



hor V. Kamble

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO.15601 OF 2022

M/s. Aditya Enterprises)
1203, The Crown,)
Plot No. 15-16, Sector 15,)
Kharghar-410 210)... Petitioner

VERSUS

City Industrial and Development)
Corporation of Maharashtra Ltd.)
CIDCO Bhavan, Sector 10,)
Belapur, Navi Mumbai-400 614)... Respondents

WITH
WRIT PETITION NO.396 OF 2023

Mahaavir Superstructures Pvt. Ltd.)
A-1003, 'A' Wing, 10th Floor,)
Mahaavir Icon, Plot No. 89 & 90,)
Sector 15, CBD, Belapur)
Navi Mumbai-400 614)... Petitioner

VERSUS

City Industrial and Development)
Corporation of Maharashtra Ltd.)
CIDCO Bhavan, Sector 10,)
Belapur, Navi Mumbai-400 614)... Respondents

Appearances

Mr. Rohan Cama a/w. *Mr. Aditya Udeshi, a/w. Mr. Rahul Sanghvi, a/w. Mr. Samarth Jaidev i/b. Sanjay Udeshi & Co. for the Petitioners.*

Mr. G. S. Hegde, Sr. Advocate, i/b. Ms. P. M. Bhansali for Respondent (CIDCO).

CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.

RESERVED ON : 17th April 2023.
PRONOUNCED ON : 20th April 2023.

JUDGMENT : (Per - Sandeep V. Marne, J.)

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, petitions are taken up for final hearing.
2. Petitioners in these petitions are aggrieved by decision of City and Industrial Development Corporation of Maharashtra Limited (**CIDCO**) in canceling tender process in which they were declared as highest bidders for purchase of respective plots. Petitioners accordingly seek directions against CIDCO to accept their bids and issue allotment letters in respect of plots for which they had bid.
3. CIDCO floated tender on 3rd May 2022 for lease of 23 Residential, Commercial and Residential-cum-Commercial plots at Ghansoli, Sangpada, Kalamboli and New Panvel (W) in Navi Mumbai and issued e-tender cum e-auction notice. Petitioner in WP 145601/2022 submitted bid for plot Nos. 37 and 38 in Sector 17, New Panvel (W). Petitioner made payment of Earnest Money Deposit (**EMD**) of Rs. 2,40,31,859.90 for plot No.37 and Rs.2,76,29,517.90 in respect of plot No.38. Petitioner quoted price of Rs.1,19,925/- per sq. mtr. for plot No.37 whereas price quoted

for plot No. 38 was Rs.1,31,999/- per sq. mtr. After opening the financial bids, petitioner's bid of Rs.46,54,04,940/- was declared highest for plot No.37. Similarly, petitioner's bid of Rs.47,98,83,684.49 was declared highest for plot No.38.

4. While the petitioner was looking forward for issuance of allotment letter and making payment towards lease premium, CIDCO suddenly credited EMD amount in respect of both the plots in bank account of the petitioner. CIDCO did not issue any communication to petitioner as to why the amount of EMD was refunded. Petitioner accordingly has filed Writ Petition No.15601 of 2022 for issuance of allotment letter in respect of Plot Nos. 37 and 38.

5. In Writ Petition No. 396 of 2023, petitioner therein had submitted bid for allotment of plot No. 28, Sector-17, Node-New Panvel (W) adm. 4646.46 sq. mtr. At Rs.1,11,925/- per sq. mtr. Petitioner's bid was adjudged highest. However petitioner was not issued allotment letter. Instead CIDCO addressed communication dated 26th August 2022 to the petitioner (received by it on 8th September 2022) conveying the decision of cancellation of bid process in respect of plot No.28 due to administrative reasons. The EMD amount paid by the petitioner was accordingly refunded. Petitioner is accordingly challenging the communication date 26th August 2022 in the present petition.

6. Thus in both the petitions petitioners are aggrieved by decision of CIDCO in canceling the tender process after opening of the financial bids

and after Petitioners were found H1 in the tender process.

7. The CIDCO has filed affidavits-in-reply in both the petitions *inter alie* contending that rates quoted by petitioners were far less than the market range in the vicinity. CIDCO relied upon expert agency report in support it's contention. CIDCO has contended that it would face loss if petitioners are allotted plots at the rates quoted by them.

8. Petitioner in Writ Petition No.15601 of 2022 has filed a rejoinder for procuring report of Knight Frank India Pvt. Ltd. (**Knight Frank**) relied upon by CIDCO for taking the impugned decision. It is contended that the report is *ex facie* flawed as it has adopted two methods of valuation viz. Weighted Average Method and Estimated Residual Value Method.

