

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE AMIN-UD-DIN KHAN  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL APPEAL NO. 152-L OF 2010**

(Against the judgment of Lahore High Court, Lahore dated 24.06.2002 passed in RFA No. 180/1994)

**Lahore Development Authority and ... Appellant  
another**

**Versus**

**Muhammad Tariq Niaz ... Respondent**

For the appellant. : Ch. Waseem Arif Bhaddar, ASC  
Mr. M. Sabir Deputy Director

For Respondents : Mr. Ahmad Waheed Khan, ASC

Date of Hearing : 27.08.2020

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI:-** Civil appeal, by leave of the Court under Article 185(3) of Constitution of Islamic Republic of Pakistan, 1973, is directed against the impugned judgment of Lahore High Court, Lahore dated 24.06.2002 passed in RFA No.180/1994.

2. The facts leading to file the instant civil appeal are that the respondent/plaintiff filed a suit for declaration/specific performance with consequential relief qua an agreement on the basis of which an offer was made by the appellant to respondent/plaintiff. The said offer was in response to an open public action proceedings published in a newspaper dated 06.10.1980 regarding a plot bearing No.193/B, Upper Mall Lahore. The respondent/plaintiff was one of the participants in the open auction proceedings while depositing Rs.5000/- in lieu of terms and conditions.

The respondent/plaintiff was declared as highest bidder of the auction proceedings which was declared Rs.3,56,000/- per Kanal. As the respondent was highest bidder by all standards, therefore, the appellant formally invited the respondent to make 1/3 of the total auction price as per legal requirement at the spot. Consequently, Rs.1,50,000/- was deposited and he was further directed to deposited an amount of Rs.1,18,500/- in view of the acceptance of the bid. All such requirements were fulfilled accordingly and as such receipt of the same was duly issued. The respondent visited the office of the appellant time and again while seeking demand notice to make the rest of the amount payable against total auction amount. It is a matter of surprise that letter bearing No.707 dated 18.10.1980 was sent by the appellant/defendant wherein the respondent/plaintiff was intimated to contact the appellant/defendant. Subsequently, the respondent/plaintiff was informed on 11.12.1980 that a third party (not participated in auction proceedings) had offered them higher price of Rs.3,85,000/- per Kanal and as such showed their unwillingness to hand over the plot, the subject matter of auction proceedings to the respondent/plaintiff. Although the subsequent development was squarely unjustified, however, the respondent/plaintiff showed his inclination to pay the enhanced priced to meet the offer and as such intimated the appellant through a letter which was incorporated in diary of the appellant on 11.12.1980. The appellant in lieu of the offer made to the respondent/plaintiff directed him verbally to deposit the remaining amount within seven days, but in the meantime another public notice for open auction was published in "Daily Pakistan Times" dated 16.11.1980 wherein the same plot bearing No. 193/B Upper Mall Lahore was made the subject matter which was already auctioned in favour of the respondent/plaintiff.

3. Being aggrieved by the conduct of the appellant, the respondent/plaintiff filed a declaratory suit and specific performance with consequential relief while calling in question the re-auction of the plot already auctioned in favour of respondent/plaintiff. The learned trial court after recording of evidence of both the parties decreed the suit of the respondent/plaintiff vide judgment and decree dated 27.03.1994. The appellant challenged the judgment and decree of learned trial court through filing Regular First Appeal before Lahore High Court, Lahore which was ultimately dismissed vide judgment dated 24.06.2002.

4. At the very outset, learned counsel for the appellant contends that the learned courts below have grossly misinterpreted, misconstrued the evidence available on the record which was not evaluated in its true prospective. It is further contended that the oral as well as documentary evidence adduced by the appellant was altogether ignored and the same was not given due appreciation. Contends that the main aspect of the auction proceedings was not sustainable as no approval of the Director General was ever sanctioned in favour of the auction proceedings in the capacity as "competent authority" and as such whole super structure raised has no legal sanctity. Contends that the declaration as prayed was not sustainable as such no right or interest was ever accrued to the respondent/plaintiff in the given scenario. Contends that the communication through Ex.D-8 qua confirmation of the auction proceedings has no legal weightage as the negotiations were carried out with LDA staff having no authorization to enter into negotiations and as such hardly contribute towards completion of contract. Lastly, it is argued that mere assumption that the contract was complete cannot be substituted in absence of due sanction by the competent authority which is squarely missing in the given circumstances. Learned counsel prayed that

as no right or interest has accrued in favour of the respondent/plaintiff, hence, no liability can be ascribed to the appellant, therefore, the reasoning assigned by the learned courts below are artificial, hence, nullity in the eye of law.

