

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2619 OF 2009
(Arising out of SLP (C) No.3215 of 2008)

Meerut Development Authority ...Appellant

Versus

Association of Management Studies
& Anr. ...Respondents

WITH
CIVIL APPEAL Nos. 2620-2621 OF 2009
(Arising out of SLP (C) No.1602-1603 of 2008)

Pawan Kumar Agarwal ...Appellant

Versus

Meerut Development Authority
& Anr. ...Respondents

J U D G M E N T

B.SUDERSHAN REDDY, J.

Leave granted.

2. Both these appeals can be dealt with under a common judgment since one and the same issue requires to be decided. The brief facts relevant for the purposes of disposing of these appeals may be stated.

3. Association of Management Studies (for short 'AMS') is a Society registered under the provisions of the Societies Registration Act, 1860. It is stated to be managing various educational institutions imparting education such as MBA, MCA, Engineering etc., the details of which are not required to be noted.

4. Meerut Development Authority (for short 'MDA') has been constituted as an Authority called as the Development Authority by the U.P. State Government under Section 3 of the Uttar Pradesh Urban Planning and Development Act, 1973. The said Act, has been enacted to provide for development of certain areas of Uttar Pradesh according to plan and for matters ancillary thereto. The main object and

reasons for the enactment was to tackle resolutely the problems of town planning and urban development in the State of Uttar Pradesh.

FACTUAL MATTERS :

5. On 12.05.2000, MDA allotted a plot of land admeasuring 20,000 sq.mts. situated in Pocket 'O' Ganga Nagar Residential Scheme at the rate of Rs.560/- per sq.m. to AMS for construction of buildings meant to be utilised for educational purposes. The reserved price has been fixed in terms of G.O. dated 19.04.1996 which provides that plots for educational institutions/engineering colleges shall be sold at 50% of the sector rate. The AMS has requested to allot an additional land of 20,000 sq mts. and 37,000 sq. mts. in Ganga Nagar Residential Scheme for establishment of engineering college and other degree colleges, e.g. masters' course such as MBA, MCA etc. It is noteworthy that the land use of the above mentioned land in the Meerut

Master Plan 2001 has been shown as 'Residential medium Density'. The MDA having considered the request and other relevant factors resolved to invite tenders from interested persons to allot the land admeasuring 20,000 sq.mts. and another extent of land admeasuring 37,000 sq. mts. located in the said residential scheme available to be utilised for educational use. The reserved price has been fixed at Rs.690/- per sq.m. for 20,000 sq.mts. and for the remaining extent of 37,000 sq. mts. of land at Rs.500/- per sq.m.; both being 50% of sector rate.

6. MDA issued advertisement inviting tenders in respect of several plots meant for educational institutions within various residential schemes including the aforesaid two plots in Ganga Nagar. The tenders were required to be submitted on 18.08.2001. In response to the advertisement inviting tenders AMS submitted its tender @ Rs.500/- for the plot of land admeasuring 37,000 sq. mts. and Rs.560/- for the plot admeasuring 20,000 sq. mts. The MDA having considered

the tenders so submitted informed AMS vide letter dated 3rd September, 2001 that the commercial offer @ Rs.560/- per sq. m. was less than that of the reserved rate of Rs.690/- per sq. m. in respect of 20,000 sq. mts. of land, out of the reserved 57,000 sq mts. of land meant for the engineering colleges. AMS was put on notice to give its consent within one week if it was desirous of getting 20,000 sq.m. of land @ Rs.690/- per sq.m. MDA was willing to consider the allotment of entire land admeasuring 57,000 sq.mts. for the establishment of engineering colleges provided the institute was willing to pay the reserved price @ 690/- per sq.m. in respect of 20,000 sq.m. of land. AMS in response to the said letter requested the Authority to allot 37,000 sq.m. of land @ Rs.500/- per sq.m. offered by them in their tender. It is noteworthy that AMS in clear and categorical terms stated that the other land of 20,000 sq.m; 'may be deleted from ---- offer as the cost of that land is not viable for ----. However, we are ready to purchase the same @ Rs.560/-

per sq.m. as quoted by us which is the same rate as we have already purchased the part of that land.'

7. MDA having considered the response of AMS vide its letter dated 27.11.2001 informed AMS that only 37,000 sq.m. of land has been allotted for the establishment of engineering college with the condition that the construction of the engineering college is made in accordance with the norms of the A.I.C.T.I.; and deposit of required amounts within the stipulated time. This was accepted by AMS and they took the allotment of only 37,000 sq.mts. of land. In all fairness the matter should have ended there. But it did not.

