Reserved On : 29/06/2026
Pronounced On : 17/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12071 of 2025

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M/S SEEBAAT DEVELOPERS
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR D K TRIVEDI(5283) for the Petitioner(s) No. 1
MS. KRISHNA DESAI, ASST. GOVERNMENT PLEADER for the Respondent(s) No. 1
MR NANDISH Y CHUDGAR(2011) for the Respondent(s) No. 2,3

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CORAM:**HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**
and
HONOURABLE MR.JUSTICE J. L. ODEDRA

CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. On 12.03.2024, the respondent authority floated a tender notification whereby, it proposed to sell various plots by way of an e-auction. The terms of the notification required that the bidders, after paying the EMD and the tender fee, were also required to submit a sealed bid.

2. Under this tender notification, the last date for making the Earnest Money Deposit was stipulated as

12.06.2024. On deposit of the EMD, the applicants were required to submit their sealed bid on or before 14.06.2024 i.e., within two days thereafter.

3. The petitioner, admittedly, deposited the Earnest Money Deposit, i.e., Rs. 22,92,024/-, and also the tender fee.

4. The petitioner claims that he also submitted a sealed bid, but this assertion is denied by the respondent authority, and reliance is sought to be placed on a subsequent communication in which the petitioner is stated to have accepted that a sealed bid could not be made due to some technical glitch.

5. The respondent authority contends that since the petitioner had not submitted his sealed bid, he was not allowed to participate in the auction held on 19.06.2024.

6. It is not in dispute that an auction was conducted, in the absence of the petitioner, and the plot in which the

petitioner was interested and intended to purchase, was admittedly sold to the highest bidder from amongst a set of bidders.

7. The authority contends that since a sealed bid was not submitted by the petitioner, that would necessarily result in the forfeiture of the EMD of Rs. 29,92,024/- that had been submitted by the petitioner in terms of the auction notification. The respondent authority, therefore, contends that because the petitioner did not submit a sealed bid before 18.06.2024, he suffered the consequence of forfeiture of his EMD, as stipulated under the terms of the tender notification.

8. The petitioner contends that his non-participation in the final bid in the auction process was due to a technical error and, even otherwise, since the tender auction process was conducted successfully and the authority had sold the plot to the highest bidder, the authority cannot take advantage of its assertion that the petitioner did not submit his sealed bid, and, consequently, forfeit the EMD.

9. It is contended that this forfeiture of the EMD for non-participation in the tender is nothing but an unjust enrichment on the part of the respondent authority, which, being an instrumentality of the State, is required to act fairly and not in a manner which is unethical and immoral.

10. The authority, on the other hand, contends that since the terms of the tender notification clearly and categorically provided that if the sealed bid was not submitted by a prospective bidder his EMD would be forfeited, the forfeiture of the EMD was inevitable, the moment the petitioner chose not make a sealed bid.

11. It is contended that since the respondent was aware of this stipulation and was also conscious of the fact that he would stand to lose the entire EMD if he did not submit the sealed bid, the authority would be justified in forfeiting the amount, since the petitioner has conceded that the sealed bid could not be submitted due to a technical glitch.

12. In the light of the above, the only question which would arises for our consideration in this writ petition is whether the respondent authority can proceed to forfeit the petitioner's Earnest Money Deposit, only on the ground that he had not made a sealed bid, even though he had paid the tender fee and the Earnest Money Deposit.

13. In order to consider this question, it would be primarily required to examine the terms of the tender. The aspect of Earnest Money Deposit is dealt with in Clause 3 of the tender notification. For the purpose of this writ petition, only Clause 3, which is relevant is extracted and the dame reads as follows:

> *3. Earnest Money Deposit ("EMD" or "Bid Security")*
> *a. A Bidder/ Applicant/s shall deposit, an EMD as mentioned in advertisement. The Bidder/Applicant's will have to provide the EMD and Tender fee by RTGS/NEFT through (n)code web site https://e-auction.nprocure.com. <u>In Case Of Failure of submission of seal bid offer, EMD will be forfeited. Any Bid not accompanied by the Tender fee and/or EMD and/or Seal Bid offer shall be summarily rejected by AMC as non- responsive and applicant will not</u>*

be entitled to participate in auction process.

b. EMD is collected in INR (Indian Rupee) only from Indian as well as International bidders. Hence international bidders from overseas are requested to ensure that the exact amount of EMD to be received by AMC any less amount received from the bidder would not be considered. In case of refund sought by overseas bidders it would be refunded in INR only after deducting bank charges, as applicable, which are to be borne by the bidder. It is to be noted that international transactions are subject to Reserve bank of India/FEMA regulations.