9. Appearing for petitioners, Mr. Cama the learned counsel would submit that the impugned decision of the CIDCO is contrary to its own policy. That as per the policy framed by CIDCO in 2004 it is required to fix the base price for each node uniformly on the basis of reserve price of each node. The method has been contemplated for evaluation of base rate and that CIDCO cannot act on report of external agency like Knight Frank by giving a go-bye to its policy. Mr. Cama would rely upon CIDCO's Revised Land Pricing and Land Disposal Policy, Navi Mumbai, 2015 suggesting 3 sets of base prices for the plots of similar uses, whichever is higher. That methodology provided in 2015 policy could only have been used for fixation of market value/ base price. That in accordance with CIDCO's policy, the circular dated 28th April 2022 was issued fixing base

rates, which were valid up to 31st March 2023. In accordance with that circular, base rate of Rs.61,925/- per sq. mtr. was fixed for plot No.37 and base rate of Rs.75,999/- per sq. mtr. was fixed for plot No.38. That against base rate so fixed, petitioner quoted rate of Rs.1,19,925/- per sq. mtr. for plot No.37 and Rs.1,31,999/- per sq. mtr. for plot No.38.

10. Mr. Cama would further submit that the purported valuation report of Knight Frank indicates price range for plot No.37 as between Rs.1,40,305/- to 1,65,550/- per sq. mtr. and for plot No.38 as between Rs.1,48,671/- to Rs.1,74,697/- per sq. mtr. He would submit that reliance of CIDCO on Knight Frank report amounts to patent illegality and arbitrariness. That the report has been manufactured to suit CIDCO's purpose and that same is back dated. Though the report is dated July 2022, Knight Frank has addressed e-mail to CIDCO on 8th August 2022 seeking queries for the purpose of finalising the 'draft report'. That the independence of said report is questionable after CIDCO was called upon to submit its inputs.

11. Mr. Cama would then question methodology adopted by Knight Frank in determining valuation of the plots. That the 'Weighted Average Method' adopted by Knight Frank was hitherto unheard. That the other method of 'Estimated Residual Value Method' is also erroneous as developable potential is determined by taking into consideration MCGM's DCPR 2034 which does not apply to CIDCO plots which are governed by UDCPR.

12. Mr. Cama would submit that since the action of CIDCO is *ex facie* arbitrary, judicial review thereof is admissible even at per-contract stage. That the Apex Court held in catena of judgments that if the cancellation is arbitrary or illegal, the action of cancellation can be inferred with. That mere likelihood of receipt of higher price cannot be a sole consideration for cancellation of validly conducted tender process. That no reasons are communicated to petitioners for canceling the tender process and the same cannot later be added/ supplemented in the form of affidavit.

13. In support of his contention Mr. Cama would rely upon following judgments.

- i) **M. P. Power Management Co. Ltd. Jabalpur Vs. Sky Power Southeast Solar India Pvt. Ltd. & Ors.**, (2023) 2 SCC 703.
- ii) **M/s Star Enterprises & Ors. Vs. CIDCO**, (1990) 3 SCC 280.
- iii) **Haryana Urban Development Authority (HUDA) & Ors. Vs. Orchid Infrastructure Developers Pvt. Ltd.**, (2017) 4 SCC 243.
- iv) **Rishi Kiran Logistics Pvt. Ltd. Vs. Board of Trustees of Kandla Port Trust & Ors.**, (2014) All SCR 2640.
- v) **Vice Chairman & Managing Director of CIDCO & Anr. Vs. Shishir Reality Pvt. Ltd. & Anr.**, (2021) SCC OnLine SC 1141.
- vi) **JVPD Scheme Welfare Trust Vs. Chief Officer MHADA & Ors.**, (2019) 11 SCC 361.
- vii) **Mohinder Sing Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Anr.**, (1978) 1 SCC 405.

14. Petitions are opposed by Mr. Hegde, the learned senior advocate appearing for CIDCO. He would submit that no semblance of right is created in favour of petitioners by reason of their participation in the

tender process. That CIDCO is entitled to cancel the tender process at any time if the circumstances so demand. He would rely upon relevant terms and conditions of the tender document conferring absolute power on CIDCO to cancel the tender process without assigning any reason.

