

A JAYKRISHNA INDUSTRIES LTD.
THROUGH DIRECTOR

v.

STATE OF MAHARASHTRA AND OTHERS

B (Civil Appeal No. 496 of 2007)

NOVEMBER 13, 2017

[**RANJAN GOGOI AND NAVIN SINHA, JJ.**]

Auction:

C *Public auction – Provisional acceptance of bid of appellant –*
25% of tender amount deposited by appellant – In the meantime
respondent approached High Court for permission for submission
of higher bid than the appellant, without making the appellant party
therein – High Court granted permission – Bid of respondent
D *provisionally accepted – Provisional acceptance of bid of the*
appellant, was cancelled on 07.05.2005 – Writ petitions by appellant
challenging acceptance of bid of respondent and rejection of his
bid – High Court dismissed the petitions – On appeal, held: Claim
of respondent for settlement of a Government property by way of
private largesse, without open advertisement is unfounded in law –
E *Belated challenge to cancellation of bid by the appellant was rightly*
rejected in view of the intervening developments (i.e. change in
permissible usage of the land from commercial to residential) – Since
the very substatum of the auction advertisement has changed, a
fresh tender is mandatory – Direction to refund the deposited money
F *to respondent without any interest and to appellant with 8% interest.*

Evidence Act, 1872:

s.114(e) – presumption under – In respect of Government
communication – Held: there shall be a presumption in law that a
Government communication was properly made and reached the
G *addressee.*

Dismissing the appeals, the Court

HELD: 1. The claim of the Respondent for settlement of a
government property by way of a private largesse, without open
advertisement, is completely unfounded in the law. Apparently,

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the negotiations were done by MHADA under political influence as evident from the letter of the Respondent dated 29.11.2004 read with the letter dated 30.04.2005 of one Member of Parliament. The Respondent had not submitted any bid in response to the advertisement. The order of the High Court dated 23.12.2004 was passed in absence of the Court being apprised of the provisional acceptance of the Appellant's bid. The plea that the Respondent was never made aware of the order of cancellation dated 22.02.2000 merits no consideration as it was also revealed in the counter affidavit of the State of Maharashtra dated 11.07.2005 in Writ Petition No. 2112 of 2005. The cancellation order was addressed to MHADA and copy marked to the Respondent. There shall be a presumption in law that a government communication was properly made and reached the addressee, under Section 114 (e) of the Evidence Act. It is not the case of the Respondent that the order never came to be issued and remained in the file. The Respondent despite awareness never challenged the cancellation and which sets at naught its entire claim. Any offer made to the Respondent in teeth of, and after the cancellation was therefore redundant. [Para 9][109-B-E]

2. The bid of the Appellant was provisionally accepted. No final allotment was made in its favour under the advertisement dated 17.11.2004. MHADA was inhibited from proceeding further in view of the Court order dated 23.12.2004 in favour of the Respondent. MHADA in its affidavit dated 24.06.2005, in Writ Petition No. 2112 of 2005 preferred by the Appellant, had disclosed the cancellation of the provisional acceptance by order dated 07.05.2005. There shall likewise be a presumption with regard to the issuance and delivery of the same to the Appellant and it is not its case that no such order was ever made or issued. The belated challenge to the cancellation in Writ Petition No. 867 of 2010 was therefore rightly rejected by the High Court on account of the intervening developments with regard to the change in permissible usage of the land from commercial to residential. [Para 10][109-F-H; 110-A]

3. The change in permissible land usage goes to the root of the matter. If the very substratum of the advertisement has

A changed, a fresh tender is mandatory. The passage of thirteen long years since the advertisement is also an important consideration. The Notification dated 03.07.2017 issued under DCR Regulation 33(5) inter alia altering the FSI is at the final stage awaiting publication. The bid price today for that reason will also escalate considerably. The State Government and
 B MHADA have denied any fresh negotiated settlement with the Appellant. The interim order of this Court dated 04.09.2014 was not a *carte blanche* for a mandatory settlement with the Appellant. The High Court has noticed that the value of the property now
 C Mumbai, the settlement of any Government land, for a housing project, has to be by public auction only, so as to fetch the best price in the larger public interest. [Para 11][110-B-D]

4. The Respondent has only itself to blame for its woes, based on a conduct that cannot be countenanced in law. It is
 D therefore not entitled to any interest on the deposit made by it which shall be refunded by MHADA within four weeks. The Appellant is found to have been wronged, but must bear part of the blame for laches on its part also. It is therefore held entitled to interest @ 8% on the deposit made by it including the earnest money, only till 24.06.2005. [Para 12] [110-E]

E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 496 of 2007.

