
(2010) 05 GAU CK 0057
In the Gauhati High Court
Case No : Writ Petition (C) No. 602 of 2008

Homeswar Bora

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

Assam Sale of Forest Coupes and Mahal by Tender System Rules, 1977 — Rule 17, 9
Contract Act, 1872 — Section 5

Citation : AIR 2010 Guw 167 : (2010) 5 GLR 1

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : H.K. Mahanta and N. Borah, for the Appellant; H. Rahman, for the Respondent

Judgement

P.K. Musahary, J.—Heard Mr. H.K. Mahanta, learned Counsel for the petitioner. Also heard Mr. H. Rahman, learned Government Advocate for the State respondents.

2. For disposal of this writ petition, a brief reference to the facts of the case is necessary. The respondent No. 3 issued a sale notice on 28.9.2007 for settlement of some Sand Mahals including Digaru Sand Mahal No. 1(C) of 2007-2009 inviting tenders from the general public. A schedule has been appended to the aforesaid sale notice giving the details of duration of working period, stipulated quantity, earnest money, etc. The stipulated quantity was fixed at 20,000.00 cubic metres of sand and the earnest money at Rs. 3,14,000 with provision for due concession to eligible communities as per existing public policy. The petitioner submitted his tender quoting Rs. 60,00,000 and depositing an amount of Rs. 1,57,000 as earnest money. The tender of the petitioner was found to be most responsive amongst the tenderers and accordingly, the aforesaid Digaru Sand Mahal was provisionally settled with him vide Office Order No. 284 dated 19.12.2007 (Annexure C to the writ petition). On the next day, the petitioner vide his letter dated 20.12.2007 (Annexure D to the writ petition)

addressed to the respondent No. 3, viz., D.F.O. Kamrup East Division, Guwahati, informed his inability to run the said Mahal "due to some unavoidable personal problems" and he was "not interested at all to sign agreement, etc., for the Mahal". Without replying to the said communication, the respondent No. 3 issued notice for Risk Sale on 5.1.2008 in respect of the aforesaid sand Mahal (Annexure E to the writ petition). Having come to know about the same, the petitioner submitted a representation dated 4.2.2008 before the respondent No. 2, requesting him to relieve him from liabilities and burden that may fall upon him due to the aforementioned risk sale. The respondent authorities did not respond to the said request. Hence, the petitioner is before this Court.

3. Mr. Mahanta, learned Counsel for the petitioner, referring to Rule 17 of the Assam Forest Produce Coupe and Mahals Rules, 1977 ("the Rules of 1977"), submits that after the Risk Sale, if the proceeds on re-sale are less than the value at which it was originally sold, the difference shall be realized from the original settlement holder and his earnest money shall also be forfeited and the whole security deposit and part thereof as may be necessary shall also be adjusted against the dues. The petitioner, hereinbefore, has an apprehension that he may be saddled with the aforesaid liabilities by way of misinterpretation of provision under Rule 17 of the aforesaid Rules of 1977. According to the learned Counsel, such liabilities can be fixed with the original tenderer only when the Mahal was finally settled or accepted. The petitioner, in the instant case, promptly intimated the authorities concerned on the very next day of the provisional settlement of the Mahal in question and there was no occasion for signing any agreement by the petitioner with the settling authority and therefore, his provisional settlement could not be treated as final. Except the deposit of earnest money of Rs. 1,57,000, the petitioner deposited no other money by way of security deposit, etc.

4. Mr. Mahanta, learned Counsel for the petitioner, in this regard, referring to a Division Bench judgment of this Court in *Abdul Salam v. State of Assam* 1989 (1) GLR 464 submits that the tenderer has the right to withdraw his tender and such right cannot be restricted by the settling authority, for, it would be in conflict with the provision u/s 5 of the Indian Contract Act, 1872.

5. Referring to the counter affidavit filed by the respondent No. 3, Mr. Rahman, learned Government Advocate, submits that the impugned resale notice was issued at the risk of the original settlement holder i.e. the petitioner, for the remaining Mahal period as he was not in a position to run the said Digaru Sand Mahal No. 1(C) of 2007-2009 due to some unavoidable personal problems and as such, consequences would follow as per the provision of the aforesaid Rules of 1977 and the petitioner cannot be relieved from the liabilities attached to him in the risk sale.

6. I have carefully considered the pleadings and submissions of the learned Counsel appearing for the parties. In paragraph 4 of the counter affidavit, the respondent No. 3 has clearly stated that the provisional settlement was issued in

favour of the petitioner subject to appeal provision and on receipt of approval from the Chief Conservator of Forests(T), Assam. The only question that is called upon to answer by this Court is whether the provisional settlement order dated 19.12.2007 was made final or finally accepted within the meaning of Rule 17 of the aforesaid Rules of 1977 before the risk sale notice was issued. Before answering this question, it is necessary to refer to Rule 9 of the aforesaid Rules of 1977 which provides for an appeal and/or review within 15 days from the date of communication of the order for acceptance of tender by the Divisional Forest Officer. The provision under Rule 9 implies that any provisional settlement order made by the Divisional Forest Officer shall be treated as final only after 15 days and a consequential order of finally accepting the settlement is to be issued. In the present case, as discussed earlier, the petitioner received the provisional settlement order on 19.12.2007 and he informed the authorities concerned his inability to run the Mahal in question vide his letter dated 20.12.2007 which goes to show that there was no scope for finally accepting the provisional settlement and as such, no liability could be attached to the petitioner under Rule 17 of the aforesaid Rules of 1977.

7. Here is a case where the petitioner, as tenderer, intended to withdraw his tender at the initial stage before final acceptance and the said position has not been disputed in the affidavit-in-opposition filed by the respondent No. 3.

8. In my considered view, the provisional settlement of the Mahal in question with the petitioner was not accepted finally within the meaning of Rule 17 of the Rules of 1977 and he could not be saddled with the liabilities as contemplated in the said Rules.

9. It appears from the interim order passed by this Court on 20.2.2008 that no settlement in respect of the sand Mahal in question could be made till this date even after a lapse of about 2 years causing loss of State revenue. Under such circumstances, it can safely be held that no useful purpose would be served if the impugned Risk Sale Notice dated 5.1.2008 is carried out by the authorities concerned, moreso where there is nothing on record to show that any progress was made in the aforesaid Risk Sale Notice by way of receiving tenders from interested parties.

10. In view of the above, the aforesaid Risk Sale Notice dated 5.1.2008 is liable to be quashed and set aside. The same is accordingly quashed and set aside.

11. With the above observations, the writ petition stands disposed of. There shall, however, be no order as to costs.

12. Resultantly, the respondent authorities shall initiate fresh tender in respect of the aforesaid sand Mahal in accordance with the existing Rules and procedures. The authorities shall, after due verification, if found entitled, return the earnest money to the petitioner, if he makes such a request, in accordance with relevant rules within a period of 3(three) months from the date of receipt of such an application/request. The petitioner shall obtain and furnish a certified copy of this

order along with a copy of this writ petition to the respondent authority/
authorities concerned.