8. AMS having accepted the offer of 37,000 sq.mts. of land, raised an objection stating injustice has been done by the Authority in fixing the reserved price @ Rs.690/- per sq.m. even though adjoining plots were allotted @ Rs.500/- and Rs.560/- per sq.m. MDA in its meeting held on

15.03.2002 has decided that the disposal of the land be made through Open Tender-cum-Auction for residential use after giving wide publicity. The Authority considered the offer stated to have been made on behalf of the officer's Class Housing Society of the Canal Colony to purchase the bulk of land admeasuring 20,000 sq.m. @ Rs.775/- per sq.m. and as well as the letter dated 04.03.2002 sent by AMS. Since this letter reflects the attitude and conduct of AMS, it is required to be noted in its entirety:

"The Chairman,
Meerut Developmetn Authority,
MEERUT.

Dated 04.3.2002

Subject :- ALLOTMENT OF LAND AT GANGA NAGAR.

Hon'ble Sir,

Following facts are submitted for your honour's kind consideration:-

1. That M.D.A. on 19.9.2001 floated a tender for allotment of two pieces of land measuring 37,000 and 20,000 sqm bulk scale for Technical Institute after getting the approval of rates from Board viz Rs.500/- and 690/- respectively.

2. We deposited 25% of a sum as first installment for 37000 sqm of land as demanded on 27.11.2001.
3. That due to paucity funds, we could not deposit the 25% of amount for 20,000 sqm land on 27.11.2001.
4. That now we are ready to deposit the demanded amount and kindly condone the delay and oblige.

With Regards,

Yours faithfully,

(YOGESH MOHAN)
Chairman."

9. AMS vide its letter dated 27.03.2002 requested the Authority to allot the said land @ Rs.690/- per sq.m. or in the alternative, the topography of the land be so adjusted that both the 20,000 sq.m. of land and 37,000 sq.m. of land already allotted to the Society may be made contiguous to each other so that the entire land can be fruitfully utilised by it for educational purposes.

10. On 15.04.2002, MDA got issued fresh advertisement inviting applications in newspapers for allotment of the aforementioned plot of land of 20,000 sq. m. inviting bids from foreign direct investors, building developers etc. for housing purposes with the reserved price of Rs.885/- per sq.m. and earnest money of Rs.5.50 lakhs. AMS filed C.M.W.P.No.18578/02 in the High Court of judicature at Allahabad on 01.05.2002 with the following prayers:

- (i) to issue a Writ Order or direction in the nature of certiorari quashing the advertisement dated 15.4.2002 issued in the newspaper Amar Ujala of the said date.
- (ii) To issue a Writ, Order or direction in the nature of mandamus restraining the respondent from changing the use of the plot of land in question from being used for Engineering college to residential purpose.
- (iii) To issue a Writ, Order or direction in the nature of mandamus directing the respondent to allot the said plot of land to the petitioner society at the reserved price fixed by it i.e. Rs.690/- per sq.metre and the interest till the payment of the amount by the petitioner or in the alternative direct the respondent to consolidate the two plots of land already demised in favour of the petitioner society into one.
- (iv) To issue any other suitable writ, order or direction which the Hon'ble Court may deem

- fit and proper in the circumstances of the case.
- (v) To award cost of this petition to the petitioner.

11. The High Court vide its interim order dated 07.05.2002, permitted MDA to allot the land in pursuance of the advertisement dated 15.04.2002 "but the allotment shall be subject to the decision of this Writ Petition. It shall also be mentioned in the allotment order, if issued by MDA to the allottee."

12. In the auction Pawan Kumar Aggarwal, the appellant in C.A.Nos. 2620-2621/09 arising out of SLP (C) No. 1602-03/2008 became the highest bidder @ Rs.1365/- per sq.m. and the bid was accepted. He has deposited only the earnest money of Rs.5.50 lakhs. The balance consideration was required to be paid in installments. But during the pendency of the Writ Petition, the MDA vide its order dated 14.05.2007, cancelled the auction and the decision of allotment to Pawan Kumar Aggarwal. He filed the Writ

Petition No.3007 of 2007 challenging the order of cancellation. The High Court by the impugned order allowed the Writ Petition filed by AMS and dismissed the Writ Petition filed by Pawan Kumar Aggarwal. Hence these appeals.

SUMMARY OF SUBMISSIONS :

13. We have heard the learned senior counsel Shri P.S. Patwalia for the appellant – MDA, Shri Rakesh Dwivedi appearing on behalf of the appellant – Shri Pawan Kumar Aggarwal and Shri Sunil Gupta, learned senior counsel appearing for AMS. Elaborate submissions were made by the counsel for the respective parties. The following is the summary of contentions urged by respective senior counsel which are critical and crucial to decide the case.

