

Stereo. HCJDA 38
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Writ Petition No.22158 of 2009

Husnain Cotex Ltd. etc.

Versus

Waseem Sana etc.

JUDGMENT

Date of Hearings:-	1.02.18, 02.02.18, 08.02.18, 13.02.18 & 14.02.2018.
Petitioner No.1 by:-	Mr.Iftikhar ud Din Riaz and Mian Tariq Shafiq Bhandara, Advocates for petitioner No.1.
Petitioner No.2 by:-	M/s.Salman Akram Raja and Tariq Bashir, Advocate for counsel for petitioner No.2.
Respondent No.1 by:-	Mr. Shahzad Shaukat and Asjad Saeed, Advocates for respondent No.1.
Respondents No.8 to 14 by:-	Mr.Amar Farooq and Raja Imran Aziz, Advocates Nemo for the applicant in C.M.No.5 of 2016. Mr.Khalid Ishaq, Advocate for PCBL. Rao Muhammad Akram applicant in C.M.No.1 of 2016. Rao Tajammal Abbas, Advocate for the applicant in C.M.No.1907 of 2016. M/s.Usman Raza Jamil and Muhammad Rizwan Rasheed, Advocates for the applicant in C.M.No.1919 of 2016.

CH. MUHAMMAD IQBAL, J:- Through this single judgment, we intend to decide the instant writ petition along with Writ Petition Nos. 13685/2016 & 13686/2016 as common questions of law and facts are involved therein.

2. In this writ petition, the petitioners have challenged the validity of judgment dated 10.07.2009 passed by the learned

Cooperative Judge whereby petition of respondents No.1 & 2 was allowed and order dated 28.06.2007 passed by Chairman, Punjab Cooperatives Board for Liquidation, Lahore was set aside.

3. Brief facts of the case are that in the year 1989, Pakistan Development Cooperative Corporation (hereinafter called as Corporation) was registered under Cooperative Societies Act, 1925. That the said Cooperative Society purchased land measuring 1674 Kanals & 6-Marlas, situated in the Revenue Estate of Top Kalial & Kalam Mughal, G.T Road, Rawat, Rawalpindi and launched a Housing Project under the name and style of Quaid City Housing Project (hereinafter called as Housing Society). Respondents No.1 to 7 along-with 300 other persons purchased plots in the said society in the year 1989 @ Rs.1,50,000/- per Kanal. The Corporation statedly spent more than 20 million rupees on the development of the scheme. The said Cooperative Society was taken over by Punjab Cooperatives Board for Liquidation as defunct Society under the Punjab Undesirable Cooperative Societies (Dissolution) Act, 1993 (hereinafter called as Act, 1993). The said land was put to auction by the Board and on 09.06.2003, first advertisement was issued in daily newspaper by fixing the reserve price of land @ Rs.71,000/- per Kanal and first date for bidding was fixed as 23.06.2003. Petitioner Husnain Cotex Ltd. remained the highest bidder and the sale was confirmed in its favour by the Punjab Cooperatives Board of

Liquidation in its meeting held on 21.08.2003 but on the multiple complaints of the members of the society NAB probed the matter and on the intervention of the NAB authorities sale was set aside on 22.08.2003. The second advertisement was made in daily 'Din' on 04.10.2003 and in Daily 'Jang' on 05.10.2003 for auction of the said property by fixing 21.10.2003 as the date of auction. Petitioner again participated in auction proceedings and declared successful as the sole bidder. The Punjab Cooperatives Board for Liquidation approved the bid of Husnain Cotex Limited on 30.10.2003 and approval letter was issued on 18.11.2003 with the assessment of total price of the land as Rs.127,224,000/- (127.224-Million) and terminus date for making payment of total auction price was conveyed to the petitioners as 17.12.2003. Respondents filed a complaint/petition No.7-C of 2004 before the learned Cooperative Judge challenging the auction of Quaid City Housing Project. The learned Cooperative Judge entertained the said complaint/petition and granted status quo order on 05.03.2004. Despite the injunctive order the Punjab Cooperatives Board for Liquidation during pendency of petition approved sale deed in favour of the petitioners on 21.12.2004. Finally, Cooperative pending Petition No.7-C of 2004 was also disposed of on 09.05.2005 by the Cooperative Judge who remanded the matter to the Chairman, Punjab Cooperatives Board for Liquidation for fresh decision. In post-remand proceedings, a

proclamation was issued by PCBL in the Daily Newspaper 'Jang' requiring the allottees of Quaid City Housing Project to appear on 18th August, 2005 and submit their respective objections in writing before the Chairman. Accordingly, a petition was moved before Cooperative Board on 18.06.2005 by M/s Waseem Sana and others, the bonafide purchasers of plots in Quaid City Housing Project, Rawalpindi challenging the auction of land measuring 1674-Kanals in favour of petitioner No.1 owned by the Quaid City Housing Society. The Chairman, Punjab Cooperatives Board for Liquidation vide order dated 28.06.2007 again decided the matter in favour of the petitioners. The above said order of the Chairman was challenged by the respondents through petition No.156-C of 2007 titled Waseem Sana etc., vs Punjab Cooperatives Board for Liquidation before the learned Cooperative Judge who after adjudication set aside the auction as well as the order of the Chairman PCBL, vide judgment dated 10.07.2009. Hence, this writ petition.

