

FULL BENCH

Before P. C. Jain, A.C. J., G. C. Mital and I. S. Tiwana, JJ.

SURJA RAM,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 2114 of 1983.

February 13, 1984.

Rules for Sale of Surplus Rural Properties—Rule 5(i)—Sale of property by public auction—Such sale subject to confirmation by Settlement Commissioner or his nominee—Settlement Commissioner not accepting the highest bid—Such officer—Whether bound to give reasons—Highest or other bidder—Whether entitled to challenge the action of the appropriate authority.

Held, that an analysis of rule 5(i) would show that under this sub-rule, a Settlement Commissioner or other officer is not bound to accept the highest or other bids nor are they bound to disclose reasons therefor, but refusing to disclose reasons can by no stretch of imagination be interpreted to mean that the Settlement Commissioner or other officer is not bound to give reasons. There is difference between 'not disclosing the reasons' and 'non-giving of reasons'. A thing can be discussed only when it so exists, but in case it does not exist, then the question of disclosure does not arise. By using the word 'disclose', the intention of the rule-making authority is absolutely clear that while declining to accept the highest bid or other bids, the officer concerned is bound to give reasons and the only right available to him is not to disclose those reasons. Moreover, this non-disclosure of reasons, is meant for the bidders i.e., that the Settlement Commissioner or other officer is not bound to tell them as to on what grounds has he not accepted their bid. If the intention of the rule making authority had been to vest the officer concerned with a power to refuse to accept the highest bid without assigning any reasons, then instead of 'shall not be bound to disclose his reasons', the words would have been 'shall not be bound to give his reasons'. As such, it has to be held that the Settlement Commissioner or other officer is bound to record reasons for declining to accept the highest or other bids and once that conclusion is arrived at, there is no gainsaying that such reasons have to be relevant and not whimsical or arbitrary.

(Para 8)

Held, that the aggrieved persons whose right to property as a result of non-acceptance of the highest bid is being taken away, can certainly challenge the action on the ground that the order of the appropriate authority is arbitrary or has come in existence as a

result of extraneous considerations and in case it is so proved, then the order of non-acceptance would certainly be liable to be quashed. It is, therefore, held that the Settlement Commissioner or other officer under sub-rule (i) of Rule 5 of the Rules is bound to record reasons which are relevant for refusing to accept the highest bid or other bids, that such reasons have not to be disclosed to the highest bidder, that in case an action refusing to accept the highest bid is challenged in a Court of law, then the reasons given for refusing to accept the bid have to be made available so as to enable the Court to find out if the same are relevant and germane to the non-acceptance of the bid and that the Settlement Commissioner or other officer cannot arbitrarily, whimsically and without assigning any reasons refuse to accept the highest bid or other bids.

(Paras 9 and 12).

Writ petition under articles 226/227 of the Constitution of India praying that the records of the case may be summoned and after perusal of the same the impugned order of the Settlement Officer (Sales) (as mentioned at page 2 of Annexure P-2) setting aside the auction in favour of the petitioner and his brothers,—vide the auction dated 24th November, 1978 and the order Annexure P-2 be quashed by way of issuance of Writ in the nature of certiorari and any other appropriate Writ, Order or Direction.

(ii) *a writ in the nature of mandamus be issued to the respondents to treat the auction dated 24th November, 1978 as final and to confirm the same, allowing the petitioner to deposit the instalments due as per the terms of auction and as so directed by this Hon'ble Court.*

(iii) *any other writ, order or Direction which this Hon'ble Court deems fit may be passed.*

(iv) *issuance of advance notice of motion may kindly be dispensed with;*

(v) *production of certified copy of Annexure P-1 be dispensed with;*

(vi) *Petition be allowed with costs.*

It is further prayed that the operation of the impugned order Annexure P-2 be stayed and further proceedings to auction the land be stayed.

S. S. Rathor, Advocate with Malkiat Maan, Advocate, for the Petitioner.

B. L. Bishnoi, Advocate, A.G. (H), for Respondents.

JUDGMENT

Prem Chand Jain, A.C.J.—

(1) The only legal question that needs determination by this Bench may be formulated thus :—

Is the Settlement Commissioner or other Officer under Rule 5(i) of the Rules for sale of Surplus Rural property, bound to give reasons for not accepting the highest or other bids ?

