

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE SHAHID WAHEED
JUSTICE MIANGUL HASSAN AURANGZEB

C.A. NO.613 OF 2020

(Against the judgment dated 05.03.2020 of the Peshawar High Court, Peshawar passed in C.R. No.647-A of 2009)

AND

C.M.A. NO.3760 OF 2022

(For setting aside ex-parte order)

Zarin Khan, etc.

...Appellants

Versus

The Chairman, Evacuee Trust Property Board, Lahore, etc.

...Respondents

For the Appellants: Sardar Aman Khan, ASC with Syed Rifaqat Hussain Shah, AOR.

For the Respondents: Mr. M. Siddique Aman, ASC for respondents No.1 to 3.

Date of Hearing: 03.03.2025

ORDER

MIANGUL HASSAN AURANGZEB, J.- The appellants call into question judgment dated 05.03.2020 passed by the Peshawar High Court, whereby civil revision petition No.647-A/2009 filed by the Chairman, Evacuee Trust Property Board ("**ETPB**") against the judgment and decree dated 10.05.2009 passed by the learned appellate Court, was allowed and the said judgment and decree dated 10.05.2009 was set-aside. Through the said judgment and decree, the learned appellate Court had allowed the appeal filed by the appellants against the judgment and decree dated 27.05.2009 passed by the Court of the learned Civil Judge, Haripur, whereby the suit for declaration and perpetual injunction filed by the appellants, was dismissed.

2. The record shows that on 22.12.2001, an auction was conducted in the office of Tehsildar, District Haripur for the sale of

land measuring 49 *kanals* and 11 *marlas* in *khasra* Nos.1451, 1473 and 1483 in revenue estate Malikyar, Tehsil and District Haripur (**"the suit land"**). The terms of the auction gave the occupants the right to match the bid of the highest bidder. The highest bid at the auction was Rs.79,000/- per *kanal* submitted by Muhammad Farid, resident of Khalabat Town, District Haripur. The appellants opted to match the highest bid. The bid sheet prepared by ETPB shows that the offer made by the ETPB to the appellants to match the highest bid was accepted by the appellants subject to the approval of the Chairman, ETPB. The said bid sheet also shows that 1/4th of the sale price amounting to Rs.97,843/- was paid by the appellants to ETPB on 22.12.2001. At no material stage did the Chairman, ETPB approve the said option exercised by the appellants.

3. In terms of clause 5 of the terms and conditions of the auction, the successful bidder was placed under an obligation to deposit the remaining 3/4th of the bid amount within six months of the approval by the competent authority. Failure to deposit the remaining bid amount within the said period would render the already deposited 1/4th of the bid amount liable to forfeiture. Under clause 8 of the terms and conditions of the auction, the competent authority / Auction Committee had the option to cancel all the bids without assigning any reason. Letter dated 08.02.2002 from ETPB shows that the Chairman, ETPB had decided to cancel the auction for the sale of the suit land. Furthermore, orders were issued for its re-auction.

4. At no material stage did the appellants deposit the remaining 3/4th of the bid amount. The occasion to make such deposit did not arise since the Chairman, ETPB had decided to cancel the auction and subject the suit land to re-auction. The vital question

that needs to be answered is whether the option exercised by the appellants to match the highest bid of Rs.79,000/- per *kanal* submitted at the auction held on 22.12.2001 would vest them with a legal right for a declaration to the effect that they are liable to be declared as owners of the suit land on payment of the remaining 3/4th amount of the highest bid.

5. There is no denying the fact that in terms of clause 8 of the terms and conditions of the auction, ETPB was given the right to cancel the auction without assigning any reason. Furthermore, in terms of clause 4, the remaining 3/4th amount of the highest bid was to be deposited after approval of the competent authority. It is an admitted position that the competent authority did not approve the option exercised by the appellants to match the highest bid of Rs.79,000/- per *kanal*. The appellants derive their right to match the bid of the highest bidder from clause 4 *ibid*. This clause is contained in the very same terms and conditions which contain clause 8 which gives ETPB the right to cancel all the bids. Courts cannot re-write the terms and conditions of the auction which are in the realm of a contract. A bid at an auction is only an offer and without confirmation or approval does not create any right in the property in favour of the successful bidder. By matching the bid of the highest bidder, the appellants merely stepped into their shoes. Their status upon exercising the option would be no different from the highest bidder.

6. Since a decision was made to re-auction the suit land, there is nothing preventing the appellants from participating in the auction. In the case of Javed Iqbal Abbasi & Company Vs. Province of Punjab (1996 SCMR 1433), it was held *inter alia* that where the highest bid was rejected and re-auction was ordered which afforded equal opportunity to persons whose bid had been rejected,

then the principles of natural justice would not be deemed to have been violated. In the case of Captain-PQ Chemical Industries (Pvt.) Ltd. Vs. A.W. Brothers (2004 SCMR 1956), it was held *inter alia* that mere floating of a bid at an auction whether it is the highest or the lowest does not create a legal right in favour of the bidder, hence the question of its infringement does not arise. In the case of Afzal Maqsood Butt Vs. Banking Court No.2, Lahore (PLD 2005 SC 470), it was held *inter alia* that a bid in an auction is only an offer and without confirmation of sale, it does not create any right in the property in favour of the successful bidder.

7. It is also well settled that where the acceptance of the highest bid is subject to the approval or confirmation by the competent authority, then unless and until such approval is granted or confirmation is made there is no concluded contract vesting the highest bidder with an interest in the property subjected to auction. Since it is an admitted position that the approval contemplated by clause 4 of the terms and conditions of the auction was never issued in the appellants' favour, the latter in our view was not entitled to a declaration to the effect that ETPB is legally bound to receive the 3/4th amount of the highest bid and vest the appellants with ownership rights in the suit land.

8. In view of the above, the instant appeal is dismissed. No costs.

Islamabad, the
3rd March, 2025

~~Not approved for reporting~~
Ahtesham Majid