4. Learned counsel for the petitioners submits that impugned judgment is contrary to the facts and law; that the petitioners participated in the bidding process and being the highest bidder purchased the suit land; that there is no evidence that roads were already constructed; that the suit land is Banjar and no development works were done within the scheme by the society/Quaid City Housing Project except only a single road

leading from the scheme to the main road; that price Rs.76,000/- per kanal in October 2003 was a fair offer but the learned Cooperative Judge has not considered the aspect that the land is Banjar Qadeem and no development work was carried out at site; that land of the society is randomly scattered in multiple small parcels which is not beneficial for any other land developing company etc. and no department of the Government including the Army Foundation or NESPAK, were willing to purchase the said land; that the petitioners are bonafide auction purchasers of the land and the Chairman, Punjab Cooperative Board for Liquidation through well-reasoned order dismissed the prayer/objections of the respondents and rightly maintained the sale through auction in favour of the petitioners whereas the learned Cooperative Judge has not considered the document appended with the petition and without perusing the documentary evidence set aside the auction confirmed in favour of the petitioners, as such, judgment of the learned Cooperative Judge suffers from perversities and illegalities which is not sustainable in the eye of law. Further submits that non-fixing of reserve price is merely an immaterial irregularity which cannot be considered as a valid ground to nullify the sanctity of auction as such the impugned judgment dated 10.07.2009 is without jurisdiction, lawful authority and is violative of the legally vested rights of the petitioners. They prayed for setting aside of the same. Reliance was placed on the

cases reported as 2008 CLD 449, 2005 CLD 169, 2004 SCMR 1956, 2012 SCMR 455, 2007 SCMR 1054, PLD 2016 SC 229, 2010 CLC 1503, 2007 SCMR 1813 & PLD 2006 SC 538.

5. Mr. Khalid Ishaque learned counsel appearing on behalf of the respondent/PCBL submitted that reserve price of the project intended to be auctioned was not fixed which lacuna invalidates bidding process; that non-mentioning of reserve price of land makes the determination of call deposit impossible as the bank draft is to be received on the basis of total price of the land; that against all other properties meant for auction through same advertisement reserve price was clearly mentioned; that in the absence of determination of the reserve price the auction process gathers no sanctity in the eyes of law which itself was based on malafide, collusiveness and fraud and any superstructure built on fraud has to crumble down. Reliance is placed on the cases reported as PLD 2014 SC 283, 2013 SCMR 1419, PLD 2018 SC 91, PLD 2013 Sindh 430.

Further submits that the petitioners did not deposit the remaining balance amount within the stipulated period. As per advertisement the bidding took place on 21.10.2003, Board approved the bid on 30.10.2003 and approval letter issued on 18.11.2003, as such, 25% amount was to be deposited within seven days commencing from 18.11.2003 ending on 25.11.2003; that before publication only Rs.2,67,89,700/- were deposited on

21.10.2003, which itself constituted default on the part of the petitioners and 25% amount was deposited till 17.12.2003 whereas the rest of amount was not deposited within the stipulated period of 7 days as such non-deposit of the rest of the amount frustrated the very bid/auction. Reliance was placed on the case reported as 2011 SCMR 1675. Further submits that property of the society taken over by the PCBL was a public property and it was requirement of law that the same should be disposed of (sold) through transparent manner to fetch the maximum price of the land in complete exclusion of any collusiveness in order to avoid grant of any undue favour to the auction purchaser. Reliance is placed on the cases reported as 2012 SCMR 773, PLD 2010 SC 759, PLD 2010 Lhr 6052014 YLR 2571, PLD 2010 Lhr 510. The learned counsel further submitted that no authenticity or fairness is attached to such auction proceedings which are illegal, tainted with malafide and result of element of cartelization and fraud. Moreover, the then Chairman PCBL (Brig.) Muhammad Farooq Maan and other officials have been found involved in multifarious transactions brimmed with corrupt practices/corruption, nepotism, favouritism and deliberated misuse of authority which also vitiate the sanctity of auction process. Reliance is placed on the cases reported as 2016 SCMR 670 and 2018 SCMR 76. Finally, he submitted that the learned Cooperative Judge has rightly passed

impugned judgment and no illegality has been committed, therefore, the instant writ petition deserves dismissal.

6. We have heard the arguments of the learned counsels for the parties at some length and gone through the record with their able assistance.

7. Admittedly, land measuring 1674 Kanals & 6-Marlas, situated in the Revenue Estate of Top Kalial & Kalam Mughal, G.T Road, Rawat, Rawalpindi was owned by Pakistan Development Cooperative Corporation. The said corporation planned and launched a Housing Project named as Quaid City. In response to advertisement for the above project respondents No.1 to 7 as well as approximately 300 persons became member of the society and they purchased the plots @ Rs.1,50,000/- Per Kanal in the year 1989 and the Cooperative Corporation constructed structural metallic road within the precinct of the scheme. In the year 2002, Pakistan Development Cooperative Corporation was taken over as defunct society by PCBL to protect and safeguard the interest/rights of the members. Section 7 of the Punjab Undesirable Co-operative Societies (Dissolution) Act, 1993 explains powers of Cooperative Board to take over the properties of the defunct society whereas under Section 7 (m), the Cooperative Board is placed under obligation to manage and develop the properties of the Undesirable Co-operative Society by formulating development schemes with or without the

collaboration of the state development agencies and assess market value of the assets/properties etc. under Section 7 (n) before their final disposal. For ready reference, Section 7 (m) and (n) are reproduced as under:-

(m) develop the properties of an Undesirable Co-operative Society and for that purpose to formulate and execute development schemes with or without the collaboration of the official development agencies and dispose of assets and properties;

(n) assess the market value of properties and assets of an Undesirable Co-operative Society for their disposal.