5. On the other hand, learned counsel appearing on behalf of respondent argued that the respondent was bona-fide participant/bidder of the auction proceedings qua the plot in question. Contends that all pre-requisite to enter into open auction were fulfilled as per terms and conditions and as such the depositing of different installment being highest bidder further supplement the bona-fide of the respondent/plaintiff. Contends that the conduct of the appellant while enhancing the auction price at belated stage was uncalled for although the respondent/plaintiff accepted the same with open heart. Contends that the public functionary cannot demonstrate beyond the limits prescribed by the law and as such an equitable right of the respondent was made complicated in unprecedented manner, hence, such conduct cannot be assented by the court of law.

6. We have heard the arguments of the learned counsel for the parties and perused the record with their able assistance.

7. There is no denial to this fact that the respondent/plaintiff participated in the open auction qua the plot bearing No. 193/B Upper Mall Lahore. During the bidding proceedings respondent/plaintiff was declared the highest bidder. The said claim of the respondent/plaintiff was even accepted by the appellant while submitting written statement before the learned trial court. It was further admitted that the respondent deposited Rs.1,50,000/- at the time of bid and later on he deposited Rs.1,18,500/- as 1/3<sup>rd</sup> of the bid. Admittedly the appellant/defendant never denied the

various visits of respondent/plaintiff in the office of LDA in order to complete the bidding process while depositing the rest of the amount to discharge its liability qua payment of amount of auction. The introduction of third party by the appellant (not participated in the open auction proceedings) with offer of higher price was also intimated to the respondent/plaintiff which was ultimately accepted by the respondent/plaintiff and as such the letter was written which was incorporated in the daily register, therefore, despite of the acceptance of higher price another public notice was published in daily newspaper. Faquir Muhammad, Assistant Director LDA while appearing as DW.1 admitted in cross examination that the respondent was the highest bidder and LDA issued letter Ex.P.2 to respondent for negotiation. DW.1 also admitted that the respondent paid an amount of Rs.2,73,500/- at the spot as 1/3<sup>rd</sup> amount of the bid. The cross examination of DW.1 further reveals that one Saeed Ahmad filed an application to the LDA that the disputed plot be given to him at the rate of Rs.3,85,000/- per Kanal and the respondent was called through letter Ex.P3 to accept that amount in order to hand over the disputed plot. DW.1 further admitted that in the record of LDA, the application of respondent is available that he is ready to admit the condition under protest. The appellant did not deny that the offer was made subsequently to the respondent/plaintiff; therefore, the appellant could not back out from his admission. The written statement filed by the appellant as well as statement of DW.1 Faquir Muhammad and Ex.P.4 and Ex.P5 shows that the acceptance of the offer of the appellant to pay the price at the rate of Rs.3,85,000/- was made first orally on 03.11.1980 and thereafter through Ex.P4 dated 28.11.1980 and then through Ex.P.5 dated 15.12.1980 despite the fact that as per Ex.D.2 the bid of the respondent/plaintiff was cancelled on 28.11.1980. The learned counsel for

the appellant was specifically confronted that the Director General ever proceeded to cancel the bid being unlawful as it was carried out without the sanction of competent authority. Further that the competent authority ever proceeded against those employees who negotiated with the respondent/plaintiff on behalf of the competent authority without seeking prior sanction. The learned counsel failed to satisfy this Court. Otherwise the fact that the price of bid was enhanced at belated stage on the pretext that one person who was not participant of the open auction had made an offer of higher price which cannot be made basis for re-auction of the plot and this practice seems to be un-precedented being without any lawful authority. On the contrary it is noticed by us that the respondent/plaintiff has performed his part towards fulfillment of contract by first depositing an amount of Rs.5000/- as per terms and conditions, as he was declared highest bidder. Therefore he deposited an amount of Rs.2,73,500/- at the spot as 1/3<sup>rd</sup> amount of the bid, all these facts are admitted by Assistant Director of LDA while deposing before the court, hence, in the given circumstances narrated above, it is made abundantly clear that the appellant/defendant was grossly unjustified to issue another proclamation for public auction relating to plot No. 193/B, Upper Mall Lahore, once its valid acceptance was made by the respondent/plaintiff. It is worth mentioning that the conduct of the appellant/defendant was not above-board, rather they acted in a manner which was squarely against the dictates of justice. This practice if allowed to continue it might frustrate public confidence qua public functionaries which might be detrimental to uphold the public order which is paramount to keep the society in peaceful atmosphere; therefore, the public functionaries are expected to perform their duties well within the prescribed limits of the law of the land.

8. For reasons recorded above, we do not find any merit in this appeal. It is accordingly dismissed.

Judge

Judge

Judge

Lahore  
27.08.2020  
Approved for reporting.  
\*Athar\*