A LAXMIKANT AND ORS.

v.

SATYAWAN AND ORS.

MARCH 19, 1996

B [N.P. SINGH AND S.C. SEN, JJ.]

Nagpur Improvement Trust Land Disposal Rules, 1955 :

R. 4(3), Proviso under control of Nagpur Improvement Trust—Allot-
C *ment of plot on lease—Cancellation on lease on allottee's failure to raise construction within stipulated period—Plot put to auction—Conditions of auction contemplating accrual of right to highest bidder subject to confirmation letter—Third round of bid being not held due to stay order by court—Auction no completed—Trust passing resolution to reinstate allotment to lessee—Resolution challenged by highest bidder—High Court deciding in*
D *favour of highest bidder—Held, High Court not justified in quashing the resolution passed by Trust—Auction not being completed, and confirmation letter not being issued to highest bidder no right accrued to him.*

Auction sale :

E

Nagpur Improvement Trust—Auction of plot by—Nagpur Improvement Trust Land Disposal Rules empowering Trust to reserve right to itself to reject highest or any bid—Conditions of auction contemplating accrual of right on highest bidder subject to issuance of confirmation letter to him—Third round of bid, not held due to stay order passed by court—Auction not com-
F *pleted—No confirmation letter issued—Claim of highest bidder upto second round of bid—Held not maintainable.*

The appellant was a transferee of the plot in dispute which was originally leased out to the transferer by the Nagpur Improvement Trust. Since the appellant did not comply with the condition of the lease
G **whereunder the lessee was required to start construction on the said plot within four years from the date of agreement of the lease and to complete the construction within three years thereafter, the Trust cancelled the allotment; and put the plot to auction, which was challenged by the appellant in a writ petition before the High Court. At the auction, the**
H **respondent was the highest bidder till the second round of the bid; but**

before the third round of the bid could be held, an order staying the bid was received and the auction proceedings did not proceed further. A

During the pendency of the writ petition filed by the appellant, the Trust took a decision to reinstate the allotments which had been cancelled due to non-completion of the construction. The appellant withdrew the writ petition and the Trust passed a resolution rejecting the bid of the respondent and reinstating the plot in favour of the appellant. B

The respondent filed a writ petition before the High Court challenging the rejection of his bid. The High Court though held that because of the order of stay the third round of bid could not be held and as such there was no completed contract which could be enforced in court, yet it directed the trust to transfer the land to the respondent who was the highest bidder at the auction. C

Aggrieved, the appellant filed the appeal.

D

Allowing the appeal, this Court

HELD : 1.1. Since third round of the bid could not be held and the public auction had not culminated to its logical end the High Court erred in holding that the respondent had acquired a right in respect of the plot in dispute. [537-B-C] E

1.2. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale had been notified before the public auction was held. F [538-D-E]

1.3. From a bare reference to the conditions of auction it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter, as envisaged by condition No. 3, had been issued to him. No such confirmation letter was issued to the respondent. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. [538-B] G H

A **1.4. The High Court, was not justified in quashing the resolution dated 27.2.1981 of the Trust to reinstate the plot in favour of the appellants. That decision had been taken by the Board of Trustees which power was neither challenged nor could have been challenged. As such no right had accrued to the respondent which could have been enforced by the High**
B **Court in the writ jurisdiction. [538-F-G]**

Trilochan Mishra, etc. **v.** *State of Orissa & Ors.,* **[1971] 3 SCC 153,** *State of Orissa and Ors.* **v.** *Harinarayan Jaiswal and Ors.,* **[1972] 2 SCC 36,** *Union of India & Ors.* **v.** *M/s. Bhim Sen Walaiti Ram,* **[1970] 2 SCR 594 and** *State of Uttar Pradesh and Ors.* **v.** *Vijay Bahadur Singh and Ors.,* **[1982] 2**
C **SCC 365 referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1683 of 1982.

From the Judgment and Order dated 15.12.81 of the Bombay High
D Court in W.P. No. 843 of 1981.

V.A. Bobde and A.K. Sanghi for the Appellants.

V.N. Ganpule, S.K. Agnihotri and P.V. Holay for the Respondents.

E S.M. Jadhav for A.S. Bhasme for the Respondent.

M.N. Shroff, S.K. Mishra and Ms. Reema Bhandari for the Respondent No. 2.

