

**10IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 31918 OF 2022

Ram Omprakash Patil
C-402, La Gloriosa, S/No.9/3, 10/4,
Kalyani Nagar Annexe, Wadgaon Sheri,
Pune - 411014
201, Athena Society, Opp Kumar
Primavera, Wadgaon Sheri,
Pune - 411014

..... Petitioner

VERSUS

- 1 The Secretary
Govt of India, Ministry of Finance
Department of Revenue Delhi
Represented through Union of India
- 2 Office of the Competent Authority and
Administrator, Smugglers and Foreign
Exchange Manipulators (Forfeiture of
Property) Act, 1976

Narcotic Drugs and Psychotropic
Substances Act 1985, Adjudicating
Authority,
Off at : Room No.134-A, 1st Floor, Aayakar
Bhawan, M.K. Road, Churchgate,
Mumbai - 20
- 3 Joint Commissioner,
SAFEMA/NDPSA/PBPTA
Mumbai
Off at : Room No.134-A, 1st Floor,
Aayakar Bhawan, M.K. Road,
Churchgate, Mumbai - 20
- 4 Superintendent Administration
SAFEMA/NDPSA, Mumbai
- 5 Inspecting Officer
Office of SAFEMA/NDPSA, Mumbai

..... Respondents

**WITH
INTERIM APPLICATION (L) NO.35930 OF 2022
IN
WRIT PETITION (L) NO. 31918 OF 2022**

Omprakash Jivanlal Sawal
Occ : Social Worker
R/o. Gorakshan Road,
Near Nikate Hospital, Akola
Tal. & Dist. Akola - 44400

.....Applicant /
Intervenor

Ram Omprakash Patil
C-402, La Gloriosa, S/No.9/3, 10/4,
Kalyani Nagar Annexe,
Wadgaon Sheri, Pune - 411014
201, Athena Society,
Opp Kumar Primavera, Wadgaon Sheri,
Pune - 411014

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Churchgate, Mumbai - 20

- 3 Joint Commissioner,
SAFEMA/NDPSA/PBPTA
'C' Wing, 3rd Floor, Mittal Court,
Nariman Point, Mumbai,
Maharashtra - 400021

4 Superintendent Administration
SAFEMA/NDPSA, Mumbai

5 Inspecting Officer
Office of SAFEMA/NDPSA, Mumbai Respondents

Mr. Venkatesh Dhond, Senior Advocate with Ms. Rashi Raghavan, Ms. Janhavi Kamik, Mr. S. A. Khan I/b. Himanshu Kode for the Petitioner

Mr. Vivek Arote for the Applicant in Interim Application (L) No.35930 of 2022

Mr. Advait M. Sethna with Mr. D. P. Singh a/w. Mr. Poushali Roychoudhary a/w. Mr. Rangan Majumdar, Mr. Sandeep Raman for the Respondents.

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

**RESERVED ON : MARCH 10, 2023
PRONOUNCED ON : MARCH 15, 2023**

JUDGMENT (PER : ACTING CHIEF JUSTICE)

1. The Petitioner participated in the tender process initiated by the Respondents for auction of agricultural land and was declared as a highest bidder at Rs.66,00,000/- (Rupees Sixty Six Lacs Only). The Petitioner deposited the earnest money of Rs.6,63,000/- (Rupees Six Lacs Sixty Three Thousand Only). The Petitioner thereafter deposited 25% of the amount i.e. Rs.9,75,000/- (Rupees Nine Lacs Seventy Five Thousand Only). The Petitioner, in all, had deposited Rs.16,53,000/- (Rupees Sixteen Lacs Fifty Three Thousand Only). Subsequently, Respondent No.3, under the order

dated 18th August 2022 cancelled the auction conducted by Respondent No.2 due to technical reasons. Under the said order dated 18th August 2022 cancelling the auction, Respondent No.2 also returned the amount of Rs.16,53,000/- (Rupees Sixteen Lacs Fifty Three Thousand Only) deposited by the Petitioner under cheque No.277513 dated 18th August 2022. The Petitioner assails the order dated 18th August 2022 cancelling the auction.