But unfortunately without resorting to above-provision of law the liquidation Board in a hasty manner floated a publication dated 09.06.2003 putting the land of defunct society for sale through auction by fixing reserve price as Rs.71,000/- per Kanal, auction was conducted, petitioner as the sole bidder was declared successful and ultimately the sale of the land was confirmed in favour of Husnain Cotex Limited. Against the above auction and sale members of the society agitated the matter at different foras, ultimately said sale was set aside on 22.08.2003 on Intervention of NAB whereafter PCBL floated a second advertisement in daily 'Din' (on 04.10.2003) and in daily 'Jang' (on 05.10.2003) for auction of the suit land and bidding date was fixed as 21.10.2003. Punjab Cooperatives Board for Liquidation again approved bid of Husnain Cotex on 30.10.2003 and also issued confirmation of auction/approval letter on 18.11.2003. Total price of auctioned land was calculated as Rs.127,224,000/- and terminus date for making total payment was fixed as 17.12.2003. One Waseem Sana

along with other member filed Complaint No.7-C of 2004 before Hon'ble Cooperative Judge who accepted the petition on 09.05.2005 and by setting aside the auction remanded the matter to the Chairman PCBL for decision in accordance with law within a period of 60 days and also directed that till the completion of the proceedings/inquiry the status of the land in question shall not be changed either by the PCBL or aforementioned purchaser. For ready reference relevant part of the said order is reproduced as under:-

4. Since that exercise is not possible before this Court in these proceedings, I will remit the matter to the Chairman PCBL, for a decision in accordance with law at the earliest either by himself or through an employees of the Board having judicial experience not below the status of a District Judge as principal civil court of original jurisdiction. That exercise must be completed within 60 days from today irrespective of the fact that anyone or more of the parties do not cooperate or try to linger on the matter. Till the completion of the proceedings and announcement of order which must happen within the aforesaid period, the status of the land in question will not be changed either by the PCBL or the aforesaid purchaser.

In pursuance of the above direction the then Chairman PCBL afforded hearing to parties and dismissed the applications of Waseem Sana etc./respondents vide order dated 28.06.2007 by maintaining the earlier order of approval/confirmation of the sale. For ready reference, relevant part of the said order is reproduced as under:-

22. Vide my findings in issue No.2, the auction of land by the Liquidation Board has been conducted in quite transparent manners, after the publication in the prominent newspapers of the country. None from the petitioners turned up at the occasion. Their plea that they had no notice of the auction, keeping in view the publication twice in the newspaper as discussed above, is devoid of any force. If they were

interested they could have offered the price for the purchase of land collectively or otherwise individually. The auction was duly scrutinized by the NAB Authorities and was approved by the Liquidation Board comprising of responsible officers of the Provincial Government. So auction in question was conducted in quite lawful manner. Besides other reasons one of the reasons to maintain the auction is, that at present as many as 103 allottees from the Quaid City have already been compensated against their claims. This is also a fact that QCHP is subsidiary of the main Cooperative Society i.e. PDCCC and was raised with the funds of the members of the society. As such the transfer of management to its members is neither practicable under the law, nor is possible under the circumstances of the case. For the aforesaid reasons the applications of the petitioners merit dismissal and are dismissed accordingly.

Against the said order, Petition No.156-C of 2007 was filed by Waseem Sana etc., and the Hon'ble Cooperative Judge set aside the auction as well as order dated 28.06.2007 and directed the Board to prepare the scheme for securing ends of justice by looking after the interests of the allottees and also ensure that the land be utilized for the same purpose. For ready reference, relevant portion of the said order is reproduced as under:-

13. As a result of the above discussion, impugned order dated 28.06.2007 is hereby set aside while allowing the application moved by the affectees/petitioners and the Board is directed to prepare the scheme for securing ends of justice by looking after the interests of the allottees and to ensure that the land is utilized for the same purpose. The allottees will be inducted in their portions of land and development work will be made at the site after collecting money from the allottees and while selling the assets of the said defunct society. The petitioners shall bear the expenses and also offer the Board for depositing the amount to carry on the scheme for establishment of the said society.

Firstly board was under obligation to develop the properties of the Co-operative Society by formulating a development scheme with or without the collaboration of the officials of other land development agencies and after accomplishment of the object, adjust the members according to their entitlement upon the plots

whereafter the left out assets/property was to be disposed of after assessing the market value but the Board has made no bonafide endeavor to formulate or execute any development scheme and in hasty manner proceeded to dispose of the properties owned by individuals of the public without following the relevant law and procedure and doled the property at previous auction price in deliberate inter se collusion with the petitioners.

8. The main controversy for adjudication and determination by this Court is as to whether the land of the society was auctioned as per law. In this regard Order 21 Rule 66 CPC furnished ample guidance. For ready reference, Order XXI Rule 66 CPC is reproduced as under:-

66. Proclamation of sales by public auction.--(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible:-

a) the property to be sold;

b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

c) any incumbrance to which the property is liable;

d) the amount for the recovery of which the sale is ordered; and

e) every other thing which the Court considers material for a purchaser to know in order to judge the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and

verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

By conjunctive reading of Order 21 Rule 66 and Section 7 of the PCBL Act, 1993 it emerges out that the evaluation, assessment of price of the property under auction is mandatory in nature and its conspicuous mentioning in the proclamation is also a fundamental requirement of the law. A perusal of the very clipping of proclamation reveals that the reserve price of all the other properties is manifestly described therein except the land in question which act of the PCBL rendered the entire process of auction doubtful, based on malafide, fraud, cartelization and collusiveness. The Board without carrying out due process, determination of market value of the land, obtaining a report about the development work conducted on the land and application of judicial mind accepted the offer even without determining the amount of call deposit.

9. As the core controversy is revolving around the legalities of the auction proceedings it would be quite appropriate to have microscopic examination of the entire process of auction. The most significant document in this regard is the very advertisement as well as the terms and conditions of the auction. The terms and conditions written in the advertisement are as under:-

مختص قیمت فی کنال / مرلہ سے کم قیمت کے حساب سے جمع شدہ کوئی ٹینڈر قابل قبول نہ ہوگا۔

خواہشمند پارٹی کو ہر پراپرٹی کے سامنے درج شدہ مختص قیمت فی کنال / مرلہ کے حساب سے ہر پراپرٹی کی کل قیمت کا تعین کر کے اس کے مطابق بطور زر ضمانت بشمول کال ڈیپازٹ / پے آرڈر / بینک ڈرافٹ اپنی پیشکش کے ساتھ منسلک کرنا ہو گا جو کہ پہلی دوسری اور تیسری زیادہ پیشکش کے علاوہ بقیہ تمام ٹینڈر دہندگان کو ان کے بینک ڈرافٹ ٹینڈر کھولنے کے بعد واپس کر دیئے جائیں گے۔

