that the forfeited amount may be reduced from 10 percent to 5 percent. Therefore, the revision petition is accepted and the order of Chief Administrator and Estate Officer, Patiala Development Authority, Patiala, are rectified to the extent that forfeiting half amount out of the amount deposited as earnest money, the half amount may be refunded to the petitioner. The order was kept reserved on 27.9.2012 which is issued today. The parties may be apprised of the order.........”

7. PUDA now impugns the above-stated order, interalia, contending that since forfeiture to the extent of 10% is permissible, no interference ought to have been made by the Revisional Authority.

8. Having heard learned counsel for the petitioner we do not find any ground to interfere with the impugned order. We say so for the reason that under Section 45(3) of the Punjab Regional and Town Planning and Development Act, 1995, wherever applicable, no forfeiture exceeding 10% of the total sale consideration, interest and other dues payable by an allottee, is permissible. In the instant case, the Estate Officer has imposed penalty of forfeiture to the maximum, namely, 10% despite the fact that the delay in surrendering two plots by respondent No.2 did not cause any severe prejudice like financial loss to PUDA as the earnest money deposited by him for those two plots was retained by PUDA till the refund was made after surrender of those plots. Similarly, the allottees in waiting list also did not suffer as their liability to pay the due installments commenced only after the formal allotment. Be that as it may, the forfeiture of 5% amount is sufficient to compensate PUDA if at all any loss was caused to it. That apart, the Revisional Authority has acted within the ambit of its statutory powers under Section 45(8) of the Punjab Regional and Town Planning and Development Act, 1995, hence no case to interfere with the aforesaid order in exercise of our writ jurisdiction is made out.

9. Dismissed.

Petition dismissed.

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PUNJAB AND HARYANA HIGH COURT

<u>Before: Satish Kumar Mittal & Mahavir S. Chauhan, JJ.</u>

C.W.P. No.15975 of 2000 Decided on: 03.12.2013

Lalit Kumar and another Petitioners

Versus

State of Haryana and others Respondents

Present: Mr. Adarsh Jain, Advocate, for the petitioners.

Mr. Anjum Ahmed, Additional Advocate General, Haryana, for respondent No.1.

Mr. Durgesh Aggarwal, Advocate, for Mr. Sumeet Goel, Advocate, for respondent Nos.2 and 3.

Punjab Agricultural Produce Markets Act, 1961 (23 of 1961), Section 18 – Auction of plots – Delay in rejecting the bids – Legality of -- Chief

Administrator being a public authority was expected to decide fate of the auction within a reasonable period and period of one year five months and ten days consumed by that authority to reject bid on the plea of absence of Administrator, Market Committee at the auction cannot be said to be reasonable ground -- Administrator's non-presence, perhaps, could be a ground for not holding of the auction but it was held without any objection from any quarters -- Respondents directed to finalize the auction process, issue letters of allotment to the petitioners and give possession to them as expeditiously as possible.

(Para 12-20)

Cases referred:

1. Kalu Ram Ahuja v. Delhi Development Authority, (2008) 10 SCC 696.

2. T. Vijayalakshmi v. Town Planning Member, (2006) 8 SCC 502.

3. Mansaram v. S.P. Pathak, (1984) 1 SCC 125.

JUDGMENT

MAHAVIR S. CHAUHAN, J. –

1. Market Committee, Ballabgarh, through its Administrator, held an open auction on 07.08.1998 for sale of 27 commercial sites in New Grain Market, Mohna, Tehsil Ballabgarh. Petitioners deposited a sum of Rs.10,000/-, each, and participated in the auction. Both of them came out to be the highest bidders in respect of Site Nos.3 and 4, respectively, at Rs.3,05,000/- each. As required, the petitioners deposited a sum of Rs.76,250/-, each, it being one-fourth of the bid money, at the fall of hammer. Remaining amount of sale consideration could be deposited, without interest, within 30 days from the date of issue of letter of allotment or, with interest @ 15% per annum, in six equated half yearly installments. The bid was subject to confirmation by the Chief Administrator, Haryana State Agricultural Marketing Board (for short 'HSAMB'). Having failed to catch the fortune of receiving letters of allotment, the petitioners got issued a legal notice dated 31.05.2000 (Annexure P-4) calling upon respondent No.3 to finalize the auction proceedings and to deliver possession of the sites to them but were taken aback on receipt of reply dated 29.06.2000 (Annexure P-5) saying that the Chief Administrator, HSAMB had rejected the bid and the 3rd respondent had refunded the bid money to them. The petitioners sent a rejoinder dated 28.10.2000 (Annexure P-6) reiterating their demand as raised in legal notice dated 31.05.2000 (Annexure P-4) and adding that the rejection of bid was wrong as no reasons were given to support the rejection and no notice to show cause before the rejection was served upon them. The respondents, instead of taking steps to redress petitioners' grievance issued a public notice to auction 41 commercial sites at New Grain Market, Mohna, which included Plot Nos. 3 and 4 in respect of which the petitioners were highest bidders in the previously held auction. To seek quashing of the auction notice (Annexure P-7) and to seek issuance of a writ of mandamus to direct the respondents to issue letters of allotment in their favour with regard to Plot Nos. 3 and 4, the petitioners have brought the instant Civil Writ Petition under Articles 226 and 227 of the Constitution of India.

2. Respondents have filed a written response, wherein it has been stated that the plots were put to auction with a clear stipulation that the auction would be subject to the approval of the Chief Administrator, who, however, rejected the bids made at the said auction and after rejection of the bids, money deposited by the bidders, including the petitioners, has already been refunded to them.

3. In the replication filed by the petitioners, receipt of refund of the amount deposited by them has been specifically denied.

4. We have heard learned counsel for the parties and have examined the record, including the one maintained by the respondents.

5. It is not in dispute that the petitioners were highest bidders at Rs.3,05,000/-, each, for purchase of Plot Nos. 3 and 4, respectively, which was more than the reserved price of the plots fixed for the auction; the auction was subject to approval or confirmation of the Chief Administrator, who did not confirm it; and that the petitioners had deposited 1/4th of the bid money at the spot. Power of the Chief Administrator to reject the bid without indicating any reasons is also not in question. The only question that baffles us is – How and within what time the discretion vested in the Chief Administrator is to be exercised?

6. The learned counsel for the petitioners contended that the Chief Administrator cannot be allowed unbridled and unguided discretion to reject the bid, rather, the discretion must be used in a judicious manner and for justifiable reasons and the principal consideration should be the public interest, whereas in the case in hand, the respondents have failed to decipher the circumstances that impelled rejection of the bid.

7. The learned counsel also argued that the decision to reject the bid ought to have been taken within reasonable time and delay in the matter has gravely prejudiced the petitioners insofar as they have been deprived of their legitimate right to commence their business and at the same time have been prevented from looking for suitable alternative by indecision of the Chief Administrator.

8. It is also argued that the respondents have failed even to refund the amounts deposited by the petitioners till today.

9. On the contrary, on behalf of the respondents, it has been argued that the petitioners participated in the auction knowing it fully well that the bid was liable to be rejected by the Chief Administrator without assigning any reasons and that being so, they cannot be heard to make a grievance as regards rejection of bid.

10. The learned counsel has further contended that the cheques towards refund of the deposited amounts were sent to the petitioners and other participants of the auction on 23.08.2000 but while all others have got the cheques revalidated and encashed and only the petitioners have chosen not to do so, only to make out a ground to challenge rejection of their bids.

11. Nothing more has been argued on either side.

12. It has remained undisputed that the auction was held on 07.08.1998 and till date rejection of the bid has not been conveyed to the petitioners. From the record of the office of the respondents, it, however, comes out that vide memorandum dated 17.01.2000, say after about one and a half years of the date of auction, it was conveyed by the office of Chief Administrator to the Secretary-cum-Executive Officer of Market Committee, Ballabgarh (for short 'the Committee') that the bid had been rejected by the Chief Administrator.