14. The principal objection of MDA is that the High Court was not justified in scrutinising its action and the tendering

process in such great detail as if it was hearing an appeal against its decision in the matter. The High Court virtually acted as more than the appellate court and went into the merits in evaluating the decision making process of the MDA. It was submitted that the High Court practically converted itself into an Enquiry Commission and heard the Writ Petition in such a way as if it was making an enquiry into the affairs of the MDA which is impermissible in law. It was submitted MDA was left with no option except to invite fresh bids after rejecting the offer made by AMS which was less than that of the reserved price. Shri Rakesh Dewedi, learned senior counsel appearing for appellant – Pawan Kumar Aggarwal submitted that MDA acted fairly and it did not commit any error in not accepting the tender of AMS. The decision making process according to him does not suffer from any vice of illegality or unconstitutionality. He, however submitted that the MDA was not justified in cancelling the auction and its decision to allot land in favour of appellant – Pawan Kumar Aggrwal. Shri Sunil Gupta,

learned senior counsel for the respondent - AMS submitted that the decision of MDA in not allotting the land was unreasonable, whimsical, capricious and violative of Article 14 of the Constitution. The decision is not in public interest. MDA committed mistakes in the matter of depiction of rates in the notice inviting tenders as is evident from their supplementary counter affidavit filed in the High Court. There was some confusion as regards reserved price in respect of disputed plot of land which led AMS to offer bid at a lesser rate than the reserved price. It was further submitted that MDA's decision to put the disputed plot of land to reauction in spite of willingness on the part of AMS to pay the reserved price is unsustainable in law. The decision to reauction the land by changing the land use from that of 'educational' to 'residential' is motivated and inspired by extraneous considerations. Public interest requires allotment of the said land in favour of AMS which is catering the needs of public at large in imparting education in engineering courses.

These contentions are culled out from the storms of submissions made during the course of hearing of these appeals.

ISSUES REQUIRING RESOLUTION :

15. Shorn of all the details and embellishments and notwithstanding the display of forensic skills by the senior counsel, the substantial question that really arises for our consideration in these appeals is whether the decision of MDA dated 15.03.2002 resolving to invite fresh tenders and making the land available for residential use suffers from any legal or constitutional infirmities ?

16. Having regard to the above submissions, we propose to deal with the matter from the following four aspects:

- a) what is the nature of rights of a bidder participating in the tender process?

- b) the scope of judicial review in contractual matters;
- c) whether the decision of the Authority is vitiated by any arbitrariness and therefore hit by Article 14 of the Constitution of India? and
- d) whether the decision is not in public interest?

WHAT IS THE NATURE OF RIGHTS OF A BIDDER PARTICIPATING IN THE TENDER PROCESS?

17. A tender is an offer. It is something which invites and is communicated to notify acceptance. Broadly stated it must be unconditional; must be in the proper form, the person by whom tender is made must be able to and willing to perform his obligations. The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. However, a limited judicial review may be available in cases where it is established that the terms of the invitation to tender were so tailor made to suit the convenience of any particular

person with a view to eliminate all others from participating in the bidding process. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.

18. It is so well-settled in law and needs no restatement at our hands that disposal of the public property by the State or its instrumentalities partakes the character of a trust. The methods to be adopted for disposal of public property must be fair and transparent providing an opportunity to all the interested persons to participate in the process. The

Authority has the right not to accept the highest bid and even to prefer a tender other than the highest bidder, if there exist good and sufficient reasons, such as, the highest bid not representing the market price but there cannot be any doubt that the Authority's action in accepting or refusing the bid must be free from arbitrariness or favoritism.

WHETHER ANY RIGHT OF AMS HAS BEEN INFRINGED ?

19. A mere look at the tender notice in the present case makes it abundantly clear that the two plots of land admeasuring 37,000 and 20,000 sq.mts. meant for establishing engineering colleges were advertised as a single item, though the specified reserved price was different. The reserved price of 20,000 sq. mts. was expressly and clearly mentioned at Rs.690/- per sq.m. There is no ambiguity nor any confusion in this regard. AMS itself mentioned different and separate bids in their tender

and made a bid at Rs.560/- per sq.m. for 20,000 sq.mts plot which was less than that of the reserved price. The Authority was not under any legal or constitutional obligation to entertain the bid which was much below the reserved price. The plea that there was some vagueness, uncertainty and misunderstanding in the matter of depiction of rates is clearly an after thought. AMS never sought any clarification whatsoever from the Authority as regards the fixation of reserved price in respect of 20,000 sq. mts. of plot. This plea is not raised even in the Writ Petition filed by the AMS.

20. Be that as it may, the MDA though not under any obligation, provided a further opportunity to the Society and expressed its willingness to part away with the land provided AMS agreed to pay the reserved rate of Rs.690/- per sq.m. AMS did not avail this opportunity. Even at this stage AMS did not say that it was under some confusion as regards the specified reserved price. No objections were raised whatsoever in this regard. Instead it made a request

that the two plots be segregated and 37,000 sq.mts. be allotted to it while the other plot of 20,000 sq.mts “may be deleted fromoffer as the cost of that land is not viable.....” It expressed its desire to purchase the said land @ Rs.560/- per sq.m. only. It is difficult to discern as to on what basis AMS asserted its right and insisted that the Authority should part away with its valuable land at a price lesser than that of the reserved price. AMS proceeded on the assumption as if it has some unassailable right in respect of the said plot of land merely because it had earlier got allotted adjoining plot of land for the construction of its buildings. Had the Authority conceded to the request so made by AMS it would have been an unfair and arbitrary decision and the courts may have interfered with the same in exercise of judicial review power. The tender process actually stood terminated with the letter of the MDA dated 27.11.2001 allotting 37,000 sq.mts. of land alone. The rights of AMS, if any came to an end when it informed the Authority – MDA that it was not claiming any right over the

land admeasuring 20,000 sq.mts. and made a further request to delete its offer in respect of the said land.

