

(1973) 07 OHC CK 0010

In the Orissa High Court

Case No : Original Jurdn. Case No. 291 of 1973

Jagannath Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 09-07-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 Ori 191

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; R.C. Misra, D.S. Misra and Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Panda, J.—The petitioner is a forest contractor. He had taken lease of Jarada Bamboo coupe No. "A". Lot No, 71 of 1972-73 of Parlakhemedi Division on highest bid for Rs. 17,000/- in an auction, held on 21-8-1972. According to rules, he deposited ten per cent, of the bid money. i. e. Rs. 1700/- as security deposit.

To cut the matter short the Divisional Forest Officer (Opp. Party No. 3) under Annexure-3 dated 22-3-1973 cancelled the lease under Rule 12 of the Orissa Forest Contract Rules as the petitioner "Failed to take delivery of the said coupe within 1.1/2 months from the date of issue of ratification order." It is this Annexure-3 which is sought to be quashed in this writ petition under Article 226 of the Constitution.

When the petition was filed on 9-4-73, there were three opposite parties. Later, by an amendment dated 10-5-1973, opposite party No. 4 (one N. Bhagaban Pradhan) was impleaded as opposite Party No. 4. After cancellation of the lease in favour of the petitioner, the coupe in question, was resold on 26-3-1973 and it was settled with opposite party No. 4 as the highest bidder for a sum of Rs. 9,600/-In due course, opposite party No. 4 received the ratification order on

13-4-1973; submitted the coupe delivery receipt on 15-4-1973: paid the first instalment of Rs. 3,200/- on 16-4-1973 (Annexure A/4): and made the second deposit of Rs. 3,200/- on 12-5-1973 (Annexure-B/4). Under Annexure C/4, the period of lease is going to expire by the 30th June, i. e. the day following when the hearing of this writ petition was concluded.

The petitioner had prayed for an injunction which was granted on 10-3-1973, but later vacated on 17-5-1973 subject to the condition that the opposite party No. 4 "Will keep accounts of the bamboos sold under the direct supervision of the D. F. O. (O. P. No. 3) of the area" Originally, the prayer was for quashing of Annexure 3 and for stay of re-sale of the coupe in question and if the sale had already taken place, staying delivery of the coupe. Later by Order No. 5 dated 10-5-1973 some more prayers were added of which the material one is regarding quashing the re-sale of the coupe in favour of opposite party No. 4.

2. In the writ petition, certain facts have been mentioned which are said to have stood in the way of the petitioner in working the coupe or paying the royalty due in time, but they are otiose for the purpose of disposal of this petition hence need not be referred to.

3. In the counter of opposite Party Nos. 1 to 3, it is stated that the petitioner made fictitious allegations about the heavy damage of the coupe by cyclone: mischievously wanted the extension of contract period beyond 30th June. 1973 which is contrary to the provisions of Rule 28; did not Pay the instalment due as per the ratification order issued to him on 11-12-1972; and lastly, instead of fulfilling his part of the contract submitted a self-serving declaration not in conformity with Rule 12 of the Orissa Forest Contract Rules, of 1966 necessitating cancellation and resale of the coupe in favour Of opposite party No. 4.

4. The opposite party No. 4 in his counter stated how he took the lease of the coupe when re-sold on 26-3-1973 to the full knowledge of the petitioner: how he was purposely not made a party in the original writ petition though stay of resale was pleaded: and how he got the lease for a lesser amount because it was for a brief period of hardly less than three months during which he was to work out the coupe.

5. We think it unnecessary to go into the various allegations in the petition particularly so because the writ petition has become infructuous. Opposite Party No. 4 has already worked out the coupe and the lease is going to expire by the end of June. 1973. As such, no relief can be granted at this stage. When it was posed to Mr. Mohanty, the learned Advocate appearing for the petitioner as to what is his present grievance, he stated that he seeks a declaration that the cancellation of the lease in favour of the petitioner is Illegal so that he would sue for damages in the civil Court Neither on facts nor on law we are impressed that such a Prayer can be granted. We, in exercise of our extraordinary jurisdiction, are reluctant as we ought to to give a declaration to that a party be sure of his

position and sue for damages in another forum. If the petitioner is so advised, he can seek both the remedies in the Civil Court by an appropriate suit and should not be allowed to split up his grievance first seeking a declaration here and then working out his damages elsewhere. As such we decline to interfere.

6. The petition is accordingly dismissed with costs. Hearing fee of one set of Rs. 100/- to opposite party Nos. 1 to 3 and another set of Rs. 100/- to opposite party No. 4.

R.N. Misra, J.

7. I agree.