13. We are conscious that till acceptance of the bid by the competent authority the highest bidder does not get a vested right to allotment of the property in question as till such acceptance of the bid no concluded contract comes into existence and the power of judicial review is not in the nature of an appeal from the decision of the competent authority and the court cannot substitute its own decision for that of the competent authority. But, in our opinion, where the decision of the competent authority is found to be arbitrary or unreasonable and the discretion is found to be used irrationally, the power of judicial review can and should be exercised. To support this view, we may refer to judgment of the Hon'ble Supreme Court of India rendered in the case of **Kalu Ram Ahuja Vs. Delhi Development Authority, (2008) 10 SCC 696.** In this case, Delhi Development Authority (for short "DDA"), had issued an advertisement for auction of Plot No.235 measuring 84.10 Sq. Meters situated at Padam Nagar, New Delhi. In the auction held on 21-6-1988, the appellants therein participated along with other bidders. They gave the highest bid of Rs.3,00,758/-. In terms of the advertisement, the bid was required to be approved by the Vice-Chairman, DDA, who rejected the same. The appellants challenged the rejection of their bid by filing a writ petition which was dismissed by the learned Single Judge of Delhi High Court by relying on a representation made by an ex-Municipal member to espouse the cause of the residents of the area. The letters patent appeal preferred by the appellants was also dismissed by a Division Bench. Matter was then taken before the Hon'ble Supreme Court by way of appeals by special leave. Setting aside the order of the Delhi High Court, the Hon'ble Supreme Court ruled as under:

*"**5.** Undisputedly, DDA had taken a conscious decision to auction the plot. It is neither the pleaded case of the respondents nor has any material been produced before this Court to show that the said decision was taken by the competent authority under some misapprehension. It is also not in dispute that the appellants participated in the auction held on 21-6-1988, and gave the highest bid, which, as mentioned above, was rejected by the Vice-Chairman, DDA. The communication dated 7-7-1988 does not make a mention of the reason which may have prompted the Vice-Chairman to reject the bid given by the appellants. No other record has been produced before the Court to show that the decision of the Vice-Chairman was based on rational and tangible reasons and was in public interest. Therefore, there is no escape from the conclusion that the decision of the authority concerned was wholly arbitrary. The learned Single Judge without properly appreciating the nature of the appellants' challenge to the rejection of their bid, dismissed the writ petition. The Division Bench also committed the same error by dismissing the appeal. Therefore, the impugned orders are legally unsustainable.*

***6.** Accordingly, the appeals are allowed, the impugned orders passed by the High Court are set aside, the writ petition filed by the appellants before the High Court is allowed and the decision of the Vice-Chairman, DDA to reject the bid of the appellants is quashed. The appellants are directed to deposit the amount of bid along with the interest thereon at the* *rate of eighteen per cent from the date of bid till the date of actual payment within a period of three months from today. Thereafter DDA shall complete all the formalities of land and hand over possession to the appellants. The needful be done within three months from the date the amount is deposited by the appellants.*"

14. It is seen that intent of the above-cited judgment is that the prescribed authority, no doubt, has the discretion either to accept or to reject the bid but the discretion must be based on rational and tangible reasons or say it should be used in a reasonable and justifiable manner. It is also well settled by now that the highest bid can be rejected only if such rejection is found to be in larger public interest such as possibility of the plot sought to be auctioned being capable of fetching higher price than the one offered by the bidder. In the case in hand, decision of the Chief Administrator has neither been conveyed to the petitioners nor has it been made part of record of this case. The written statement and affidavit dated 08.10.2013 of Secretary-cum-Executive Officer of the Committee filed pursuant to order dated 10.09.2013 of this Court, are conspicuously silent as regards the reasons that impelled rejection of the bid but we have found from the record of the respondents that vide memorandum dated 17.01.2000 (copy retained), the Chief Administrator had informed Secretary-cum-Executive Officer of the Committee that the bid was cancelled as the Committee vide its resolution dated 09.12.1998 did not recommend approval of the open auction held on 07.08.1998 under Section 18 of the Punjab Agricultural Produce Markets Act, 1961 (for short, 'the Act'). It comes out from this memorandum that recommendation of the Committee was necessary for approval of the bid under Section 18 of the Act. However, a perusal of Section 18 of the Act reveals that it does not lay down any such condition. The Section, in our view mandates passing of a resolution by the Committee at a meeting specially convened for the purpose, by a majority of not less than three-fourth of the members of the committee and approval of the Chairman of the Haryana State Agricultural Marketing Board before initiation of process of sale by auction or otherwise as is evident by use of the word "prior" therein. It does not envisage recommendation of the Committee as a prerequisite for acceptance of bid by the Chief Administrator. Even the terms and conditions of the auction, copy whereof is available on record as Annexure P1, do not talk of any such condition. Section 18 of the Act is reproduced hereunder:

"***18. Incorporation of committees -*** *Every committee shall be a body corporate as well as a local authority by such name as the state Government may specify in the notification establishing it, shall have perpetual succession and common seal , may sue and be sued in its corporate name, and shall subject to the provisions of section 32 be competent to acquire and hold property, both moveable and immovable to lease, sell or otherwise transfer any moveable and immovable property which may have become vested in or been acquired by it, and to contract and to do all other things necessary for the purposes for which it is established :*

Provided that no committee shall permanently transfer any immovable property accept in pursuance of a resolution passed at a meeting specially convened for the purpose by a majority of not less them *three-fourth of the members of the committee and with prior approval of the chairman of the board.*"

15. It is nobody's case that the market committee did not take a decision and did not get prior approval of the Board in terms of Proviso added to Section 18 of the Act, before putting the plots to auction.

16. No public interest is shown to have been served by rejection of the bid. Rather, to the contrary, by rejection of the bid, the Committee has been deprived of the revenue it would have earned in the year 1998 but for the inaction of the authorities that be, and ultimate rejection of the bid in the year 2000.

17. Be that as it may, the Chief Administrator being a public authority was expected to decide fate of the auction within a reasonable period (per **T. Vijayalakshmi versus Town Planning Member, (2006) 8 SCC 502** and **Mansaram versus S.P. Pathak, (1984) 1 SCC 125)** and period of one year five months and ten days consumed by that authority to reject bid on the plea of absence of Administrator, Market Committee, Ballabgarh at the auction cannot be said to be reasonable ground by any stretch of imagination and in such a situation, this Court has no option but to protect the hapless petitioners who have been hopefully waiting for this long span of time for allotment of the commercial sites to them in view of their bids being the highest ones.

18. Incidentally, memorandum dated 17.01.2008 whereby bid is stated to be rejected by the Chief Administrator, and ground of rejection of the bid as stated therein, do not find a mention in the reply dated 29.06.2000 (Annexure P5) and in the written statement. While the respondents have failed to explain this obliteration, we refrain ourselves from commenting further on this aspect of the matter.

19. As aforesaid, in memorandum dated 17.01.2000 only ground for rejection of the bid is given that Market Committee, Ballabgarh, did not recommend its approval which, in our opinion is not the requirement of law. On going through the resolution dated 09.12.1998 (copy retained) of Market Committee, Ballabgarh, we have found that the resolution reads as under:

"*Considered. Case of open auction of the plots of the Grain Market held under the supervision of Pardeep Kasni, Enquiry Officer, HSAM Board, Panchkula, be forwarded to the Board for appropriate action as I was not present at the time of the auction.*

Sd/-

S.D.M., Ballabgarh

Cum-Administrator,Market Committee, Ballabgarh"

20. We are constrained to observe that Administrator's non-presence, perhaps, could be a ground for not holding of the auction but it was held without any objection from any quarters and that being so rejection of the bid only for the reason that the Administrator, Market Committee, Ballabgarh was not present at the time of the auction cannot be said to be in public interest or based on a rational and tangible reason. The respondents, at least, have not been able to show how public interest has suffered by absence of the Administrator at the time of the auction.

21. There is another aspect of the matter. In paragraph (7) of the writ petition, there is a categorical averment that Shri Pardeep Kasni, HCS, representative and delegatee of Chief Administrator presided over the auction proceedings; he was empowered to accept, and did accept, the bids; and that being so, the bids stood accepted on the spot. Surprisingly, respondents have chosen not to deny this very important and material assertion made on behalf of the petitioners which amounts to admission of what is stated by the petitioners. If that be so, rejection of bid vide memorandum dated 17.01.2000 pales into insignificance. Paragraph (7) of the writ petition reads as under:

> "*7. That the auction of sites was conducted in the manner prescribed by law and no objection was raised by either the authority or any of the bidders or the public. The auction at the site was presided over by Shri Pradeep Kasni, HCS, the representative of the Chief Administrator, Respondent No.2 and in his presence the bids of the petitioners were accepted. The allotment was released in favour of the petitioners. The other sites situated in the market committee were also auctioned on that date and allotment was made after receipt of earnest money of 25% of the bid amount. Shri Kasni, HCS, had been delegated the powers of the Chief Administrator and empowered to accept auction bids and the auction and the bids in dispute.*"

