

(1987) 03 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Petition No. 734 of 1985

Mrs. Sharada Sawani

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 19-03-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 — Section 12

Citation : AIR 1987 MP 281

Hon'ble Judges : K.K. Verma, J;G.G.Sohani, J

Bench : Division Bench

Advocate : V.S. Kokje and M.K. Karpe, for the Appellant; S. Kulshrestha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Varma, J.—This is a petition under Art, 226 of the Constitution of India whereby the petitioner has sought quashing of the notice of demand/recovery dated 18-7-1985 issued by the respondent No. 2 and other appropriate reliefs in the circumstances.

2. The material facts leading to this petition, briefly stated, are as follows : --

Trading in Tendu leaves in Madhya Pradesh is regulated by the provisions of M.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 (hereinafter called "the Adhiniyam") and the rules. The State Government disposes of the Tendu leaves of various forest units by sale to purchasers either by invitation of tenders or by auction. A tender notice dated 17-12-1984 for disposal of various Tendu Patta units was published in the M .P. Gazette (Extra Ordinary) dated 5-1-1985 inviting tenders from prospective purchasers of Tendu leaves in respect of the various units of Tendu patta including the unit in question viz., Unit No. 19/B, Bisali of Dewas Forest Division, Indore Circle on the terms and conditions which were also published in the gazette. Disposal of Tendu Patta Units by invitation of tenders was made as per Section 12 of the Adhiniyam which provides for disposal of

Tendu leaves by the State Government in such manner as the State Government may direct.

3. The petitioner submitted her tender-form for purchase of Tendu leaves in respect of Tendu Patta Unit No. 19/B, Bisali: Her tender was for Rs. 2,40,500/-, which, being the highest tender received for the said unit, was accepted by the Conservator of Forests, Indore, who by letter dated 6-4-85 (Annexure "A") appointed her as purchaser and directed her to execute an agreement of purchase after depositing the security amount of Rs. 60,125/- within 15 days. But even before expiry of 15 days, the State Government by another notice dated 9-4-1985 published in "Nai Duniya" daily dated 12-4-85 advertised sale by a fresh auction of the same Tendu Palta Unit. In response to this subsequent notice inviting bids from the prospective purchasers, the highest bid submitted was of Rs. 2,26,000/- which was less than what was offered by the petitioner in response to the earlier tender notice.

4. The respondent No. 2 then by letter dated 30-4-1985 (Annexure TV) intimated the petitioner that her tender of Rs. 2,40,500/- had been accepted and that she should have deposited the said security amount of Rs. 60,125/- and executed the agreement of purchase before 21-4-1985, which she failed to do. The petitioner was further directed to deposit the said amount and to execute the agreement that very day, failing which her appointment as purchaser was liable to be cancelled and she would be responsible for the consequences. The petitioner did not comply with the directions aforesaid.

The respondents once again i.e. for the third time published sale proclamation for disposal by auction of Tendu Patta of the concerned unit. In this reauction dated 10-5-1985, the highest purchase-bid was still smaller being Rs. 1,60,000/- only, which the respondents accepted and appointed the concerned highest bidder as the purchaser for Tendu Patta Unit No. 19/B. Bisali. Before the said reauction the Conservator of Forests, Indore Circle, respondent No. 3, passed an order dated 7-5-1985 (Annexure "F") in terms of condition No. 16(ka) cancelling the petitioner's appointment as purchaser in respect of Unit No. 19/B, Bisali and directing forfeiture of earnest money which was 3% of the tender amount of Rs. 2,40,500/-.

The petitioner was also required to deposit within 15 days an amount equal to the difference between the tender amount offered by her and the price received by the respondents in the subsequent disposal of the said unit, representing the amount of loss suffered by the Forest Department. It was also stated in the said order that on the petitioner failing to deposit the said amount, the same would be liable to be recovered as the arrears of Land Revenue from the petitioner.