The judgment of the Court was delivered by

F **N.P. SINGH, J.** This appeal has been filed for setting aside the judgment of the High Court quashing the resolution dated 27.2.1981 of the respondent - Nagpur Improvement Trust (hereinafter referred to as the Trust) and directing the Trust to transfer the land in question to writ-petitioner/respondent (hereinafter referred to as the respondent) being the
G highest bidder.

The said Trust had framed a scheme known as "Central Avenue Scheme" and plot No. 57 in Circle No. 7/12 was leased out to C.P. Syndicate, Nagpur. However, the aforesaid C.P. Syndicate on 30.10.1957 transferred its right, title and interest in the lease-hold to the appellant No.
H 1, Laxmikant. The other appellants are brothers of appellant No. 1. One

of the conditions imposed by the Trust in respect of the aforesaid lease was that the construction should start within four years from the date of the agreement of lease and it should be completed within three years thereafter. As this condition was not complied with, a notice was issued to the appellants alongwith other defaulters as to why the lease be not cancelled. Show cause was filed on behalf of the appellants which was accepted by the trust on a condition that the appellants should make the construction on the plot on or before 30.6.1971. As there was a default on the part of the appellants, the allotment of the plot was cancelled on 11.1.1972. Again representations were filed before the Trust but the plot in question was put on auction on 21.1.1974. The respondent participated at the said auction and offered Rs. 3,12,000, and he was the highest bidder till the second round of the bid. But before the third round of the bid could be held an order staying the auction was received. There is no dispute that the third round of bid could not be held. However, the respondent deposited an amount of Rs. 31,200 as an earnest money as per conditions of the auction.

The writ petition (W.P. No 102 of 1974) filed on behalf of the appellants was admitted on11.3.1974. It appears that in the meantime the Trust took a decision to reinstate the allotments which had been cancelled due to non completion of the construction over the plots of different lessees. We were informed that there were 17 lessee including the appellants. It is an admitted position that the cancellation order in respect of 16 lessees have been recalled and their allotments have been reinstated with reference to the different plots allotted in their favour. On behalf of the appellants, it was stated that as writ petition on their behalf was pending, they were required to withdraw the writ petition, so that further action could be taken. The appellants withdrew the said writ petition on 30.9.1980. Thereafter, a meeting of the Board of the Trust was held on 27.2.1981 to consider the question as to whether the highest bid of the respondent be rejected and the plot be reinstated in favour of the appellants. The relevant part of the resolution says :

> "The Board, therefore, decided by majority of votes that the highest bid of Shri S.S. Bhojwani, Chief Promoter, Indus Co-Operative Housing Society Ltd., received in the auction should be rejected and the plot should be reinstated in favour of the original allottees Shri Laxmikant Itkelwar and others on the following terms and conditions.....".

A This very resolution has been quashed by the High Court by the impugned judgment saying that as the respondent was the highest bidder at the auction aforesaid, the Trust had to perform its statutory obligation under Rule 4(3) of the Nagpur Improvement Trust Land Disposal Rules, 1955 which is as follows :–

B "Where it is proposed to depose of any Trust land by auction, the premium to be paid for the transfer of such land shall be put to auction after giving due publicity to the date and place of auction and the Trust land to be auctioned and *the land shall be transferred to the highest bidder subject among other things, to be condition of* C *payment of ground rent at two per cent of the premium annaully :*

Provided that if, for reason to be recorded in writing, the Chairman or the Officer authorised by him in this behalf considers -

(a) *that it would be in the interest of the Trust to accept a lower* D *bid, he may accept such lower bid and that land shall be transferred accordingly, or*

(b) *that no fair bid is forthcoming, he may withdraw the land from the auction of the day and put it up for auction on future date to be announced later.*"

E (emphasis supplied)

According to the High Court, as sub-rule (3) of Rule 4 aforesaid provides that once a decision had been taken to depose of the land by auction, after the auction of the land it has to be transferred to the "highest bidder", no F discretion was left with the trust to refuse to make such transfer. The proviso to the said sub-rule (3) of Rule 4 provides that under conditions prescribed therein a lower bid may be accepted or the land in question may be withdrawn from auction. It will be proper to refer to the finding of the High Court in respect of the auction so held :

G "It is also clear that unless the third bid is accepted, there is no completed contract and the question of enforcement of any rights under the contract does not arise in the present case. If it is brought to the notice of this Court that statutory Body like the Nagpur Improvement Trust is refusing to perform its statutory H obligation, then certainly this Court can entertain a petition to find

out whether that grievance be redressed or not. In may opinion, therefore, no such question of any enforcement of a contract or rights thereunder arises in this case."