15. Mr. Hegde would then contend that the price quoted by petitioners are far below the market range. That CIDCO has consulted expert agency and has taken a decision to cancel the tender process. He would submit that in fresh tender process to be initiated by CIDCO, lowest price suggested by Knight Frank would be considered as reserve price. In support of his contention Mr. Hegde would rely upon judgment of the Apex Court in **Haryana Urban Development Authority (HUDA) & Ors. Vs. Orchid Infrastructure Developers Pvt. Ltd.**, (2017) 4 SCC 243 and **Rishi Kiran Logistics Pvt. Ltd. Vs. Board of Trustees of Kandla Port Trust & Ors.**, (2014) All SCR 2640.

16. Rival contentions of the parties now fall for our consideration.

17. Petitioners are aggrieved by non-issuance of allotment letters in respect of plots, for which they have been adjudged highest bidders in the tender process. The tender process has been cancelled by CIDCO before its completion. Since allotment letters are not issued nor lease premium is paid by petitioners, the tender process was incomplete when the cancellation letters were issued. All that is paid by petitioners is only EMD along with their respective bids. It is common ground that the amounts of EMD paid by petitioners have been refunded by CIDCO to

them.

18. In the light of this position, the issue that arises for our consideration is whether petitioners have acquired any right to seek issuance of allotment letters by CIDCO? Petitioners have termed the action of CIDCO in cancelling the tender process as arbitrary for the purpose of invoking jurisdiction of this court. It is contended that being an instrumentality of State, CIDCO is expected to act in a reasonable manner and that upon making out a demonstrable case of arbitrariness, this court would be justified in exercising power of judicial review. In support of this contention reliance is placed by petitioners on the Apex Court judgment in ***M. P. Power*** (supra). It is contended that even in case where the contract is yet to be awarded, this court would be justified in interfering with decision of the State especially when it deals with award of largesse by the state. In paragraph No.56 and 82.4 of the judgment the Apex court has held as under:

“56. This case while it dealt with the issue of arbitrariness at the stage of award of largesse by the State, it paved the way for future development in this field of law.

82.14 Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself.”

19. Reliance is also placed by the petitioners on judgment of Apex Court in ***Kalu Ram Ahuja*** (supra) in which it is held by the Apex Court in

paragraph No.5 as under.

“5. Undisputedly, D.D.A. 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, D.D.A. 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 concerned authority was wholly arbitrary. The learned Single Judge without property 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. Accordingly, the appeals are allowed, impugned orders passed by the High Court are set aside, writ petition filed by the appellants before the High Court is allowed and the decision of the Vice-Chairman, D.D.A. 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 the D.D.A. 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.”

20. Reliance is also placed on the judgment in *Harjinder Singh Arora*

(supra) in which the Apex Court has held in paragraph No.24 and 29 as under:

“24.It is true that the government may enter into a contract with any reason but in so doing the State or its instrumentalities cannot act arbitrarily. In the instant case, tenders were invited and the appellant and respondent 4 submitted their tenders. The tenders were to be adjudged on their own intrinsic merits in accordance with the terms and conditions of the tender notice. The learned counsel, however, placed reliance on C.K. Achuthan V. State of Kerala, where Hidayatullah, J., as he then was, held that a contract which is held from government stands, on no different footing from the contract held by a private party and when one person is chosen rather than another, the aggrieved party cannot claim protection of Article 14.”

29. In the instant case, the instrumentalities of the State invited tenders for the supply of fresh buffaloes and cows milk and, therefore, this case has to be decided on the basis of bid by the tenderers. There was no question of any policy in this case. It is open to the State to adopt a policy different from the one in question. But if the authority or the State Government chooses to invite tenders then it must abide by the result of the tender and cannot arbitrarily and capriciously accept the bid of respondent No. 4 although it was much higher and to the detriment of the State. The High Court, in our opinion, was not justified in dismissing the writ petition in limine by saying that the question relates to the contractual obligation and the policy decision cannot be termed as unfair or arbitrary. There was no question of any policy decision in the instant case. The contract of supply of milk was to be given to the lowest bidder under the terms of the tender notice and the appellant being the lowest bidder he should have been granted the contract to supply, especially, when he has been doing so for the last so many years.”

21. There can be no dispute to the proposition that where arbitrariness is demonstrated on the part of a State instrumentality, this court would be justified in interfering with its decision. However, in the present case, the tender process is cancelled even before the letter of allotment could be issued in favour of petitioners. It is not that Petitioners have erroneously been disqualified in the tender process or that any term of tender notice is violated. CIDCO has cancelled the entire tender process

under the hope of securing higher prices for lease of plots. In such a situation, whether this court would be justified in interfering with decision of the CIDCO is the issue that arises for our consideration.

