

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 3<sup>rd</sup> OF APRIL, 2024**

**WRIT PETITION No. 24880 of 2023**

**BETWEEN:-**

1. HARIRAM S/O HIRALAL PATIDAR, AGED ABOUT 50 YEARS, OCCUPATION: BUSINESS AND AGRICULTURE R/O VILLAGE JAMLI TEHSIL PETLAWAD DISTT. JHABUA (MADHYA PRADESH)
2. JEEVANLAL S/O GANGARAM PATIDAR, AGED ABOUT 41 YEARS, OCCUPATION: BUSINESS AND AGRICULTURIST RAIPURIYA TEH. PETLAWAD, DIST. JHABUA (MADHYA PRADESH)
3. PRAVEEN S/O NAANSINGH BHABAR, AGED ABOUT 28 YEARS, OCCUPATION: BUSINESS AND AGRICULTURIST RAIPURIYA TEH. PETLAWAD DIST. JHABUA (MADHYA PRADESH)

**...PETITIONERS**

***(BY SHRI AKASH RATHI, ADVOCATE)***

**AND**

1. CHIEF EXECUTIVE OFFICER JANPAD PANCHAYAT PETLAWAD DISTT. JHABUA (MADHYA PRADESH)
2. GRAM PANCHAYAT THROUGH SECRETARY RAIPURIYA JANPAD PANCHAYAT PETLAWAD, DIST. JHABUA (MADHYA PRADESH)

**.....RESPONDENTS**

***(BY SHRI AMAY BAJAJ, PANEL LAWYER FOR THE STATE  
SHRI PIYUSH JAIN, ADVOCATE FOR RES.No.2 )***

**WRIT PETITION No. 5141 of 2024**

1. HIMMAT SINGH RATHOR S/O JUJHAR SINGH RATHORE, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURIST VILLAGE RAIPURIYA TEH. PETLAWAD DIST. JHABUA (MADHYA PRADESH)
2. PRAVEEN S/O NAANSINGH BHABAR, AGED ABOUT 28 YEARS, OCCUPATION: BUSINESS AND AGRICULTURIST R/O VILLAGE RAIPURIYA TEH. PETLAWAD DIST. JHABUA (MADHYA PRADESH)

....PETITIONERS

*(BY SHRI AKASH RATHI, ADVOCATE)*

**AND**

1. CHIEF EXECUTIVE OFFICER JANPAD PANCHAYAT PETLAWAD DIST. JHABUA (MADHYA PRADESH)
2. GRAM PANCHAYAT RAIPURIYA THROUGH SECRETARY JANPAD PANCHAYAT PETLAWAD DISTRICT JHABUA (MADHYA PRADESH)

....RESPONDENTS

*(BY SHRI AMAY BAJAJ, PANEL LAWYER FOR THE STATE  
SHRI PIYUSH JAIN, ADVOCATE FOR RES.No.2)*

.....  
*This petition coming on for order this day, the court passed the following:*

**ORDER**

1. This order shall also govern the disposal of **W.P. No. 5141 of 2024**, as in both the writ petitions, a common issue of auction of 29 shops by the respondent No. 1 is involved.
2. Also heard on **I.A No.1756/2024**, which is an application for withdrawal of the petition on behalf of the petitioner No.1/ Hariram S/o Hiralal Patidar.

3. For the reasons assigned therein, the I.A stands allowed and the petition on behalf of the Petitioner No.1/Hariram S/o Hiralal Patidar is dismissed as withdrawn. The name of the petitioner No. 1 is directed to be deleted from the cause title of the petition by the counsel for the petitioner.

4. So far as W.P.No.24880/2023 is concerned, this petition has been filed by the petitioner seeking the following reliefs:

*“a) This petition may kindly be allowed with costs.*

*b) The impugned public auction dated 12.09.2023 (Annexure P/1) may kindly be quashed.*

*c) Issue such other orders, writ, direction as this Hon’ble Court deems fit in the interest of justice in favour of petitioner.”*

5. Whereas, in W.P.No.5141/2024, the following reliefs have been sought by the petitioner:-

*“a) This petition may kindly be allowed with costs.*

*b) The impugned public auction dated 19.02.2024 (Annexure P/1) may kindly be quashed.*

*c) Issue such other orders, writ, direction as this Hon’ble Court deems fit in the interest of justice in favour of petitioner.”*

6. The grievance of the petitioner is that the auction notice dated 12/09/2023 has been issued by the respondents without complying with the procedure prescribed under the provisions of M.P.

