

SANKALP RECREATION PRIVATE LIMITED

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v.

UNION OF INDIA & ORS.

(Civil Appeal No. 7438 of 2019)

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SEPTEMBER 19, 2019

**[R. F. NARIMAN AND SURYA KANT, JJ.]**

*Auction – A property was acquired by Union of India u/s.269 UD(1) of the Income Tax Act – Despite several attempts to sell property, several auctions conducted qua the said property failed – Appellant made offer to the Central Board of Direct Taxes to purchase the said property for a sum of Rs.32.11 crores – However, the offer was not accepted – A fresh valuation report of the property was submitted on 04.09.2017 and a reserve price for property was fixed at Rs.30 crores – Appellant made a bid of Rs.30.21 crores – On 26.09.2017 respondent no.3 sent a report to respondent no.2, in which it was stated that the offer made by the appellant was less than the sum of Rs.32.11 crores, which was offered by it earlier – Therefore, a fresh auction to be conducted – Pursuant thereto, auction proceedings with a reserve price of Rs.30 crores were kept in abeyance – Again a valuer was appointed, who valued by the property at Rs.31.07 crores on 23.01.2018 – Earlier auction process which yielded the sum of Rs.30.21 crores was cancelled – Fresh auction was conducted – Aggrieved by the cancellation of the auction process, appellant filed writ petition – In the fresh auction, appellant did not participate and respondent no.4 was the sole bidder, with the bid of Rs.31.10 crores – On the other hand, High Court dismissed the writ petition filed by the appellant – On appeal before the Supreme Court, respondent no.4 made an offer to pay a sum of Rs.35 crores for the said property – Appellant contended that cancellation of auction process was invalid in law – Held: The reasons stated in the report dated 26.09.2017 cannot be said to be arbitrary – Also, a letter dated 06.04.2018 from the Government of India, Ministry of Finance to Chief Commissioner of Income tax, which stated that the other properties of a similar nature in the same area was sold for a considerably higher amount was not arbitrary – Thus, there was no arbitrariness in the entire*

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- A *auction process – It was in the public interest to see that the highest possible price is fetched – Further, there is no reason to doubt the valuation reports – Besides, appellant was given several opportunities to bid in the fresh auction conducted, however, he refrained from participating – This being the case, offer made by the respondent no.4 of Rs.35 crores for the said property accepted – Respondent no.4 to pay the said amount directly to the Union treasury.*
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**Dismissing the appeal, the Court**

- C **HELD: 1. In the present case, several auctions were conducted from the year 1994, including an auction as recent as 27.03.2017 which failed to elicit a response from any buyer. Ultimately, the auction with the reserve price of Rs.30 crores, on which the appellant bid was Rs.30.21 crores, was kept in abeyance. The reason that is available from the record is in a Report dated 26.09.2017 in which it was pointed out that this figure was considerably lower than the figure offered by the appellant itself at Rs.32.11 crores and that, therefore, a fresh auction be held. This Court cannot say that the aforesaid reason can be said to be, in any manner, arbitrary. After all, it was in public interest to see that the highest possible price be fetched for such properties. Further, this Court has also seen how at every stage valuation reports were submitted by reputed Valuers, first from Mumbai, and then from Chennai, and has no reason to doubt what has been stated to be the Fair Market Value in any of these reports. It may also be pointed out that though the appellant was given several opportunities to bid in the fresh auction conducted, ultimately, for reasons best known to him, he chose to refrain from participating in the fresh auction that was conducted. [Paras 13,14 and 15] [667-B-E]**
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- G **2. Following various judgments of the Supreme Court, suffice it to state that the reasons disclosed both in the Report dated 26.09.2017 and the letter dated 06.04.2018 from the Government of India, Ministry of Finance, to the Chief Commissioner of Income Tax, make it clear that there is no arbitrariness that is discernible in the entire auction process.**
- H **This being the case, this Court dismisses this appeal and hold**

