

(1990) 05 OHC CK 0004
In the Orissa High Court
Case No : First Appeal No. 230 of 1977

Jagannath Pradhan (dead) and After him Smt. Hura
Pradhanuni and Others

APPELLANT

Vs

District Forest Officer and Others

RESPONDENT

Date of Decision : 18-05-1990

Acts Referred:

Orissa Forest Contract Rules, 1966 — Rule 12, 34, 34(2), 42, 7

Citation : (1990) 70 CLT 477

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : I. Mohanty, K. Patnaik and Ranjib Das, for the Appellant; A.G. for Respondents 1 to 4, P.K. Misra, J.P. Misra, L. Mohapatra and Debasis Das for Respondent 5, for the Respondent

Judgement

A. Pasayat, J.—Dismissal of a suit for recovery of damages and refund of security deposit from the Forest Department of the State Government of Orissa has brought the Plaintiff before this Court. During pendency of the appeal, the sole Appellant died and his legal representatives have been brought on record.

2. A brief reference to the factual aspects is necessary, which shorn of unnecessary details, are as follows:

Plaintiff, was the highest bidder in respect of a coupe bearing No. A/71 of the Parlakhemundi Division of the Forest Department for collection of Salia bamboos in the auction held on 21-8-1972 j the Plaintiff deposited Rs. 1700/- towards his security deposit which was 10% of the bid amount; the ratification, order was issued by the concerned authorities on 11-12-1972; the agreement dated 21-8-1972 clearly indicated that the collection was to be made between 11-12-1972 to 30-6-1973 both days inclusive; it was stipulated in the agreement that the bid amount of Rs. 17,000/- shall be paid in three instalments first and second instalment of Rs. 5,667/- each was stipulated to be paid on or before 15-1-1973, and the rest amount of Rs. 1.666/- on or before 15-3-1973.

The controversy between parties arose on or about middle of September, 1972. According to the Plaintiff, there was a cyclone causing heavy damage to the bamboos and bamboo clumps and therefore, the Plaintiff wrote to the concerned authority (Respondent No. 4) to cancel the sale or issue ratification order subject to proper compensation for damages, representation was made by the Plaintiff to the Defendants with a request to deliver possession and/or for return of security deposit; delivery of possession was taken on 12-1-1973; telegram was sent by the Plaintiff to Defendant No. 1 and others that delivery had been taken on 15-1-1973 the Plaintiff wrote to the Defendants to re-fix the lease amount, the date of payment and requested for extension of working period and to spread over the payments as there was loss due to delay in issuing the ratification order and delivery of possession due to which the start of work was delayed and also there was damage caused due to cyclone; on 18-1-1973 the Plaintiff received a letter from Defendant No. 1 directing him to take delivery on the very same day; on 14-3-1973 Gazette notification regarding the auction sale of some coupes including the area leased out to the Plaintiff was notified; the area in question was re-auctioned in favour of Defendant No. 5 on 26-3-1973 and on 28-3-1973 letter of cancellation was issued to the Plaintiff. These averments have been denied by the Defendants who have stated that a map demarcating the area from which the collection was to be made was attached for reference of the Plaintiff; even after receipt of the map and execution of the agreement the Plaintiff did not like to carry out the work on some pretext or other and did not comply with the requirements of Orissa Forest Contract Rules, 1966 (in short "the Rules") for which the sale in his favour was cancelled by the Department and the same was communicated to the Plaintiff-contractor and thereafter the same was resold to Defendant No. 5 for a much lesser sum than the bid amount of the Plaintiff ; as per Clause 5 of the agreement, the Rules were made applicable since there was noncompliance of Rule 12 of the said Rules, due notice was issued on 22-3-1973 by the Divisional Forest Officer cancelling the contract of lease i the said Rule clearly stipulates that in case the contractor does not furnish the requisite declaration within forty-five days from the date of issue of ratification order, the Divisional Forest Officer shall cancel the contract, forfeit the security, deposit, re-sell the contract at the risk of the contractor and recover the deposit, if any, as arrears of land revenue.

