

ALAUJI ANCHAL BOAT TRAFFIC COOPERATIVE SOCIETY LTD., PHULTORA AND ANR. A

v.

STATE OF BIHAR AND ORS.

(Civil Appeal No.1853 of 2016) B

FEBRUARY 26, 2016

[T. S. THAKUR, CJI, A. K. SIKRI AND R. BANUMATHI, JJ.]

Auction – Auction-purchase – Challenge to – Propriety of – Auction of a Ghat – Highest bid amount was Rs.16,00,000/- – Though the appellant-society did not participate in the auction – Its opinion was sought on the highest bid – The Society accepted the bid for Rs. 16,00,000/- under protest – Contract of the Ghat granted to the society – The society challenged the order inviting the open bid by public auction for settlement of the Ghat and also bid amount by filing writ petition – Single Judge of High Court remitted the matter to the authorities concerned to reconsider the matter – LPA of the State was allowed by the Division Bench of High Court – On appeal, held: In the facts of the case, auction process inviting bids in settlement of ghats cannot be said to be arbitrary or in violation of Government Circulars – Bid of Rs.16,00,000/- had a rationale behind it being the highest bid – The ghat in question was not the only ghat for which auction was held – The Society had offered even higher bid amount in respect of other ghats and was declared successful bidder – Thus, there is not justifiable reason to challenge either the auction or the bid amount. C D E F

Dismissing the appeal, the Court

HELD: It emerges from the record that the reason for auctioning the ghat in question was that the Circle Officer had accepted the recommendation of the District Level Committee and acted as per the Government instruction vide letter No.2526 dated 12.09.1978 to go through open auction process which is mandatory for the settlement of the ghats for every third year. As per the recommendation of the District Level Committee, in order to augment the State revenue, the authorities are expected to G H

- A invite bids through auction process and ensure transparency in acceptance of the bids. The auction process inviting the bids in the settlement of ghat cannot be said to be arbitrary or in violation of Government circulars. [Para 9] [88-B-C]

2. In auction, the highest bid received was of Rs.16,00,000/-
- B -. Further, the appellant-society was not a bidder and did not participate in the auction. However, still it was offered to have the ghat settled in its favour on payment of Rs.16,00,000/- which was the highest bid received. It agreed to do so but accepted the bid under protest. There is no justifiable reason to challenge either the auction or the aforesaid bid amount. The amount of
- C Rs.16,00,000/- had a rationale behind it as it was the highest bid and, therefore, having agreed to take the settlement of ghat for Rs.16,00,000/- the appellant-society was not justified in challenging the auction of ghat by inviting bids. More so, Ghat in question was not the solitary ghat in which the auction has been
- D held but other ghats were also auctioned and settled at much higher amounts. In fact, the appellant-society was successful in offering the highest bid amount for other ghats at Rs.20,00,000/- -. Having participated and having emerged as the successful bidder for other ghats, the appellant-society is not justified in challenging the auction inviting open bids for the Ghat in question.
- E The Division Bench rightly observed that every year the amount of bid has gone up and therefore, the Court has no jurisdiction to go into such disputed questions of fact with regard to bid amount. [Paras 9 and 15] [88-D-F; 90-E]

3. Contention of the appellant society is that in view of
- F various circulars of the Government, the upward revision of reserve Jama could only be fifteen percent of the reserve Jama/ settlement amount for the previous years and the bid amount of Rs.16,00,000/- for the ghat in question is arbitrary and unreasonable. When the decision was taken to go through the open
- G auction process which was even otherwise justifiable in order to augment the State revenue, the appellant-society cannot object to the same and claim the settlement of ghat in its favour on payment of 15% of the reserved Jama/settlement amount for the previous years. In fact, such a contention is not even available to the appellant-society inasmuch as the decision of the
- H respondents to go through the auction process was never

questioned or challenged by the appellant-society in any judicial proceedings. On the contrary, it jumped to the offer of the respondents and accepted the bid but, at the same time, put the uncalled for condition that it was accepting the same under protest. Therefore, it cannot now turn around and make out a case that the bid amount should have been 15% of the reserved Jama/settlement for the previous years. [Paras 10-11] [88-G; 89-A-C]

4. In the present case, the settlement was already done for three years and thereafter the appellant-society was bound to settle the ghat on the basis of open bid as per the direction of the Government with a view to re-assess the valuation of the settlement and the process of open bid was rightly adopted by the appellant-society which was also necessary to enhance the revenue of the Government. [Para 12] [89-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1853 of 2016

From the Judgment and Order dated 15.12.2011 in Letters Patent Appeal No. 1457 of 2009 passed by Patna High Court

Subhro Sanyal, Ram Nibas Pd., Advs. for the Appellants.

