(2007) 04 PAT CK 0100

In the Patna High Court

Case No : C.W.J.C. No. 2331 of 2007

Mojibur Rahman APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Citation : (2007) 2 BLJR 1470 : (2007) 3 PLJR 162

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Najmul Hoda and T.N. Ambastha, for the Appellant; Ajay Kr. Singh and Diwakar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh, J.—The petitioner has challenged the right of the Special Officer cum Administrator, Kisanganj Agriculture Produce Market Committee to settle certain Hat consequent to the repeal of the Bihar Agriculture Produce Market Act, 1960 by the Bihar Agriculture Produce Market (Repeal) Act, 2006. It is submitted that after the Market Act was repealed, the respondent had no jurisdiction to bid settlement of the Hat and Bazar and, that too, in respect of realisation of ground rent. A counter affidavit has been filed on behalf of the State. The private respondent has appeared and filed a counter affidavit and a supplementary counter affidavit and a preliminary objection has been raised by the private respondent.

2. Parties have been heard and with their consent, this writ application is being disposed of at the stage of admission itself.

3. A public notice was issued by the Special Officer-cum-Administrator of Kisanganj Market Committee (since dissolved) for settlement of various Hats as per terms and conditions contained therein (Annexure-1). One of the terms was that in case the settlement is made for a consideration of more than Rs. 10,000/- then the settlee would have to deposit half of the settlement amount

immediately and the balance in two six monthly instalments. Another important term of the said notice was that if the successful bidder does not deposit the amount required to be deposited within the time then the earnest money deposited by him would be forfeited and the settlement would be transferred to the next highest bidder.

4. It is not in dispute that pursuant to the said notice petitioner applied for participating in the bid. He deposited the earnest money much before the bidding. On the day of bidding, he turned out to be the highest bidder having bid six lacs rupees as the settlement amount in respect of Khangrahat Avam Gudrihat. He had already deposited Rs. 50,690/- as earnest money. He was then asked to deposit three lacs rupees which is half of the bid amount immediately. He sought for time. He was granted time. He failed to deposit within the time. He was told that he would forfeit his earnest money on failure to deposit. Settlement was then made with the second person and the earnest, money forfeited. All this happened on that day itself and these facts are supported by order-sheets and documents signed by the petitioner himself. Petitioner asserts that these signatures and writings were taken under coercion. This Court is not persuaded to accept the same. Thus the earnest money having been forfeited and the settlement having been made in favour of Respondent No. 5, the petitioner has challenged the very notice saying that it is without jurisdiction on the ground that the estate did not belong to the Market Committee. His submission was that it was not the asset of the erstwhile Market Committee and as such could not have vested in the Special Officer-cum-Administrator, who is the caretaker, as per the repealing Act. If that be so then the very auction as called for was illegal and without jurisdiction. If that be so then his earnest money has to be refunded and cannot be forfeited. In the alternative it is submitted that he was ready and willing to deposit the said amount though belatedly on the same day but was not accepted by the authority and as such settlement ought to be made in his favour setting aside the settlement made in favour of Respondent No. 5.

5. On behalf of Respondent No. 5, a preliminary objection has been raised that the petitioner having participated in the process, deposited earnest money cannot now turn around and challenge the process itself. In other words, the petitioner cannot be permitted to approbate and reprobate at the same time. Having participated and being unsuccessful he cannot now challenge and get out of the situation and get refund of his earnest money.

6. Having, heard the parties, I am satisfied that on this preliminary issue itself, the writ application must fail. The petitioner participated in the settlement process with his eyes open. He was all along aware that the Market Committee had been dissolved. He was fully aware of the capacity in which the respondent was acting. He deposited the earnest money. The earnest money is a pre-contractual deposit to show the earnest and honest intention for a party to proceed with the process of selection. He participated in the process. He made successful bid but having failed to pay the amount which was required to be paid

within the time stipulated, his bid was cancelled to his knowledge and earnest money forfeited. In order to get a refund, he has challenged the very legality of this which, in my opinion, is not permissible.

7. In the case of Nagubai Animal and Ors. v. B. Shama Rao and Ors., since reported in 1956 SC 593, the law in this regard has been discussed in detail in paragraph 23 of the reports, which is reproduced hereinbelow:

A plaintiff is not permitted to ''approbate and reprobate''. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election - namely, that no party can accept and reject the same instrument: Ker v. Wauchope (1819) 1 Bligh 1 (E): Douglas - Menzies v. Umphelby 1908 AC 224 (F). The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the Purpose of securing some other advantage. That is to approbate and reprobate the transaction.

8. Thus the petitioner cannot be permitted to challenge the validity or the legality of the settlement as made and if that be so then in terms of the notice itself he was required to deposit the money within a fixed time. He was granted time. He failed to do so. As per the condition of the notice itself this gave the parties a right to forfeit the earnest money. The earnest money thus being forfeited in terms of the notice, there cannot be an escape from that.

9. Thus in my view the writ petition is meritless and is dismissed as such. Interim order if any, stands vacated.