21. The subsequent letters sent by AMS at its own choice is of no consequence. The MDA did not make any promise that the suggestion of AMS to allot the plot at Rs.560/- per sq.m. was under its consideration. Many a letters including the letter dated 03.01.2002 of the Society makes it clear that there was no confusion whatsoever with regard to reserved price fixed at Rs.690/- per sq.m. Once it is clear that there was no vagueness, uncertainty or any confusion with regard to the reserved price there is no scope for any interference in the matter by this court. The terms and conditions of tender were expressly clear by which the authority as well as the bidders were bound and such conditions are not open to judicial scrutiny unless the action of the tendering authority is found to be malicious and misuse of its statutory powers.

[See: Tata Cellular vs. UOI¹, Air India Ltd. vs. Cochin International Airport Ltd.², Directorate of Education vs. Educomp Datamatic Ltd.³, Association of Registration Plates vs. UOI⁴, Global Energy Ltd. vs. Adani Exports⁵, and Purvanchal Projects Ltd. vs. Hotel Venues⁶.]

22. The bids offered by AMS received their due attention in a fair and transparent manner free from any bias at the hands of MDA. No rights of AMS have been infringed by MDA in not giving opportunity to involve itself in lengthy negotiations. The Authority was free to make its choice and to invite fresh bids after the Society relinquished its claim in respect of the disputed plot vide letter dated 17.09.2001 which was accepted by MDA. The decision of the Authority was duly communicated to the AMS by MDA vide its letter dated 27.11.2001. The decision so taken by the MDA resolved in infringement of rights of AMS.

¹ [1994 (6) SCC 651],

² [2000 (2) SCC 617],

³ [2004 (4) SCC 19],

⁴ [2005 (1) SCC 676]

⁵ [2005(4) SCC 435]

⁶ [2007(10) SCC 33].

SCOPE OF JUDICIAL REVIEW IN CONTRACTUAL MATTERS:

23. In **Tata Cellular** (supra) this Court observed that “Judicial quest in administrative matters is to strike the just balance between the administrative discretion to decide matters as per government policy, and the need of fairness. Any unfair action must be set right by judicial review.”

24. In **Chief Constable of North Wales Police Vs. Evans**⁷, Lord Hailsham stated: “The underlying object of judicial review is to ensure that the authority does not abuse its power and the individual receives just and fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eyes of the court.”

25. Large numbers of authorities have been cited before us in support of the submission that even in contractual matters the State or “other authorities” are bound to act

⁷ [(1982) 3 AllER 141],

within the legal limits and their actions are required to be free from arbitrariness and favouritism. The proposition that a decision even in the matter of awarding or refusing a contract must be arrived at after taking into account all relevant considerations, eschewing all irrelevant considerations cannot for a moment be doubted. The powers of the State and other authorities are essentially different from those of private persons.

The action or the procedure adopted by the authorities which can be held to be State within the meaning of Article 12, while awarding contracts in respect of properties belonging to the State, can be judged and tested in the light of Article 14. Once the State decides to grant any right or privilege to others, then there is no escape from the rigour of Article 14. These principles are settled by the judgments of this Court in the cases of **Ramana Dayaram Shetty vs. International Airport Authority of India**⁸, **Kasturi Lal**

⁸ [1979 (3) SCC 489],

Lakshmi Reddy vs. State of J & K⁹, Ram and Shyam Co. vs. State of Haryana¹⁰, Mahabir Auto Stores vs. Indian Oil Corporation¹¹, Sterling Computers Ltd. vs. M & N Publications¹² and A.B. International Exports vs. State Corporation of India.¹³ Executive does not have an absolute discretion, certain principles have to be followed, the public interest being the paramount consideration.

It has been stated by this Court in **Kasturi Lal's case** (supra):

"It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State, such an action would be both unreasonable and contrary to public interest. The government, therefore, cannot, for example, give a contract or sale or lease out its property for a consideration less than the highest that can be obtained from it, unless of course, there are other considerations which render it reasonable and in public interest to do so."

⁹ [1980 (4) SCC 1],

¹⁰ [1985 (3) SCC 267],

¹¹ [1990 (3) SCC 752],

¹² [1993(1) SCC 445]

¹³ [2000(3) SCC 553].