c. Save and except the tender fee, the EMD of unsuccessful Bidder/ Applicant/s will be returned by AMC, without any interest and all other charges for the transfer of EMD shall be borne by the bidder, in accordance with the terms contained under this RFP. The refund of EMD thereof shall be in INR through RTGS in the account from where EMD has been paid.

d. The Preferred Bidder's Bid Security/EMD will be adjusted against the payment of 90% of the total consideration for purchase of PLOT. AMC shall be entitled to forfeit and appropriate the EMD as mutually agreed genuine pre-estimated compensation / damages to AMC in the event of default made by the Bidder/ Applicant/s.

e. If AMC cannot hand over the possession of plot due to any reason other than reasons beyond its control and/or the reasons attributable to such Applicant/s/ tenderer/ lessee, AMC will return the EMD and all the

> *money paid by the Preferred Bidder, without interest, after 90 (Ninety) days to Bidder/ Applicant/s succeeded in auction.*

14. As could be seen from Clause 3(a), if there is a failure on the part of the applicant to submit a sealed bid offer, the EMD was liable to be forfeited. The clause also indicates that a bid, which is not accompanied by the tender fee or the EMD or the sealed bid will be summarily rejected as being non-responsive, and the applicant would not be entitled to participate in the auction process.

15. In respect of the plot to which the petitioner intended to participate, i.e., plot No. 11 notified by Tender No. DTS/RNT/39/2024.

Clause L reads as follows:

> *"**L. For Seal Bid Offer:** After Registration, A Bidder/Applicant/s must have to submit Seal Bid Offer within Stipulated deadline. In Case Of Failure, EMD will be forfeited."*

16. This would also indicate that the applicant would

have to necessarily submit a sealed bid within the stipulated deadline, and, in case of failure to do so, the EMD would stand forfeited.

17. Though these two clauses indicate that the non-submission of a sealed bid would result in the forfeiture of the EMD, at first blush the action of the respondent would appear to be in terms of the tender notification. However, on a deeper inspection of the other terms of the notification, this would not be the correct course of action to be adopted by the authority.

18. The tender notification contains a set of General Conditions stipulated in Clause 22 which would assume significance in the matter of forfeiture of EMD. This Clause 22.2, which specifically deals with EMD, reads as follows:

> *"22.2 The amount of EMD shall be returned to unsuccessful bidder without any interest and all other charges for the transfer of EMD shall be borne by the bidder, within 45 days of completion of auction process*

or on acceptance of the bid of the Preferred Bidder *or when the auction process is cancelled by AMC.”*

19. As could be seen from the above, the EMD is to be returned on the occurrence of any one of three events mentioned above and this is because of the use of the term “or” while describing the three events.

1. The 1st event would be to an unsuccessful bidder i.e., an applicant who has made a bid but has not been successful

2. The 2nd event would be when the bid of the preferred bid has been accepted.

3. The 3rd event would be when the auction process is cancelled by the respondent.

20. The 1st and the 3rd event would not apply since even according to the respondent, the petitioner was not even a bidder and the respondent had not cancelled the bid.

21. A plain reading of the 2nd event described in the clause would indicate that if the bid of a preferred bidder is accepted, the EMD is required to be refunded. This would mean that when the plot is sold, the EMD of all the other applicants is required to be funded.

22. This is obviously because the respondent-authority had achieved its objective of selling its plot in the e-auction and had secured the highest possible amount and therefore there would be corresponding obligation to return the EMD to all the other participants.

23. If it is borne in mind that the sole objective of securing an EMD from a participant is to ensure that the auction is not stalled or disrupted by any participant, which would result in financial prejudice to the respondent-authority, that participant would be visited with a penalty in the form of forfeiture of his EMD.

24. It must be also be kept in mind that the EMD is a percentage of the reserve price and therefore a participant

who has the intent of disrupting or postponing the auction process would be put on notice that any such attempt will cost him financially.

25. If the auction process is completed and the plot is sold to the satisfaction of the respondent-authority, the ultimate objective of the respondent-authority stands fulfilled and therefore the requirement of retaining the EMD would evaporate. It is keeping in mind this principle, the general condition 22.2 contemplates the refund of the EMD if the bid of a partipant is accepted by the respondent-authority.

26. If the ultimate intent of requiring an EMD i.e., to ensure a successful sale and the mandate of Clause 22.2 to refund the EMD on the bid being accepted, is seen in context and the clauses conjointly read, it is obvious that the earlier clauses which contemplated forfeiture of the EMD if a sealed bid is not submitted would come into play only when the auction does not conclude in a successful sale of the plot.

