

(1994) 06 MAD CK 0020
In the Madras High Court
Case No : Writ Appeal No. 796 of 1994

A. Veeriah Thever

APPELLANT

Vs

The Commissioner for Excise and Prohibition and others

RESPONDENT

Date of Decision : 24-06-1994

Acts Referred:

Contract Act, 1872 — Section 62

Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules, 1981 — Rule 20(3),
20(4), 20(6)

Citation : AIR 1995 Mad 288

Hon'ble Judges : Thangamani, J;Srinivasan, J

Bench : Division Bench

Advocate : M. Kalyanasundaram, for the Appellant;

Judgement

Srinivasan, J.—The appellant was the successful bidder in the auction held on 29-5-1981 under Tamil Nadu Toddy and Arrack Shops

(Disposal in Auction) Rules, 1981 (hereinafter referred to as "the Rules"). His bid was for Rs. 1,075/-. That was provisionally accepted under the

Rules by the Sale Officer and it was recommended to the Collector for confirmation. The Collector has, however, found that the bid was less than

the upset price of Rs. 3,000/- and he exercised his powers under R. 20 and directed a re-sale. In the re-auction held there was no bidder at all.

Hence the Collector confirmed the sale in favour of the petitioner/appellant herein and communications were issued to that effect. The petitioner

refused to receive the communication and it was served by way of affixture. As the petitioner failed to comply with the conditions of the sale, re-

auction was directed by the Collector and in the re-auction the highest bid was for Rs. 525/- by a third party. That was confirmed and the

difference in amount was sought to be recovered from the petitioner by the authorities as per the Rules. Challenging the same, the petitioner filed

the writ petition for issue of a writ of certiorarified mandamus to quash the order passed by the authorities and also seeking refund of a sum of Rs.

1,540/- deposited by the petitioner as earnest money deposit and half a month kist in respect of the Toddy shop. The petition was contested by

the respondents and a learned single Judge of this Court, by order dated 24-12-1992, dismissed the same. Aggrieved the petitioner has preferred

this appeal.

2. The first contention of the appellant is that once the bid was not confirmed and a re-auction was ordered by the Collector, there is no contract

between the appellant and the authorities and, therefore, the appellant cannot be made liable for the difference between the bid amount and the

amount that was realised through re-auction. This contention has no force inasmuch as the Rules on the subject are very clear. Rule 20(3), (4) and

(6) is as follows :--

(3) If the Collector considers any bid to be inadequate, he may refuse to confirm the provisional acceptance of the bid, and immediately direct the

resale of the shop from the point at which it was last left on such date and at such time and place as may be fixed by him. The conditions of sale

remain unaltered unless otherwise directed by the Collector. Any order passed by the Collector for resale shall be given adequate publicity and

shall also be notified at the Taluk Office.

(4) Any resale ordered to be made under sub-rule (3) shall begin with the bid provisionally accepted by the sale officer at the original sale and in

the name of the individual who offered it. If at such sale a higher bid is offered and is provisionally accepted by the sale officer, the bid with which

such sale began shall lapse. But if no higher bid is accepted by the Sale Officer, the matter shall be reported to the Collector who may pass orders

confirming the bid provisionally accepted at the original sale or may again direct that the sale be continued from the point at which it was left at the

original sale, and the order of the Collector shall be final unless it is revised by the Commissioner on appeal or revision.

(6) No bid which has been provisionally accepted by the Sale Officer shall be withdrawn before it lapses under sub-rule (4) or before orders are

passed confirming or refusing to confirm it, and if the bidder commits any breach of this conditions, he shall be liable to make good the difference

between his bid and any lower bid which may be finally accepted.

3. As per the Rules, if the bid which is provisionally accepted is not confirmed by the Collector for some reason and he directs re-auction, and in

the re-auction if there is no higher bid, then it is open to the Collector to accept the highest bid of the original sale, That has been done in the

present case. As there was no bidder at all in the re-auction the appellant's bid in the original sale was accepted by the Collector. It is strictly in

accordance with the Rules and it cannot be contended by the appellant that there is no contract between him and the authorities.

4. The next contention urged by learned counsel is that Rules 20(4) and 20(6) are invalid and illegal inasmuch as they run counter to the general

law of the land. According to him, Section 62 of the Contract Act provides for novation, rescission and alteration of contract. As per the said

section, if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. It

is submitted by learned counsel that if the Rules are to be construed as enabling the authorities to enforce the original contract, then they are invalid

inasmuch as they run counter to the general law. There is no merit in this contention.

5. This contention was not raised by the appellant in the writ petition. Nor was it argued before the learned single Judge. For the first time learned

counsel for the appellant wants to raise this contention in the course of arguments here. As it happens to be a question of law, we have permitted

him to argue.

6. In the first place, it is not open to the appellant to challenge the validity of the Rules. The appellant was fully aware of the Rules when he took

part in the auction. The auction was held only under the Rules. Once he has taken part in the auction and has also succeeded there, it is not open to

him to contest the validity of the Rules. Secondly, the contention is without any substance. There is no contract between the appellant and the

authorities to substitute a contract with a new contract. On the other hand, the contract is if the appellant's offer is provisionally accepted, but not

confirmed by the authorities concerned, then there will be an attempt to get a

better offer and if no better offer is obtained the appellant's offer will be accepted. That contract is certainly enforceable and it is not one which is contemplated u/s 62 of the Contract Act.

7. In the circumstances, there is absolutely no merit in the appeal. The appeal is dismissed.

8. Appeal dismissed.