The law has been succinctly stated by Wade in his treatise, Administrative Law:

"The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. So a city council acted unlawfully when it refused unreasonably to let a local rugby football club use the city's sports ground, though a private owner could of course have refused with impunity. Nor may a local authority arbitrarily release debtors, and if it evicts tenants, even though in accordance with a contract, it must act reasonably and 'within the limits of fair dealing'. The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good."¹⁴

¹⁴ Administrative Law, 9th Edition, H.W.R. Wade & C.F. Forsyth

There is no difficulty to hold that the authorities owe a duty to act fairly but it is equally well settled in judicial review, the court is not concerned with the merits or correctness of the decision, but with the manner in which the decision is taken or the order is made. The Court cannot substitute its own opinion for the opinion of the authority deciding the matter. The distinction between appellate power and a judicial review is well known but needs reiteration.

By way of judicial review, the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then the court cannot act as an appellate court by substituting its

opinion in respect of selection made for entering into such contract. But at the same time the courts can certainly examine whether 'decision making process' was reasonable, rational, not arbitrary and violative of Article 14. [See: **Sterling Computers Ltd.** (supra)].

It may be worthwhile to notice the leading judicial review case in relation to grant of licences, by competitive tender reported in **R. vs. Independent Television Commission, ex p. TSW Broadcasting Limited**.¹⁵ The leading speeches in the House of Lords were delivered by Lord Templeman and Lord Goff. Lord Templeman stated:

"Where Parliament has not provided for an appeal from a decision maker the courts must not invent an appeal machinery. In the present case Parliament has conferred powers and discretions and imposed duties on the ITC. Parliament has not provided any appeal machinery. Even if the ITC make mistakes of fact or mistakes of law, there is no appeal from their decision. The courts have invented the remedies of judicial review not to provide the appeal machinery but to ensure that the decision maker does not exceed or abuse his powers... But the rules of natural justice do not

¹⁵ [1996 JR 185 and 1996 EMLR 291]

render a decision invalid because the decision maker or his advisers make a mistake of fact or a mistake of law. Only if the reasons given by the ITC for the decision to reject the application... disclosed illegality, irrationality or procedural impropriety.. could the decision be open to judicial review."

In the concluding section of his speech, he added:

"Of course in judicial review proceedings, as in any other proceedings, everything depends on the facts. But judicial review should not be allowed to run riot. The practice of delving through documents and conversations and extracting a few sentences which enable a skilled advocate to produce doubt and confusion where none exists should not be repeated."

One has to bear in mind the caution administered by Lord Scarman in **Nottinghamshire County Council Vs. Secretary of State for the Environment**¹⁶ that: " 'Judicial review' is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power." It is equally necessary that the following

¹⁶ [(1986) 1 All ER 199]

observations of Benjamin Cardozo, should always be kept in mind:

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'. Wide enough in all conscience is the field of discretion that remains."
[The Nature of Judicial Process, P. 141].

26. There cannot be any disagreement that unjustified discriminations violate the Constitution and unreasonable decisions are susceptible to be interfered with and corrected in judicial review proceedings. But general propositions do not decide concrete cases as has been famously put by Justice Oliver Wendell Holmes in **Lochner** Vs. **New York**.¹⁷ It remains to be decided which acts of discrimination are justified and which are not. It is for the court to decide in the given facts and circumstances whether

¹⁷ [198 U.S. 45,76 (1995)].

the action complained of is unreasonable? How to do that is always a complex and complicated one. It would be unnecessary to burden this judgment of ours with various precedents and super-precedents cited at the bar in support of the general propositions that the authority's action must be free from arbitrariness. It always depends upon the contextual facts. In law, context is everything. We shall bear these parameters in mind and proceed to determine the question whether the decision of the Authority is vitiated by any abuse of power.

WHETHER THE DECISION OF THE AUTHORITY IS VITIATED BY ANY ARBITRARINESS AND THEREFORE HIT BY ARTICLE 14 OF THE CONSTITUTION OF INDIA :

27. It was submitted on behalf of AMS that the decision of MDA dated 15.3.2002 undoing its earlier decision dated 7.7.2002 and changing land use of the disputed plot from 'educational' to 'housing' is unreasonable, unprincipled and capricious and violative of Article 14 of the Constitution.

This was done for making higher financial gain and profit and that too, at the instance of an alleged unverified extraneous person overlooking the demands of public interest as well as law and order problems that may arise on account of peculiar location of the plot in the midst of existing higher education campuses belonging to AMS. We find no merit in this submission. The claim of AMS, in our considered opinion came to an end on 17.9.2001 when it had intimated the MDA to delete its offer in respect of the disputed plot on the ground that the cost of that land as stipulated is not a viable one. This was followed by its letter dated 3.1.2002, once again stating that it was injustice to fix Rs. 690/- per sq. meter for the disputed land while adjoining plots were allotted for Rs. 500/- per sq. meter and Rs. 560/- per sq. meter respectively. There were no further negotiations and any response from MDA to the said letter dated 3.1.2002. The letter dated 4.3.2002 from AMS to MDA indicating the acceptance of Rs. 690/- per sq. meter only after one Harpal Singh Chowdhary on behalf of the

Officer's Class Housing Society had mentioned a higher price of Rs. 775/- per sq. meter in his representation. There is nothing on record to suggest that impugned decision has been taken only for making higher financial gain and profit. But what is wrong even if any such effort was made by MDA to augment its financial resources. We are, however, of the opinion that the effort, if any, made by MDA to augment its financial resources and revenue itself cannot be said to be unreasonable decision. It is well said that the struggle to get for the State the full value of its resources is particularly pronounced in the sale of State owned natural assets to the private sector. Whenever the Government or the authorities get less than the full value of the asset, the country is being cheated; there is a simple transfer of wealth from the citizens as a whole to whoever gets the assets 'at a discount'. Most of the times the wealth of a State goes to the individuals within the country rather than to multinational corporations; still, wealth slips away that ought to belong to the nation as a whole.