From the Judgment and Order dated 17.10.2005 of the High Court of Judicature at Bombay (Original Side) in Writ Petition No. 2112 of
 F 2005 with Writ Petition No. 3466 of 2004

WITH

C. A. Nos. 498, 18489 and 18492 of 2017.

G Shekhar Naphade, Sanjay Hegde, M. L. Varma, Sr. Advs., Kamaldeep Dayal, Mahesh Agarwal, Ms. Parul Shukla, Munjaal Bhatt, Himanshu Satija, E. C. Agrawala, Viraj Kadam, Rohit Shetty, D. M. Nargolkar, Ms. Bina Gupta, Chirag M. Shroff, Ms. Neha Sangwan, V. N. Raghupathy, Mahaling Pandarge, Nishant Katneshwarkar, Advs. for the appearing parties.

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The Judgment of the Court was delivered by A

NAVIN SINHA, J. 1. Leave granted in both Special Leave Petitions.

2. The present batch of appeals, between the same parties, arise from a controversy relating to auction settlement by the Mumbai Housing and Area Development Board (hereinafter referred to as "the MHADA"), of a plot of land measuring 10,000 sq. mtrs, located at Powai, in the town of Mumbai. The auction notice published on 17.11.2004, remains inconclusive, mired in litigation. The subsequent developments being relevant are also required to be noticed. The contesting parties, M/s. Popcorn Properties Private Limited and M/s. Jaykrishna Industries Ltd., shall hereinafter be referred to as the Appellant and Respondent for convenience. B C

3. Sri Shekhar Naphade, learned Senior Counsel for the Appellant submitted that it being the highest bidder at Rs.22,22,22,300/-, provisional acceptance of the bid was communicated to it on 17.12.2004. As required, 25% of the tender amount was deposited on 03.01.2005, awaiting communication for deposit of the balance 75% amount. On 03.05.2005, the Appellant objected to MHADA illegally negotiating settlement of the subject lands with the Respondent. Writ Petition No. 2112 of 2005 was instituted assailing the action of the official Respondents in provisionally accepting the bid of the Respondent for Rs.22,23,22,300/-. The order dated 17.12.2004 was subsequently wrongly cancelled on 07.05.2005, and which was also assailed by the Appellant in Writ Petition No. 867 of 2010. D E

4. The Respondent had earlier preferred Writ Petition No. 3466 of 2004 and obtained an order on 23.12.2004 for submission of a higher bid. The Appellant was not a party to the same. The High Court was not apprised that the Appellant's bid already stood provisionally accepted. Upon being apprised of the correct facts, the order dated 23.12.2004 was recalled which automatically results in revival of the order of acceptance of the appellant's provisional bid. The High Court wrongly declined to interfere with the order dated 07.05.2005 ordering a fresh tender process for settlement. F G

5. Shri Naphade, in the aforesaid facts further submitted that the Appellant also had a right in equity for settlement in its favour, especially in view of the interim order of this Court dated 04.09.2014 permitting it to make a fresh proposal to the MHADA, and which has been found H

A acceptable by it. MHADA had acted inequitably, on political influences,
to cancel its bid at the behest of the Respondent, who was not even a
bidder in response to the tender notice. The Appellant has had to suffer
for no fault of it, despite being the highest bidder. An alternative submission
was made that if fresh tenders were to be invited, the right of the first
B refusal must be given to it for matching the highest offer that may be
made. The second alternative submission was that 25 percent of the plot
be settled with it. The present case, on its peculiar facts, was a fit case
where the normal rule of settlement by tender could be deviated from
and settlement could be made by private negotiation.

C 6. Mr. Sanjay Hegde, learned Senior Counsel for the Respondent
submitted that even prior to the advertisement dated 17.11.2004, the
Respondent had a pre-existing right to settlement as it was already in
negotiation with MHADA, culminating in orders dated 05.07.1999 and
05.10.1999 in its favour. This was recognised in Writ Petition No. 3466
of 2004 permitting it to offer a higher bid. On 15.02.2005, the Respondent
D offered to increase its bid by Rs.10,00,000/- above that of the Appellant
and payment was made on 02.05.2005. The challenge by the Appellant
to the cancellation dated 07.05.2005 was highly belated. The Appellant
had no locus in the matter after the cancellation order. The cancellation
order having been declined interference, the question of any private
negotiation does not arise. A like claim in equity was also raised for an
E opportunity to pay the market price and match the price that may be
offered by the Appellant.

