

(2001) 02 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 97/1996

Govind Ram Sharma

APPELLANT

Vs

State of J&K and Others

RESPONDENT

Date of Decision : 02-02-2001

Acts Referred:

Constitution of India, 1950 — Article 299(1)

Citation : (2001) KashLJ 330

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : R.P.Sharma, A.Kapoor, Advocates appearing for the Parties

Judgement

1. The petitioner has been called upon to meet the liability which was undertaken in pursuance of his having taken part in the auction process. Facts

in brief are as under:

2. In pursuance of auction notice no. MSJ/ MS19/8586/20122311 dated 8.1.1985 auction of minor minerals of Udhampur Tawi River was held in

the office of Deputy Commissioner Udhampur on 1.3.1985. During the auction, the petitioner was declared as a successful bidder. His highest bid

to the extent of Rs. 62.300/ was accepted. As per the conditions contained in the auction notice, the petitioner deposited a sum of Rs. 15575/ i.e.

one fourth of the amount. He is said to have signed an agreement also. Petitioner, however it is alleged, he did not complete the requisite formalities

of entering into the contract. He is said to have exploited the minor mineral. He was called upon to meet the total liabilities. This aspect of the

matter is being challenged by him in this petition.

3. Petitioner submits that after depositing initial amount, he never extracted

minor minerals. He further submits that as no formal agreement came to be executed, therefore, he cannot be called upon to meet the liability which he has been called upon to meet.

4. Respondents have filed objections. Stand taken by the respondents is that allotments order was issued in favour of the petitioner. Petitioner

extracted minor minerals. He did not pay second, third and fourth installments. It is in this situation urged that he is supposed to give all the

amounts. It is further urged that merely because the petitioner had not entered into formal agreement cannot sustain his claim of nonmeeting of the

liability. It is submitted that once in pursuance of the auction the petitioner exploited the minor minerals and even if formal agreement was not

executed even then the amount can be recovered.

5. I am of the opinion that so far as question as to whether minor minerals was exploited or not is a question of fact. Respondents have taken

positive stand that minor minerals has been extracted. This aspect of the matter cannot be gone into in this petition.

6. So far as controversy regarding the petitioner having not executed formal agreement is concerned, all that is required to be said is that once the

petitioner has enjoyed a benefit he cannot contend that he is not liable to meet the liability. It is settled law that when a agreement is discovered to

be void, any person, who has received an advantage under such agreement, is bound to restore it or to make compensation for it to the person

from whom he received it.

7. Where a contractor entered into an agreement with the Government to construct a godown room and received advance payment for the same

and as he did not complete the work the Government determined the contract and filed a suit for realisation of the amounts advanced, it was held

that though the contract not being in conformity with Article 299(1) of the constitution of India was void from its inception the Government under

Section 65 could recover the amount advanced to the contractor under the contract. The aforementioned view was expressed by the Orissa High

Court in case reported as State of Orissa vs. Rajballav Misra, AIR 1976 Orissa 19. Reference was made to the decision of Privy Council in the

case reported as ThakurainHarnath Kuar vs. Thakur Inder Bahadur Singh, AIR 1922 pc 403, wherein their Lordships Privy Council concluded:

Section 65 deals with (a) agreements enforceable by law and (b) with agreements not so enforceable. By clause (g) of Section 2 an agreement not enforceable by law is said to be void. An agreement discovered to be void is one discovered to be not enforceable by law and on the language of

the section would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void"".

8. Again in *New Marine Coal Co. Ltd. Vs. Union of India*, AIR 1964SC152, after reference to the previous decision of the Supreme Court to the

same effect, their Lordships laid down that if in pursuance of void contract, one party to that contract had performed his part and the other had

received benefit of the performance of the contract by such parties. 70 of the Indian Contract Act would justify the claim made by such party

against the other.

9. The position in this case is similar. The petitioner having delivered the benefit and having extracted minor minerals, cannot escape the liability.

10. As such this petition is found to be without merit and is dismissed.