**respondent no.4 to the offer very fairly made before this Court. A [Para 20] [668-D-E]**

*63 Moons Technologies Ltd. (Formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Ors. (2019) 7 SCALE 50 – relied on.*

*Michigan Rubber (India) Ltd. v. State of Karnataka & Ors. (2012) 8 SCC 216 : [2012] 8 SCR 128 ; Mohinder Singh Gill v. Chief Election Commissioner' (1978) 1 SCC 405 : [1978] 2 SCR 272 – referred to.*

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<u>Case Law Reference</u>		
[2012] 8 SCR 128	referred to	Para 16
[1978] 2 SCR 272	referred to	Para 18
(2019) 7 SCALE 50	relied on	Para 19

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7438 of 2019.

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From the Judgment and Order dated 27.07.2018 of the High Court of Judicature at Bombay in Writ Petition No. 1598 of 2018.

R. K. Patel, Ms. Manisha T. Karia, Shashank S. M., Ms. Sukhda Kaira, Aman I., Advs. for the Appellant.

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Sanjay Jain, ASG, K. Radhakrishnan, Kavin Gulati, Sr. Advs., H. R. Rao, Ms. Seema Bengani, Anas Zaid, Mrs. Anil Katiyar, Avi Tandon, Anish Agarwal, Ms. Vanshika Gupta, Ms. Meghna Tandon, Ish Karan Singh, Shriman Kumar, T. Mahipal, Advs. for the Respondents.

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The Judgment of the Court was delivered by

**R. F. NARIMAN, J.**

1. Leave granted.

2. The present appeal discloses a very sorry state of affairs in that a property admeasuring 1053.5 square meters bearing Plot No. 27/A, Survey No. 8, 9, 10 Opposite Santacruz Police Station, Junction of Juhu Tara Road and Linking Road, Santacruz (W), Mumbai-54, though acquired by the Union of India in 1994 under Section 269UD(1) of the Income Tax Act, could only be sold in 2018. Despite various attempts to sell the property starting in 1994, several auctions conducted *qua*

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- A the said property failed. Even an auction dated 27.03.2017 with a reserve price fixed at Rs.32.11 crores failed to elicit a response from any buyer. This being the case, the appellant before us then made an offer to the Central Board of Direct Taxes (hereinafter referred to as 'CBDT') to purchase the aforesaid property for a sum of Rs.32.11 crores. This offer could not be accepted as the CBDT stated that accepting such an offer by private treaty would be beyond their jurisdiction. However, in the meanwhile, a fresh valuation report of the aforesaid property was called for, which was submitted on 04.09.2017, valuing the property at Rs.29,91,35,000/- Pursuant to the aforesaid, a brochure/catalogue was circulated sometime in September, 2017, in which clauses 2, 12 and 16
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- C are material and are set out hereinbelow:

"2. The property is being sold under the instruction from CCIT-2, Mumbai and the auction by way of sealed tenders is subject to confirmation by him/her.

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12. The balance amount by the successful bidder will have to be paid within 90 days from the date of confirmation of sale by the Chief Commissioner of Income Tax 2, Mumbai.

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16. The Chief Commissioner of Income Tax 2 Mumbai reserves the right to reject any tender from any bid including the highest bid, without assigning any reason. In such an event, the money already paid will be refunded to the intending purchaser without any liability of interest. However, no refunds for amounts forfeited shall be made."

