

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 5861 OF 2009**

STATE OF PUNJAB & OTHERS

....APPELLANT(S)

VERSUS

MEHAR DIN

....RESPONDENT(S)

JUDGMENT

Rastogi, J.

1. The instant appeal arises from the judgment and order passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh dated 13th August, 2008 setting aside the order dated 24th August, 2006 passed by the Financial Commissioner Revenue, Patiala with a further direction to the competent authority to confirm the auction sale and complete all other formalities within three months.

2. The facts in brief culled out from the record and relevant for the purpose are that the sub-urban properties are to be disposed of in terms of the procedure for sale by public auction, as provided under Chapter III of the Punjab Package Deal Properties (Disposal)

Rules, 1976 (hereinafter referred to as “the Rules 1976”), framed by the State Government in exercise of its power conferred under Section 18 of the Punjab Package Deal Properties(Disposal) Act, 1976. Part III of Rules 1976 provides for transfer of urban properties.

3. The appellants being the custodian of the subject property initiated the process of putting the property to public auction through the notice published in Punjabi Tribune of 17th May, 1993, the extract of auction notice is reproduced as under:-

“Punjabi Tribune, Monday, 17 May 1993

AUCTION NOTICE

General public is informed that the following Sub Urban Land of Tehsil Malerkotla will be auctioned at the time and place given below. 1/5th of the bid amount shall be given at the spot in cash. The remaining conditions of the auction will be fold on the spot.

Town	:	Malerkotla
Place of Auction	:	At the spot
Dated	:	04.06.93
Time	:	10:00 A.M
Khasra No.	:	Area
185//22/2	:	7-0
191	:	7-10
12/2min	:	3-12
169//23/3/1	:	4-17
Kitte	4	22-17
Total Kitte	4	22-17

Sd/-
Tehsildar Revenue-cum-M.O. Malerkotla”

4. It has not been pleaded that the auction notice was given its wide publicity and affixed at the conspicuous place in the locality where the property is situated.

5. The Tehsildar Sales, Malerkotla conducted public auction on 4th June, 1993 and this fact is not disputed that only three bidders had participated in the bidding process and bid of the respondent, Mehar Din was the highest bid of Rs.3,90,000/-, which was provisionally accepted by the Tehsildar. Pursuant thereto, 1/5th of the bid amount, i.e., Rs.78,000/- was deposited by the respondent at the spot subject to its confirmation by the Sales Commissioner in terms of the procedure for sale by public auction provided under Rule 8(1)(h) of Chapter III of the Rules 1976.

6. On perusal of records, the competent authority (Sales Commissioner) was of the view that the public property has not been put to proper publicity and the present bid is inadequate and failed to record his satisfaction for confirmation of the bid and accordingly the bid was cancelled by an order dated 2nd July, 1993 with a further direction for re-auction and to be auctioned in his presence with wide publication to fetch the maximum price.

7. The order dated 2nd July, 1993 became the subject matter of challenge at the instance of the respondent in appeal before the

Chief Sales Commissioner, Sangrur, who after perusal of the record, returned a finding that on the date of auction, i.e. 4th June, 1993 conducted by the Tehsildar Sales, only three persons had participated in the bidding process and arrived to a conclusion that the Tehsildar Sales had not conducted the bidding process properly and adequate publicity was not made and under its order dated 24th October 1994, confirmed the order of the Sales Commissioner cancelling the bid.

8. The order of the Chief Sales Commissioner, Sangrur dated 24th October, 1994 came to be challenged by the respondent under Section 10 of the Act 1976. The Divisional Commissioner, after recording a finding that no opportunity was afforded to the bidder before passing of the order of cancellation of the bid dated 4th June, 1993 and after 1/5th of the bid towards earnest money was deposited and being the highest bidder, no reasons were assigned for cancellation and accordingly by its order dated 17th September, 2003, set aside the order of cancellation of the competent authority dated 2nd July, 1993 and so also of the appellate authority dated 24th October, 1994.

9. The order dated 17th September, 2003 became the subject matter of challenge under Section 15(1) of the Act, 1976 before the

Financial Commissioner Revenue, Punjab, Chandigarh at the instance of the appellants and after re-appraisal of the record, the Financial Commissioner, Revenue, by its order dated 24th August 2006, observed as under:-

“4. Mehar Din has the following things against him as per the arguments of the State in the courts below. First-Although this auction has fetched more money than the previous auction held in 1983 but could have still fetched a better price. This is duty of the Sale Agency to try to get the maximum price people and even in this, Mehar Din's name is mentioned twice. That leaves effectively a total of three persons. Collusion between the Sales Agency and the possible vendors is likely. Thirdly, this being sub-urban land as the State (Tehsildar Sales) mentions, the land could have fetched Rs.8-10 lakhs. Even basically, the Sales Commissioner is not bound to accept the price settled in the auction because he is to always strive for a better price.

5. Therefore, I accept the appeal and set aside the orders dated 17.09.2003 of the Commissioner, Patiala Division. The land is to be re-auctioned after proper munadi.”