Learned counsel for the petitioners argued that the provisions of CPC are not applicable in the proceedings of the Board. Suffice it to say that admittedly no specific parameters/process is mentioned in the Act of 1993 for conduct of auction but undeniably the hall mark principles of fairness, transparency, justness, equity and rationality are to be followed and the provisions of CPC are clearly based on above principles. Further, admittedly any provision of the Act specifically does not exclude the adherence of the principles of CPC and every authority or tribunal has inherent jurisdiction to perform its function in transparent manner adopting the principle of natural justice to eradicate the element of collusiveness and fraud as well as to protect the rights of the parties. Moreover, Civil Procedure Code is a Comprehensive Law on the subject and its provisions are made applicable to all the civil proceedings in the absence of any such provision in the statute itself. Reliance is placed on the cases reported as Muhammad Siddiq & Another Vs Zawar Hussain Abidi & Others (PLJ 1976 SC 493) & Syed Anjum Zafar & 8 Others Vs Syed Abbas Ali Shah & 6 Others (2000 SCMR 59).

From bare perusal of the publication, it is revealed that reserve price of all the other properties has expressly been mentioned but surprisingly the reserve price of the land in question has deliberately neither been evaluated nor disclosed in the advertisement and this material deficiency is considered enough to undo the very process of auction. No reason has been advanced for non-mentioning the reserve price which leads to the irresistible conclusion of the existence of collusivity, unfair oblique aims of the auctioning agency as well as the petitioners, as such, the superstructure built on the said publication/auction proceedings will have to fall. Reliance is placed on the case of Rehmatullah & Others Vs. Saleh Khan & Others (2007 SCMR 729). Moreover, from the perusal of terms and conditions reproduced above, it was mandatory for the purchaser to deposit the bank draft or pay order of the call deposit, according to reserve price of the property but in this case as the reserve price was missing, on what basis the auction purchaser of his own could make assessment of the price of the property in order to deposit the bank draft/amount of call deposit. Moreover non-determining of the reserve price is a grave illegality which undermined the sanctity of the conducted auction which otherwise was based on malafides and fraud. Reliance is placed on the case reported as National Bank of Pakistan & 117 Others Vs SAF Textile Mills Ltd.

& Another (PLD 2014 SC 283). For ready reference, relevant portion is reproduced as under:-

“As a supplement to the aforesaid, it may be noted that no doubt, some rudimentary procedure for conducting such sales is provided in subsection(4) of section 15 of the Ordinance of 2001 but yet again the time honoured and well entrenched principle of fixation of a “reserve price” is conspicuous by its absence. It is now well settled law that even where the sale is conducted by the Court a “reserve price” is essential and the absence thereof may be fatal.

In another case reported as Messrs Lanvin Traders, Karachi Vs Presiding Officer, Banking Court No.2, Karachi & Others (2013 SCMR 1419), it has been observed as under:-

“Agreed that the expression “reserve price” does not find mention in the relevant rule but the words used in the rule pointedly hint thereto. A sale, in its absence, is apt to give walkover to maneuverers to fix any price of their choice. A sale thus effected is no sale in the eye of law especially when the number of bidders is meager, which, indeed is close to nill. A superstructure of sale built on such a shaky infrastructure cannot sustain itself. Neither the buttress of limitation nor the ministerial nature of the rule can prevent it from a fall”.

“Crux of what has been discussed above is that clever maneuvering forcing way for disposal of a property in execution of a decree for a paltry sum has to be guarded against and jealously so with all the care and circumspection so that it may go for a sum it deserves. The judgments rendered in case of “Messrs Majid and Sons and another -v. National Bank of Pakistan through Manager and another” “Messrs Magi Chemicals Industries v. Habib Bank” Appu alias Subramania Patter v. O. Achuta Menon and others” “Mir Wali Khan and another v. Manager Agricultural Development Bank of Pakistan Muzaffargarh and another” (supra) may well be referred to in this behalf”.

Reliance can also be placed on the case reported as Ahmed through LRs Vs Faysal Bank Limited & Others (PLD 2018 SC 91).

(The Above judgment (M/s Lanvin Traders) has again been approved by the Hon’ble Supreme Court through instant judgment.)

In another case the sale made through auction without fixing or mentioning the reserve price came under consideration of Sindh High Court reported as Messrs NIB Bank Limited Vs Messrs Apollo Textile Mills Limited & 2 Others (PLD 2013 Sindh 430) of which relevant portion is hereby reproduced as under:-

“Intention of law was to fix reserve price in proclamation to safeguard rights of judgment debtor. Court auctioneer, without any authority, rather against the provision of Order XXI, Rule 85. C. P. C. fixed 30 days' time for the payment of the balance consideration, which otherwise was required to be paid in terms of Order XXI, Rule 85, CPC within a period of 15 days. No reserve price of the property was settled. Where the property was sold in complete disregard of rules and in questionable circumstances, even suo motu action for setting aside the sale would be justified

"No reserve price was fixed in the proclamation by the Executing Court, auction proceedings were illegal and were liable to be set aside. Such omission had rendered the proclamation to be illegal”.

"Under Rule 84 of Order XXI C. P.C., an auction purchaser shall deposit 25% of the auction amount immediately on being declared as highest bidder. While the requirement of Rule 85 of Order XXI that full amount of purchase money must be paid by the purchaser within 15 days from the date of sale, is mandatory. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity.