2. Mr.Dhond, the learned Senior Advocate for the Petitioner in his usual lucid manner canvassed his submissions and put-forth following propositions.

a) The concluded contract had come into an existence between the parties. Respondent No.2, 3 and 4 had accepted the offer of the Petitioner without any qualification and reservation. 25% amount deposited by the Petitioner was also accepted. Respondent No.2, 3 and 4 have signed the Bid Acceptance Form thereby resulting in concluded contract. It was not open for the Respondents to resile from the same. Resiling from the said contract would amount to breach of contract and the same is not permissible.

b) The action of the Respondents in cancelling the auction is arbitrary and perverse. The reserve price under the

advertisement was fixed at Rs.26,51,000/- (Rupees Twenty Six Lacs Fifty One Thousand Only). The same was fixed after considering the valuation by the Valuation Officer of the Income Tax Department. The property offered was on “as is where is” and “as is what is” basis. The sale of the property was advertised in two local newspapers viz; (i) Voice of Vidharbha; and (ii) Times of India, Nagpur Edition, both of which have wide circulation in Akola District. Tender notice was also put up on website of Respondent No.2. The Petitioner was the highest bidder in the auction and offered sum of Rs.66,00,000/- (Rupees Sixty Six Lacs Only) which is significantly higher than the reserve price of Rs.26,51,000/- (Rupees Twenty Six Lacs Fifty One Thousand Only). The said bid was accepted and the Bid Acceptance Form dated 3rd June 2022 was issued to the Petitioner.

c) In terms of the auction, the Petitioner had already paid earnest amount of Rs.6,63,000/- (Rupees Six Lacs Sixty Three Thousand Only). The Petitioner thereafter tendered the first installment of Rs.9,75,000/- (Rupees Nine Lacs Seventy Five Thousand Only) by his letter dated 1st July 2022 for 25% of total bid price. The notice of cancellation dated 18th August 2022 is served upon the Petitioner. The said decision was

taken relying upon Clause 19 of the Standard Terms and Conditions. The said clause 19 does not permit cancelling of an auction after a bid has been accepted and a contract has come into existence. The Petitioner objected to the said cancellation by his letter dated 23rd August 2022 and sought reconsideration of the decision. The Petitioner in the said letter emphasized that the Petitioner was ready and willing to pay the entire amount which is well within the deadline to pay. The Petitioner's request was turned down by Respondent No.2 under communication dated 26th August 2022 without ascribing any reason. The Petitioner thereafter served Advocate's notice dated 12th September 2022 calling upon Respondent No.2 to withdraw the cancellation. The said notice was responded by Respondent No.2 through letter dated 19th September 2022. In the said letter, Respondent No.2 sought to justify the decision to cancel on a completely new ground i.e. "while conducting the auction it was felt that wide publicity could not be given to the auction". The said explanation is contrary to the explanation offered earlier viz. "technical reasons". The explanation offered is self-defeating since while conducting the auction, if the authorities had felt that wide publicity had not been given, the authorities ought not to have

proceeded ahead with the auction. The excuse of wide publicity not being given was without merit since the auction had been advertised in two newspapers having wide circulation. The learned Senior Advocate submits that the auction had fetched a price which was far in excess of the reserve price mentioned in the ready reckoner of the said plot.

d) In the affidavit in reply filed by the Respondents yet another reason has been offered that the auction has been cancelled because a complaint had been filed by one Omprakash Jeevanlal Sawal. The said complainant claimed that (i) the property had been sold at a low price; and (ii) wide publicity had not been given. The same was erroneous, as wide publicity was given and the price offered was much higher than the reserve price. Moreover, the stand of the Respondents is contrary to the communication they made to the complainant Omprakash Sawal. The Respondents communicated to the complainant Omprakash Sawal stating that adequate publicity had been given and the offer obtained was fair price. The auction of 3rd June 2022 had complied with all the requisite formalities under the Smugglers and Foreign Exchange Manipulators (Receipt, Management and Disposal of Forfeited Property) Rules, 2006 and the Illegally Acquired

Property (Receipt, Management and Disposal) Rules 1989.

e) Once the auction was conducted and the Petitioner's bid was found to be in accordance with the terms of the auction and accepted, a contract came into existence which could not be unilaterally terminated. Not only did the Respondents accept that the contract had come into existence, the Respondents acted on the basis of this contract by receiving further amounts.

f) In a fresh auction advertisement the reserve price is fixed at Rs.29,19,000/- (Rs. Twenty Nine Lacs Nineteen Thousand Only) which is less than the price offered by the Petitioner. The learned Senior Advocate relied upon the judgment of the Apex Court in the case of ***K. Kumara Gupta Vs. Sri Markendaya and Sri Omkareshwara Swamy Temple and Ors.***¹ to submit that unless and until it is found that there was any material irregularity and/or illegality in holding the public auction and/or the auction sale was vitiated by any fraud or collusion, it is not open to set aside the said auction in favour of the highest bidder on the basis of some representations made by third party who did not even participate in the auction on the ground that the value of the

