REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2222 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 16530 OF 2018)

THE MUNICIPAL COMMITTEE, BARWALA,
DISTRICT HISAR, HARYANA THROUGH ITS
SECRETARY/PRESIDENT .....APPELLANT(S)

VERSUS

JAI NARAYAN AND COMPANY & ANR. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The Municipal Committee, Barwala[1] is in appeal against the judgment dated 1.5.2018, whereby its second appeal was dismissed arising out of a suit for mandatory injunction to execute a sale deed in respect of land measuring 55 kanals 5 marlas sought by the respondent-plaintiff.

2. The respondent-plaintiff claimed title and possession on the basis of an open auction conducted by the Sub-Divisional Officer, Hisar on 23.3.1999 @ Rs.2,32,000/- per acre after sanction was granted for auction of the land in question on 25.10.1995. The total sale consideration comes out to be Rs.15,76,150/- which was deposited

1 For short, the "Municipal Committee"

with the Municipal Committee. The plaintiff thus claimed that he is a bonafide purchaser and is in possession as owner of the suit land. He deposited the remaining consideration after adjusting an amount of Rs.4,10,000/- which was already deposited with the Municipal Committee.

3. The plaintiff asserts that the Municipal Committee had passed a resolution on 1.5.2002 to get the sale deed executed and registered. Since the sale deed was not executed, the plaintiff had allegedly served a registered notice dated 14.8.2006 which was made the cause of action to file the civil suit for mandatory injunction on 13.6.2011.

4. In the written statement filed by the Municipal Committee, it has been admitted that the property was put to auction after obtaining permission from the Deputy Commissioner. However, the possession of the plaintiff was said to be illegal possession. It was pleaded that the Municipal Committee is unable to execute the sale deed without proper sanction of the competent authority i.e., Government of Haryana.

5. The learned trial court decreed the suit vide judgment and decree dated 9.3.2016 after giving findings on the following issues framed in view of the pleadings of the parties:

> "1. Whether the plaintiff is entitled to a decree for mandatory injunction as prayed for?
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> 2. Whether the suit is not maintainable due to non-joinder of necessary parties?

3. Whether the plaintiff has not come to the Court with clean hand and suppressed the material facts?

4. Whether the plaintiff has no locus standi to file the present suit?

5. Relief."

6. Aggrieved against the judgment and decree of the trial court, the Municipal Committee filed the first appeal which was dismissed on 5.9.2016. The second appeal was also dismissed vide impugned judgment dated 1.5.2018.

7. Before this Court, learned counsel for the appellant argued that the auction conducted in which the plaintiff was the highest bidder was not approved by the State Government. The Ex.P/34 is a communication addressed by the Deputy Commissioner to the Director Local Bodies to seek approval of the property put to auction. However, there was no approval by the State Government of the auction once conducted in favor of the plaintiff. It was contended that till such time the auction is confirmed, mere fact that the plaintiff was the highest bidder would not confer any equitable and legal right to him. It is only after the confirmation of sale and the letter accepting the bid is issued, the plaintiff could claim any enforceable right. It was thus contended that the plaintiff is in unauthorized and illegal possession of the property. It was contended that the approval of sale of the property by public auction itself does not amount to confirmation of the auction,

therefore, in the absence of confirmation of sale by the State Government, the plaintiff would not get any right over the property. It was also argued that the plaintiff in his counter affidavit before this Court relied upon Section 5 read with Section 10(2)(e) of the Haryana Municipal Common Lands (Regulation) Act, 1974[2] read with Rule 2(4) of the Haryana Municipalities Management of Municipal Properties and State Properties Rules, 1976[3], though the 1974 Act has been declared unconstitutional by the Full Bench of Punjab & Haryana High Court in ***Rajender Parshad & Ors.*** v. ***State of Haryana & Ors.***[4]. Even the First Appellate Court and Second Appellate Court have referred to the 1974 Act while dismissing the appeals filed by the Municipal Committee.

