

**Writ Petition No.14654 of 2013****Writ Petition No.12949 of 2015****28.08.2015**

Shri Akash Moon, learned counsel for the petitioner in Writ Petition No.14654/2013.

Shri Naman Nagrath, learned Senior counsel with Shri Himanshu Mishra, learned counsel for the respondent /Jabalpur Development Authority.

Shri Samdarshi Tiwari, learned Dy. Advocate General with Shri A.A.Barnad, learned Govt. Advocate for the respondents No.1 and 2/State in Writ Petition No.12949/2015.

Shri Akash Moon, learned counsel for the respondent No.3 in Writ Petition No.12949/2015.

Heard counsel for the parties.

In the context of orders dated 1.7.2015 and 3.8.2015, we are informed that the State Government has now considered the proposal submitted by the Jabalpur Development Authority and has issued instructions to the Authority to proceed in the matter, in accordance with the opinion expressed in the communication dated 25.08.2015 (Annexure R-2).

2. Counsel for the Jabalpur Development Authority submits that the said communication does not clarify the doubt which may crop up at a later stage regarding the reserve

price to be fixed by the Authority. For that, reliance has been placed on Rule 6 (vii) of the Madhya Pradesh Vikas Pradhikarano Ki Sampatiyon Ka Prabandhan Tatha Vyayan Niyam, 2013. The doubt expressed by the Jabalpur Development Authority is completely untenable. The auction process is now being conducted by the Authority - not in continuum of the earlier three auctions conducted by the Authority, but in pursuance of the directions issued by this Court in terms of order dated 01.07.2015 and 03.08.2015. Further, the rule regarding notifying reserve price is only directory. If no reserve price is notified in the auction notice, that does not vitiate the entire auction process as such. In any case, the orders already passed in these petitions make it amply clear that the entire auction process will be conducted under the supervision of this Court. If the Authority is so keen to comply with the spirit of Rule 6, the reserve price proposal can be kept with the Registrar of this Court in a sealed cover, but need not be notified in the auction notice, for the reason stated hitherto.

**3.** We appreciate the stand taken by the State Government that to observe transparency in the auction process, the auction process be conducted online (e-tender process). We accordingly, direct the Jabalpur Development Authority to take steps to issue public notice for e-tender process, for

conducting auction online. The auction notice be finalized and produced on 03.09.2015, on the basis of which, the auction process can be taken forward keeping in mind our orders dated 01.07.2015 read with 03.08.2015. The auction notice must clearly indicate that the auction will be confirmed only by this Court.

4. Counsel for the Authority submits that to obviate any possibility of error at the end of the Authority, the Authority would prefer that the auction process online be outsourced to Tenders Online, Government certified agency.

5. Counsel for the State on instructions submits that Tenders Online would take the responsibility of issuing e-tender notice as also to complete the online auction process and submit report to this Court within the time frame to be specified by the Court.

6. Counsel for the respondent No.3 in *suo motu* petition and writ petitioner in Writ Petition No.14654/2013, submits that so long as the claim of the petitioner for refund of the deposit is not resolved, the writ petitioner be allowed to remain in possession of the property and the auction process be made subject to the settlement of that dispute. This argument does not commend to us. In the first place, this plea is contrary to the assurance given to the Court by the said Party on the earlier occasion. That is evident from the order

dated 01.07.2015. It is also seen that directions have been given by this Court in Public Interest Litigation as back as on 26.09.2012. That, however, has only remained on paper. Whereas, the petitioner has succeeded to remain in possession of the property without paying market rent, at-least after termination of lease by this Court. The order dated 26.9.2012 has become final by dismissal of SLP (Civil) No.38071/2012 and connected cases on 04.01.2013.

7. A priori, we have no hesitation in observing that the dispute regarding refund of the amount to the writ petitioner will be dealt with as an independent matter. Indeed, even that must be resolved at the earliest. But, that can be no impediment for execution of the order dated 26.09.2012 passed by this Court in Public Interest Litigation, being Writ Petition Nos.7111/2011 and 3151/2011. For that, we have already indicated the manner of proceeding further, in our orders dated 01.07.2015 and dated 03.08.2015.

8. One way of proceeding is to appoint Court Receiver and the writ petitioner who is in possession of the property can be appointed as Agent of the Court Receiver with obligation to vacate the premises before the auction process is complete and the auction is confirmed by this Court, so that the auction purchaser can be put in possession of the property at the earliest. If the petitioner is the highest bidder, he may

continue to remain in possession.

**9.** The auction notice must disclose the fact that the highest bidder would be put in possession of the property immediately after the auction is confirmed by this Court.

**10.** For any reason, the petitioner fails to vacate the premises before the cut off date specified by the Court, the Court Receiver as per the direction of the Court can take steps to forcibly evict the petitioner by taking help of police force.

**11.** The petitioner who is present in the Court undertakes to file affidavit before Monday i.e **31.08.2015**, that he will abide by the directions as may be given by the Court for handing over peaceful and vacant possession before the specified date in compliance of the assurance given to the Court and accepted by the Court on the previous hearing and reiterated today.

**12.** If the petitioner in W.P.No.14654/2013 and respondent No.3 in W.P.No.12949/2015, fails to file that undertaking, on the next date the Court may straightaway appoint Collector, Jabalpur as the Court Receiver to take steps as per the directions to be given by the Court and the writ petitioner would then remain in possession only as an Agent of the Court Receiver and bound by the directions as may be passed by the Court including to forcibly evict him by using police force, if he refuses or fails to vacate the premises as per the

directions given by the Court. This is the only way to ensure that the public property is not misused or abused any further and more so to effectuate the decision of this Court passed as back as on 26.09.2012 with a sanguine hope that the public property is preserved and no loss to the public exchequer is caused.

**13.** The respondent Authority has handed over sealed envelope giving the details of the amount worked out by the Department, which the petitioner would be entitled for refund. As aforesaid, the issue regarding refund of amount along with interest or otherwise; and the time frame within which refund should be made, will be as per the order to be passed by the Court in due course. If the writ petitioner is not satisfied with the calculation worked out by the Authority, the writ-petitioner may have to take recourse to appropriate remedy which will proceed, in accordance with law, being independent dispute between the Authority and the petitioner. That, however, should not and cannot be the basis to interdict the directions issued by this Court as back as 26.09.2012 to conduct public auction of the property. That auction must proceed with utmost dispatch and cannot brook any further delay.

**14.** Needless to reiterate what we have already said earlier, that the fact that public auction is being conducted, would not

denude the writ petitioner to participate in the said process without prejudice to his claim for adjustment of the amount due and payable to him by the Authority.

**15.** Since, we have dispensed with notifying the reserve price, we quantify the earnest money to be made condition precedent for eligibility to participate in the auction process as Rs.25,00,000/- (Rupees Twenty Five Lacs) on usual terms of forfeiture.

**16.** List these matters on **03.09.2015** for passing appropriate further orders.

**17.** The work-sheet regarding calculation given by the counsel for the Authority be kept in sealed cover.

**(A. M. Khanwilkar)**  
**Chief Justice**

**(K.K.Trivedi)**  
**Judge**

AM.