1 (2022) 5 SCC 710

property might have been much more.

g) Only because now in a fresh auction, more amount is received, is not a ground for setting aside the validly conducted auction. Once it is concluded that the price offered is adequate, no subsequent higher offer can constitute a valid ground for refusing confirmation of sale or offer already received. Reliance is placed by the learned Senior Advocate on the judgment of the Apex Court in the case of ***Vedica Procon Pvt. Ltd. Vs. Balleshwar Greens Pvt. Ltd. & Ors.***²

h) Only because the Respondents issued a cheque of the amount deposited by the Petitioner and the Petitioner encashed the said cheque, cannot be a ground to negate the relief to the Petitioner. The Petitioner, on 23rd August 2022 had clearly written to the Respondents not to proceed ahead with the cancellation and that the Petitioner is ready and willing to perform his part of the promise. This shows that the Petitioner encashed the cheque of the amount under-protest. Reliance is placed by the learned Senior Advocate on the judgment of the Apex Court in the case of ***State of U.P. and Anr. Vs. Uptron Employees' Union, CMD and Ors.***³

² (2015) 10 SCC 94

³ 2006 5 SCC 311

3. Mr. Sethna, the learned advocate for the Respondents succinctly countered the arguments of the learned Senior Advocate for the Petitioner and canvassed following submissions:

(i) According to the learned advocate, clause 19 of the Rules empowers the Respondents to cancel the auction at any point of time without assigning any reason. The bid of the Petitioner was never accepted by the Respondents. No concluded contract came into existence. The document viz. Bid Acceptance Form relied on by the Petitioner cannot give rise to the concluded right. The same is only confirmation by the Petitioner that he has purchased the immovable property detailed in the said form.

(ii) The Respondents had returned the entire amount to the Petitioner that was deposited by cheque. The Petitioner has encashed the said cheque without any protest, as such, now the Petitioner cannot claim performance of the same.

(iii) The complaint was received about the sale of the property being done at a lower price and that the market value of the property is more than Rs. 2 crores. The same stands proved in the fresh auction conducted, wherein the highest bid

received is Rs.2.25 crores and second highest bid is of Rs.2.07 crores.

(iv) It is for the Respondents to decide whether to accept the bid of the tenderer or not and the courts may not interfere in such matter. Reliance is placed on the judgment of the Apex Court in the case of *M/s. N. G. Projects Ltd. Vs. M/s. Vinod Kumar Jain & Ors.*⁴ Relying upon the judgment of the Apex Court in the case of *State of Punjab & Ors. Vs. Mehar Din.*⁵ It is submitted that a plausible decisions arrived at need not be overturned and at the same time, latitude ought to be granted to the State in exercise of its executive power.

v) Relying upon the judgment of the Apex Court in the case of *the Haryana State Agricultural Marketing Board and Ors. Vs. Sadhu Ram*⁶ it is submitted that the final authority to approve the auction bids was the Competent Authority and unless the same is done, the bids cannot be said to have been confirmed.

vi) The Competent Authority had not passed an order accepting the bid. Reliance is also placed on the judgment of

4 Decided on 21st March 2022

5 Civil Appeal No.5861 of 2009 dated 2nd March 2022

6 MANU/SC/7475/2008

the Apex Court in the case of *Indian Overseas Bank Vs. RCM Infrastructure Ltd.*⁷ to submit that the sale would be complete only when the auction purchaser makes the entire payment and the Authorised Officer, exercising the powers of sale issues a certificate of sale of the property. In the present case, no such certificate of sale has been issued nor any agreement has been executed between the parties. The learned advocate further submits that the High Court may not exercise its power under judicial review.

vii) The Petitioner having accepted the refund of the amount without any protest is now precluded from challenging the auction nor any right subsists with him.

4. We have considered the submissions canvassed by the learned Senior Advocate for the Petitioner and the learned advocate for the Respondents.

5. The Central Government, under the provisions of Section 68-I of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act) forfeited the property viz. agricultural land bearing Sy.No.98/1, Gut No.203, Mauja Kumbhari, Dist. Akola admeasuring 2.02 H. The Competent Authority and the

⁷ MANU/SC/0661/2022

Administrator, SAFEMA/NDPSA/PBPTA Mumbai issued notice for sale of forfeited property through simultaneous tender, public auction and e-auction on or about 18th May 2022. The reserve price was fixed at Rs.26,51,000/-.