8. When the appeal came up for hearing before this Court on 14.3.2022, attention of the counsel for the plaintiff was drawn to the Full Bench judgment of Punjab & Haryana High Court in ***Rajender Parshad*** declaring the 1974 Act as illegal. Therefore, vesting of land to *shamilat deh* on the strength of the aforesaid statute itself was not tenable. However, Mr. Sanchar Anand, learned counsel for the plaintiff submitted that it is not the case that the property vested with the Municipality on the strength of the 1974 Act. It was argued that the property was put to auction after previous approval of the Deputy Commissioner and later vide Ex.P/34, the sale stands confirmed.

2 For short, the "1974 Act"
3 For short, the "1976 Rules"
4 AIR 1980 P&H 37

Therefore, once the plaintiff has been found to be the highest bidder and sale has been confirmed by the Deputy Commissioner, the plaintiff has been rightly granted decree for mandatory injunction.

9. We have heard learned counsel for the parties and find that the decree passed by the three courts below, to say the least, is a perverse reading of the provisions of law as well as the factual position. Rule 2 of the 1976 Rules has to be referred to appreciate the present dispute. It reads as thus:

> "2. Procedure for alienation. – (1) A municipal committee proposing to alienate permanently or for a term exceeding ten years any land or other immovable property of which it is the owner shall apply to the Deputy Commissioner for sanction.
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> (2) An application under sub-rule (1) shall be accompanied by a plan of the proposed property to be alienated together with a statement in Form A appended to these rules.
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> (3) The Deputy Commissioner shall record an order on the application, -
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> (i) sanctioning it (subject to such conditions, if any, as he thinks fit); or
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> (ii) refusing to sanction it; provided that no sale by auction shall be valid, until it has been confirmed by the Deputy Commissioner.
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> (4) When the Deputy Commissioner has accorded sanction to a sale by auction, the Form A aforesaid shall in due course be re-submitted to him with the details regarding the auction shown in Form B. The Deputy Commissioner shall thereon either confirm the sale or refuse to confirm it. If the Deputy Commissioner refuses to confirm the sale, the same shall be void."

10. The 1976 Rules contemplates two acts to be completed by the Deputy

Commissioner, one of which is approval of conduct of sale which was granted on 25.10.1995. Thus, there is compliance as far as clause (i) of Rule 2(3) of the 1976 Rules is concerned. The other important provision is sub-rule (ii) of Rule 2(3) of the 1976 Rules which contemplates that no sale by auction shall be valid until it has been confirmed by the Deputy Commissioner. The communication dated 10.1.2007 (Ex P-34) referred to by the plaintiff is not the communication by the Deputy Commissioner to the Municipality or to the plaintiff that the sale stands confirmed. In fact, it is an inter-departmental communication with no endorsement of the copy of the said communication to the plaintiff. Thus, the reliance of the plaintiff on the communication dated 10.1.2007 (Ex.P/34) is not helpful to the argument raised by him as it is the inter-departmental communication from the Deputy Commissioner to the Director, Urban Local Body Department to seek approval but in the absence of any approval granted, no right would accrue. The communication is *inter alia* to the following effect:

> "3. Hence while confirming sale of Municipal Committee land measuring 54 Kanal & 7 Marla comprised in Khasra No. 517 and 518, conducted on 23.03.1999 by open auction/bid to the maximum successful bidder of this land @ Rs.2,32,000/- (Rupees Two Lacs Thirty Two Thousand) per acre, which has been accepted by Sub Divisional Office and Head Municipal Committee Barwala, you are requested to please issue Ex-post facto approval so that the sale deed of the land in the name of the purchaser M/s Jai Narain & Company may be got done by the Municipal Corporation Barwala."

11. Therefore, no concluded contract ever came into force. Reference may

be made to the judgment of this Court reported as ***Haryana Urban Development Authority & Ors.*** v. ***Orchid Infrastructure Developers Private Limited***[5], wherein this Court held as under:

> "13. 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.
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> 14. 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...."