27. The purpose of requiring an EMD is to ensure that there is no impediment for the successful conclusion of the auction process i.e., the sale of the plot and that no attempt is made to derail the auction process by any person who simply wants to play mischief with the entire auction process. If the purpose of the EMD is to ensure that no person tries to take advantage of the auction process, and the clause specifically states that on acceptance of the bid of the preferred bidder, the EMD will have to be returned, it would only indicate that the purpose of the EMD no longer subsists and it is is required to be returned.

28. It must be understood that an e-auction by an authority, which is an instrumentality of the state, is not to make a quick buck or an undeserving financial gain. The processes prescribed for the conduct of an e-auction is definitely not designed to unjustly enrich the Corporation and on the other hand the processes prescribed is to ensure that the e-auction concludes

successfully and the plot is indeed sol.

29. It is to be reiterated that the right of the Municipal Corporation to forfeit the EMD will arise only if the auction process is not concluded successfully. Any act by a participant, such as non-payment of the tender fee, non-payment of the EMD, etc., which would cause a direct impediment to the authority in selling its plots can be a ground to forfeit the EMD of any partipant.

30. The forfeiture of an earnest deposit is akin to the stipulation of liquidated damages under Section 74 of the Indian Contract Act, 1872. Once the contract stipulates that a particular predetermined and agreed sum is to be paid in the event of a default, the said sum will have to be paid on the occurrence of the breach. This is on the principle that a financial loss, which may be suffered by a contracting party as a result of a breach, is assessed and agreed upon and the same will have to be necessarily paid.

31. However, the basic underlying reason for this payment of liquidated damages is that in the event of a breach of the contract, the other contracting party will definitely suffer a financial loss, which is assessed and determined at the time of entering into a contract itself. This is also to ensure that there is no further need or dispute regarding ascertaining the financial loss. If, on the other hand, there is no financial loss to the other party, the liability to pay damages would not really arise.

32. In the context of this case i.e., in the context of an e-auction to sell plots by the respondent-authority, if the principle of liquidated damages contempted under S. 74 of the Contract Act is applied, it becomes rather obvious that the authority suffers no financial loss if the plot is sold at the highest possible price. In such an eventuality the respondent-authority, being an instrumentality of the state, is required to act in a fair manner and cannot take advantage of a lapse on the part of another partipant and cause him financial prejudice.

33. In fact, if this is act of the authority to forfeit the EMD of a participant after it has sold the plot is permitted, it would amount to putting a seal of approval to an improper act on the part of the respondent-authority. In such an event, this would also enable the authority to enrich itself unjustly. Surely, the intent of the authority is not to make money merely because it possible to do so.

34. We are also of the view that the stand of the respondent authority that there was no sealed bid by the petitioner may not be correct. In an auction, where a reserve price for the sale of a plot has been fixed under the notification and a participant knowing this reserve price seeks to participate by paying the EMD and the tender fee, he is deemed to have made a sealed bid for the reserve price. This is because, a participant cannot seek to bid for a price lower than the reserve price. It is therefore clear that the moment decided to participate in the e-auction and submitted his EMD and the tender fee,

he is deemed to have submit his sealed bid, which would be the reserve price. We are therefore of the view that the authority would therefore cannot be right when it seeks to contend that no sealed bid had been made by the petitioner.

35. It may, no doubt, be open for the petitioner to quote something more than the reserved price and thereby give himself a better chance of buying the plot, but merely because the sealed bid is not stated in express terms, that cannot mean that no sealed bid was given at all.

36. To illustrate, hypothetically, if the petitioner herein was the only bidder and he had not made his sealed bid, he would nevertheless have to be assumed to have bid an amount equal to the reserve price. The authority could then accept this bid at the reserve price and could have called upon the petitioner to make the payment. In such a situation, the petitioner could not have contended that he had not made a sealed bid, and he would, therefore, have to suffer the consequence of a forfeiture.

37. To put it differently and to reiterate, the moment a person such as the petitioner participates in the tender auction process, he is deemed to have submitted his final bid at the reserve price, if he has not otherwise made any express bid for a higher sum.

38. In the instant case, since the auction was conducted successfully and a higher bid of another applicant has been accepted, the act of the respondent authority in forfeiting the EMD would be incorrect.