Panchayat (Transfer of Immovable Property) Rules,1994 (hereinafter referred to as “the Rules of 1994”), and this Court vide its order dated 26/09/2023 had also directed that the petitioner be also permitted to participate in the auction proceeding scheduled on 27/09/2023, and it was also directed that the bid of the petitioner shall not be finalised without the leave of this court.

7. The contention of the petitioners is that the auction proceedings did not take place on 27/09/2023 and were cancelled without even taking any permission from this Court, and a second auction notice dated 19/02/2024, was issued by the respondents which compelled the petitioner to file yet another petition bearing W.P 5141/2024 seeking the aforesaid reliefs.

8. A reply to the aforesaid petition has already been filed by the respondents stating that the petitioners have no locus to file the petition, as neither in the earlier auction proceedings nor in the subsequent auction proceedings which took place in the presence of the hundreds of villagers, the petitioners took part did not participate in the auction proceedings, and their only agenda is to harass the office bearers of the Gram Panchayat with whom, they have an axe to grind, having political rivalry. Counsel has also drawn attention of this court to the service of notice to the petitioners about the auction proceedings on 19.02.2024, as also the photographs of the auction proceedings dated 19.02.2024, in which hundreds of villagers have taken part. Thus, it is submitted that it

cannot be said that the petitioners were not aware of such proceedings in which, the entire village was present and participated. In support of his submissions, Shri Jain has also relied upon the decision rendered by the High Court of Karnataka *Mahalakshmi Engineering Works and another vs. Bangalore Electricity Supply Company Limited* reported as 2022 SCC OnLine Kar. 1719 to substantiate his submission that when the petitioner has not participated in the tender process, he/she cannot be heard to whittle down the rights of eligible bidders who had participated in the tender process on the basis of written and express terms and conditions.

9. It is also submitted that the auction proceedings have already been finalised on 19/02/2024, in the presence of the villagers, after publication of notice in the newspaper Swadesh on 07/02/2024. The photographs and the documents regarding which have already been placed on record and the shops have already been allotted to as many as 29 persons, which order is also placed on record by the petitioner as Annexure P-1 in W.P.No.5141 of 2024.

10. Counsel for the respondents has also stated that the aforesaid successful bidders being the necessary parties have not been arrayed as the party respondents, and in the absence of the same, the petition liable to be dismissed for non-joinder of necessary party and is not maintainable.

11. It is also submitted that the respondents have complied with all the procedural formalities hence no interference is called for. It is submitted that the advertisement of full 15 days was not required to be issued as provided under the Rules of 1994, this is for the reason that the fifteen days advertisement was already issued in the earlier notification, and the subsequent proceedings are only the amendments of the earlier notification, the details of which were also placed on the notice board of the Panchayat office. It is also submitted that, otherwise also the auction has been made in the presence of the officers of the Janpad Panchayat and no mala-fide is alleged against them. It is also submitted that so far as the allegation of the petitioner that the shops have been auctioned at a throw away price to the office bearers of the Gram Panchayat is concerned, the same is also wrong as firstly, it was an open auction, and secondly, the Panchayat Office bearers belong to the reserve categories, and almost all the other reserved categories shops have been sold at a lower price, which is also apparent from Annexure P/1.

12. In rebuttal, Shri Akash Rathi, learned counsel for the petitioner has submitted that the entire auction proceedings is tainted with the mala fide intentions of the respondent No.2 to sell the shops at a throw away price to their own friends and relatives.

13. Heard. Having considered the rival submissions, perusal of the documents filed on record, taking note of the fact that the petitioners in W.P 5141/2024, have mentioned the names of the 29

successful bidders in Annexure P/1, it was incumbent upon the petitioners to array them (the successful bidders) as the party respondents and merely because by that time, they had not paid the entire amount of consideration, it cannot be said that no interest had accrued to them in the shops in which they were the successful bidders, especially against the petitioners who did not even participate in the auction proceedings.

14. In such circumstances, the petition is liable to be dismissed only on the ground of non-joinder of necessary parties.

15. So far as the non-compliance of the M.P. Panchayat (Transfer of Immovable Property) Rules, 1994 are concerned, this court finds that the corrigendum was published by the Gram Panchayat in daily newspaper Swadesh on 07.02.2024, informing that auction shall take place on 19.02.2024, and the terms and conditions of which can be seen on the Notice Board of Panchayat Office. Intimation of this auction was also given to the petitioners personally, the service report of which is also placed on record and has not been rebutted by the petitioner by filing any rejoinder. In such circumstances, when the petitioners were already intimated about the date of auction, but still they chose not to participate in the same, their contention that it was initially not published in the newspaper is hardly relevant and deserves rejection. Reference in this regard may also be had to the decision rendered by the High Court of Karnataka in the case of *Mahalakshmi Engineering Works (supra)*

wherein, while relying upon the decision of the Supreme Court in the case of *National Highways Authority of India*, it has been held as under:-