10. The order passed by the Financial Commissioner dated 24th August, 2006 became the subject matter of challenge at the instance of the respondent by filing writ petition before the High Court under Articles 226 and 227 of the Constitution.

11. The High Court proceeded on the premise that the reasons adopted by the Financial Commissioner were based on conjectures and surmises and once the auction purchaser's bid was higher than the reserved price which was notified at site and more than the price of the last auction and in the absence of any irregularity or illegality being committed in the auction proceedings, there is

no reason for vitiating the auction process and accordingly, while setting the aside the order of the Financial Commissioner dated 24th August, 2006 directed the competent authority to confirm the sale and complete other formalities under the order dated 13th August, 2008. The operative part of the order of the High Court dated 13th August, 2008 is reproduced hereunder:-

“A perusal of the aforesaid observations and reasons adopted by the Financial Commissioner clearly shows that the said revisional authority has acted only on conjectures, surmises and suppositions. It is not in dispute that the price as offered by the petitioner-auction purchaser was much more than the price of last auction and there is no material produced by the State to show that there was any irregularity or illegality in the auction proceedings that might have taken place due to which it stood vitiated. Still further, nothing could be shown that the value of the land was Rs.8 to 10 lacs as noticed by the Financial Commissioner in the impugned order. Furthermore, no material has been shown which may impel to infer that there was any connivance between the three persons who had given bid and that the price as offered by the petitioner was not the real price of the land in question. The impugned order dated 24.08.2006 is thus, legally unsustainable and is accordingly set aside. The writ petition is allowed and it is directed that the competent authority shall confirm the sale and complete all formalities within a period of three months from the date of receipt of a certified copy of this order.”

12. We have heard learned counsel for the parties and with their assistance perused the material placed on record.

13. The Scheme of Chapter III of Rules, 1976 is related to transfer of urban properties laying down the procedure to be followed for sale by public auction. The extract of Rule 8 of the Rules, 1976 relevant for the purpose is reproduced hereinbelow:-

“8. (1) Procedure for sale by public auction. - (a) The urban property to be sold by public auction shall be sold by Tehsildar (Sales) or Naib-Tehsildar (Sales).

(b) The Tehsildar (Sales) or Naib-Tehsildar (Sales) shall order a proclamation of the intended sale to be made in the language of the principal civil court of original jurisdiction within whose jurisdiction the property is situate.

(c) Notice of the intended sale shall be given at least fifteen days before the proposed sale and every such notice shall indicate the date, time and place of the proposed sale, the description of the urban property to be sold, its location and boundaries, where possible the terms and conditions of the sale and any other particulars which the Tehsildar (Sales) or Naib-Tehsildar (Sales) considers material. One copy of the notice shall be affixed at a conspicuous place in the locality where the property is situate. The notice of the intended sale shall also be given by beat of drum in the locality, where such property is situate.

(d) Where the Tehsildar (Sales) or Naib-Tehsildar (Sales) thinks it desirable that the notice of the intended sale of an urban property should also be published in the daily newspapers, he may get such notice published accordingly before putting it to auction.

(e) The Tehsildar (Sales) or Naib-Tehsildar (Sales) may by an order in writing and after recording reasons for so doing withhold sale of any urban property notified for sale.

(f) An urban property put to auction shall be sold subject to a reserve price fixed in respect thereof, but such reserve price shall not be disclosed.

(g) The Tehsildar (Sales) or Naib-Tehsildar (Sales) may, for reasons to be recorded, in writing, adjourn the sale to a specific date and hour and an announcement to that effect shall be made at the time of the adjournment of the sale.

Provided that where a sale is adjourned for a period exceeding fifteen days, a fresh notice shall be given in the manner indicated in clause (c).

(h) A person declared to be the highest bidder at the public auction shall be required to pay in cash, at the fall of the hammer, the whole amount of the bid if it does not exceed Rs. 500 in case the amount of bid money exceeds the said amount of Rs. 500, he shall be required to pay an amount equal to 20 per cent of the bid as earnest money and to pay the balance within fifteen days of the date of receipt of intimation of acceptance of the bid. If this amount is not paid, the bid shall be deemed to have been cancelled and the urban property put to re-auction. The acceptance of the highest bid in respect of which a deposit has been made shall be provisional, subject to the confirmation of sale by the Sales Commissioner, provided that no bid

shall be finally accepted until after the expiry of ten days from the date of auction.”

14. As per Rule 8(1)(c), auction notice has to be given wide publicity and one copy of the notice is to be affixed at the conspicuous place in the locality where the property is situated and as per Rule 8(1)(h), if the bid money exceeds Rs.500/-, the bidder shall be required to pay an amount equal to 1/5th of the bid amount as earnest money and acceptance of the highest bid in respect of which the deposit has been made shall be provisional, subject to confirmation by the Sales Commissioner.