Society's repeated representations are of no consequence and the MDA was not under any legal obligation to reopen the tender process which otherwise stood terminated. The MDA, in its meeting dated 15.3.2002 considered the request of the Society as well as the alternative offer but neither of them was accepted. The MDA after careful deliberation decided to dispose of the land through fresh tender-cum-auction for residential use after giving wide publicity.

28. The learned senior counsel relied upon the decision in **Bangalore Medical Trust Vs. B.S. Muddappa**¹⁸ in which this Court observed: "Financial gain by a local authority at the cost of public welfare has never been considered as legitimate purpose even if the objective is laudable. Sadly the law was thrown to winds for a private purpose." The observations were made in the context where this Court found the entire proceedings before the State Government

¹⁸ [(1991) 4 SCC 54]

suffered from absence of jurisdiction. Even the exercise of powers was vitiated and ultra vires. The orders of the Government to convert the site reserved for public park to civic amenity and to allot it for private nursing home was null, void and without jurisdiction and when the same was sought to be justified on the ground of financial gain; the court made the observations in that context. The impugned action of the authority in the present case did not suffer from absence of jurisdiction nor was vitiated and ultra vires. Financial gain was not at the cost of any social welfare.

29. In **Padma Vs. Hiralal Motilal Desarda & Ors.**,¹⁹ this Court found that CIDCO's decision to part with the chunk of developable land was obviously in departure from the policy of serving on "no-profit-no-loss" basis to such people as were craving for a roof over their heads. It is in that context the Court observed; the land acquired and entrusted to CIDCO cannot just be permitted to be parted with guided by the sole consideration of money making. CIDCO is not a

¹⁹ [(2002) 7 SCC 564]

commercial concern whose performance is to be assessed by the amount it earns. Its performance would be better assessed by finding out the number of needy persons who have been able to secure shelter through CIDCO and by the beauty of the township and the quality of life for the people achieved by CIDCO through its planned development schemes. It was in that context the court observed; there should have been no hurry on the part of CIDCO in disposing of the balance land and that too guided by the sole consideration of earning more money. The allotment of the land in favour of various organizations and individuals was found to be without following any procedure and almost in secrecy. The court further observed even that object of raising revenue has not been achieved since at the end it has parted with land at a price less than Rs.1500/- per sq.m. – the reserved price. “Even if a sale of left over land was felt necessary it should satisfy at least two conditions: (i) a well considered decision at the highest level; and (ii) a sale by public auction or by tenders after giving more wide

publicity than what was done so as to attract a larger number of bidders". The observations so made in those given circumstances cannot be torned out of context to be applied to the fact situation in hand. On the other hand, the ratio of judgment fully supports the decision taken by the MDA in the present case. The MDA having considered the representation made by an individual to allot the land for residential purpose at the rate of Rs.775/- per sq.m. and as well as a proposal/request of AMS to allot the land @ Rs.690/- per sq.m. rejected both the suggestions and invited tenders after giving wide publicity. We fail to appreciate as to how the decision of MDA could be characterized as an unreasonable one. In our considered opinion that was the only course left open to the Authority. The money to be realised by the sale of public auction is required to be applied towards meeting the expenses incurred by the Authority in the administration of the Act which mainly includes securing the development of the development area.

30. The expression 'arbitrary and capricious' etc. employed by the learned senior counsel for the AMS to characterise the decision of the MDA does not carry any special significance. The real question is whether the decision measures up to the legal standard of reasonableness? The meaning of all such expressions as arbitrary and capricious, frivolous or vexatious is necessarily the same, since the true question must always be whether the statutory powers have been abused? In refusing to accept the tender of the AMS on the ground that the offer made by it was lower than that of the reserved price is legal, valid and by no stretch of imagination can be characterised as an illegal one. In fact, there was no option available to the MDA but to reject the tender of the AMS as the offer made was much below than the reserved price. In fairness, the matter should have rested at that but for the unwarranted repeated representations by the AMS without any lawful claim; the MDA if at all committed an error it was

by entertaining such representations and entering into avoidable correspondence with the AMS.