22. The above quoted paragraph has been replied to by the respondents as under

> "*PARA 7 – That in reply to the averments as contained in paragraph 7 of the writ petition it is humbly submitted that the auction was subject to confirmation at the end of Chief Administrator, Haryana State Agriculture Marketing Board. However, the auction was rejected by the Chief Administrator, Haryana State Agriculture Marketing Board and, therefore, the amount deposited by the bidders including the petitioners have been sent to them.*"

23. Still further, even the assertion of the respondents that the amounts deposited by the petitioners have been refunded to them, is found to be shrouded by suspicion. As per stand of the respondents in the written response, these amounts were duly refunded to the petitioners vide cheque Nos. 805701 and 805709 dated 28.03.2000. In paragraph (1) of the affidavit dated 08.10.2013 also, a similar assertion has been made on oath. In paragraph (4) of this affidavit, it has further been added that other applicants, to whom similar cheques were sent, had got the cheques revalidated and then got encashed the same but the petitioner did not come forward to get the cheques sent to them revalidated. However, no proof of despatch of the cheques to the petitioners has been placed on record. This prompted us to examine record of the office of respondent Market Committee with regard to despatch of office correspondence and on examination thereof, we find ourselves unable to refrain from expressing our dismay and dissatisfaction as regards the above-stated assertion of the respondents. As per page 26/27 of the Despatch Register of Market Committee, Ballabgarh for the period 10.06.1999 to 18.02.2002 (copy retained) refunded cheques are shown to have been sent to fifteen persons. Surprisingly, to all others, except the petitioners, these are sent through registered post and postal receipts have been pasted in the register. Against the names of the petitioners, entered at serial numbers 153 and 154 dated 10.04.2000, the words “By hand” are written. Signatures/thumb impressions of the petitioners signifying receipt of the cheques are conspicuous by their absence. Respondents have not been able to produce the office memoranda/forwarding letters through which the cheques might have been sent to the petitioners. It has, however, remained undisputed that these cheques have not yet been encashed. In the situation, we are unable to subscribe to the plea of the respondents that the amounts deposited by the petitioners have been refunded to them. This means that the amounts are still with the respondents.

24. What emanates from the foregoing factual position is that action of the respondents in rejecting the bid vide memorandum dated 17.01.2000 cannot but be termed as arbitrary and unreasonable.

25. We, therefore, accept the writ petition, set aside memorandum dated 17.01.2000 and reply/memorandum dated 29.06.2000 (Annexure P5) and direct the respondents to finalize the auction process, issue letters of allotment to the petitioners and give possession to them of plot Nos. 3 and 4, New Grain Market, Mohna as expeditiously as possible but not later than two months from today.

26. The petitioners are also held entitled to their costs which are assessed at Rs.10,000/-.

Order accordingly.

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PUNJAB AND HARYANA HIGH COURT

Before: Ajay Kumar Mittal & Mehinder Singh Sullar, JJ.

Civil Writ Petition No.4437 of 1988 Decided on: 21.11.2013

Balbir Singh and others Petitioners

Versus

The Joint Director, Panchayats, Punjab and others Respondents

Present: Mr. Sarjit Singh, Senior Advocate, with Ms. Archana Slath, Advocate, for the petitioners.

Mr. M.L. Saini, Advocate, for the respondents.

A. Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961), Section 2(g) – Shamlat deh -- All clauses of Section 2(g) are independent of each other and recourse can be had to any one clause to the exclusion of the other -- Once, the case falls under any one of those clauses, that would be sufficient to bring it within the definition of the word 'shamlat deh'.

(Para 11)

B. Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961), Section 2(g), 3, 4 – Shamlat deh -- As per Jamabandi for the year 1956-57, the land in dispute has been described as 'Shamlat Deh Hasb Hasis Shajra Nasab' and owners were shown in its possession -- Kind of land is described as 'Banjar Qadim' – Sequelly, in the Jamabandi for the year 1976-77, Gram Panchayat has been shown as owner in the column of