6. It is trite that in matters of tender the Courts would be loath in interfering with the decision of the employer unless the decision exhibits manifest, arbitrariness, perversity and/or illegality. The Courts would step-in if the decision is arbitrary or if actuated by *mala fides* and bias, so also if the decision making process is actuated with malice or is illegal.

7. It is not disputed that the reserve price for the property under auction was Rs.26,51,000/- (Rupees Twenty Six Lacs Fifty One Thousand Only). The Petitioner had quoted Rs.66,00,000/- (Rupees Sixty Six Lacs Only). The Petitioner had deposited earnest money and also 25% of the amount. The Bid Acceptance Form was issued to the Petitioner by Respondent Nos.2, 3 and 4. The question would be whether the concluded contract came into existence.

8. Tender is an invitation to offer. Pursuant to the tender the Petitioner had given his offer. The acceptance of the offer has to be by the Respondents. The acceptance should be unqualified and without reservation and absolute. The Respondents had accepted

the offer of the Petitioner. Bid Acceptance Form was also signed by the Respondent Nos.2 to 4. Once offer of the Petitioner is accepted by the Respondents, a promise comes into existence. In the present case, offer of the Petitioner was accepted without any qualification. Promise between the parties came into existence. Both the parties thereafter are bound by the promise and are expected to perform their part of the promise. The Petitioner was required to deposit remaining 75% amount by 2nd September 2022. Prior to that on 18th August 2022 the Respondent cancelled the tender / auction and also forwarded the cheque of the entire amount deposited by the Petitioner to the Petitioner. Though the Petitioner on 23rd August 2022 gave a written communication that he has not committed any wrong and is ready and willing to go ahead with the transaction and requested the Respondents to reconsider the decision of cancelling the auction, the Petitioner on the same day encashed the cheque. He did not suggest that he is encashing the same under-protest. The Petitioner accepted the said amount without demur.

9. Once having accepted the refund of the amount deposited by him pursuant to the auction, it will not be open for the Petitioner to turn around and say that the contract of sale subsists between the parties. The fact that a part consideration amount paid by the Petitioner towards purchase of the property under auction is

refunded by the Respondents and the Petitioner accepted it without demur is sufficient to negate the relief to the Petitioner. The Petitioner wants to contend that the Petitioner was and is ready and willing to perform his part of contract. Encashing the cheque of the amount refunded by the Respondents is not compatible with the plea of the Petitioner to proceed ahead with the alleged contract. Accepting the amount of earnest money of 25% deposited by the Petitioner from the Respondents would be a death knell for the Petitioner. Accepting the refund of the amount from the Respondents would demonstrate that if at all there is a contract, the parties have rescinded the same.

10. In the case of K.Kumara Gupta (Supra), the auction sale was not below the reserve price. The Apex Court came to the conclusion that unless and until it is found that there was material irregularity and/or illegality in holding the public auction and/or the auction sale was vitiated by fraud or collusion, it is not open to set aside the said auction in favour of the highest bidder on the basis of some representations made by third party on the ground that the value of the property might have been much more. In the present case, the parties have rescinded the contract, if any, existed between the parties and it has come on record that the market value of the property was three times more. Even if we consider that the reserve

price of the property was low and the Petitioner had quoted more, still the auction process itself came to an end when the Petitioner encashed the amount of the cheque refunded by the Respondents to the Petitioner. In the case of *State of Uptron Employee's Union, CMD (supra)* the Petitioner therein encashed the cheque of the amount under-protest. In the present case, the Petitioner nowhere suggested that he is accepting the amount, under-protest.

11. Rule 19 of the Smugglers and Foreign Exchange Manipulators (Receipt, Management and Disposal of Forfeited Property) Rules, 2006 reads thus:

19. Disposal of land or building.—Subject to the relevant provisions of any law relating to the acquisition or disposal of immovable property and also subject to the sale proceeds being credited into the account of the Central Government, land or building shall be disposed of in the following manner, namely:—

(1) The disposal of land or building shall be done simultaneously through open tender, public auction and e-auction. Bids shall be invited through advertisements in local newspapers and through the website of the department. After the sealed tenders are received, the property shall be put to public auction. Simultaneously, the department shall advertise through internet inviting bids through e-auction. The property shall be sold to the highest bidder in all the three methods namely, sealed tender, public auction and e-auction, provided the price obtained is not less than the reserve price fixed at by the department.