(2) The land in question measuring 50 Kanals 1 Marla situated in village Kamalpur Gadrian, Tahsil and District Karnal, was evacuee property. It was put to auction several times; but for one reason or the other the auction was not accepted. The last auction took place on 24th November, 1978. In this auction the petitioner and his brothers gave highest bid of Rs. 20,400. A sum of Rs. 2,550 was deposited as earnest money/sale proceeds of the aforesaid property,—*vide* Receipt No. 94, Book No. 1600, dated 24th November, 1978. It appears that soon after the auction, a writ petition was filed in this Court on the ground that the land in dispute could not be put to auction as the same was not an evacuee property. To this writ petition, which was ultimately dismissed, the petitioner was not made a party. However, it appears that the Settlement Officer (Sales) without issuing any notice or affording an opportunity of hearing to the petitioner, set aside the auction in his favour by passing the following order :—

“The land is of Shamlat Deh. Hence, the sale is set aside.”

(3) Feeling aggrieved from the aforesaid order, the petitioner preferred a revision petition, but the same was dismissed by respondent No. 1,—*vide* his order, dated 7th January, 1983. The petitioner through this petition has challenged the legality and propriety of the order of the Settlement Officer (Sales) and the order of respondent No. 1 passed on 7th January, 1983.

(4) The petition has been contested on behalf of the respondents. In the return filed by the Joint Secretary to Government, Haryana, Rehabilitation Department, the averments made in the petition on merits have been controverted. However, certain preliminary objections have also been taken, out of which, the one which

needs specific mention reads as under :—

“That this highest bid of Rs. 20,400 offered by the petitioner alongwith his brothers S/Shri Natha Ram, Ram Kishan and Baljit, on 24th November, 1978, for the land in dispute has not been confirmed. This Hon'ble High Court in a case reported in A.I.R. 1983 Punjab and Haryana at page 57(D.B.) has held as under :—

‘As under a rule relating to the sale of Package Deal Property, the highest bid offered by the purchaser at the time of auction was subject to approval by the Settlement Officer or the Settlement Commissioner, where the Settlement Officer and Settlement Commissioner declined to approve the highest bid the order declining to approve of the highest bid was not liable to be set aside.’

(5) When the matter came up for arguments before the Motion Bench, the learned counsel for the State, pressed the aforementioned preliminary objection. After hearing the learned counsel for the parties, it appears, that the Bench did not find itself in agreement with the view taken in *State of Haryana and others v. Asha Ram*, (1). Consequently, the petition was admitted to hearing by a Full Bench. That is how we are seized of the matter.

(6) It was contended by the learned counsel for the petitioner, that the Settlement Officer is bound to give reasons for declining to accept the highest or other bids and that those reasons have not to be extraneous or irrelevant. In other words what was sought to be argued was that the Settlement Officer has no jurisdiction to refuse to accept the highest or other bids on arbitrary or whimsical grounds and in case an order refusing to accept the highest or other bids is challenged in a Court of law, then the appropriate authority is bound to disclose the reasons which weighed with it for not accepting the bid. On the other hand, the learned State counsel submitted that the Settlement Officer is not under any obligation to give reasons for declining to accept the highest or other bids and that mere auction of land without confirmation does not give any legal right to a bidder so as to enable him to challenge the legality of the order refusing to accept the highest or other bids. In support

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of his contention, the learned State counsel placed great reliance on the judgment of this Court in *Asha Ram's case* (supra).

(7) To get a correct and plausible answer to the question arising out of the contentions of the learned counsel for the parties, which has been formulated in the earlier part of the judgment, rule 5 of the Rules for Sale of Surplus Rural Properties (hereinafter referred to as the 'Rules'), may be noticed :—

"PROCEDURE FOR SALE OF PROPERTY BY PUBLIC AUCTION.

Where any property is to be sold by public auction :—

- (a) The property shall be sold through the officers appointed by the State Government in this behalf.
- (b) The Settlement Commissioner or any other officers empowered to sell any such property shall cause a proclamation of the intended sale to be made in the language of the principal Civil Court of the Original jurisdiction within whose jurisdiction the property is situated.
- (c) Notice of the intended sale shall be given at least 15 days before the proposed sale and every such notice should state the date, time and place of the proposed sale, the description of the property to be sold, the location and boundaries, where possible, the terms and condition of the sale and any other particular which the Settlement Commissioner or other Officer considers material. One copy of the notice shall be affixed in a conspicuous place in the village(s) where the property is situated, e.g., the Panchayat Ghar, Gurudwara, Mandir, School, etc. It shall be within the discretion of the Settlement Commissioner or other officer to advertise the sale in news paper and in such other manner as he may deem fit.
- (d) No sale shall take place until after the expiry of the period of fifteen days from the date of publication of the notice.