15. It is not disputed that the auction sale conducted by the Tehsildar Sales on 4th June, 1993 was provisionally accepted in favour of the respondent being the highest bidder. Pursuant thereto, 1/5th of the bid amount as earnest money was deposited, but that acceptance being provisional, was subject to confirmation by the Sales Commissioner. When the proceedings of auction were placed for confirmation before the competent authority (Sales Commissioner), the competent authority after perusing the record of auction observed that the provisional bid is quite on the lower side and looking to the location of the property in question, it needs a good publicity to fetch the better sale price of the subject land

and while cancelling the auction sale, directed to initiate the process of re-auction and further observed that he should be informed in advance and intended to remain present at the time of auction by order dated 2nd July, 1993. That apart, it is not disputed that total applicants were fourteen but only three bidders had participated in the bidding process.

16. Proceeding on the said premise, the appellate authority, after due appraisal of record, confirmed the action of the Sales Commissioner in cancelling the auction and was finally confirmed by the Financial Commissioner(the revisional authority), under its order dated 24th August, 2006, of which reference has been made.

17. From the Scheme of Chapter III of Rules 1976, it is apparent and explicit that even if the public auction has been completed to the highest bidder, no right is accrued till the confirmation letter is issued to him as the acceptance of the highest bid is provisional, subject to its confirmation by the competent authority. Undisputedly, the competent authority (Sales Commissioner) has failed to confirm the bidding process and after recording its satisfaction cancelled the auction bid under its order dated 2nd July, 1993.

18. This Court has examined right of the highest bidder at public auctions in umpteen number of cases and it was repeatedly pointed out that the State or authority which can be held to be State within the meaning of Article 12 of the Constitution, is not bound to accept the highest tender of bid. The acceptance of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held. In the present case, no right had accrued to the respondent even on the basis of statutory provisions as being contemplated under Rule 8(1)(h) of Chapter III of the Scheme of Rules, 1976 and in terms of the conditions of auction notice notified for public auction.

19. The scope of judicial review in the matters of tenders/public auction has been explored in depth by this Court in a catena of cases. Plausible decisions need not be overturned and, at the same time, latitude ought to be granted to the State in exercise of its executive power. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for Courts to assume jurisdiction and remedy such ills.

20. In ***Tata Cellular v. Union of India***¹ it was held that judicial review of government contracts is permissible in order to prevent arbitrariness or favouritism. It was fearlessly opined in this case as under:-

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

(emphasis in original)

21. The exposition of law on the subject has been consistently followed by this Court even in the later decisions holding that superior Courts should not interfere in the matters of tenders, unless substantial public interest was involved or the transaction

¹(1994) 6 SCC 651

was malafide. It was consistently stressed by this Court that the need for overwhelming public interest should always be kept in mind to justify judicial intervention in contracts involving the State and its instrumentalities and while exercising power of judicial review in relation to contracts, the Courts should consider primarily the question whether there has been any infirmity in the decision-making process.

22. This view has been further considered by this Court in ***Jagdish Mandal v. State of Orissa and Others***², wherein it was observed as under:-

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and

² (2007) 14 SCC 517

succour to thousands and millions and may increase the project cost manifold....”

23. This Court in a recent judgment in ***Silppi Constructions Contractors v. Union of India and another***³ held as under:

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

24. The law on the subject is settled that the Courts being the custodian of fundamental rights are under an obligation to interfere where there is arbitrariness, irrationality, unreasonableness, malafides and bias, if any, but at the same time, the Courts should exercise the power of judicial review with a lot of restraint, particularly in contractual and commercial matters.

³ (2020) 16 SCC 489

25. Undisputedly, the provisional bid, in the instant case, was not confirmed by the competent authority (Sales Commissioner) and not being accepted after recording its due satisfaction by an order dated 2nd July, 1993 and the decision of the authority in passing the order of cancellation of the auction bid was scrutinized/examined by the appellate/revisional authority and the discretion exercised by the competent authority in taking decision of cancellation was upheld at later stages.

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

27. To the contrary, the limited scope of judicial review for which interference could have been permissible to prevent arbitrariness,

irrationality, bias, malafides or perversity, if any, in the approach of the authority while dealing with the auction proceedings, was never the case of the respondent at any stage. The High Court has recorded a finding to the contrary that the appellants have failed to show any irregularity or illegality in the auction proceedings and in the absence whereof, the auction proceedings could not be held to be vitiated. The premise on which the High Court has proceeded in recording a finding, particularly, in the matters of auction of public properties is unsustainable in law and that apart, it is also not in conformity with the Scheme of auction of public properties as defined under Chapter III of Rules 1976.

28. In our considered view, the finding recorded by the High Court in the impugned judgment is unsustainable and deserves to be set aside.

29. Before we conclude, it has been informed to this Court that the respondent had deposited Rs.78,000/- being 1/5th of the bid amount as earnest money on 5th June, 1993. Let the amount of Rs.78,000/- deposited by the respondent be refunded with interest at the rate of 12% per annum from the date of its deposit until its actual payment. The order be complied with within two months from today.

30. The appeal succeeds and accordingly allowed. The impugned judgment of the High Court dated 13th August, 2008 is hereby set aside.

31. Pending application(s), if any, shall stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(ABHAY S. OKA)

NEW DELHI
MARCH 02, 2022