7. Learned Counsel for the State of Maharashtra submitted that
the order dated 05.07.1999 on which the Respondent's claim is founded
has itself been annulled on 22.02.2000, and which has not been assailed.
F Sri M.L. Verma, learned Senior Counsel appearing on behalf of MHADA,
submitted that the advertisement dated 17.11.2004 was for construction
of a hotel according to the then permissible commercial usage of the
plot. The subsequent change in permissible usage to residential purpose
for construction of a housing complex renders the entire controversy
infructuous. A new advertisement for auction at the best price available
G will have to be made. Considerable time has also passed since the
advertisement. The DCR Regulation 33(5) under the Development
Control Regulations for Greater Bombay, 1991 (hereinafter referred to
as "the Regulations") with regard to increase in FSI has not yet been
finalized and published. It was specifically denied that any decision had
H been taken to make settlement in favour of the Appellant.

8. We have considered the submissions on behalf of the parties, A
perused the records, including the impugned orders and the
communications exchanged between the parties.

9. The claim of the Respondent for settlement of a government B
property by way of a private largesse, without open advertisement, is
completely unfounded in the law. Its letter dated 30.06.1999 requesting
for a sympathetic consideration for settlement with it, as otherwise the
property was likely to be occupied by encroachers, is but a travesty of
the law. Apparently, the negotiations were done by MHADA under
political influence as evident from the letter of the Respondent dated
29.11.2004 read with the letter dated 30.04.2005 of one Mr. Mohan C
Rawle, Member of Parliament. The Respondent had not submitted any
bid in response to the advertisement. The order of the High Court dated
23.12.2004 was passed in absence of the Court being apprised of the
provisional acceptance of the Appellant's bid. The plea that the
Respondent was never made aware of the order of cancellation dated
22.02.2000 merits no consideration as it was also revealed in the counter D
affidavit of the State of Maharashtra dated 11.07.2005 in Writ Petition
No. 2112 of 2005. The cancellation order was addressed to MHADA
and copy marked to the Respondent. There shall be a presumption in
law that a government communication was properly made and reached
the addressee, under Section 114 (e) of the Indian Evidence Act. It is E
not the case of the Respondent that the order never came to be issued
and remained in the file. The Respondent despite awareness never
challenged the cancellation and which sets at naught its entire claim.
Any offer made to the Respondent in teeth of, and after the cancellation
was therefore redundant.

10. The bid of the Appellant was provisionally accepted. No final F
allotment was made in its favour under the advertisement dated
17.11.2004. MHADA was inhibited from proceeding further in view of
the Court order dated 23.12.2004 in favour of the Respondent. MHADA
in its affidavit dated 24.06.2005, in Writ Petition No. 2112 of 2005
preferred by the Appellant, had disclosed the cancellation of the G
provisional acceptance by order dated 07.05.2005. There shall likewise
be a presumption with regard to the issuance and delivery of the same to
the Appellant and it is not its case that no such order was ever made or
issued. The belated challenge to the cancellation in Writ Petition No.
867 of 2010 was therefore rightly rejected by the High Court on account

- A of the intervening developments with regard to the change in permissible usage of the land from commercial to residential.

11. The change in permissible land usage by Resolution No.6684 dated 20.10.2014 is a fundamental issue which goes to the root of the matter. If the very substratum of the advertisement has changed, a fresh tender is mandatory. The passage of thirteen long years since the advertisement is also an important consideration. The Notification dated 03.07.2017 issued under DCR Regulation 33(5) inter alia altering the FSI is at the final stage awaiting publication. The bid price today for that reason will also escalate considerably. The State Government and MHADA have denied any fresh negotiated settlement with the Appellant.

B The interim order of this Court dated 04.09.2014 was not a carte blanche for a mandatory settlement with the Appellant. The High Court has noticed that the value of the property today would be approximately 75 crores. In the land starved city of Mumbai, the settlement of any government land, for a housing project, has to be by public auction only, so as to fetch the best price in the larger public interest.

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12. The Respondent has only itself to blame for its woes, based on a conduct that cannot be countenanced in law. It is therefore not entitled to any interest on the deposit made by it which shall be refunded by MHADA within four weeks. The Appellant is found to have been wronged, but must bear part of the blame for laches on its part also. It is therefore held entitled to interest @ 8% on the deposit made by it including the earnest money, only till 24.06.2005; to be paid within six weeks.

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13. In the entirety of the matter, all the appeals lack merit and are dismissed.