22. In *HUDA vs. Orchid Infrastructure* (supra) the Apex Court has dealt with the issue of right of a bidder to seek completion of auction in its favour. The Apex Court has held in paragraph No.12, 13, 14, 15 and 16 as under:

“12. Firstly, we examine the question whether there being no concluded contract in the absence of acceptance of bid and issuance of allotment letter, the suit could be said to be maintainable for the declaratory relief and mandatory injunction sought by the plaintiff. The plaintiff has prayed for a declaration that rejection of the bid was illegal. Merely by that, plaintiff could not have become entitled for consequential mandatory injunction for issuance of formal letter of allotment. Court while exercising judicial review could not have accepted the bid. The bid had never been accepted by concerned authorities. It was not a case of cancellation of bid after being accepted. Thus even assuming as per plaintiff's case that the Administrator was not equipped with the power and the Chief Administrator had the power to accept or refuse the bid, there had been no decision by the Chief Administrator. Thus, merely by declaration that rejection of the bid by the Administrator was illegal, the plaintiff could not have become entitled to consequential relief of issuance of allotment letter. Thus the suit, in the form it was filed, was not maintainable for relief sought in view of the fact that there was no concluded contract in the absence of allotment letter being issued to the plaintiff, which was a sine qua non for filing the civil suit.

13. It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount. As per

Regulation 6(2) of the Regulations of 1978, allotment letter has to be issued on acceptance of the bid by the Chief Administrator and within 30 days thereof, the successful bidder has to deposit another 15% of the bid amount. In the instant case allotment letter has never been issued to the petitioner as per Regulation 6(2) in view of non-acceptance of the bid. Thus there was no concluded contract.

14. We are fortified in our view by a decision of this Court in *U. P. Avas Evam Vikas Parishad & Ors. v. Om Prakash Sharma* wherein the questions arose for its consideration that : whether there is any vested right upon the plaintiff/bidder until the bid is accepted by the competent authority in relation to the property in question? Merely because the plaintiff is the highest bidder by depositing 20% of the bid amount without there being approval of the same by the competent authority and it amounts to a concluded contract in relation to the plot in question; and whether the plaintiff could have maintained the suit in the absence of a concluded contract ? Considering the aforesaid questions, this Court has discussed the matter thus :

“30. In support of the said proposition, the learned Senior Counsel for the defendant, Mr Rakesh Dwivedi has also placed reliance upon another decision of this Court in *State of U.P. v. Vijay Bahadur Singh*[*State of U.P. v. Vijay Bahadur Singh*, (1982) 2 SCC 365] . The learned Senior Counsel has rightly placed reliance upon the judgment of this Court in *Rajasthan Housing Board case* [*Rajasthan Housing Board v. G.S. Investments*, (2007) 1 SCC 477] which reads as under: (SCC p. 483, para 9)

‘9. This being the settled legal position, the respondent acquired no right to claim that the auction be concluded in its favour and the High Court clearly erred in entertaining the writ petition and in not only issuing a direction for consideration of the representation but also issuing a further direction to the appellant to issue a demand note of the balance amount. The direction relating to issuance of the demand note for balance amount virtually amounted to confirmation of the auction in favour of the respondent which was not the function of the High Court.’

In State of Orissa v. Harinarayan Jaiswal [State of Orissa v. Harinarayan Jaiswal, (1972) 2 SCC 36] case, relevant paragraph of which reads as under: (SCC pp. 44-45, para 13)

‘13. ... There is no concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids (see Union of India v. Bhim Sen Walaiti Ram [Union of India v. Bhim Sen Walaiti Ram, (1969) 3 SCC 146]). [Ed.: The matter between two asterisks has been emphasised in Avam Evam Vikas Parishad case, (2013) 5 SCC 182.] By merely giving bids, the bidders had not acquired any vested rights [Ed.: The matter between two asterisks has been emphasised in Avam Evam Vikas Parishad case, (2013) 5 SCC 182.]’

31. In view of the law laid down by this Court in the aforesaid decisions, the learned Senior Counsel Mr Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid amount along with the earnest money with the Board. In the absence of acceptance of bid offered by the plaintiff to the competent authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26-5-1977 and 8-7-1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff.”

15. This Court in Om Prakash Sharma case has held that in the absence of a concluded contract which takes place by issuance of allotment letter, suit could not be said to be maintainable as there is no vested right in the plaintiff without approval of the bid by the competent authority. Thus, in the wake of aforesaid decision, in the absence of a concluded contract, the suit could not have been decreed for mandatory injunction. It amounted to enforcing of

contract in the absence thereof.