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3. Pursuant to the aforesaid, the reserve price being fixed at Rs.30 crores, the appellant was the sole bidder, having bid at a sum which is Rs.21 lakhs above the reserve price at a total sum amounting to Rs.30.21 crores. In its letter dated 26.09.2017, respondent No.3 sent a report to respondent No.2, in which it was stated that though the bid of Rs.30.21 crores offered by the appellant was above the reserve price, it was yet less than the sum of Rs.32.11 crores that had been offered by the same bidder earlier. In this view of the matter, a clarification

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was sought as to the future course of action in the matter. Given this report, on 20.11.2017, the CBDT directed that the auction proceedings be kept in abeyance for the time being, and appointed a Valuer from outside the State, viz., Mr. P. Ramaraj, District Valuation Officer, Chennai. Pursuant to this, a valuation report dated 23.02.2018 was submitted by the aforesaid Valuer valuing the aforesaid property at Rs.31.07 crores as on 23.01.2018, as a cap in the TDR which would be available by way of FSI, had been introduced in January, 2018. Short of this cap, the Valuer valued the aforesaid property at Rs.36,51,59,000/. Based on the aforesaid valuation report, the property was put up for yet another auction.

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4. Meanwhile, by a letter dated 04.05.2018, the earlier auction which yielded the sum of Rs.30.21 crores from the appellant was treated as cancelled. The said letter specifically called upon the appellant to participate in the upcoming auction to be conducted shortly.

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5. The appellant, by its communication dated 12.04.2018, referred to the return of the Demand Drafts of Rs.7.5 crores and Rs.5 lakhs towards Earnest money and Caution money stating that burden of interest liability was continuing. The appellant made it clear that its participation in a future auction will still be very much there as they are not exiting the auction proceedings.

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6. As stated hereinabove, pursuant to the valuation report, on 10.05.2018, a notice for public auction was published with the reserve price fixed this time at Rs.31.10 crores. On 17.05.2018, the Income Tax Department wrote to the appellant, in which it intimated the fact that a fresh auction was to be conducted on 30.05.2018 and that the appellant should participate in the same.

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7. Meanwhile, the appellant being aggrieved by the cancellation of the auction process in which he was the highest bidder at Rs.30.21 crores, filed a writ petition in the High Court of Judicature at Bombay on 21.05.2018. On 23.05.2018, the High Court permitted respondent Nos. 2 and 3 to conduct a fresh auction subject to refraining from confirmation of the sale.

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8. On 30.05.2018, fresh auction was conducted and respondent No. 4 was the sole bidder, with the bid being equal to the reserve price of Rs.31.10 crores.

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- A 9. Ultimately, by the impugned judgment dated 27.07.2018, finding no infirmity in the auction process and finding that the cancellation, though without reason, was not arbitrary, the High Court dismissed the writ petition so filed.
- B 10. Learned counsel appearing on behalf of the appellant has argued that the cancellation being without reason is *per se* invalid in law and therefore, ought to have been set aside by the High Court. He also argued that the process of conducting yet another auction after so many auctions had failed, was itself arbitrary and that, as he was the highest bidder at Rs.30.21 crores, that is Rs.21 lakhs above the reserve price, the auction sale ought to have been confirmed in his favour.
- C 11. Further, after citing a number of judgments before us, he made a with prejudice offer stating that he was willing to abide by the earlier offer made by him of Rs.32.11 crores.
- D 12. Shri Kavin Gulati, learned senior counsel appearing for respondent No.4, painstakingly took us through the record and argued that there was no infirmity whatsoever in the entire process. He highlighted the fact that under clause 16 of the brochure/catalogue, the Chief Commissioner reserved the right to reject any tender form, including the highest bid, without assigning any reason. He also referred
- E to the report dated 26.09.2017 that was sent by respondent No. 3 to respondent No. 2 highlighting the fact that the decision for conducting fresh auction could not possibly be said to be arbitrary when the appellant himself had earlier offered a higher sum than the amount that was ultimately payable by him in the auction conducted. At every stage,
- F according to the learned senior counsel, valuation reports were taken, and on the basis of such valuation reports, reserve price was fixed. He argued that though it is true that the cancellation letter did not itself contained any reason for cancellation, the reason was forthcoming from the letter dated 06.04.2018, in which it was stated that other properties of a similar nature in the same area was sold for a considerably higher
- G amount, as a result of which the amount that was fetched was found to be low. He also took us through the valuation report that was submitted so far as the last auction was concerned, in which he was the successful bidder, and ultimately, also made a with prejudice offer that if we were to dismiss the appeal, his client would pay a sum of
- H Rs.35 crores with an adjustment *qua* the Earnest money that has been

deposited and lying with the Union of India, if we were to give his client A a reasonable rate of interest thereon.