5 (2017) 4 SCC 243

12. In ***State of Punjab & Ors.*** v. ***Mehar Din***[6] this Court observed that State or 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 of bid. It was held as under:

> "18. This Court has examined right of the highest bidder at public auctions in umpteen number of cases and it was repeatedly pointed out that the State or 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 of bid. The acceptance of the highest bid or highest bidder is always subject to conditions of holding public auction and the right of the highest bidder is always provisional to be examined in the context in different conditions in which the auction has been held. In the present case, no right had accrued to the respondent even on the basis of statutory provisions as being contemplated under Rule 8(1)(h) of Chapter III of the Scheme of Rules, 1976 and in terms of the conditions of auction notice notified for public auction."

13. This Court has also considered that the inter-departmental communication and/or the notings on the file are not the decisions of the State. It has been held by the Constitution Bench in a judgment reported as ***Bachhittar Singh*** v. ***State of Punjab***[7] that merely writing something on the file does not amount to an order. It was held as under:

> "10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not

6 2022 SCC OnLine SC 250
7 AIR 1963 SC 395

till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. ..... Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh (AIR 1961 SC 493 at page 512] :

xxx xxx xxx

11. We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant."

14. Furthermore, this Court in a judgment reported as ***Union of India*** v. ***Avtar Singh***[8] held that letter does not records the decision of the Central Government under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act 1954, so as to be a decision by the Central Government. It was observed as under:

"19. .....Therefore the High Court was clearly in error in treating the letter of Shri Dube dated May 31, 1963 as a decision of the Central Government in exercise of the power conferred by Section 33. There was no reason for decision nor any occasion for the Central Government to exercise power under Section 33 and therefore, it is not possible to agree with the High Court that the letter records the decision of the Central Government under Section 33. If the letter of Shri Dube is not a decision of the Central Government under Section 33 of the Act, as a necessary corollary, the impugned decision must be treated as one rendered for the first time in exercise of the revisional power under Section 33 and therefore, it cannot be said to be one without jurisdiction. In this view of the matter, the appeal will have to be allowed."

8 (1984) 3 SCC 589

15. In a judgment reported as ***State of Orissa and Others*** v. ***Mesco Steels Limited and Another***[9], this Court held that the High Court was in error in proceeding on an assumption that a final decision had been taken and in quashing what was no more than an inter-departmental communication constituting at best a step in the process of taking a final decision by the Government. It was held as under:

> "20. On the contrary, the issue of the show cause notice setting out the reasons that impelled the Government to claim resumption of a part of the proposed lease area from the respondent-company clearly suggested that the entire process leading up to the issue of the show cause notice was tentative and no final decision on the subject had been taken at any level. It is only after the Government provisionally decided to resume the area in part or full that a show cause notice could have been issued. To put the matter beyond any pale of controversy, Mr. Lalit made an unequivocal statement at the bar on behalf of the State Government that no final decision regarding resumption of any part of the lease area has been taken by the State Government so far and all that had transpired till date must necessarily be taken as provisional. *Such being the case the High Court was in error in proceeding on an assumption that a final decision had been taken and in quashing what was no more than an inter-departmental communication constituting at best a step in the process of taking a final decision by the Government. The writ petition in that view was pre-mature and ought to have been disposed of as such.* Our answer to question No. 1 is accordingly in the affirmative."

16. This Court in a judgment reported as ***State of Uttaranchal*** v. ***Sunil Kumar Vaish***[10] held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such

9 (2013) 4 SCC 340
10 (2011) 8 SCC 670

noting can be treated as a decision of the Government. It was held as under:

> "24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. (See State of Punjab v. Sodhi Sukhdev Singh AIR 1961 SC 493, Bachhittar Singh v. State of Punjab AIR 1963 SC 395, State of Bihar v. Kripalu Shankar (1987) 3 SCC 34, Rajasthan Housing Board v. Shri Kishan (1993) 2 SCC 84, Sethi Auto Service Station v. DDA (2009) 1 SCC 180 and Shanti Sports Club v. Union of India (2009) 15 SCC 705)."