16. In the light of the aforesaid discussion, it is evident that in the absence of a concluded contract, i.e. in the absence of allotment letter and acceptance of highest bid, the suit by the plaintiff was wholly misconceived. Even if non-acceptance of the bid was by an incompetent authority, the court had no power to accept the bid and to direct the allotment letter to be issued. Merely on granting the declaration which was sought that rejection was illegal and arbitrary and by incompetent authority, further relief of mandatory injunction could not have been granted, on the basis of findings recorded, to issue the allotment letter, as it would then become necessary to forward the bid to competent authority – Chief Administrator - for its acceptance, if at all it was required.”

23. Faced with the problem of non-existence of any enforceable right in absence of a completed contract, reliance is placed by petitioners on the judgment in *M.P. Power* (supra). However, in the judgment of the Apex Court it is held an auction would lie when the State purports to award any largesse and in auction process, court’s scrutiny is permitted even prior to execution of contract. There can be no debate about this proposition as judicial review by courts is not completely ousted in tender matters. In appropriate cases, involving non-adherence to proper procedure or violation of terms and conditions of tender document or existence of complete arbitrariness, courts would be justified in interfering in the tender process, even before execution of contract. However, the issue involved here is altogether different. Petitioners seek allotment of plots only because they are H-1. They are not questioning correctness of the tender process. They demand that tender process must be taken to its logical end by allotting plots to them. In a situation like this, the ration laid down in the judgment in *M. P. Power* (supra)

would be inapplicable.

24. We therefore hold that no right is created in favour of petitioners to have plots allotted to them by CIDCO by mere reason of they being the highest bidders in the tender process.

25. Now we turn to the next issue as to whether action of CIDCO in canceling the tender process could be termed as arbitrary. CIDCO has contended that the price quoted by petitioners are far less than prevailing market rates. It has relied upon report of Knight Frank to arrive at the said conclusion. CIDCO has presented following chart in support of its contention of lower rates being quoted by petitioners:

| Sr. No. | Such | Sch. Lunched year | Sector | Plot No. | Approx Area | Base Price | Bids | Highest Bid (Rs) | Highest Bidder Name | Expert Agency's Range | |
|---------|------|-------------------|--------|----------|-------------|------------|------|------------------|---------------------|-----------------------|---------|
| 1 | 26 | 2021-22 | 17 | 37 | 3880.8 | 61925 | 6 | 1,19,925 | Aditya Entrprise | 140305 | 165,550 |
| 2 | 26 | 2021-22 | 17 | 38 | 3635.51 | 75999 | 4 | 1,31,999 | Aditya Entrprise | 148671 | 174,797 |

| Sr. No. | Such | Sch. Lunched year | Sector | Plot No. | Approx Area | Base Price | Bids | Highest Bid (Rs) | Highest Bidder Name | Expert Agency's Range | |
|---------|------|-------------------|--------|----------|-------------|------------|------|------------------|------------------------|-----------------------|----------|
| | | | | | | | | | | Min. | Max |
| 1 | 26 | 2021-22 | 17 | 26 | 2030.01 | 61925 | 27 | 2,01,301 | Shiv Developers | 161,629 | 192,857 |
| 2 | 16 | 2021-22 | 17 | 32 | 4038.8 | 51,604 | 7 | 1,57,221 | K T Infra | 121,572 | 140,278 |
| 3 | 16 | 2021-22 | 17 | 32 | 4029.3 | 51,604 | 9 | 1,38,746 | Varsha Buildcon | 121,572 | 140,278 |
| 4 | 17 | 2021-22 | 17 | 35 | 3668.89 | 63,330 | 9 | 1,52,556 | Neelkanth Infracon | 123,069 | 141,933 |
| 5 | 26 | 2021-23 | 17 | 28 | 4646.46 | 61,925 | 6 | 1,11,925 | Mahavir Superstructure | 1,20,196 | 1,44,062 |

26. Petitioners have attempted to question the methodology adopted by Knight Frank in determining valuation of the plots. We are afraid, we are not experts in the field and cannot go into the correctness of methodology adopted by Knight Frank. Mr. Hegde has clarified that CIDCO will determine base price of respective plots in fresh auction process by taking into consideration minimum price indicated by Knight Frank. From the above chart it clearly appears that there is huge difference between the reserve price fixed by CIDCO in the earlier tender process and one that would be fixed by CIDCO in the fresh tender process. This is clear from following chart:

| Plot No. | Earlier Reserve Base Price | Revised Reserve Base Price |
|----------|----------------------------|----------------------------|
| 37 | 61,925/- | 1,40,305/- |
| 38 | 75,999/- | 1,48,671/- |
| 28 | 61,925/- | 1,20,196/- |