3. The Plaintiff based his claim on alleged non-compliance of Rule 34 whereas the Defendants pleaded that Rule 34 had no application and the case was governed by Rule 12, Several documents were exhibited on behalf of the respective parties and four witnesses were examined on behalf of the Plaintiff while two were examined on behalf of the Defendants. On evaluation of the oral as well as the documentary evidence, the learned trial Judge came to hold that the termination of lease was proper and the decision to re-auction was not illegal or improper. Termination of the contract was held to be in accordance with law and the forfeiture of the security deposit was not illegal. With these conclusions the suit was dismissed on contest.

4. In appeal it has been urged that time having been indicated to be the essence of the contract the delayed issued of the ratification order impliedly was violative of the terms of the contract, and therefore the actions of the Defendants were contrary to law; Rule 7 provides for extension of time for special reasons on payment of monthly extension fees and in the instant case admittedly there being severe damage due, to cyclone, the authorities acted contrary to law in not considering the case of the Plaintiff with reference to the provision Rule 7; even though the Defendants pleaded that there was no scope for extension of time beyond the stipulated: period in the Plaintiff's own case such time was extended in the previous years; the conclusion that the Plaintiff denied to take delivery of the property has been arrived at without proper appreciation of the facts and circumstances of the case; the re-sale of the self-same area having not been disputed by the Defendants the conclusion to the contrary is error of record; this is a case which is covered by Rule 34, of the aforesaid Rules and the trial Court erroneously applied the provisions of Rule 12; and termination of contract without prior notice is violative of the principles of natural justice, On behalf of the State and its functionaries it has been submitted that the conduct of the Plaintiff was not above board and he has tried to confuse the issue to cover up his own laches; Rule 34 has absolutely no application to the facts of the case and in reality Rule 12 is applicable; the Plaintiff's own case being that the coupe in question was not re-notified further case made out at the trial stage has rightly been discarded by the trial Court; because of non-co-operative attitude of the Plaintiff the Department sustained substantial loss and has been forced to initiate proceeding under the Orissa Public Demands Recovery Act. On consideration of the rival submissions, I find that the only question that falls for consideration is whether the Plaintiff's case is covered by Rule 12 or Rule 34 and whether the benefit of Rule 7 could have been extended to him, The relevant rules read as follows:

7. Time to be of the essence of forest contracts. Where by the terms of any forest contract, it is aged that the extraction of the forest produce purchased under the contract may be carried out only during a specified period, time shall be deemed to be the essence of such contract, and upon the completion of the specified period, the contractor's right under the contract shall cease and any forest produce not removed across the boundaries, of the contract area shall become the absolute property of Government:

Provided that the Conservator of Forests or the Divisional Forest Officer, as the case may be, may, for special reasons, grant an extension of time on such terms, as he may decide, for a total period (inclusive of original lease period) not exceeding the period for which he is empowered to sanction contracts on payment of a monthly extension fee of 1 percent of the consideration money; of the contract; provided that full consideration money of the contract has been paid.

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12. Inspection of boundaries. Before commencing any work in the contract area the forest contractor shall sign and submit to the Divisional Forest Officer or the Range Officer concerned a written declaration to the effect that he or/and his authorised agent has/have been shown the boundaries and limits of the lot covered by the contract by the Range. Officer or by a subordinate deputed by him for the purpose and that the area shown to him or/and his authorised agent on the ground agrees with the declaration on the map annexed to the agreement and until such a declaration has been given, the Divisional Forest Officer or Range Officer may refuse to allow any work to commence and the contractor shall not be entitled to compensation for any loss that may be sustained by him for any delay in commencing work owing to such refusal:

Provided that in case of minor forest produce leased covering the entire range, Thana, civil subdivision or other units no such declaration is necessary and it will be sufficient if in such case the contractor gives in writing that he intends to commence work from a particular date. It will then be presumed "that he has commenced operation from that date:

Provided further that unless such intimation or declaration is furnished within 11/2 months from the date of issue of ratification order, the Divisional Forest Officer shall cancel the contract forfeit the security deposit, re-sell the contract at the risk of the contractor and recover as arrears of land revenue the amount, if any, by which the price secured on such re-sale falls short of the purchase price. There shall be no condonation of delay.

