

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

OWP No. 1071/2007 Date of Decision: 31.05.2011
CMP Nos. 1555/2007 & 885/2011

Kartar Nath and ors. Vs State of J&K & anr.

Coram:

Mr. Justice J.P.Singh.

Appearing Counsel:

For the Petitioner(s) : Mr. M.K.Raina, Advocate.

For the Respondent(s) : Mr. S.C.Gupta, Sr. AAG.

i)	Whether approved for reporting in Press//Media	:	Yes.
ii)	Whether to be reported in Digest/Journal	:	Yes.

The Municipal Committee Bishnah published a Notice informing the general public of its proposal to Auction lease of its Ten (10) Shops situated at Bye-pass Road near Fatima Convent School, Bishnah. The area of each Shop, the Minimum Reserved Official Bid for Premium, Earnest Money and the Monthly Rent for each Shop was indicated in the Auction Notice.

Finding that only five Auction Forms were sold before the date fixed for Auction, the Auction date was extended to 28th June, 2007, reducing the amount of Earnest Money from 0.50 lac to 0.25 lac.

Fourteen offers were received by the Municipal Committee in respect of Ten (10) Shops.

Not satisfied with the Response received to the Auction Notice, in that, except for a few Shops for which Multiple Bids were received, **single bids** were received in respect of rest of the Shops, the Directorate of Urban Local Bodies, Jammu, the Competent Authority to accept or reject the bids, therefore, directed the Executive Officer, Municipal Committee, Bishnah to go in for Re-auction so as to have healthy competition.

The petitioners-Kartar Nath and two others, who are stated to be the only persons who had applied in terms of the Notice seeking consideration of their Bids, have approached this Court questioning the decision of the Directorate of Urban Local Bodies, Jammu.

In their Response to the Writ Petition, the respondents have justified the Directorate's action urging that the decision to go in for re-auction was in public interest, intended to receive competitive bids so that the Municipal property was leased out at proper price.

Appearing for the petitioners, their learned counsel referred to *Mahabir Auto Stores and others versus Indian Oil Corporation and others, reported as AIR 1990 SC, 1031*, to urge that the Directorate's action to go in for Re-auction was arbitrary and malafide.

Considered the submissions of learned counsel for the parties and perused the judgment referred to by the petitioners' learned counsel.

The case set up by the petitioners in the Writ Petition that they were the only persons who had applied for participation in the Auction amply justifies the respondents' action, in that, had they gone in for the proposed Auction, there would not have been healthy competition and the respondents would not get the best price for their property.

According to the respondents, they had received multiple bids only for a few Shops and for rest of the Shops there were only **single bids**.

The aforementioned stand of the respondents has not been controverted by the petitioners, in that, nothing has been placed on records to contest the case set up by the respondents in this behalf to meet the petitioners' case.

The petitioners' learned counsel's submission that the respondents' action of putting the Shops to re-auction was arbitrary is not found sustainable for the respondents have, in unambiguous terms, indicated in the impugned Communication, their reasons justifying the re-auction of the Shops, i.e., to ensure healthy competition amongst the Bidders which in other words would mean that they intended to get best price for the Municipal Property which could be achieved only

by ensuring healthy competition amongst the Bidders.

It is the prerogative of the owner of a property to see that its property fetches best value in the open market and the efforts made by it in this behalf to see that the competition amongst the bidders for the property, was healthy, cannot, by any stretch of reasoning be said to be arbitrary and questioned by the bidder, who until the acceptance of his bid possesses no enforceable right to compel the owner to dispose of its property accepting the limited bids received in this behalf.

In the circumstances, the decision of the respondents to go in for re-auction cannot be faulted, in that, they cannot be compelled to accept **single bids** offered for majority of their Shops and thereby lease out the Municipal property at throw-away price because such a course may not even otherwise be in public interest.

The case law cited by the petitioners' learned counsel is not applicable to the facts of the present case as no material has been placed on records by the petitioners, on the basis whereof, the decision of the respondents to go in for re-auction may be termed unfair, unreasonable or suffering from malice in law.

The Writ Petitioners do not possess any enforceable right to question the prerogative of the respondents to put their property to re-auction in a bid to secure best price therefor.

For all what has been said above, there is no merit in the
Writ Petition which is, accordingly, dismissed.

(J. P. SINGH)
JUDGE

JAMMU
31.05.2011
Pawan Chopra