10. Admittedly, the auction/bidding process took place on 21.10.2003, the Board approved the said bid on 30.10.2003 and approval letter was issued on 18.11.2003 whereafter 25% (Rs.31,806,000/-) amount was required to be deposited within seven days till 25.11.2003 but the petitioners made deposit of the amount of Rs.26,789,700/- on 21.10.2003, whereas, rest of the amount was deposited on 04.12.2003 after about 13 days delay which default is a clear violation of terms and conditions of the advertisement as well as of the law on the subject. The details of the amount deposited by the petitioners are as under:-

Credited Amount	Credit Date	Account #	Bank
=55,060,500/-	06.05.2004	1017-6	ACBL Main Br. Lahore
=12,000,000/-	20.02.2004	1017-6	ACBL Main Br. Lahore
=3,473,500/-	20.02.2004	1017-6	ACBL Main Br. Lahore
=335,885/-	20.02.2004	1017-6	ACBL Main Br. Lahore
=709,518/-	20.02.2004	1017-6	ACBL Main Br. Lahore
=650,000/-	25.02.2004	1017-6	ACBL Main Br. Lahore
=2,050,000/-	25.02.2004	1017-6	ACBL Main Br. Lahore
=1,501,500/-	25.02.2004	1017-6	ACBL Main Br. Lahore
=3,750,000/-	25.02.2004	1017-6	ACBL Main Br. Lahore
=7,951,500/-	25.02.2004	1017-6	ACBL Main Br. Lahore
=26,789,700/-	04.12.2003	1017-6	ACBL Main Br. Lahore
=7,952,688/-	20.02.2004	1017-6	ACBL Main Br. Lahore
=5,022,000/-	13.08.2003	1017-6	ACBL Main Br. Lahore
2,544,936/-	01.04.2004	1065-7	ACBL Main Br. Lahore
=129,791,727/-	(Rupees One Hundred Twenty Nine Million Seven Hundred Ninety One Thousand Seven Hundred Twenty Seven Only)		

From the perusal of aforementioned details of deposited amounts it is very much clear that the petitioners failed to make the deposit of the auction amount within the stipulated period as mentioned in the advertisement and as such committed further a deliberate default of even the terms and conditions of the bid. The Board was not vested with any authority to enlarge the stipulated period by itself and no permission was ever sought or granted for such delayed deposit under the bid/auction. Moreover, any unauthorised belated deposits if so made cannot remedy the default committed by the auction purchasers and provisions for forfeiture of the deposited amount could have been invoked as discussed and held in the case reported as Mst. Nadia Malik Vs

Messrs Makki Chemical Industries Pvt. Ltd. through Chief

Executive & Others (2011 SCMR 1675). For ready reference,

relevant portion is reproduced as under:-

“.....Clause 4 of the proclamations provides that the remaining 75% of the auction money shall be deposited in court within 15 days from the date of auction, failing which the executing court can forfeit the amount of auction money deposited on the conclusion of the auction. These conditions are in fact borrowed from the provisions of Order XXI, Rules 84, 85 and 86, CPC. In other words, the executing court had chosen to adopt the procedure provided under the CPC for executing the decree. There is nothing on record to show that the decree-holder had ever approached the banking court to execute the decree in the manner other than the one provided under the C.P.C. Therefore, the argument of the learned counsel for the appellant on the issue of application of the provisions of C.P.C. by the executing court are without substance.”

“..... ”Admittedly, this amount was not deposited by the said date and record reveals that an application for extension of time was made by the appellant on 13.05.2002 and on 14.05.2002 an amount of 3.00 million was deposited and for the balance amount of 3 million further time of 10 days was sought. The default in deposit of the balance amount was violative of the mandatory conditions provided under the proclamation which language was borrowed from the mandatory provisions of the Order XXI of the CPC. Failure to deposit the balance amount of 75% of auction money within 15 days by the appellant renders the sale/auction proceedings nullity. ”

“The appellant admittedly has violated the mandatory conditions and the contention of the learned counsel for the appellant that the court in its discretion can extend time to the appellant for deposit of balance amount of 75% of the sale price after the lapse of 15 days by virtue of sub section (2) of section 19 of the Ordinance, does not appeal to reason. Afzal Masood Butt v. Banking Court No.2 Lahore and others reported as (PLD 2005 SC 470) wherein this court has held that non-payment of 75% balance auction amount within 15 days in violation of provisions of Order XXI, Rule 85, C.P.C. would render the sale nullity and the executing court is bound to order re-sale of the property in terms of Order XXI, Rule 86, CPC. Moreover, the case of the respondents is supported by the judgments of the Indian Supreme Court in the cases reported as Manilal Mohanlal Shah and others Vs Sardar Sayed Ahmad Sayed Mahmud and others (AIR 1954 SC 349) and Balram son of Basha Ram v. Ilam Singh and Others (AIR 1996 SC 278), wherein it has been held that provisions of Order XXI, Rules 84, 85 and 86 CPC are

mandatory in nature and violation of the same would render the sale nullity."

"In the face of the afore-said illegalities coupled with the non-deposit of the balance sale amount of 75 % within 5 days renders the sale culminating from such auction proceedings as nullity "

11. Now adverting to the mandatory terms and conditions of auction as settled and circulated in the advertisement wherein it is unambiguously mentioned that:-

منظوری ٹینڈر کے بعد ہر پراپرٹی کی بقیہ قیمت کا 25% اندر سات یوم پورا کرنا ہوگا
اور بقایا 75% وصولی مراسلہ منظوری ٹینڈر / پیشکش تیس یوم کے اندر جمع کروانا ہو
گا۔ عدم ادائیگی کی صورت میں زر ضمانت ضبط تصور ہوگی اور کوئی عذر قابل قبول نہ
کیا جائے گا۔