(2) In case the property is not disposed of in the manner prescribed under sub-rule (1) of rule 19 in two attempts, the same shall be disposed of by inviting sealed tenders:

(a) the property shall be advertised in the local newspapers

indicating the reserve price and inviting tenders. The highest bidder (subject to the reserve price) shall be entitled to buy the property.

(b) if the property cannot be sold in the first attempt as provided in clause (a), the sale of the property through sealed tender shall be advertised again with a proviso that the competent authority reserves the right to sell the property to the highest bidder who offers to buy the property for a price which is up to fifteen per cent less than the reserve price.

(c) if the property remains unsold even after the attempts as provided in clause (a) and clause (b), the sale of the property shall be advertised again with a proviso that the competent authority reserves the right to sell the property to the highest bidder who offers to buy the property for a price which is up to thirty per cent less than the reserve price.

(3) If the property remains unsold even after attempts as provided in sub-rule (1) and sub-rule (2), it shall be disposed of through a negotiated sale upto fifty per cent below the reserve price to any of the following entities, namely:—

- (a) Central and State Government Departments.*
- (b) Public Sector Undertakings.*
- (c) Local bodies.*

(4) If the property is not sold by any of the above methods, it may be disposed of by the Central Government in the manner as deemed fit.

12. Rule 19 dealing with disposal of land or building would be relevant to be considered. The disposal of the immovable property is subject to the sale proceeds being credited into the account of the Central Government. In the present case, the stage for depositing the complete sale proceeds had not yet arrived and prior to that auction sale was cancelled.

13. The Apex Court in the case of Indian Overseas Bank (supra) while considering the auction under the provisions of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002, held that the statutory sale as per Rule 8 & 9 of the Security Interest (Enforcement) Rules 2002 would be complete when the auction purchaser makes the entire payment and the authorised officer exercising the power of sale issues a certificate of sale. In the present case sale would complete only after deposit of entire sale proceeds with the Central Government as contemplated under Rule 19 of the Rules 2006.

14. The title of the property never passed to the Petitioner. The Petitioner only got right to purchase the property. As observed above, the Petitioner accepted the cheque of the amount refunded by the Respondent towards the earnest amount and 25% of the amount i.e. total Rs.16,53,000/- (Rupees Sixteen Lacs Fifty Three Thousand Only and encashed the cheque without demur, would be sufficient to suggest that the Petitioner forfeited his right to purchase the property inasmuch as any transaction between the Petitioner and the Respondents would be rescinded. Section 62 of the Indian Contract, 1872 deals with 'contracts which need not be performed'. If the parties to contract agree to rescind it, the original contract need not be performed. The rescission can be express or implied.

The Respondents, under communication dated 18th August 2022 cancelled the contract. The Petitioner accepted the refund of the amount deposited by it thereby acceding to the rescission of the contract. It will be too late in the day now for the Petitioner to contend performance of the contract that has been rescinded by the act of the parties. On this count also, the Petitioner would not be entitled for any relief from this Court.

15. Once the contract is rescinded, no rights and liabilities would flow from the same. Rescission can be by accepting the refund of the consideration amount. Rescission may be express or implied.

16. Moreover, the Respondents had resorted to fresh auction. By way of interim order, this Court had directed not to finalize the tender, however, allowed the Respondents to proceed with the auction and open the tender. The amount tendered by the fresh auction purchaser is three times more than the amount offered by the Petitioner. The highest bid is of Rs.2.25 crores and the second highest bid is of Rs.2.07 crores. The same is more than 3 times the amount offered by the Petitioner i.e. Rs.66,00,000/- (Rupees Sixty Six Lacs Only). The same would substantiate the contention of the Respondents and of the Complainant that the market value of the property is much more than for which it was being sold. The public

exchequer would be a casualty if the auction is allowed to be confirmed at Rs.66,00,000/- (Rupees Sixty Six Lacs Only).

17. The aforesaid facts and circumstances taken into consideration in entirety, would dis-entitle the Petitioner to any relief. The Writ Petition, as such, is dismissed. No costs.

(SANDEEP V. MARNE, J)
JUSTICE)

(ACTING CHIEF

18. At this stage, the learned Senior Advocate for the Petitioner submits that the interim order was operating since long and the same be continued for a period of 10 days.

19. The learned Counsel for the Respondents opposes the said request.

20. Considering the fact that the interim order was in operation, the Respondents shall not finalize the auction / tender till 25th March 2023. Needless to state that after 25th March 2023, the present protection shall come to an end.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)