
(1975) 01 KL CK 0003
In the High Court Of Kerala
Case No : W.A. No. 299 of 1974

K. Bhaskaran Nair

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 06-01-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Forest Act, 1961 — Section 79

Citation : (1975) 01 KL CK 0003

Hon'ble Judges : V. Balakrishna Eradi, J; George Abraham Vadakkal, J

Bench : Division Bench

Advocate : S. Easwara Iyer and E. Subramoni, for the Appellant; N. Dharmadan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, J.—The Petitioner in O.P. No. 3284 of 1973 which was dismissed by a learned single Judge of this Court is the Appellant before us.

2. The Appellant is a forest contractor, who had been declared to be the highest bidder at an auction of forest produce conducted by the Divisional Forest Officer, Punalur on 21st November 1972 in pursuance of the notification Ext. R-2, dated 27th October 1972. The Appellant's bid was accepted by the competent authority and the sale was confirmed in his name by the Conservator of Forests, Quilon as per the said officer's proceedings dated 27th December 1972. In spite of the fact of confirmation of sale having been intimated to him, the Appellant failed to comply with the requirement specified in condition 8 of the sale notice regarding deposit of the balance amount required to make up 2/3 of the bid amount. Hence he was called upon by the notice Ext. P-2, dated 23rd January 1973 issued by the Divisional Forest Officer, Punalur to show cause why action should not be taken against him under Clause 8 of the sale notice for forfeiting the amount already remitted by him and for holding a reduction at the Appellant's risk and recovering from him any loss that may result from such

resale. An explanation was submitted by the Appellant, of which Ext. P-3 is a copy. That did not however satisfy the Divisional Forest Officer and hence the latter informed the Appellant as per Ext. P-4 that the coupe would be resold in auction at his risk as per the sale notice conditions. Accordingly a resale was conducted which resulted in a deficit of about Rs. 50,000. The Appellant was thereafter called upon as per notice Ext. P-6, dated 20th August 1973 issued to him by the Divisional Forest Officer to remit within fifteen days an amount of Rs. 39,900 which was Stated to represent the net loss caused to the department after setting off the amount of Rs. 10,000 already remitted by the Appellant. The Appellant was also informed by the said notice that in the event of his failure to remit the amount within the time specified action would be taken against him under the Revenue Recovery Act for realisation of the said amount. The Appellant thereupon came up to this Court and filed O.P. No. 3284 of 1973 praying that Ext. P-6 should be quashed and that a writ of mandamus should be issued to Respondents Nos. 1 to 3, namely, the State of Kerala, the Conservator of Forests, Quilon and the Divisional Officer, Punalur respectively directing them to forbear from taking any steps against the Petitioner under the Revenue Recovery Act for realisation of the amount mentioned in Ext. P-6. It was contended in the writ petition that since no agreement had been executed by the writ Petitioner (Appellant) after the confirmation of the auction sale there was no concluded contract on the strength of which revenue recovery proceedings could be taken against him and that, in any event, even going by the terms and conditions of the sale notice there had not been any breach of contract on the part of the Petitioner (Appellant) so as to render him liable to make good any loss which might have resulted to the Government from the resale even under the terms and conditions of the sale notice.

3. The learned single Judge held that even though there was force in the writ Petitioner's contention that there was no completed contract, he was none the less liable to be proceeded against under the provisions of the Revenue Recovery Act for realisation of the loss occasioned by the resale by virtue of the specific provision contained in Section 79 of the Kerala Forest Act. In this view the challenge against Ext. P-6 was held to be devoid of merit and the writ petition was dismissed. Hence this appeal by the writ Petitioner.

4. It is not contended by the Appellant that he had not participated in the auction or that he was not a signatory to the sale list. In fact it is clearly seen from Exts. R-2 and R-3 produced along with the counter affidavit that prior to his participation in the auction the Appellant had affixed his signature in the auction papers undertaking to be bound by the terms and conditions of the sale notification and that at the conclusion of the auction he had also signed in the sale list accepting his position as the highest bidder and reiterating his readiness and willingness to continue to be governed by the conditions of sale mentioned in the notification. Under the conditions of sale the Appellant who had been declared to be the highest bidder and whose bid was accepted by the competent authority, was bound to remit the further installments of the bid amount within

the stipulated periods and on failure to do so, the amounts already deposited by him were liable to be forfeited and he was also liable to make good to Government any loss that may be suffered by the department consequent on a reauction of the coupe. Section 79 of the Kerala Forest Act, 1961 specifically provides that all money payable to the Government on account of timber or forest produce inclusive of any sum recoverable under the terms of a notice relating to sale of timber or forest produce by auction may if not paid when due, be recovered under the law for the time being in force, as if it were an arrear of land revenue. What was sought to be recovered from the Appellant under Ext. P-6 is an amount said to be recoverable from him under the terms of the notice relating to the sale of forest produce by auction and hence it falls directly within the scope of Section 79. It cannot therefore be said that the Respondents have acted without jurisdiction in initiating proceedings against the Appellant under the Revenue Recovery Act for recovery of the said sum. This was the view taken by the learned single Judge and, with respect, we are in complete agreement with the same.

5. Inasmuch as we have held that by virtue of Section 79 of the Forest Act the amount demanded under Ext. P-6 can be recovered under the provisions of the Revenue Recovery Act, it is unnecessary for us to consider the argument advanced on the side of the Respondents that a contract had become concluded between the parties with the fall of the hammer at the auction sale when the Petitioner was declared the highest bidder or at least when the Petitioner's bid was accepted by the competent authority.

6. As regards the plea put forward by the Petitioner that he has not committed any breach of the conditions of sale and has not therefore become legally liable for making good to the Government the loss said to have sustained by the department consequent on the resale, a determination of this question necessitates a full investigation of all the relevant facts which cannot properly be conducted in a writ proceeding under Article 226 of the Constitution. We do not therefore propose to go into the said question. In case the Petitioner wishes to have an adjudication of the said matter, the proper course to be adopted by him is to approach the ordinary civil court having jurisdiction to decide the question. Nothing contained in this judgment will prejudice the Petitioner in the matter of having adjudicated the matter by a Civil Court. Subject to the above observation we confirm the judgment of the learned single Judge and dismiss this Writ Appeal. The parties will bear their respective costs.

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