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- (e) Every auction of a property shall be subject to a reserve price fixed in respect of the property, but such reserve price shall not be disclosed.
- (f) The Officer conducting the auction may in his discretion withhold sale of any property without assigning any reasons therefor.
- (g) The officer conducting the sale may, at his discretion for reasons to be recorded in writing, adjourn the sale to a specified date and hour and an announcement to that effect shall be made at the time of the adjournment of the sale. Provided that where a sale is adjourned for a period exceeding fifteen days, a fresh notice shall be published.
- (h) The person declared to be the highest bidder at the public auction shall pay in cash immediately at the fall of hammer the whole amount of the highest bid if it does not exceed Rs. 500 and if it exceeds this figure, an amount equal to 25 per cent of the highest bid, as earnest money.

If this amount is not paid, the bid shall be cancelled and the property put to re-auction. The loss, if any, resulting from the re-auction shall be recoverable from the previous bidder.

The highest bid in respect of which an initial deposit has been made shall be subject to the approval of the Settlement Commissioner or an Officer appointed by him for the purpose; provided that no bid shall be accepted until after the expiry of fifteen days from the date of the auction.

(i) *Procedure for acceptance of the highest bid:*

- (1) The Settlement Commissioner or other Officer shall not be bound to accept the highest or other bids and shall not be bound to disclose his reasons therefor. Every bidder shall be bound by his bid and shall if he resiles from such bid, be liable to forfeit his deposit of earnest money. The decision

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of the Settlement Commissioner with regard to the forfeiture of the deposit shall be final.

If a bid has been accepted by the Settlement Commissioner or other officer, the bidder shall produce before the Tehsildar (Sales) or any other officer appointed by the Settlement Commissioner for the purpose within thirty days of the receipts of such intimation to him of the acceptance of the bid, a Challan showing a deposit into the Treasury of the balance of the purchase money."

(8) An analysis of the aforesaid rule shows that it provides a detailed procedure for the sale of the property by public auction. Without dilating in detail on clauses (a) to (h), reference may straightaway be made to clause (i), on the interpretation of which the fate of the case would depend. Under this sub-rule, a Settlement Commissioner or other officer is not bound to accept the highest or other bids nor are they bound to disclose reasons therefor. The question that arises for consideration is whether the Settlement Commissioner or other officer is also within his power to decline to accept a bid without giving reasons. In my view the answer has to be in the negative and is available in the sub-rule itself. As earlier observed, under this sub-rule, the Settlement Commissioner or other officer has an absolute power not to accept the highest or other bids and not to disclose his reasons therefor, but refusing to disclose reasons can by no stretch of imagination be interpreted to mean that the Settlement Commissioner or other officer is not bound to give reasons. There is difference between 'not disclosing the reasons' and 'non-giving of reasons'. In Black's Law Dictionary, the meaning of the word 'disclose' is—To bring into view by uncovering; to expose; to make known; to lay bare, to reveal to knowledge, to free from secrecy or ignorance, or make known'. A thing can be disclosed only when it so exists; but in case it does not exist, then the question of disclosure does not arise. By using the word 'disclose', the intention of the rule-making authority is absolutely clear that while declining to accept the highest bid or other bids, the officer concerned is bound to give reasons and the only right available to him is not to disclose those reasons. Moreover, this non-disclosure of reasons, in my view, is meant for the bidders, i.e., that the Settlement Commissioner or other officer is not bound to tell them as to on what grounds has he not accepted their bid. If the intention of the rule making authority had been to vest

the officer concerned with a power to refuse to accept the highest bid without assigning any reasons, then instead of 'shall not be bound to disclose his reasons', the words would have been 'shall not be bound to give his reasons'. In this view of the matter, I hold that the Settlement Commissioner or other officer is bound to record reasons for declining to accept the highest or other bids. Once this conclusion is arrived at, there can be no gainsaying that such reasons have to be relevant and not whimsical or arbitrary. As observed by their Lordships of the Supreme Court in *Ramana Dayaram Shetty v. The International Airport Authority of India and others* (2), every order of the State or its functionary has to meet the twin test of 'reason and relevance'. They just cannot arbitrarily pass an order for any or no reason. The officer concerned is duty bound under the rules to record relevant legal reasons for refusing to accept the highest or other bids.