“12. A tenderer who remains outside and then seeks to question the tender process or conditions stipulated in the tender notification would not get locus to challenge and condition of tender. This issue need not detain this Court for long or delve deep into the matter. The Apex Court in the case of NATIONAL HIGHWAYS AUTHORITY OF INDIA (supra) considering this issue, has held as follows:

“20. *While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no title of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfill all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the*



*tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. **Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfillment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions.** At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.”*

*(Emphasis supplied)*

The Apex Court clearly holds that the tenderer who would chose to stay away from the tender process cannot be heard to whittle down the rights of eligible bidders who had participated in the tender process on the basis of written and express terms and conditions. At the culmination of the tender process, if the tenderer had not participated in law, he cannot be seen to question the terms and conditions. The petitioners, in the case at hand, have admitted their non participation in the tender. Staying away from the tender, they cannot now seek to challenge the tender. It is further germane to notice a similar view taken by the Calcutta High Court. A Division Bench of the High Court of Calcutta in the case of *SUBIR GHOSH v. STATE OF WEST BENGAL* has held as follows:

*“4. The more important factor is that the tender process in this case opened sometime*

*in March, 2019 and the closing date for submitting online bids was April 1, 2019. The writ petition was filed in January, 2020, Though it is submitted on behalf of the writ petitioner that the time to submit the bids was extended, no specific date in such regard is indicated. What is apparent is that the writ petitioner did not participate in the bidding process and yet chose to challenge the same.*

*5. It is possible that a prospective bidder finds the terms of the tender documents to be unfair or illegal and challenges the same; but such challenge has to be before the time to put in the bids is closed. At any rate, if a bid is made and the bid is thrown out on an illegal or unfair ground contained in the tender documents, even then, a challenge can be fashioned. **But a person who has not participated in the bidding process at all cannot challenge the tender conditions on any ground whatsoever.** This admitted aspect of the matter escaped the attention of the Single Bench while passing the impugned order of January 15, 2020.*

*6. For the reasons aforesaid, the order dated January 15, 2020 cannot be sustained and the same is set aside. Since the best arguable case of the writ petitioner will not result in any of the tender terms being altered as the writ petitioner did not participate in the process at all, the writ petition itself is dismissed. Nothing in this order will be construed to be an approval of the terms and conditions of the tender document and in an appropriate challenge, the same may be considered in accordance with law.”*

In the light of the judgments of the Apex Court in the case of NATIONAL HIGHWAYS AUTHORITY OF INDIA and the Division Bench of the Calcutta High Court in the case of SUBIR GHOSH holding that only a participant can question the tender, the challenge

raised by the petitioners who are not the participants in the subject tender, would thus tumble down. Therefore, the second issue that fell for consideration which concerns locus of the petitioners to challenge the tender process being held against the petitioners, the first issue with regard to tender process would not arise for consideration, as it is trite law, that if a writ petitioner has no locus to raise a challenge to the subject matter, no other ground on merit of the challenge need be considered.

*(emphasis supplied)*

16. It is also found that the auction proceedings on 19/02/2024 have taken place in the presence of hundreds of villagers which is also apparent from the photographs filed by the respondents, and admittedly, the petitioners have not taken part in the aforesaid auction proceedings despite personal service of notice of the same. In such circumstances also, this Court is not inclined to interfere in the proceedings, as it is apparent that the petitioners were never interested in participating in the aforesaid proceedings despite the fact that in W.P No.24880/2023, this court vide order dated 26/09/2023, had also directed them to participate in the auction proceeding scheduled to be held on 27/09/2023, and although, on the said date, the auction did not take place, but it took place on 19.02.2024 regarding which they were personally served with the notice, thus, it is difficult to perceive that the petitioners were oblivious of such proceedings or were seriously interested in participating in the auction proceedings, and their only interest appears to be to thwart the auction proceedings by one way or the other.

17. In view of the same, both the petitions being devoid of merits, deserve to be and are hereby *dismissed with costs of Rs.50,000/-* (Rupees Fifty Thousand only) which shall be payable by the petitioner in the account of “**President and Secretary High Court Employees Union**” {Account No.63006406008, Branch Code No.30528, IFSC No. SBIN0030528, CIF No.73003108919} within a period of four weeks from the date of receipt of certified copy of this order, and the acknowledgement of the same shall be also filed before the Registry of this Court.

18. Writ Petitions No. 24880/2023 and 5141/2024 stand *dismissed.*

(SUBODH ABHYANKAR)  
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