5. Finally by notice of demand/recovery dated 18-7-1985 (Annexure "H") the respondent No. 2 has directed the petitioner to deposit within 15 days the amount of Rs. 75,500/-, being the loss determined as per condition No. 16(Ka) of the tender notice and has further directed that for failure to deposit, the said

amount would be recovered from the petitioner as arrears of land revenue. The petitioner, it appears has also been blacklisted by the respondents and in spite of petitioner's representation dated 25-6-1985 made to the Chief Conservator of Forests against the action of the respondents in putting her name in the blacklist, there has been no response from the Chief Conservator of Forests. It is, however, not disputed that the petitioner's name has been put in the blacklist without giving her a show cause notice.

6. The main question in controversy in the instant case is whether or not the petitioner remains bound by the tender submitted in response to the first tender notice for purchase of Tendu Patta unit in question, even after the respondents put the said Tendu Patta Unit to a fresh auction.

7. According to the agreement signed by the petitioner under condition 7(two) of the tender notice and submitted along with the tender form the tenderer/petitioner was bound by her offer of purchase until the competent authority passed an order accepting or rejecting her tender or until some other person was appointed as the purchaser in respect of the concerned Tendu Patta Unit. The tender notice or the Tendu Patta tenderer's agreement under condition 7(two) signed by her did not contain any such term that the tenderer shall remain bound by the offer of purchase even if the authorities decide to re-auction the said unit and put the unit to a fresh auction.

It is, however contended by the respondents that while putting the concerned unit to re-auction it was made clear in the notice that the tenderers who had offered to purchase in response to the earlier notice inviting tenders, would remain bound by their offers. This kind of unilateral declaration by the respondents cannot, in our opinion, extend the obligation of the tenderers, if they could otherwise be held not bound in law by their respective promises of purchase in view of the respondents putting the concerned unit to a fresh auction.

8. The learned Government Advocate appearing for the respondents has submitted that the petitioner's tender was below the upset price fixed for the unit in question and the need to re-auction the concerned unit arose on account of the observations made by this Court in an interim order dated 9-4-1985 passed in M.P. No. 909 of 1985 at Jabalpur, in Tharumal v. State of M.P.; wherein it has been directed that where units are auctioned but the auction price is below the upset price then units shall also be put to auction on 15-4-1985 after due publication. In our opinion, the reason why and how the authorities decided to re-auction the unit is not relevant in deciding the legal position obtaining in the case where instead of accepting the highest tender of the petitioner the authorities decided to re-auction the unit.

9. Having heard the learned counsel for the petitioner as also the learned Government Advocate, we are of the opinion that the effect of re-auctioning the unit in question is that the new auction replaces the earlier sale held by tender or auction. The tenders/bids received at the earlier sale held by the authorities do

not subsist in view of the re-auction of the unit. Accordingly, the tenderers including the petitioner who made offers of purchase in response to the first tender notice cannot be held bound to keep their offers alive even when the respondents have put the unit to re-auction. The effect of decision to re-auction is to reject impliedly the offers made in the first sale by tender or auction and consequently the tenderers/bidders of the first tender/auction sale are relieved of their obligation to keep their offers alive. The subsequent auction sale-supersedes the initial tender/auction sale and necessarily implies the rejection of the former sale proceedings by the authorities. In the circumstances, order (Annexure "F") calling upon the petitioner to deposit the amount of loss to the State, computed as the difference between the tender amount offered by the petitioner at the initial tender sale and the highest bid received at the subsequent auction sale cannot be sustained in law. Consequently, the notice of demand/recovery (annexure "H") issued by the respondent No. 2 making a demand of 75,500/- and threatening to recover the amount as arrears of land revenue, is also not sustainable in law and is liable to be quashed.

10. The learned counsel for the petitioner has also contended that the petitioner's name has been put in the blacklist by the respondents without giving her an opportunity of being heard which fact has not been disputed by the learned Government Advocate. The order of the authorities black-listing the petitioner without giving her an opportunity to show cause, is apparently arbitrary and violative of the rules of natural justice and the same cannot be sustained in law.

11. In the result, this petition succeeds and is allowed with costs. The notice of demand/recovery (Annexure "H") and the order of blacklisting passed against the petitioner are quashed. Counsel's fee Rs. 250/- (Rs. Two hundred fifty only), if certified.