(9) Further the contention that no legal right vests in a highest or other bidder so as to entitle him to challenge an action of the appropriate authority in refusing to accept the highest or other bids, is not legally tenable. The aggrieved person whose right to the property as a result of non-acceptance of the highest bid, is being taken away, can certainly challenge the action on the ground that the order of the appropriate authority is arbitrary or has come in existence as a result of extraneous considerations and in case it is so proved, then the order of non-acceptance would certainly be liable to be quashed. The State Government or the appropriate authority can defend its action by disclosing reasons given for non-acceptance of the bid and if the same are found relevant, relief would straightaway be declined. But there is no warrant for this proposition that even if the order of the authority in not accepting the bid is arbitrary and does not disclose any reasons, then also the legality of the same cannot be challenged in a Court of law.

(10) Mr. Sandhu had placed great reliance on the judgment in *State of Haryana and others v. Asha Ram* (supra). I have very carefully gone through that judgment and find that the way in which the point has been raised in this petition was never agitated in that case nor was it decided as such and the decision of that case has gone on its own facts. The relevant observations to which

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our attention was drawn from *Asha Ram's case* (supra), read as under :—

“The contention of the learned counsel for the appellant is that the highest bid offered by the respondent was subject to approval of the Settlement Officer under the Rules of the sale of surplus rural evacuee property purchased by the State Government as also the terms of the memorandum of offer signed by the respondent at the time of auction. The relevant rule reproduced above and also the condition contained in the memorandum of offer envisaged that the Settlement Officer was not bound to accept the highest bid or other bid and further was not bound to disclose his reasons therefor. The order of the Settlement Officer not approving the highest bid of the respondent and that of the Settlement Commissioner upholding it was not liable to be set aside in C.W.P. No. 3904 of 1977. The contention of the learned counsel for the appellants must prevail.

In view of the discussion above, it is clear that the highest bid of Rs. 16,500 offered by the respondent was subject to approval by the Settlement Officer or the Settlement Commissioner. The Settlement Officer as also the Settlement Commissioner declined to approve the bid of the respondent. They were competent to decline the highest bid of the respondent in spite of the fact that there was no irregularity or fraud in the publication of sale. The order of the learned Single Judge setting aside the order of the Settlement Officer, dated October 12, 1977 and that of the Settlement Commissioner, dated November 30, 1977, cannot be sustained.”

(11) A bare perusal of the aforesaid observations, as earlier observed, does not go to show that any finding has been recorded by the learned Judges of the Bench that it was not necessary to give any reasons. Rather, the fact is that such a question which has been posed before us was never debated before the Bench. It was on the facts of that case that the judgment of the learned Single Judge was set aside, the order of the appropriate authority was upheld and the Bench did not deem it proper to upset the order of the appropriate authority declining to accept the bid. However, if the observations of the Bench “they were competent to decline

the highest bid of the respondent in spite of the fact that there was no irregularity or fraud in the publication of sale", are being read to mean that no reasons are required to be given at all and that a highest or other bid can be declined without assigning any reason whatsoever, then with respect, in the view I have taken in the earlier part of the judgment, I am unable to agree with these observations and overrule them.

(12) Thus, as a result of the aforesaid discussion, I hold that the Settlement Commissioner or other officer under sub-rule (i) of Rule 5 of the Rules is bound to record reasons which are relevant for refusing to accept the highest bid or other bids, that such reasons have not to be disclosed to the highest bidder, that in case an action refusing to accept the highest bid is challenged in a Court of law, then the reasons given for refusing to accept the bid have to be made available so as to enable the Court to find out if the same are relevant and germane to the non-acceptance of the bid and that the Settlement Commissioner or other officer cannot arbitrarily, whimsically and without assigning any reasons refuse to accept the highest bid or other bids.

(13) Coming to the facts of this case, I find that the reason given for non-confirmation of the bid is "The land is of Shamlat Deh. Hence, the sale is set aside". Now this reason for refusing to confirm is wholly arbitrary and extraneous. In the written statement no plea has been put forth that the property in dispute is not an evacuee property; rather the stand taken is that it is a rural package deal property and will be disposed of in accordance with the provisions of the State Rules framed for the disposal of rural package deal properties. This clearly shows that the impugned order is perverse and whimsical. Consequently, the order for refusing to confirm the bid cannot legally be sustained.

(14) For the reasons recorded above, I allow this petition, quash the order of the Joint Secretary (Rehabilitation)-cum-Settlement Commissioner, dated 7th January, 1983, copy Annexure P-2 and direct the appropriate authority to confirm the sale in favour of the petitioner. In the circumstances of the case, I make no order as to costs.

G. C. Mital, J.—I agree.

N. K. S.