The High Court having held that because of the order of stay, the third round of bid could not be held and as such there was no completed contract which could be enforced in Court, issued the impugned direction, directing the Trust to transfer the land in question to the respondent, who was the highest bidder at the auction aforesaid. We are not able to reconcile the findings of the High Court. If the public auction had not culminated to its logical end because the third round of bid was a must, then how High Court came to conclusion that the respondent had acquired any right in respect of the plot in question ? When sub-rule (3) of Rule 4 aforesaid requires the trust to transfer the land in question after the auction it assumes that a valid right has accrued to the bidder which has been accepted by the Trust. Sub-Rule (3) of Rule 4 has to be read alongwith the proviso thereto referred to above which vests power to accept a lower bid or to withdraw the land itself from auction inspite of the highest offer being made by any person.

Apart from that the High Court overlooked the conditions of auction which had been notified and on basis of which the aforesaid public auction was held. Condition No. 3 clearly said that after the auction of the plot was over, the highest bidder had to remit 1/10 of the amount of the highest bid and the balance of the premium amount was to be remitted to the trust office within thirty days 'from the date of the letter informing confirmation of the auction bid in the name of the person concerned'. Admittedly, no such confirmation letter was issued to the respondent. Condition Nos. 5, 6 and 7 are relevant :

"5. The acceptance of the highest bid shall depend on the Board of Trustees.

6. The Trust shall reserve to itself the right to reject the highest or any bid.

7. The person making a highest bid shall have no right to take back his bid. The decision of the Chairman of the Board of Trustees regarding acceptance or rejection of the bid shall be binding on the said person. Before taking the decision as above and informing the same to the individual concerned, if the said

A individual takes back his bid, the entire amount remitted as deposit towards the amount of bid shall be forfeited by the Trust."

From a bare reference to the aforesaid conditions, it is apparent and explicit that even if the public auction had been completed and the respondent was the highest bidder, no right had accrued to him till the confirmation letter had been issued to him. The conditions of the auction clearly conceived and contemplated that the acceptance of the highest bid by the Board of Trustees was a must and the Trust reserved the right to itself to reject the highest or any bid. This Court has examined the rightof the highest bidder at public auctions in the cases of *Trilochan Mishra, etc.* v. *State of Orissa & Ors.*, [1971] 3 SCC 153, *State of Orissa & Ors.* v. *Harinarayan Jaiswal & Ors.*, [1972] 2 SCC 36, *Union of India & Ors.* v. *M/s. Bhim Sen Walaiti Ram*, [1970] 2 SCR 594 and *State of Uttar Pradesh & Ors.* v. *Vijay Bahadur Singh & Ors.*, [1982] 2 SCC 365. It has been repeatedly pointed out that State or the 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 or bid. The acceptance of the highest bid is subject to the conditions of holding the public auction and the right of the highest bidder has to be examined in context with the different conditions under which such auction has been held. In the present case no right had accrued to the respondent either on the basis of the statutory provision under Rule 4(3) or under the conditions of the sale which had been notified before the public auction was held.

The learned counsel appearing for the respondent urged that in view of the statutory provision of Rule 4(3) it was not open to the Trust to prescribe the conditions of auction referred to above. The respondent having participated at the said public auction on basis of those conditions which were in nature of supplementary provisions for holding the auction could not be questioned by the respondent. The High Court, was not justified in quashing the resolution dated 27.2.1981 of the Trust, to reinstate the plot in question in favour of the appellants on conditions mentioned in the said resolution. That decision had been taken by the Board of Trustees which power was neither challenged nor could have been challenged. As such no right had accrued to the respondent which could have been enforced by the High Court in the writ jurisdiction. Accordingly, the appeal is allowed. The impugned judgment of the High Court is set aside. In the facts and circumstances of the case, there shall be no orders as to cost.

H R.P. Appeal allowed.