Shivam Singh, Gopal Singh, Advs. for the Respondents.

R. BANUMATHI, J. 1. Leave granted.

2. This appeal assails an order dated 15.12.2011 passed by the Division Bench of the High Court of Judicature at Patna allowing Letters Patent Appeal No.1457 of 2009 setting aside the order of the learned Single Judge and declining to interfere with the order of the Collector dated 16.10.2008, auctioning Ghurandera Kilagarai Ghat and direction to the appellant-society to deposit the balance bid amount of Rs.10,80,000/- for the year 2008-2009 for settlement of the said ghat.

3. A public notice dated 16.10.2008 was issued by the Zonal Officer, Alauli for auction of Ghurandera Kilagarai Ghat for the year 2008-2009 in which Reserve Jama was fixed at Rs.33,350/-. Three bidders had taken part in the auction, the highest bidder at Rs.16,00,100/- by Sushil Kumar and that one Lalan Kumar and Shri Ram Bilash Yadav who also participated in the bid at Rs.5,00,000/- and Rs.10,00,000/- respectively. At the time of Dak, the appellant-society which was present there accepted the settlement under protest and deposited one third of the

- A total bid amount. The appellant-society then prayed for recalling the open bid for the year 2008-2009 on the ground that the bid amount was very much higher and also to fix the amount only with fifteen percent increase of the previous years and for direction upon the respondent to adjust the amount deposited by it in the future instalment. Request of the appellant-society was declined; however, liberty was granted to the appellant-society that it can avail next two settlements for consecutive years at the same settlement amount without any further Jama or open bid.

4. The appellant-society then filed Writ Petition No.3646 of 2009 praying for quashing the order dated 16.10.2008 inviting open bid for settlement of Ghurandera Kilagarai Ghat for the period 2008-2009 through public auction. The appellant alleged that the bid amount was very much higher than the amount on which ghats were being settled for the previous years. Learned Single Judge disposed of the writ petition and remanded the matter back to the Collector, Khagaria observing that the persons who bid the amount were not really interested in taking the settlement and that the appellant-society had taken the ghat under protest. The learned Single Judge directed the authorities to re-consider the matter in the light of various circulars of the State Government. Being aggrieved, respondent-State of Bihar preferred appeal in LPA No.1457 of 2009 which was allowed by the Division Bench holding that the record revealed that every year the amount of bid has gone up and as such the court has no jurisdiction to go into the disputed questions of fact with regard to the bid amount and that it was for the appellant-society to work out its remedies before the appropriate forum.

5. Learned counsel for the appellant-society Mr. Subhro Sanyal submitted that bid amount of Rs.16,00,000/- for which the ghat was settled is arbitrary and is very much on the higher side than the standardized revision by fifteen percent of the amount over and above the amount fixed in previous years and hence the respondents are obligated to re-fix the amount. It was contended that the appellant-society had accepted the bid only under protest and the Division Bench failed to consider the fact that the appellant-society had reserved its right to challenge the public auction Ghurandera Kilagarai Ghat by Circle Officer, Alauli and deposit of one third amount under protest does not amount to acquiescence and waiver of appellant's legal right.

6. Per contra, learned counsel for the respondents Mr. Shivam Singh contended that the Circle Officer, Alauli not only accepted the

recommendation of the District Level Committee rather he has acted as per the direction of the Government letter to go through open evaluation process in order to augment the revenue of the State. The respondents further contended that the appellant-society took the settlement of the ghat on the amount assessed through open bid and as such appellant-society is estopped from assailing the auction of the ghat by inviting bids.