CHANGE OF LAND USE :

31. Now, we proceed to deal with the question whether the decision to change the land use is unreasonable? It was submitted that the decision of the MDA on 15.3.2002 to overturn the decision of 7.7.2001 and change the land use of the disputed plot from educational to housing and not to allot the same to AMS is *ex facie* arbitrary and unreasonable. We find no merit in this submission. The disputed land in the Master Plan is reserved for 'Residential' purpose. The residential category of use is a category in contrast with industrial, agricultural, commercial, recreational, green belt, or institutional category in use. It does not mean exclusive use for housing on every inch of the land. The expression residential use in the Master Plan means that the land can be used for housing, various other kinds of uses such as institutional, commercial etc. At any

rate this argument need not detain us any further since a categorical statement is made during the course of the hearing of this appeal on behalf of the MDA that the land shall still be made available for educational use and as well as residential. The MDA had earlier relaxed the use and made it for 'educational' purpose though it is earmarked for residential use in the Master Plan. There is nothing unreasonable in changing the land use and earmarking it again for 'Residential' use. It was submitted that MDA never gave any reason for change of land use in its resolution dated 15.3.2002 nor any reasons were communicated. Once it is clear that the land in the Master Plan was reserved for residential use where educational institutions could also be permitted within that area, it cannot be said that there has been a change of land use as such. At any rate in view of the statement made there is no further controversy that the land in question can be put to both residential and educational use.

PUBLIC INTEREST:

32. The learned senior counsel relied on the decisions of this Court in **Unni Krishnan, J.P. Vs. State of A.P.**²⁰ and **TMA Pai foundation Vs. State of Karnataka**²¹ to highlight the importance of private educational institutions and their entitlement to get assistance from the State or other authorities in the form of various concessions. The allotment of land at a reasonable rate according to the learned senior counsel subserves public interest. We find no relevance of those judgments to decide the case on hand. AMS may have established Engineering Colleges to impart education and may have a role to play in providing education in engineering courses; but it cannot insist the MDA to provide land at the rate chosen by it for itself.

The object of the Act under which MDA is constituted was to provide for development of certain areas according to

²⁰ [(1993) 1 SCC 645]

²¹ [(2002) 8 SCC 481]

plan and for matters ancillary thereto. It is mainly concerned with an orderly development of the areas and balanced use of the available land within the development area. The Authority in law is not entitled to gift or freely make available any land or at a rate lesser than that of reserved price.

The MDA in terms of the directions of the Government vide G.O. dated 19.04.1996 has already decided to make the lands available to the institutions imparting education in engineering at a concessional rate i.e. to say 50% of the sector rate and accordingly fixed reserve price @ Rs. 690/- per sq. meter. The public interest parameters have been duly taken into consideration by the Government itself in directing MDA to make the lands available to educational institutions at a concessional rate. It is difficult to appreciate as to what more the AMS expects from the Authority. The Society in fact availed that assistance from MDA on an earlier occasion but failed to avail the facility this

time for which the AMS has to blame itself. The AMS having failed to offer at least the reserved price cannot be permitted to turn round and ask for a mandamus to allot the land in its favour based on self-serving representations. The AMS indulged to say the least in speculative litigation. We accordingly find no merit in the submission of the AMS placing reliance upon the Directive Principles of State Policy and more particularly, Article 41 of the Constitution of India which says that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. The State had already made effective provision for securing right to education by resolving to make the land available at concessional rate to educational institutions imparting education in engineering courses. Obviously, such a decision was taken only with the view to give effect to the Directive Principles of State Policy enshrined under Article

41 of the Constitution of India. The AMS has no legal or constitutional right to make any perpetual demands and dictate terms to the MDA to allot any particular land at the chosen rate.

33. It was lastly contended on behalf of the AMS the relief in the present case needs to be moulded with two aspects in mind: (a) Public interest & (b) Equity. Reliance has been placed by the learned senior counsel for the AMS on the findings of the High Court in this regard. The High Court recorded the findings including that AMS is performing public service by providing higher education, has established different technical institutes by constructing huge buildings on adjoining plots in which Engineering, Computer Science, Business Administration are already running; as 6,000 students are studying; facilities for students such as hostel, library, parking, open space etc. are required; the sandwiched location of the plot between pre-existing educational campuses would make housing use

of the plot detrimental to the interest of the students as well as the prospective residents. The High Court also found that MDA has not pleaded or proved such surplusage of educational need or such acute shortage of accommodation in Meerut that even the disputed plot cannot be spared.

The expression 'public interest' if it is employed in a given statute is to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment but in the absence of the same it cannot be pressed into service to confer any right upon a person who otherwise does not possess any such right in law. In what manner this Court has to arrive at any conclusion that MDA's decision in calling for fresh tender from the interested persons for making the land available for residential use is not in public interest? Repeated attempts were made before us to say that providing the land in question for educational use will be more appropriate and sub-serve public interest than making it available for residential use. Public interest floats

in a vast, deep-ocean of ideas, and “imagined experiences”. It would seem to us wise for the courts not to venture into this uncharted minefield. We are not exercising our will. We cannot impose our own values on society. Any such effort would mean to make value judgments.