13. Having heard learned counsel for both the sides, it is important to first advert to the facts of this case. As has been pointed out, several auctions were conducted from the year 1994, including an auction as recent as 27.03.2017 which failed to elicit a response from any buyer. B

14. Ultimately, the auction with the reserve price of Rs.30 crores, on which the appellant bid was Rs.30.21 crores, was kept in abeyance. The reason that is available from the record is in a Report dated 26.09.2017 in which it was pointed out that this figure was considerably lower than the figure offered by the appellant itself at Rs.32.11 crores C and that, therefore, a fresh auction be held.

15. We cannot say that the aforesaid reason can be said to be, in any manner, arbitrary. After all, it was in public interest to see that the highest possible price be fetched for such properties. Further, we have also seen how at every stage valuation reports were submitted by reputed Valuers, first from Mumbai, and then from Chennai, and have no reason to doubt what has been stated to be the Fair Market Value in any of these reports. It may also be pointed out that though the appellant was given several opportunities to bid in the fresh auction conducted, ultimately, for reasons best known to him, he chose to refrain from participating in the fresh auction that was conducted. E

16. So far as the judgments cited by the appellant are concerned, there cannot be any doubt whatsoever as to the parameters of judicial review in these matters. Broadly speaking, so long as the auction process is conducted *bona fide* and in public interest, a judicial hands off is mandated by the decisions that have been cited, in particular, 'Michigan Rubber (India) Ltd. v. State of Karnataka & Ors.' [2012 (8) SCC 216] at paragraph 21. F

17. Equally, there can be no manner of doubt that ordinarily, reasons must inform all governmental decisions including administrative decisions of Government so that both the administration as well as challenges made to such orders, can be said to be fair and not arbitrary. G

18. '*Mohinder Singh Gill v. Chief Election Commissioner*' 1978 (1) SCC 405 which was relied upon for the oft quoted passage in paragraph 8, has been the subject matter of future comment in some later cases. H

- A 19. In *63 Moons Technologies Ltd. (Formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Ors.* 2019 (7) SCALE 50, this Court had occasion to deal with this celebrated passage and its aftermath in paragraph 63 and 64 of the said judgment. This Court concluded:
- B “It will be seen that there is no broad proposition that the case of *Mohinder Singh Gill* (supra) will not apply where larger public interest is involved. It is only subsequent materials, i.e., materials in the form of facts that have taken place *after* the order in question is passed, that can be looked at in the larger public interest, in order to support an administrative order. To the same effect is the judgment in *PRP Exports and Ors. v. Chief Secretary, Government of Tamil Nadu and Ors.* (2014) 13 SCC 692 [at paragraph 8].”
- C 20. Following these judgments, suffice is to state that the reasons disclosed both in the Report dated 26.09.2017 and the letter dated 06.04.2018 from the Government of India, Ministry of Finance, to the Chief Commissioner of Income Tax, make it clear that there is no arbitrariness that is discernible in the entire auction process. This being the case, we dismiss this appeal and hold Shri Kavin Gulati, learned senior counsel, to the offer very fairly made to us. We may indicate
- D that from the figure of Rs.35 crores, which will be paid within a period of 12 weeks from today directly to the Union treasury, a sum equivalent to interest of 9 per cent on the amount of Rs.7.78 crores, that is lying with the Union, calculated from the date on which it was deposited with the Union till today be subtracted, and the net figure be handed over as aforesaid.
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Ankit Gyan

Appeal dismissed.