The petitioners being fully cognizant of the above clear stipulation participated in auction and being successful bidder were required to deposit 25 % within clear 7 days and rest of the amount was liable to be deposited within 30 days from the date of issuance of letter of acceptance of auction but the petitioners failed to deposit the amount of 25% within seven days as well as rest of the amount 75% within 30 days, as such, by operation of provisions of Order 21 Rule 85 CPC their deposited amount should have been forfeited. From perusal of details of the deposits made by the petitioners, it is quite evident that deposits were made after the expiry of the period provided in the advertisement and no convincing explanation has been furnished in this regard by the petitioners' to dislodge the mandatory obligation as per the terms and conditions of auction whereas the Board in complete

derogation of the law on the subject and with shameless collusiveness kept the auction intact rather confirmed the same without taking into consideration the default of the bidder which amounts to commission of fraud with the public property. Such deliberate collusive auction garners no sanctity in the eyes of law. It is settled law that every state functionary while dealing with public property and determining the rights of the public must have to show ultimate fidelity in the interest of justice as well as the public rights and is under extraordinary obligation to maintain fairness, equity, impartiality of racial, religious, social and financial nature, while dealing with public affairs without any element of bias, partiality and doubt as great expectation of public are attached with official proceedings and any deviation therefrom would render the auction proceeding as nullity in the eyes of law as settled in the cases reported as Alleged Corruption in Rental Power Plants etc.: In the matter of Human Rights Cases Nos. 7734-G/2009, 1003-G/2010 and 56712 of 2010, decided on 30th March, 2012 (2012 SCMR 773). For ready reference, relevant portion is reproduced as under:-

“Every action taken by the Government must be in public interest and its action would be liable to be invalidated on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid:

"The law is well-settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders eligible persons and the notification of the public-auction or inviting tenders should be advertised in well known dailies having wide circulation in the locality with all relevant details such as date, time and place of

auction, subject-matter of auction, technical specifications, estimated cost, earnest money Deposit, etc. the award of Government contracts through public-auction/public tender is to ensure transparency in the public procurement, to maximize economy and efficiency in Government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. In our opinion this is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence. "

In case of *Ramona Dayaram Shetty v. The International Airport Authority of India* (AIR 1979 SC 1628). the Court has held as under:-

.....dealing with the public. whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, its action must be in conformity with standard or norms which is not arbitrary irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory. "

In case of *Ram and Shyam Co. v. State of Haryana* (AIR 1985 SC 1147), the Indian Supreme Court has held as under:.

“.....disposal of public property partakes the character of a trust in that in its disposal there should be nothing hunky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficent activities by the availability of larger funds.....”

In the case of *Haji T.M. Hasan v. Kerala Financial Corpn.* (AIR 1988 SC 157), the Court observed that:

"It is needless to state that the Government or public authorities should make all attempts to obtain the best available price while disposing of public properties. They should not generally enter into private arrangements for the purpose. "

Reliance is placed on the case reported as Human Rights Cases Nos.4668 of 2006, 1111 of 2007 & 15283-G of 2010 (PLD 2010 SC

759) wherein the Hon'ble Supreme Court of Pakistan held as under:-

"This Court, time and again, has insisted upon public functionaries to adhere to the principle of transparency in the performance of their duties. In the case of Messrs Airport Support Services v. The Airport Manager (1998 SCMR 2268), this Court dealt with the question whether a concluded contract could be struck down on the grounds of mala fides arbitrary exercise of discretionary power, lack of transparency, discrimination and unfairness, etc. Relevant portion from the judgment is reproduced below:- (Emphasis is ours)

"Further a contract, carrying elements of public interest, concluded by functionaries of the State, has to be just, proper, transparent, reasonable and free of any taint of mala fides, all such aspects remaining open for judicial review. The rule is founded on the premise that public functionaries, deriving authority from, or under law, are obligated to act justly, fairly equitably, reasonably without any element of discrimination and squarely within the parameters law, as applicable in a given situation. Deviation, if of substance, can be corrected through appropriate orders under Article 199 of the Constitution. In such behalf even where a contract, pure and simple, is involved, provided always that public element presents itself and the dispute does not entail evidentiary facts of a disputed nature, redress may be provided".

In the case of Shams and Brothers v Government of Pakistan (2007 CLD 125) a Division Bench of the High Court of Sindh, Karachi while dealing with the issue of causing heavy financial loss to the exchequer in awarding a contract, held as under"

"23. From the above discussion, we have come to an irresistible conclusion that the whole process of inviting of tender sealed offers by the respondent No 2 on the first occasion as well as on the second occasion was game of fraud and cheating full of ulterior name and mala fide, aimed to oblige some particular party (respondent No 4) and for causing heavy financial loss to public exchequer. Thus, we have no option but to allow and dispose of this petition in the terms that the acceptance of the bid of respondent No. 4 in the sum 605.000; subsequent awarding of contract in his favour and the whole process of bidding conducted by respondents Nos. 1 and 2 for this purpose is illegal, without lawful authority and of no legal effect. The respondent Nos. 1 and 2 are, therefore, directed to invite fresh bids/offers for granting of lease of Pakistan Sports Board Coaching Centre plot at Sir Shah Suleman Road. Karachi for the purpose of marriage lawn, by incorporation of only such conditions,

which are available in the first advertisement or relevant and necessary to safeguard the interest of respondents Nos. 1 and 2 properly”.

Reliance can also be placed on the case reported as Atta Ullah Khan Malik Vs Federation of Government of Pakistan through President of Pakistan & 3 Others (PLD 2010 Lahore 605 (DB)). For ready reference, relevant part is reproduced as under:-

“Public Property held by public authorities is held in trust. Public functionaries (civil servants or officers of any public authority) are the Trustees of the said property on behalf of the people of Pakistan. No public officer, how high up he may be in a public institution, has the right, authority or power to sell, leave or transfer even a single inch of public property unless it is strictly in accordance with law and meets the public standard of open public tender and open public auction. “The government in itself has no private” interest of its own. The government exists for the sake of individuals. The government does not exist for its “own” sake. Those who represent the government have no “self interest that must be protected. They must act to achieve the collective interest. Indeed, there is a serious concern a concern that history has repeatedly validated that representatives of the government mil develop their own interests and use the tremendous power granted them for purposes that did not reflect that collective good. The duty of loyalty seeks to prevent that. That duty of loyalty seeks to guarantee that the government take care of the public and not itself; the general duty of loyalty seeks to guarantee that the grammar” takes care of the public and not itself”

