposal of the shop in question by deciding to allot it on lease hold basis for a period of 99 years instead of 33 years, read together with a communication dated 8.5.1981 addressed to the petitioner. It was urged that a conjoint reading of the Resolution dated 9.4.1981, letter dated 8.5.1981 and the defence of the petitioner before the Estate Officer as recorded in the order dated 21.3.1986, entitles the petitioner to remain in the property for a period of 99 years.

18. It was argued on behalf of the petitioner that the Estate Officer had framed five issues which were decided vide order dated 21.3.1986 and that each issue is a finding of fact and ought to be treated as steps in aid of the decision as to whether the petitioner was in lawful occupation of the shop in question or not. In support of the plea that a perusal of the communication dated 8.5.1981 addressed by the MCD to the petitioner established that the bid was deemed to have been granted in favour of the petitioner and hence the principles of promissory estoppel came into play, a judgment of the Supreme Court in the case of Southern Petrochemical Industries Co.Ltd. v. Electricity Inspector and ETIO and Ors. reported as : AIR 2007 SC1984 was relied upon. Reference was also made to a judgment of the Division Bench of the Calcutta High Court in the case of Shri Krishna Investment and Ors. v. Union of India and Ors. reported as : AIR1976 Cal333 , to contend that Section 5 of the Act contemplates adjudication prior to making an order and such adjudication requires reasons to be recorded by the Estate Officer.

19. Counsel for the petitioner argued that the respondent being an instrumentality of the State, is under an obligation to act in public good and in public interest, not

only while discharging its constitutional and statutory obligations, but also in discharging its contractual obligations. In this regard, he relied on a judgment of the Supreme Court in the case of ABL International Ltd. and Anr. v. Export Credit Guarantee Corporation of India Ltd. and Ors. reported as (2004) 3 SCC 533. Reference was made to Explanation VIII of Section 11 of the CPC to contend that the order of the Estate Officer dated 21.3.1986 will operate as res judicata in the present proceedings, and in the said context, reliance was placed on the following judgments:

(i) Satish Nambiar v. Union of India and Anr. : 150(2008)DLT312

(ii) Hukum Chand and Ors. v. Delhi Development Authority and Ors. : 152(2008)DLT565

(iii) Daya Sapra v. Vishnu Dutt Sharma 2008 (100) DRJ 578

20. While deciding the first issue, a brief reference has been made to the doctrine of res judicata, but in the context of examining the attempt on the part of the respondent to yet again initiate proceedings under Sections 4 and 7 of the Act by relying on a cancellation notice dated 10.12.1981, which was a subject matter of determination in the earlier proceedings filed by the respondent under the very same provisions of law, and turned down by the Estate Officer, vide order dated 21.03.1986.

21. However, can reliance on the findings of the Estate Officer as contained in the order dated 21.03.1986 entitle the petitioner to invoke the doctrine of res judicata, in terms of Section 11 of the CPC to claim entitlement to execution of a lease deed in perpetuity in respect of the shop? One must remember that the Estate Officer can exercise his powers and the discretion vested in him by virtue of the provisions of the Act, only within the parameters as defined under the Statute. In other words, the Estate Officer is vested with the power to give a decision only on the issue of eviction and/or damages in respect of a public premises. Reference was made by the counsel for the petitioner to the findings of the Estate Officer in respect of issue No. (e) to the effect that the respondent having failed to refund the security amount and the earnest money deposited by the petitioner, when he

participated in the auction bid, the bid ought to be honoured by the respondent. The said reliance on the part of the petitioner has to be examined in the light of the binding nature of the decision in respect of the issues that arose for consideration in the lis between the petitioner and the respondent before the Estate officer.

22. The findings returned by the Estate Officer in the order dated 21.3.1986 were in the context of arriving at a conclusion as to whether the petitioner was liable to be evicted from the shop and pay damages as claimed by the respondent. In the process of returning a finding to the said effect, if the Estate Officer examined the factual position pertaining to the efforts made by the respondent to put the shop in question to auction and participation of the petitioner in the said auction process, it cannot be accepted that the said findings of fact are of such a nature that they would bind the respondent to execute a lease deed in perpetuity in favour of the petitioner, in respect of the shop in question. The facts pertaining to the auction process could have at best been treated as the ground work for the decision taken by the Estate Officer on the issues of unauthorized occupation of the shop by the petitioner and the damages, if any, liable to be paid by him. But the same cannot be stretched to the point of being treated as conclusive with regard to execution of a lease deed in perpetuity in favour of the petitioner, on the assumption that the bid made by him was accepted by the respondent and was binding on it. For the said reason, this Court is unable to agree with the contention of the counsel for the petitioner that the findings with regard to the auction bid, as returned by the Estate Officer, ought to be treated as *res judicata* between the petitioner and the respondent with regard to his claim for execution of a perpetual lease deed in his favour in respect of the shop.