The impugned judgment illustrates “the danger of judges wrongly though unconsciously substituting their own views for the views of the decision maker who alone is charged and authorized by law to exercise discretion.” With respect, we find that the High Court virtually converted the judicial review proceedings into an inquisitorial one. The way proceedings went on before the High court suggest as if the High Court was virtually making an inquiry into the conduct and affairs of the MDA in a case where the court was merely concerned with the decision making process of the MDA in not accepting the offer/tender of the AMS in respect of the disputed plot on the ground that the offer so made was less than that of the reserve price fixed by the

MDA. We express our reservation in the manner in which the High Court dealt with the matter. The High Court went to the extent of holding that there was a concluded contract between MDA and AMS. Of course, learned senior counsel Shri Sunil Gupta, did not support the findings so recorded by the High Court.

34. Finally, it was submitted that equity requires the allotment of land to AMS as the disputed land can be put to most beneficial use and for a public purpose for imparting education in engineering courses. The AMS expressed its willingness to pay such reasonable price as may be fixed by this Court. It is brought to our notice that the prices of the land in the vicinity of area have gone up many times and as at present prevailing rates are very high. We do not propose to indulge in any guess work and direct allotment of land to the AMS by fixing the land price by ourselves. Equity is not a one way street. The conduct of the AMS does not entitle it to get any such relief in equity.

35. For all the aforesaid reasons, we find it difficult to sustain the impugned judgment.

36. Civil Appeal Nos. 2620-2621/09 arising out of SLP (c) Nos. 1602-1603 of 2008 preferred by Pawan Kumar Agarwal :

On 15.4.2002, MDA got fresh advertisement issued inviting bids to acquire the land for housing purposes at the reserve price Rs. 885/- per sq. meter. The auction was held on 2.8.2002. Pawan Kumar's bid of Rs. 1365/- per sq. meter was the highest. He deposited a sum of Rs. 5,50,000/- towards earnest money. The highest bid was approved by the MDA by its letter dated 17.8.2002. However, further amounts were not accepted as the matter was pending in the High Court. Be it noted, the High Court never issued any orders restraining MDA from accepting the bid amount. The only restraint was that the auction would be subject to further orders to be passed in the writ petition. The fact remains there was no demand from MDA requiring

the appellant to pay any amount nor did the appellant on his own deposited any amount towards installments except requesting the MDA to initiate proceedings for transferring the land. The MDA informed the appellant that it was making efforts to get the writ petition decided and the letter of allotment would be issued only after the disposal of the writ petition.

37. AMS challenged the fresh advertisement in which the appellant was the highest bidder but without impleading the appellant. Number of affidavits and supplementary affidavits were exchanged between the parties in the High Court. On 2.4.2007, the High Court allowed impleadment application of the appellant-Pawan Kumar Agarwal. During the course of hearing, the High Court on 8.5.2007 directed the Vice-Chairman, MDA to file additional affidavit *inter alia* explaining as to why allotment in favour of appellant-Pawan Kumar Agarwal was not cancelled when it has deposited only earnest money and not the balance of total

consideration and whether the earnest money could be forfeited by MDA? MDA, obviously was reeling under the pressure and took decision to cancel the auction of the plot by its order dated 14.5.2007 on the grounds stated therein. Thereafter, MDA filed supplementary affidavit mentioning about cancellation of auction. The appellant-Pawan Kumar Agarwal filed Writ Petition No. 30074 of 2007 challenging the cancellation of auction. The High Court vide common impugned judgment dismissed the appellant-Pawan Kumar Agarwal's writ petition.

38. We find some merit in the submission made by learned senior counsel Shri Rakesh Dwivedi that the cancellation of the auction was not tenable. But the fact remains the appellant deposited only an amount of Rs. 5,50,000/- towards earnest money out of huge amount of total consideration. Having regard to the totality of the facts and circumstances, we are not inclined to exercise our jurisdiction under Article 136 of the Constitution of India and

interfere with the order of cancellation passed by MDA on 14.5.2007.

RESULT

39. It is needless to observe that the MDA shall be at liberty to call for fresh tenders in accordance with law but duly notifying the land use for both 'educational' and 'residential' and invite bids accordingly. It shall permit AMS and other educational institutions intending to participate in the auction. In view of the undertaking given by MDA to this Court it shall not raise any objection for the use of the land for educational purposes in case if any educational institution is found to be the successful bidder. The bids shall obviously be invited from the intending bidders duly notifying the 'residential' and 'educational' use.

40. In the result, Civil Appeal No. 2619/09 arising out of SLP (c) No. 3215 of 2008 preferred by MDA is allowed with costs. Advocate's fee quantified at Rs. 50,000/-.

Civil Appeal Nos. 2620-2621/09 arising out of SLP (c) Nos. 1602-1603/08 shall stand dismissed but without any order as to costs.

.....J.
(Lokeshwar Singh Panta)

.....J.
(B. Sudershan Reddy)

New Delhi;
April 17, 2009