17. Thus, the letter seeking approval of the State Government by the Deputy Commissioner is not the approval granted by him, which could be enforced by the plaintiff in the court of law.

18. The suit was not maintainable for the reason that there was no vested right with the plaintiff to claim such a decree merely on the basis of a participation in the public auction. Secondly, even if the plaintiff had any right on the basis of an auction, he could at best sue for specific performance of the so-called agreement. In ***Orchid***, the plaintiff had sought decree of declaration and of consequential mandatory

injunction. This Court held that such suit was not maintainable as no concluded contract came into existence by merely submitting the highest bid. In these circumstances, suit for mandatory injunction was not maintainable.

19. It is to be noted that though the plaintiff had served a notice on 14.9.2006, but still the suit was filed in the year 2011 in respect of the auction conducted in the year 1999. The suit for mandatory injunction was filed on or after 13.6.2011, i.e., more than 12 years after the auction was conducted on 23.3.1999. Therefore, even the suit for specific performance was barred by limitation as such suit, even if maintainable, could be filed within three years of the auction being conducted in terms of Article 54 of the Schedule to the Limitation Act, 1963. The suit for injunction was filed beyond the period of limitation and was not properly constituted. The courts have not examined such aspect as was expected to examine legally.

20. Section 61 of the 1973 Act deals with vesting of the property with the Municipal Committee and how the property can be utilized. Sections 61 and 62 read thus:

> "61. Property vested in committee.—(*1*) Subject to any special reservation made or to any special conditions imposed by the State Government, all property of the nature hereinafter in this section specified and situated within the municipality, shall vest in and be under the control of the committee, and with all other property which has already vested or may here after vest in the committee, shall be held and applied by it for the purposes of this Act, that is to say,—

(*a*) all public town-walls, gates, markets, stalls, slaughter houses, manure and night-soil depots and public buildings of every description which have been constructed or are maintained out of the municipal fund;

(*b*) all public streams, springs and works for the supply, storage and distribution of water for public purposes, and all bridges, buildings, engines, materials and things connected therewith or appertaining thereto, and also any adjacent land, not being private property appertaining, to any public tank or well;

(*c*) all public sewers and drains, and all sewers, drains, culverts and water-courses in or under any public street or constructed by or for the committee alongside any public Street, and all works, materials and things appertaining thereto;
(*d*) all dust, dirt, dung, ashes, refuse, animal matter or filth or rubbish of any kind or dead bodies of animals collected by the committee from the streets, houses, privies, sewers, cesspools or elsewhere or deposited in places fixed by the committee under section 152;

(*e*) all public lamps, lamp-posts, and apparatus connected therewith or appertaining thereto;

(*f*) all land or other property transferred to the committee by the State Government or acquired by gift, purchase or otherwise for local public purposes;

(*g*) all public streets, not being land owned by the State Government, and the payments, stones and other materials thereof, and also trees growing on, and erections, materials, implements, and things provided for, such streets;

(*h*) Shamlat Deh.

(*2*) Where any immovable property is transferred otherwise than by the sale by the State Government to a committee for public purposes, it shall be deemed to be a condition of such transfer, unless specially provided to the contrary, that should the property be at any resumed by the State Government the compensation payable therefor shall, notwithstanding anything to the contrary in the Land Acquisition Act, 1894, in no case exceed the amount, if any, paid to the State Government for the transfer together with the cost or the present value, whichever

shall be less of any buildings erected or other works executed on the land by the committee.

62. Inventory and map of municipal property.—(*1*) The committee shall maintain an inventory and a map of, all immovable property of which the committee is proprietor, or which vests in it or which it holds in trust for the State Government.

(*2*) The copies of such inventory and map shall be deposited in the office of the Deputy Commissioner and such other officer or authority as the State Government may direct and all changes, made therein shall forth with be communicated to the Deputy Commissioner or other officer or authority."