23. Hence, the principles laid down in the case of *Daya Sapra* (supra) cannot come to the aid of the petitioner. Even in the case of *Hukum Chand and Ors.* (supra), a Division Bench of this Court observed that for a former decision to operate as *res judicata*, the requirement of Section 11 of the CPC is that the Tribunal which decided the former proceedings must either be a court of exclusive jurisdiction or a court of limited jurisdiction competent to try the issue raised in the subsequent suit. In the present case, though the court of the Estate Officer is a court of special and exclusive jurisdiction in respect of matters it is competent to

adjudicate upon, it cannot be held to be a court competent to try an issue pertaining to grant of a perpetual lease deed in favour of the petitioner, pursuant to an auction process undertaken by the respondent in respect of the shop in question. The determination of the Estate Officer in the case in hand would be on the question as to whether the petitioner was an unauthorized occupant of the public premises or not. As a step in aid of the said determination, if the Estate Officer examined the factual background of the case including the auction bid process undertaken by the respondent, it cannot be concluded that merely because the respondent/MCD did not challenge the order of the Estate Officer, whereby the petition filed by the respondent under Sections 4, 5 and 7 of the Act was dismissed, the latter was under an obligation to execute the lease deed in perpetuity in favour of the petitioner in respect of the shop in question. While the Estate Officer was entitled to examine the effect of the auction process so as to decide as to whether the petitioner was in authorized or unauthorized occupation of the shop in question, as elaborated in the judgments rendered in the cases of Satish Nambiar (*supra*) and Hukum Chand (*supra*), however, it has to be held that he lacked the inherent jurisdiction to direct the respondent/MCD to honour the bid made by the petitioner in the auction held on 22.11.1981.

24. Counsel for the respondent is justified in stating that any such findings returned by the Estate Officer would be a judgment without jurisdiction and hence the principles of *res judicata* would not apply. The Estate Officer lacked inherent jurisdiction to take a decision with regard to the auction process in respect of the shop in question and consequently declare the petitioner to be a successful bidder in a proceeding of limited jurisdiction where the scope of examination was limited only to whether the petitioner could be declared as an unauthorized occupant of the shop in question and, if so, the damages, if any, liable to be claimed by the respondent from him. Hence, the findings of the Estate Officer to the aforesaid extent are held to be a nullity and cannot bind the respondent on account of inherent lack of jurisdiction. As a result, neither the doctrine of *res judicata*, nor that of *estoppel* would be of any assistance to the petitioner.

25. The argument of the counsel for the petitioner that a conjoint reading of the resolution dated 9.4.1981 passed by the respondent, the letter dated 8.5.1981

issued to the petitioner by the respondent and the defence of the petitioner before the Estate Officer as recorded in the order dated 21.3.1986, would entitle the petitioner to remain in the property for 99 years, is misconceived. Simply because the respondent changed the mode of disposal of the shop in question on the representation of the petitioner by deciding to convert it from that of lease on 5 years' licence basis to 33 years through open public auction and subsequently to a 99 years' lease hold basis, would not confer any special privilege on the petitioner. Similarly, the letter dated 8.5.1981 issued by the respondent to the petitioner did not contemplate that if the bid went in his favour, the petitioner would automatically be entitled to claim execution of a 99 years' lease deed in his favour. For a bid to conclude in favour of a party in a public auction, acceptance thereof by the respondent is a pre-requisite. Merely because the earnest money was not refunded by the respondent to the petitioner, the same cannot vest any right in favour of the petitioner to enable him to claim that the auction had been concluded successfully in his favour. The petitioner has not been able to show any communication from the respondent confirming its acceptance of his bid at the public auction, which can be construed as a conclusive transfer of the shop in his favour.