39. The learned Counsel for the authority, however, sought to place reliance on the judgment rendered by a Division Bench of this Court in case of *Pooja Ceratech Pvt. Ltd. Through Director Narendra Sundarjibhai Padiliya versus Oil and Natural Gas Corporation Limited, reported in 2021 SCC Online Guj 3177*. In our view, the said judgment would have no application since, in that case, the petitioner therein had requested the corporation to permit him to modify his price bid on the ground that he had committed a mistake in offering the price. In that context,

this Court held that the forfeiture of an EMD was permissible, as an attempt was being made to recede from the bid. That is not the factual situation in the present case.

40. An argument was also sought to be advanced that, though in law a person can withdraw his offer before its acceptance, if he has agreed upon a condition that some earnest money would be forfeited for not entering into the contract or if some act is not performed, then he would have no right to contend that the forfeiture was impermissible. The above proposition which has been laid down in *National Highways Authority of India vs Ganga Enterprises & Anr. [2003] Supp. (3) SCR 114* is sought to be pressed into service.

41. It may be pertinent to state here that, in the said judgment also, the Hon'ble Supreme Court was considering a case wherein the applicant therein sought to withdraw his bid before the expiry of the validity period and, in that context, the Hon'ble Supreme Court held that

the right to forfeiture would be available.

42. It may be pertinent to state here that, in both the cases referred to above, the auction of a plot was not involved. In both the cases, a clause similar to Clause 22.2 of the general conditions was not involved.

43. As noticed above, since the entire intent of the authority was to ensure that the auction was successfully conducted and the sale of the plot was achieved, the right of the Corporation to resort to forfeiture in respect of the other unsuccessful bidders would not subsist and cannot be tenable.

44. In fact, in the Division Bench ruling relied upon, the Division Bench has considered the judgment rendered by the Madras High Court in the case of *Rubina verses Authorized Officer*, wherein it has been held as follows:

> *7. <u>The right to forfeit has, ordinarily, to be balanced against the rule against unjust enrichment. Merely because there is a forfeiture clause does not imply that the entire amount deposited has to be forfeited. The forfeiture clause, like an</u>*

> *<u>earnest money deposit clause or a liquidated damages clause, has to be regarded as a genuine pre-estimate of the loss that may have been incurred,</u> but when a forfeiture clause does not indicate an amount but provides that the entire amount tendered would be forfeited, it may not be permissible to forfeit, say 99% of the payment made for the default in depositing the balance 1%. Thus, the quantum that can be forfeited will depend on the extent of the loss or damage suffered by the party not in breach and this is, essentially, a question of fact that has to be adjudicated by an appropriate forum. The High Court, in exercise of the jurisdiction under Article 226 of the Constitution, is not such forum.*

45. As could be seen from the above, a coordinate Division Bench has accepted the principle that a forfeiture clause, such as an Earnest Money Deposit clause or a liquidated damages clause, is to be regarded as a genuine pre-estimate of the loss that may have been incurred. This, therefore, indicates that forfeiture would come into operation only when the opposite party has suffered a financial loss. If there is no financial loss, and if the ultimate objective of the auction or selling the property was achieved, the respondent-authority cannot be said to still possess the right of forfeiture.

46. So far as the precedent relied upon by the Division Bench of the Hon'ble Supreme Court in *NTPC Ltd. v. Ashok Kumar Singh & Ors.*, reported in (2015) 4 SCC 252, is concerned, in our view, the said judgment would also be of no avail, since that was also a case where a party sought to withdraw an offer before it was accepted, which had resulted in the forfeiture of the earnest money. Since, in the instant case, the question of the petitioner withdrawing his offer does not arise, the said decision will have no application.

47. It is to be stated here that, in an auction, a person, though intending to participate in the auction, may also choose not to make a bid, probably because he cannot match the bid that has been submitted by another bidder. A person who intends to participate in an auction cannot be forced to make a bid, and, as a consequence, failure to submit a bid cannot result in the forfeiture of the Earnest Money Deposit.

48. As already held above, in our view, when a

minimum reserve price has been fixed, and a person intends to participate in such an auction, it is deemed that he has agreed to make a bid at least equal to the reserve price and cannot, therefore, contend that no bid at all was made. Consequently, in our view, the action of the respondent authority in forfeiting the EMD of Rs. 29,92,040/- would be illegal, and the same is quashed. Accordingly, we direct the authority to refund the EMD amount deposited by the petitioner within a period of four weeks from the date of receipt of a copy of this order.

49. Accordingly, the writ petition is allowed.

(N.S.SANJAY GOWDA,J)

(J. L. ODEDRA, J)

Mehul Desai