"The disposal or transfer of public property without public participation is abuse of public trust. Public Property sold or transferred behind closed doors by public functionaries to some selected few undermines this venerated trusteeship. Good governance is fundamentally pillared on trust and confidence of the people in the government, public institution and more importantly in the public functionaries at the helm of the affairs. If this public trust is hemorrhaged, the entire edifice of public administration loses its credibility, which weakens governments and discredits democracy. "

"Disposal of Public Property without reaching out to the public is a branch of public trust and is facially discriminatory. By giving preference to a selected few foot the general public, equals are treated unequally, offending fundamental right of equality under Article 25 of the Constitution "

"Public functionaries are custodians of public property; they must protect and safeguard public property like a lioness guarding her cubs. Therefore, even a slight lapse on behalf of the public functionaries in the stewardship of this sacred trust and public confidence calls for strictest of accountability in the larger interest of justice and institutional building.

In a reported case titled as Muhammad Qahir Shah & Others Vs Federation of Pakistan, Ministry of Railways, through Secretary, Islamabad & Others (2014 YLR 2571 DB), the learned Division Bench held as under:-

Undue benefit to auction purchasers---Loss to public exchequer ---terms of Bid not abided by---sale not proclaimed/advertised properly-Land owned by government local government or public institutions was a valuable public asset and must be put to the best possible use for the benefit of the citizens-When public properties were sold the bid conditions must be complied with-Successful bidders did not abide by the term of Bid Documents, and the Bid Forms With regard to the most important aspect i.e. making payment as stipulated-Comparatively small percentage of the sale consideration had been paid till date; five years had elapsed since the bids were submitted-Price of property increased over a period of time whereas the effect of inflation and other factors depreciated the value of money in Pakistan-Public interest therefore had been seriously compromised and the auction purchasers had been accommodated and extended huge benefit at the cost of the public exchequer.

Pakistan Railways in extending the time for making payment to the auction purchasers, without publicly informing the general public that it had changed the payment terms and without inviting fresh bids in such terms acted unfairly, unreasonably, unjustly and illegally, and caused prejudiced to the public interest-failure of the auction purchasers to make payment promptly and as per the terms of the bids documents and bids forms was a major contravention of the sale terms, which also adversely affected the public interest.

In the case of Haji T.M.Hassan Vs Kerala Financial Corpn. (AIR 1988 SC 57), the Court observed that:

"It is needless to state that the Government or public authorities should make all attempts to obtain the best available price while disposing of public properties. They should not generally enter into private arrangements for the purpose."

The Hon'ble Supreme Court stated that natural resources too came within the definition of 'property' and belonged to the general public and property which must not be compromised:--

“10. The Government Executive being the custodian of the national resources on behalf of the nation is bound to preserve and protect the same by strictly adhering to the relevant laws, conventions, experiences and have no authority to compromise with the resources, which fall within the definition of property in term of constitutional provisions belonging to general masses falling within the ambit of Article 24 of the Constitution.

Reliance is placed on the case reported as Arshad Waheed Vs Province of Punjab & Others (PLD 2011 LHR 510), in which, it is held as under:-

"Even a slight lapse on behalf of the public functionaries in the stewardship of such sacred trust and public confidence, called for strictest accountability in the larger interest of justice and institutional building."
"Therefore, even a slight lapse on behalf of the public functionaries in the stewardship of this sacred trust and public confidence, calls for strictest of accountability in the larger interest of justice and Institutional building. Reliance is placed with advantage on Human Rights Case: Nos. 4668 of 2006 11.11 of 2007 and 15283-G of 2010 (PLD 2010 SC 759), Moulvi' Iqbal Haider v. Capital Development Authority and others (PLD 2006 SC 394), Arshad Mehmood and others v Government of Punjab through Secretary, Transport Civil Secretariat, Lahore and others (PLD 2005 SC 193) Ardeshir Cowajee and 10 others v. Karachi Building Control Authority (KMC), Karachi and 4 others (1999 SC MR 2883), Iqbal Hussain v Province of Sindh through Sectary Housing and Town Planning Karachi and others (2008 SCMR 105) and Bangalore Medical Trust v. B S Muddappa and others (AIR 1991 SC I 902). "

From the perusal of the advertisement and record appended with this petition we are of the view that the initial step taken by the Board for the auction of the public property was not in accordance with law as reserve price of property put up for auction was not fixed in derogation of mandatory requirement under Order 21 Rule 66 CPC which flaw in itself was not curable rather proper auction proceedings should have been conducted after evaluating and fixing the reserve price which exercise admittedly has not been undertaken by the respondent Board which

vitiating the sanctity of the auction, as such, when the initial process of proclamation was patently illegal then all subsequent proceedings dependent thereupon shall automatically collapse. Further, the respondents produced so many criminal complaints/FIRs against the then Chairman PCBL (Brig. Muhammad Farooq Maan) which shows the involvement of the said Chairman in multifarious transactions of corruption/corrupt practices and misuse of authority. In the instant case the said Chairman admittedly confirmed the auction of public property in inter se collusion with the petitioners at a throw away price without following the prescribed procedure, transparency and also trampled the sacred vested right of the lawful owners/affectees in naked disregard to the legitimate expectations of the state as well as public attached with the state functionaries, who are under legal obligation to protect the rights of the public in complete consonance of law. Reliance is placed on the case reported as Muhammad Rafique Bhatti & Others Vs The Cooperative Judge, Lahore High Court, Lahore & Others (2016 SCMR 670). For ready reference, relevant portion is reproduced as under:-

"By this order the Chairman, PCB, cancelled the "No Objection Certificate ("NOC")" dated 30.10.1997 issued by his predecessor for sale to the petitioners of land measuring 193 Kanals, 12 Marlas situated in village Maraka, Tehsil and District Lahore belonging to National Industrial Cooperative Finance Corporation ("NICFC") in exchange for cash deposit receipts ("CDRs") issued by the NICFC and National Industrial Cooperative Credit Corporation ("NICCC"), both being defunct undesirable cooperative corporations ("CFCs").