7. We have carefully considered the rival contentions and perused the impugned order and materials on record.

8. Pursuant to the auction notice dated 16.10.2008, auction of Ghurandera Kilagarai Ghat was held on 27.10.2008 in which three persons participated and the highest bid was at Rs.16,00,100/- by one Sushil Kumar. By perusal of record of proceedings of auction of Ghurandera Kilagarai Ghat (Annexure P/10), it is seen that at the time of Dak, appellant-society was present there and its opinion on the highest Dak was obtained and the appellant-society had then taken the settlement of the said ghat under protest. Relevant portion of record of auction proceedings of Ghurandera Kilagarai Ghat dated 27.10.2008, reads as under:

“The highest bid had done by the Dakvakta No. 3 Shri Sushil Kumar S/o Shri Satya Narayan Pra.Yadav, R/o Govindpur Natoliya Sahebpur Kamal, Baigusarai. At the time of Dak, the Alauli Zonal Bodh Traffic Society Ltd., Phoolwada, Khagdiya was present there. Get his opinion on this highest Dak.

Ready to take with objection
Sd/-”

Even though the appellant-society had neither participated in the auction nor submitted the bid, appellant-society's opinion was obtained on the higher Dak and the appellant-society accepted the bid under protest for Rs.16,00,000/-. Though, no plausible explanation is shown to us as to why the appellant-society was given the contract when it had not participated in the auction or submitted its bid, learned counsel for the appellant had submitted that Sushil Kumar, who was the highest bidder and had given the bid of Rs.16,00,100/-, did not come forward and it is in these circumstances the appellant was offered the contract of the said ghat at the aforesaid rate. Be that as it may, Sushil Kumar, who was the highest bidder, did not question the settlement of ghat in favour of the appellant-society and, therefore, such a question is not to be gone into in these proceedings. Since the contract was awarded to the appellant-

- A society and insofar as the said award is concerned, nobody has challenged the validity thereof, we are only called upon to decide as to whether the appellant-society could question the settlement bid of Rs.16,00,000/- at which the settlement of ghat was given to the appellant-society.

9. It emerges from the record that the reason for auctioning the said ghat was that the Circle Officer, Alauli had accepted the recommendation of the District Level Committee and acted as per the Government instruction vide letter No.2526 dated 12.09.1978 to go through open auction process which is mandatory for the settlement of the ghats for every third year. As per the recommendation of the District Level Committee, in order to augment the State revenue, the authorities are expected to invite bids through auction process and ensure transparency in acceptance of the bids. The auction process inviting the bids in the settlement of ghat cannot be said to be arbitrary or in violation of government circulars. In auction, the highest bid received is of Rs.16,00,000/- as mentioned above. Further, as pointed out above, the appellant-society was not a bidder and did not participate in the auction. However, still it was offered to have the ghat settled in its favour on payment of Rs.16,00,000/- which was the highest bid received. It agreed to do so but accepted the bid under protest. We do not find any justifiable reason to challenge either the auction or the aforesaid bid amount. Had the appellant-society refused, the only other course of action was to invite the bids again. The amount of Rs.16,00,000/- had a rationale behind it as it was the highest bid and, therefore, having agreed to take the settlement of ghat for Rs.16,00,000/- the appellant-society was not justified in challenging the auction of ghat by inviting bids. More so, when Ghurandera Kilagarai Ghat was not the solitary ghat in which the auction has been held but other ghats were also auctioned and settled at much higher amounts.

10. Contention of the appellant-society is that in view of various circulars of the Government, the upward revision of reserve Jama could only be fifteen percent of the reserve Jama/settlement amount for the previous years and the bid amount of Rs.16,00,000/- for the ghat in question is arbitrary and un-reasonable. According to the appellant-society, Reserve Jama Committee fixed the reserve Jama for settlement of Ghurandera Kilagarai Ghat for the years 2005-2006, 2006-2007, 2007-2008 at Rs.28,750/- Rs.29,000/- and Rs.33,500/- respectively.