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34. Termination of contracts-(1) If the forest contractor makes default in the payment of the consideration for his contract or of any instalment thereof, or does not pay the compensation assessed under any of these rules, such contract may be terminated by the authority competent to execute it.

(2) Such termination shall be notified to the forest contractor by a written notice delivered to him personally or sent to him by registered acknowledgement due post and stating that he shall forthwith discontinue all works in pursuance of the contract that the contract shall be deemed to have been terminated, unless he pays within one month from the date of receipt of the notice all arrears due to the Government together with interest assessable under R. 42 and renewal fee not exceeding 1 per cent of the arrear dues and thereupon in the case of the failure of the contractor to make the aforesaid payments, all the rights of the contractor under the contract including all necessary licences shall cease and all the forest produce remaining within the contract area or at the depots referred to in R. 16 and bearing the contractor's; registered property or trademark and Government hammer mark prescribed in R. 22 shall become the absolute property of Government:

Provided that the State Government, Chief Conservator of Forests or the Conservator of Forests or the Divisional Forest Officer as the case may be, may

extend the grace period of one month in cases of leases terminated by them in exceptional cases.

(3) On such termination Government shall be entitled:

(a) to keep all sums already paid by the contractor as considerations or part consideration of the forest contract and also interest on overdue instalments under Rule 42;

(b) to recover as arrears of land revenue any compensation which may be assessed under the provisions of the Forest Contract Rules;

(c) to resell the contract along with the produce at the depots referred to in Sub-rule (2) in the, case of bamboo and other reasonable forest produce which has become the property of Government order the said Sub-rule (2) and to recover as arrears of land revenue the amount, if any, by which the, price secured on such resale falls short of the consideration money fallen due and also that it is likely to fall due but for such termination together with interest accrued under Rule 42 calculated upto the date of termination of contract;

(d) to forfeit the security deposit of the contractor.

A reference to the factual position makes it dear that the Plaintiff had not started, the work. From Sub-rule (2) of Rule 34 it prima facie appears that the rule has application where work has started. In the instant case the work having not started, Rule 34 has no application. On the contrary, the learned trial Judge has rightly held that Rule 12 has application to the facts of the case. For application of Rule 12 four stages are involved, namely, signing of the agreement; issue of the order of ratification; delivery of possession and inspection at the spot regarding the boundary and, demarcation as, to the sketch map attached to the agreement and .furnishing of declaration regarding contractor's satisfaction. The case of .the Plaintiff is that there having been no inspection and demarcation, Rule 12 has no application. The delivery of possession and inspection have to be contemporaneous actions because the contractor in law is authorised to be delivered possession of, the area in respect of which the agreement has been entered into. The admitted position is that the declaration required to be given under Rule 12 has not been furnished by the Plaintiff-contractor within the stipulated time. Therefore, the Divisional Forest Officer was authorised to cancel the contract, forfeit the security deposit, re-sell the area in question and recover the deposit.

However, the further question is whether notwithstanding the specific stipulation that time was the essence of the contract, there was any scope for variation of the period of execution. Strong reliance has been placed on the proviso to Rule 7. Applicability of Rule 7 though noticed by the learned trial Judge, has not been considered by him. While the competency and the authority of Divisional Forest Officer to resort to Rule 12 cannot be gainsaid, yet the question whether the Plaintiff made out a case under the proviso to Rule 7 needed adjudication. This

aspect has not been dealt with by the learned trial Judge. It was open to him to draw an inference of availability or otherwise of the benefit extended under the proviso to Rule 7. But non-consideration certainly has prejudiced the Plaintiff-Appellant. Since the matter has not been dealt with specifically by the learned trial Judge. I feel it would be proper to remit the matter back to him to record a specific finding on the question whether any protection was available to the Plaintiff under proviso to Rule 7, and whether he made out a case for such protection. The issues framed are to be answered depending on the adjudication of the question whether the Plaintiff was entitled to any protection under the proviso to Rule 7. It appears that there is no direct issue on this question. The learned trial Judge would do well to frame an additional issue in this regard. The parties will be permitted to lead additional evidence, if they make applications and the learned trial Judge shall dispose of those in accordance with law.

The appeal is accordingly disposed of. There shall be no order as to costs.

Ordered accordingly