
(1961) 10 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 153 of 1961

K.P. Choudhary

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 05-10-1961

Acts Referred:

Constitution of India, 1950 — Article 299

Forest Act, 1927 — Section 82

Forest Contract Rules — Rule 28, 29

Citation : AIR 1962 MP 102 : (1962) ILR (MP) 29 : (1962) 7 MPLJ 166

Hon'ble Judges : P.V. Dixit, C.J;N.M. Golwalker, J;K.L. Pandey, J

Bench : Full Bench

Advocate : L.G.R. Desilva, for the Appellant; H.S. Khaskalam, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

This petition under Article 226 of the Constitution challenging the legality of the recovery of Rs. 51,500/- as arrears of land revenue from the petitioner has been filed in the following circumstances.

The petitioner's bids at an auction of two parts of coupe No. 1, Hulki, of Bargi Range were accepted by the Chief Conservator of Forests. Thereafter some dispute arose between the petitioner and the Forest Department about the marking of the trees according to the "material notified" at the time of the auction. The dispute was not settled to the satisfaction of the petitioner. The petitioner avers that on account of this dispute he refused to complete the contract or to pay the first instalment in respect of the forest contract. According to the State, the applicant actually signed the contract (exhibited at page 61 of the paper-book) and also furnished security for the same. On behalf of the State the contract was signed not by the Chief Conservator of Forests, Rewa, but by the Divisional Forest Officer, Jabalpur Division.

When the applicant failed to pay the balance of the first instalment due from him and to get the security bond furnished by him signed by his surety, the Divisional Forest Officer informed him on 29th July 1959 that if he did not complete these "formalities" within a week, action as per condition 14 of the auction sale notice would be taken and the earnest money deposited by him would be forfeited to the State. The applicant was also told that the coupe would be reaucted and any deficiency occurring on such resale would be recoverable from him as arrears of land revenue. The applicant did not pay the balance amount of the instalment due from him and did not complete the formalities. He was again asked in August 1959 to pay the instalment amount and complete the formalities. He again failed. Ultimately on 25th November 1959, the petitioner was informed that the Chief Conservator of Forests had cancelled the acceptance of his bids and that the coupe would be reaucted at the petitioner's risk in January 1960. The reauction resulted in a loss of Rs. 51,500/- to the Forest Department. The applicant was asked to remit this amount to the Department. When he failed to do so, the Divisional Forest Officer, Jabalpur, addressed a letter to the Tahsiidar, Jabalpur, for recovering Rs. 51,500/- as arrears of land revenue from the applicant.

The petitioner contends that he is not liable to pay the amount demanded from him and prays that a writ of certiorari be issued for quashing the demand notice and the proceedings for the recovery of the amount of Rs. 51,500/- from him as arrears of land revenue.

This matter had first come up for hearing before a Division Bench and it has now come up before us on a reference by the Division Bench. The Division Bench was of the opinion that the main question which required determination in the case was whether in the absence of a written contract the State was entitled under Rule 29 of the Forest Contract Rules to recover from the petitioner the difference between the amount of the bid accepted at the reauction and the amount of the bids offered by the applicant in the first auction. Before the Division Bench learned Government Advocate relying On *Mulamchand Ratilal Asathi Vs. State of Madhya Pradesh and Others*, , contended that the Department was entitled to recover the aforesaid amount from the applicant even if there was no proper contract in writing. In that ease it was held in relation to a contract for the right to propagate and collect lac in forest areas that the person whose bid was accepted at the auction was liable to pay the amount of annual instalments even if no document embodying the transaction had been executed. The Division Bench felt that the view taken in *Mulamchand Ratilal Asathi Vs. State of Madhya Pradesh and Others*, , (supra) was not correct. Accordingly the matter was referred to a Full Bench.

In our judgment, the question whether Rules 28 and 29 of the Forest Contract Rules apply to the present case and whether, in the absence of a written contract executed between the applicant and the Chief Conservator of Forests in conformity With Rule 28 and Article 299 of the Constitution, the opponent-State

is entitled under Rule 29 to recover from the applicant the deficit amount do not at all arise for consideration. These questions were raised on the argument of the learned counsel for the petitioner that under Rule 29 there could be no such recovery unless the forest contract was first terminated, and as there was in fact no contract between the petitioner and the Department as required by Rule 28(1) and Article 299, there could be no termination of any contract within the meaning of Rule 29 and on the argument put forward by the learned Government Advocate before the Division Bench. At the time of the hearing of the petition before the Division Bench the learned Government Advocate did not dispute that the deed exhibited at page 61 of the paper-book signed by the petitioner bore the signature of the Divisional Forest Officer and was not signed by the Chief Conservator of Forests who was the competent authority to sign the contract on behalf of the State. He sought to justify the recovery on the basis of Rule 29 and the decision in *Mulamchand Ratilal Asathi Vs. State of Madhya Pradesh and Others*, , (supra).