11. For the reasons given above, we have no hesitation to reject

the aforesaid contention. It is re-emphasized that when the decision was taken to go through the open auction process which was even otherwise justifiable in order to augment the State revenue, the appellant-society cannot object to the same and claim the settlement of ghat in its favour on payment of 15% of the reserved Jama/settlement amount for the previous years. In fact, such a contention is not even available to the appellant-society inasmuch as the decision of the respondents to go through the auction process was never questioned or challenged by the appellant-society in any judicial proceedings. On the contrary, it jumped to the offer of the respondents and accepted the bid but, at the same time, put the uncalled for condition that it was accepting the same under protest. Therefore, it cannot now turn around and make out a case that the bid amount should have been 15% of the reserved Jama/settlement for the previous years.

12. The appellant placed reliance upon the letter dated 12.04.1982 of the Joint Secretary, Department of Revenue & Land Reforms, Government of Bihar addressed to Collector, Gopalganj stating that minimum fifteen percent increase is to be made in the settlement of Jalkar keeping in mind the development of Jalkar and rising prices of fish. The said letter dated 12.04.1982 deals with development of Jalkar and Fisheries-cum-Makhana. Likewise, letter dated 09.03.2002 upon which the High Court based its order stipulates that the settlement of ghats ought to be made only for three years on the basis of reserve Jama. In the present case, the settlement was already done for three years and thereafter the appellant-society was bound to settle the ghat on the basis of open bid as per the direction of the Government with a view to re-assess the valuation of the settlement and the process of open bid was rightly adopted by the appellant-society which was also necessary to enhance the revenue of the Government.

13. Likewise the circular dated 12.02.1981 which states that instead of doing settlement of Jalkar through open bidding, it should be made to the cooperative societies for every three years deals only with Sairats pertaining to Fisheries-cum-Makhana. By perusal of the said circular, it is seen that the District Fishery Officer and also Fishery Officer from the level of Sub-Division are the members of the Committee thereby indicating that the said circular is only with reference to Fisheries-cum-Makhana. But so far as in the present case Ghurandera Kilagarai Ghat, it is concerned with settlement of ghats for transportation of men and material through water base. Contention of the respondents is that the

- A appellant-society was well aware of the higher economic viability as through these ghats, maize transportation is being carried out for their export centres from Khagria Railway Station.

14. As pointed out earlier, the appellant has not earlier challenged the auction notice dated 16.10.2008. On the day of auction dated
B 27.10.2008, the appellant-society was present and when its opinion was obtained on the highest Dak, the appellant-society accepted the settlement of ghat for Rs.16,00,000/-. While so, it was not open to the appellant-society to challenge the auction notice and to seek writ of mandamus to direct the respondents to act as per the decision of the District Level Reserve Jama Committee. As pointed out earlier, the Circle Officer
C accepted the recommendation of the District Level Committee and gone through the open evaluation process which is mandatory for settlement of ghats for every third year after the evaluation of open bid process.

15. Be it noted, Ghurandera Kilagarai Ghat was not the only solitary
D ghat auctioned, but auction was held for other ghats also and the bid amount had gone much higher than the amounts at which the ghats were being settled in the previous years. In fact, the appellant-society was successful in offering the highest bid amount for other ghats at Rs. 20,00,000/-. Having participated and having emerged as the successful bidder for other ghats, the appellant-society is not justified in challenging
E the auction inviting open bids for Ghurandera Kilagarai Ghat. The Division Bench rightly observed that every year the amount of bid has gone up and therefore, the Court has no jurisdiction to go into such disputed questions of fact with regard to bid amount. We do not find any reason warranting interference with the impugned order.

16. It is to be pointed out that the appellant-society has deposited
F only thirty per cent of the amount and even after serving three notices by the Circle Officer Alauli, the rest of the amount has not yet been paid. While granting stay of the impugned order, vide order dated 23.03.2012, this Court directed the appellant-society to deposit a sum of Rs.2,00,000/-. The respondents are at liberty to proceed against the
G appellant-society to recover the amount due from the appellant-society.

17. In the result, the appeal is dismissed leaving the parties to bear their respective costs.

Kalpana K. Tripathy

Appeal dismissed.