21. Clause 61(1)(h) of the 1973 Act is the subject matter of challenge in another appeal before this Court whereas clauses (a) to (g) except clause (f) deal with the public utility services. The clause (f) deals with, *"the land or other property transferred to the Committee by the State Government or acquired by gift, purchase or otherwise can be utilised only for local public purposes."*

22. In terms of Section 62 of the 1973 Act, the Municipal Committee is required to maintain an inventory and map of all immovable property of which the Committee is the proprietor or which vests in it or which it holds in trust for the State Government. In the absence of nature of land as to whether it is a land owned by the Municipality and is not vested with the Municipality in terms of Section 61 of the Act, no direction by the courts could have been granted. It has not come on record as to whether such land was vesting with the Municipal Committee or that it was not mentioned in the list of inventories of the

properties of Municipal Committee. We find that Municipal Committee was remiss in defending its property as a custodian of public property.

23. Section 245 of the 1973 Act falling in Chapter XII (Control) empowers the Deputy Commissioner or any other officer not below the rank of Assistant Commissioner by a general or special order to carry out the functions assigned therein. The Deputy Commissioner has a power to suspend any resolution or order of Committee under Section 246. Any action taken by the Deputy Commissioner under Sections 246, 247 or 248 of the 1973 Act is to be reported to the Commissioner.

24. Section 250 of the 1973 Act confers power with the State Government to issue directions for carrying out the purposes of the Act. The said provision reads thus:

> "250. Power of State Government to give directions.—The State Government may issue directions to any committee for carrying out the purposes of this Act and in particular with regard to—
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> (*a*) various uses to which any land within a municipal are may be put;
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> (*b*) repayment of debts and discharging of obligations;
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> (*c*) collection of taxes;
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> (*d*) observance of rules and bye-laws;
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> (*e*) adoption of development measures and measures for promotion of public safety, health, convenience and welfare;
>
> (*f*) sanitation and cleanliness;
>
> (*g*) establishment and maintenance of fire-brigade."

25. It is in pursuance of the powers conferred on the State Government, a message was conveyed on 12.9.1994 on behalf of the Director, Local Bodies, Haryana to all the Deputy Commissioners of the State of Haryana that no municipal property will be sold without the prior approval of the Government. The learned trial court has discarded such communication for the reason that such communication has not been proved as per the provisions of the Indian Evidence Act, 1872. It may be stated that the State or the Deputy Commissioner was not impleaded as a party to the civil suit filed. In fact, the objection raised was that the State has not been impleaded as a party. Such communication has been produced by the Municipal Committee when the Committee examined Shri Mahavir Singh, Secretary as DW-1 and Shri Sandeep Kumar, Building Inspector as DW-2. Such communication has come on record from the official source which would carry presumption of correctness under Section 114 of the Indian Evidence Act, 1872 that the official acts have been regularly performed. The original record was not necessarily required to be proved by summoning the Government officials as such document was produced by the officials of the Municipal Committee from the official record.

26. Thus, since direction issued by the State Government is in terms of Section 250 of the 1973 Act, the Deputy Commissioner was bound to seek approval of the State Government. The binding nature of such instructions is evident from the fact that the Deputy Commissioner has

sought approval from the State Government when a communication to this effect was addressed on 10.1.2007.

27. In view of the above, we find that the plaintiff has been granted decree for mandatory injunction not only beyond the period of limitation but in contravention of the statute and the rules framed thereunder.

28. Consequently, the appeal is allowed. The judgment and decree passed by the courts below are set aside. The plaintiff is in possession, which is found to be illegal and without the authority of law. The Municipality shall take possession of land forthwith and furnish compliance report within three months. The amount of Rs.15,76,150/- shall stand forfeited towards the damages for the illegal occupation of the land for more than 20 years since the date of auction in contravention of law.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
MARCH 29, 2022.