"The petitioners state that the sale consideration under the agreements to sell exceeds the value for the land transacted and the cancellation of NOC dated 30.10.1997 by the Chairman, PCBI on 28.04.2001, as affirmed by the High Court, violates the vested rights of the petitioners.

12. So far as the arguments of the learned counsel for the petitioners that except the petitioners no other land developer came forward to participate and purchase the land, suffice it to say, that vide letter dated 10.11.2003 appended at Page-3 in C.M.No.6995/2015 Defence Housing Authority (DHA), Islamabad had shown its explicit willingness to purchase the suit land at higher reasonable rate but the said offer was never placed before the Board for consideration rather the Chairman himself malafidely closed the matter by writing a letter dated 20.11.2003 intimating DHA that the property has already been auctioned and the Board has finally approved the auction on 30.10.2003, as such, the Chairman by withholding the real facts with malafide intention managed the ouster of all other competitors from participating in arena of contest for the auction. Moreover, respondent Waseem Sana alongwith other members of the society also made a clear offer to pay more price than the auctioned rate but unfortunately their request was also disregarded by Chairman of the Board who adamantly doled out the public property to his favorite one. Besides above, it is unimaginable and illogical that the rate/price of the property in the year 1989 was shown as Rs.1,50,000/- per kanal whereafter substantial infrastructure such as roads were constructed by spending about 20 million rupees, how the price of semi developed land could reduce by 50% in the year 2003 whereas the commercial activities and land development were flourishing rapidly in the area which aspect also presents a crude example of favouritism and nepotism etc., in this transaction. It is settled

law that public property cannot be disposed of through private understanding. Reliance is placed in the case titled American International School System Vs. Mian Muhammad Ramzan & Others (2015 SCMR 1449). Moreover publication dated 04.10.2003 itself shows that for all other properties, meant for auction, their value was assessed and reserve price was fixed except the disputed land the detail whereof is as under:-

- i) For the property situated within the District Khushab the reserve price was fixed Rs.3,75,000/- per kanal.
- ii) For the property situated in Muzaffargarh the reserve price was fixed one million.
- iii) For agricultural land situated in Daulu Khurd and reserve price was fixed Rs.1,50,000/- per Kanal.

It may also be noted that in the advertisement, the reserve price of the lands situated in far flung areas in District Khushab, Muzaffargarh and Daulu Khurd was fixed at higher rates as against the semi developed property situated on the G.T.Road Rewat, Rawalpindi closer to the metropolitan cities of Rawalpindi and Capital City of Islamabad, which was sold out @ Rs.76,000/- per Kanal, without assessing the reserve price to the petitioners with malafide intention thus a fraud was committed in disposing of public property in the said transaction by the Chairman who confirmed the bid at a throw away rate/price. This conduct in itself is a sound evidence of the collusiveness and undue favour extended by the then Chairman who relentlessly caused huge damage to the public exchequer while disposing off public property arbitrarily at ridiculously low throw away price which required initiation of criminal proceedings against him under the NAB Ordinance.

13. Learned counsels for the petitioners while laying much emphasis that auction has been completed and it has attained the status of past and closed matter which could not be reversed after such a long time, placed reliance on case reported as *Messrs Ashraf Agro & Others Vs HBL (2008 CLD 449)*. From perusal of the referred case it is evident that subject property was put to auction and five attempts of auction were made on different dates and judgment debtor moved an application for fixation of reserve price on 25.12.2003 which was dismissed for non-prosecution but judgment debtor never sought its restoration and auction proceedings remained pending from 1999 to June 2005, as such, the cited judgment is not applicable to the facts and circumstances of the present case. In the case in hand admittedly reserve price was not fixed and DHA as well as the members of the society were making better offer to purchase the land but their requests were maliciously ignored and rejected, as such, above facts exclude applicability of the judgment cited above. Further, the learned counsel for the petitioners heavily reiterated and relied upon case reported as *Zakaria Ghani & 4 Others Vs Muhammad Ikhtlaq Memon & 8 Others (PLD 2016 SC 229)* by arguing that non-fixing of reserve price is an immaterial irregularity which could not be made basis to frustrate the auction proceedings. Suffice it to say in this regard, that the said judgment of the Hon'ble Supreme Court of Pakistan has been revisited and is made distinguishable for multiple reasons and peculiar facts as the issue qua the absence of Reserve Price has been considered by the Hon'ble Supreme Court of Pakistan in its recently pronounced judgment

reported as Siraj Ahmed through LRs Vs Faysal Bank Limited & Others (PLD 2018 SC 91)., wherein it has been once again held that the absence of Reserve Price is fatal for sale of property by auction.

Thus, the reserve price in the normal course may have no special significance under the principle of willing buyer and willing seller. However, the position would be different in case of auction of public assets by the state functionaries or by the representative of such authority which requires extraordinary transparency and circumspection to safeguard the vested or accrued rights of the public without any iota of mala fide, arbitrariness and collusiveness in order to protect and preserve the sanctity of auction proceeding in the eyes of law but the afore-mentioned traits are absolutely lacking in the auction proceedings conducted in the matter in hand as such the learned Cooperative Judge has rightly passed the impugned judgment which does not suffer from any infirmity, illegality, perversity or any jurisdictional defect calling for interference through constitutional jurisdiction of this Court.

14. For the foregoing reasons, this writ petition is **dismissed**. Judgment dated 10.07.2009 passed by the learned Cooperative Judge is hereby maintained.

(Muhammad Farrukh Irfan Khan)
Judge

(Ch. Muhammad Iqbal)
Judge

Announced in open Court on **28.06.2018**.

JUDGE
Approved for reporting.

JUDGE

JUDGE

JUDGE