26. The fact that the bid had not conferred any transfer of title in respect of the shop in favour of the petitioner, is also borne out by the fact that even the petitioner understood the same to be true by not following up the matter with the respondent by depositing the balance 75% of the bid amount with the respondent, after completion of the auction. Merely because after a lapse of almost 10 years from the date the public auction was held, the petitioner unilaterally remitted a sum of Rs. 1,32,070/- in August 1990 to the respondent as the balance price of the bid, cannot be the basis for accepting the contention of the petitioner that the bid had been finalized in his favour. Rather, even in the writ petition, the petitioner admitted that he never received any response from the respondent after he was declared as a highest bidder.

27. Counsel for the respondent is justified in relying upon the judgments in the cases of Ravindra Mohan Aggarwal (supra), Laxmi Kant (supra), Shilpa Shares and Securities (supra) and Haryana State Agricultural Marketing Board (supra) to

contend that the acceptance of a bid at public auction and deposit of 25% of the bid amount would not constitute transfer of property, and an auction attains finality only after it is approved by the competent authority and the decision is communicated to the bidder, by issuance of a confirmation letter. The present case cannot be treated as one where the petitioner altered his position pursuant to a promise made by the State. The doctrine of promissory estoppel is, therefore, not applicable to the facts of the present case. The respondent had neither withdrawn from any assurances given to the petitioner, nor had it sanctioned any benefits in favour of the petitioner, based on which, the petitioner could claim that he had altered his position pursuant to or in furtherance of the promises or representations made by the respondent. Thus, the principles of equity which is the very foundation of the doctrine of promissory estoppel, cannot be invoked in the present case by the petitioner.

28. The contention of the counsel for the petitioner that the petitioner is entitled to claim the relief of a mandamus against the respondent, by directing it to execute a 99 years' lease deed in perpetuity in favour of the petitioner in respect of the shop in the present proceedings on the ground that even in contractual matters, the State must act fairly and reasonably, as per the requirements of Article 14 of the [Constitution of India](#), has to be examined in the background of the facts of each case. No doubt the contractual obligation on the part of the State cannot divest a claimant to the guarantees offered under Article 14 of the [Constitution of India](#). However, it is equally true that the scope of judicial review in respect of the disputes pertaining to contractual obligations is far more limited, particularly, when the nature of dispute is such that the parties are required to be relegated to adjudication of their rights when there is a suitable efficacious alternative remedy available under the civil law. Refusal on the part of the respondent to accept the bid of the petitioner, even if it was the highest bid, cannot be treated as an unfair or unreasonable action on the part of the respondent while operating in the contractual field. It has been held in a catena of judgments that a bidder does not acquire any right to claim that an auction be concluded in his favour. A direction to the respondent/MCD to accept the bid of the petitioner as sought by the petitioner, would virtually amount to confirmation of the auction in favour of the petitioner, which is not a function of the court which falls within the scope of judicial review.

(Ref. : Union of India v. Mis. Bhim Sen Walaiti Ram : [1970]2SCR594 , Trilochan Mishra, etc. v. State of Orissa : AIR 1971 SC733 , State of Orissa v. Harinarayan Jaiswal : [1972]3SCR784 and State of Uttar Pradesh and Ors. v. Vijay Bahadur Singh : AIR 1982 SC1234 .

29. As held by the Supreme Court in the case of Tata Cellular v. Union of India reported as (1994) 6 SC 651, the scope of judicial review under Article 226 of the [Constitution of India](#) in contractual matters, would be to prevent arbitrariness and favoritism. However, the right of the State to refuse the lowest or the highest tender cannot be questioned on the ground of infringement of Article 14 of the [Constitution of India](#). Since the power of judicial review is not that of an appeal from the decision taken by the State in accepting or refusing a tender, the Court ought not to substitute its own decision with that taken by the State. The stand of the respondent in the present case that though the offer made by the petitioner was the highest, the same was rejected on the spot being on a lower side, cannot be questioned as the prime consideration for a State is not only to ensure fairness, but also to generate public revenue while dealing with public property and it is only in furtherance of public interest that the court ought to exercise its discretionary powers under Article 226 of the [Constitution of India](#).

30. In the background of the present case, it cannot be stated that refusal on the part of the respondent to accept the bid of the petitioner, was unfair, arbitrary or invalid. The respondent was under no obligation to accept the bid of the petitioner even if it was the highest bid and as such, no right of such a nature could be held to have accrued in favour of the petitioner, the enforcement of which can be sought in the present proceedings. For the foregoing reasons, this Court declines to grant the first relief sought by the petitioner. The writ petition is therefore partly allowed to the extent indicated above. Parties are left to bear their own costs.