Before us also the arguments first proceeded on the same lines. But later on it was found that the conditions on which the auction, at which the bids were accepted was held, themselves gave the power to the opponent-State to recover from the petitioner as arrears of land revenue any deficiency occurring on resale of the coupe. Condition 13(b) prescribed that if the successful bidder failed to make the payment or to furnish the security or to complete the formalities within the time granted by the Divisional Forest Officer, the deposit made and the earnest money paid by the bidder shall be forfeited to the State and the Divisional Forest Officer shall reauction the contract as provided in condition 14. Condition 14 provided that on such failure, on the part of the successful bidder, the contract shall be reauctioned at the risk of the successful bidder and any deficiency happening on such re-sale shall be recoverable from the bidder as arrears of land revenue. Now, the petitioner has admitted in paragraph 11 of his petition that his bids were accepted by the Chief Conservator of Forests. In that paragraph he has stated that the bids were cancelled by the Chief Conservator of Forests. There would have been no necessity for the cancellation of the bids if they had not been accepted by the Chief. Conservator of Forests.

The petitioner thus admits that his bids were accepted by the Chief Conservator of Forests. He was thus a successful bidder for the purposes of condition 14 and made himself liable under that condition for the recovery of the deficit amount from him as arrears of land revenue. That the petitioner was bound to pay this deficit amount and the same could be recovered from him as arrears of land revenue becomes clear when it is remembered that the auction was held subject to the conditions which were notified (pages 45 to 53 of the paper-book). When, therefore, the petitioner was allowed to offer his bids at the auction, there was an implied contract between him and the Department conducting the auction that he would be bound by those conditions. It follows, therefore, that there was an implied contract between the petitioner and the opponents that he would pay the deficit on a reauction of the coupe and the said amount would be recoverable

from him as arrears of land revenue. Now, u/s 155(b) of the Madhya Pradesh Land Revenue Code, 1959, all moneys falling due to the State Government under any contract which provides that they shall be recoverable as an arrear of land revenue, may be recovered as an arrear of land revenue.

The implied contract between the petitioner and the opponent-State for the recovery of the deficit amount as an arrear of land revenue is clearly one falling under Clause (b) of Section 155. The recovery of the amount of Rs. 51,500/- as arrears of land revenue is, therefore, justified under condition 14 of the conditions on which the auction was held. It must be noted that whereas conditions 13 and 14 apply to the failure on the part of the successful bidder before the execution of a valid contract in writing to pay the amount of the first instalment or to furnish security or to complete the formalities necessary for a valid contract in writing and to pay the deficit occurring on a reauction, Rules 28 and 29 deal with his failure after the contract in writing is executed. The present case is clearly one of failure before the execution of a valid contract in writing.

It must be noted that the implied contract of being bound by the conditions of auction that results when a person is allowed to bid at the auction subject to those conditions is not a contract to which Article 299 of the Constitution can be made applicable. That Article plainly applies to contracts which are required to be reduced to writing. An implied contract in its very nature is not such a contract. A contract is implied when the facts warrant the conclusion that the parties have actually agreed to enter into a legal obligation containing certain stipulations. As was said by the Supreme Court in *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, ,

"it wouldbe disastrous to hold that the hundreds of Government Officers who have daily to enter into a variety of contracts, often of a petty nature, and sometimes in an emergency, cannot contract orally or through correspondence and that every petty contract must be effected by a ponderous legal document couched in a particular form."

It is not necessary to consider the scope of the words "All contracts" used in Article 299. It is sufficient to say that an implied contract, such as the one in the present case by which the petitioner and the State bound themselves by the stipulations on which the auction was held, is not a contract to which Article 299 is attracted.

This renders it unnecessary for us to say anything on the correctness of the view expressed in *Mulamchand Ratilal Asathi Vs. State of Madhya Pradesh and Others*, as regards the meaning, scope and purpose of Article 299.

For the foregoing reasons this petition must be and is dismissed with costs. Counsel's fee is fixed at Rs. 100/-. The outstanding amount of the security deposit after deduction of costs shall be refunded to the petitioner.