True it is that the gap between rates quoted by petitioners and the proposed revised price by CIDCO may not be too wide. However what is now sought to be fixed by CIDCO is merely base price and CIDCO is likely to receive much higher offers than base price. CIDCO is the custodian of public property and carries an obligation of securing maximum possible price while leasing out the plots. Funds received by CIDCO by lease of plots are to be utilized for providing public amenities in *inter alia* in Navi Mumbai and Navi Mumbai Airport Influence Notified Area (NAINA). It is therefore incumbent that CIDCO ensures highest possible lease premium for plots put on auction. We therefore do not see any element of

arbitrariness in CIDCO's proposed action of securing higher price for the plots. On the contrary CIDCO's decision subserves public interest.

27. Reliance is placed by petitioners on judgment of the Apex Court in *CIDCO Vs. Shishir Reality Pvt. Ltd.* (supra) wherein it is held that when a contract is being evaluated, the mere possibility of more money in public offers does not itself serve public interest. The facts in the said case were however entirely different. There were allegations of irregularities in allotment of plots, sanctioning amalgamation, change of user, etc by CIDCO in favour of respondents therein and CIDCO had cancelled the allotment. CIDCO had however executed lease deeds in favour of the allottees and the contracts were completed. In the meantime, the allottees applied for amalgamation / splitting the plots as well as change of user. The same were sanctioned by CIDCO and later CIDCO sought to cancel the allotment of plots. Thus, the issue before the Apex Court was not about cancellation of public auction with a view to secure higher price. The Apex Court held that after completion of tender process and receipt of money CIDCO, could not have backtracked on hypertechnical grounds. The Apex Court did not find any public interest in the action of CIDCO in seeking to cancellation lease deeds executed in favour of the allottees. The facts in *CIDCO Vs. Shishir Reality Pvt. Ltd.* are entirely different and the judgment has no application to the present case.

28. Reliance is also placed on judgment in *Star Enterprises Vs. CIDCO* (supra) In that case, the highest offer was rejected without assigning any

reasons. The Apex Court held that for rejecting highest offer reasons should be made available and 'ordinarily' same should be communicated to the concerned parties. The Apex Court however did not apply the said principle to the case before it. The Apex Court has also used the word 'ordinarily'. In the present case reasons for cancellation of the tender process have been placed before us. We have not found any arbitrariness in decision of CIDCO. Since reasons are not communicated to petitioners and stated in the Affidavit, reliance is placed on judgment in *Mohinder Singh Gill* (supra) and *JVPD Scheme Welfare Trust* (supra). However, the Apex Court has held in *Silppi Constructions Contractors Vs. Union of India*, (2020) 16 SCC 489 that the tendering authority is not required to give reasons even if it is a state within the meaning of Article 12 of the constitution of India. That the decision of the tendering authority neither judicial nor quasi-judicial. It is held by the Apex Court in paragraph No.25 as under:

"25. That brings us to the most contentious issue as to whether the learned single judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a state within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. The Respondent nos. 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done."

(emphasis supplied)

29. We are therefore of the view that the decision of CIDCO would not

be vitiated merely by the reason of non-communication of reasons. For the same reason, reliance of petitioners on judgment in *Kalu Ram Ahuja* (supra) would be of no avail. In that case, Apart from absence of reasons for rejecting the highest bid in the cancellation order, no records were placed before the Court to demonstrate that the decision was based on rational and tangible reasons and that the decision was in public interest.

30. We are therefore of the considered view that neither any right is created in favour of petitioners to have the plots allotted to them nor there is any arbitrariness on the part of CIDCO in canceling tender process. In fact, Mr. Hegde has relied upon the judgment of the Apex Court in *Rushi Kiran Logistic* (supra) in which the Apex Court has held that even a concluded contract, if terminated in a bonafide manner, may amount to breach of the contract, but would not result in arbitrariness.

31. Resultantly we do not find any error in the impugned decision of CIDCO. We however record the statement made on behalf of CIDCO that in the fresh tender process, it shall fix the base price as the minimum price indicated in the report of Knight Frank. Petitions are devoid of merits. They are dismissed with no orders as to costs.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