

(2022) 11 GAU CK 0008
In the Gauhati High Court

Case No : Regular Second Appeal No. 149 Of 2014

Nalbari Municipal Board

APPELLANT

Vs

Noor Ahmed Jilani

RESPONDENT

Date of Decision : 03-11-2022

Acts Referred:

Assam Municipal Act, 1956 — Section 54, 64
Indian Contract Act, 1872 — Section 70

Citation : (2022) 11 GAU CK 0008

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : D. Choudhury, N. Ray, M. K. Sharma

Final Decision : Dismissed

Judgement

1. Heard Mr. D. Choudhury, learned counsel assisted by Mr. N. Ray, learned counsel appearing for the appellant. Also heard Mr. M. K. Sharma, learned counsel representing the respondent.

2. This Second Appeal is directed against the concurrent judgment and decree dated 03.08.2012 passed by the learned Civil Judge, Nalbari in connection with Money Appeal No.2/2012 partially affirming the judgment and decree dated 11.09.2012 passed by the learned Munsiff No.2, Nalbari in Money Suit No.35/2010. The Second Appeal was admitted to be heard on the following substantial questions of law :-

"i) Whether agreement for supply of goods by the plaintiff was binding on the Municipal Board in terms of Assam Municipal Act, 1956?

ii) Whether the Municipal Board can deny payment of consideration after receiving goods supplied by the plaintiff?"

3. The sole respondent, as plaintiff, had earlier instituted Money Suit No.35/2010 praying for a money decree for recovery of a sum of Rs.83,340/- from the

appellant/defendant i.e. Nalbari Municipal Board on account of the materials supplied by him. The plaintiff's case, in a nutshell, is that on 21.06.2008, the then Chairman, Nalbari Municipal Board, had issued a work order under Memo No.NMB/PWD/4/2008-09/131 for supply of certain materials for the purpose of construction of a concrete drain at Fakirtola Road, Ward No.5, Nalbari. As per the work order dated 21.06.2008, the plaintiff was asked to supply 1st class bricks, 1st class broken brick bats, cement, quarry sand and stone chips. Accordingly, the plaintiff had made those supplies and thereafter submitted a bill for payment of Rs.68,600/-. The Chairman of the Municipal Board had also approved the bill and recommended payment to be made to the plaintiff. However, when the matter was sent to the Administrator of the Board, no action was taken for clearing the outstanding dues of the plaintiff. Situated thus, the plaintiff had issued demand letters (Exts-3 and 4) and thereafter, instituted the Money Suit for recovery of the principal amount of Rs.68,600/- together with interest calculated at the rate of 9% per annum on the said amount being Rs.14,740/- thus, totaling to a sum of Rs.83,340/-.

4. The appellant/defendant Nalbari Municipal Board contested the suit by filing written statement.

5. Based on the pleadings of the parties, the learned trial court had framed the following issues :-

"1. Whether the suit is maintainable?

2. Whether there is a cause of action for this suit?

3. Whether the suit is bad for non-joinder of necessary parties?

4. Whether the Chairman, Nalbari Municipal Board vide his order No. NMB/PWD/4/2008-09/131 dated 21.06.08 allotted to the plaintiff the work of supplying materials for construction of 'pucca' drain along Kalafakirtola Road at Ward No.5, Nalbari?

5. Whether the plaintiff is entitled to the decree as prayed for?

6. To what other relief/reliefs the parties are entitled?"

6. In support of his case the plaintiff had examined himself as PW-1 and Sri Phanindra Talukdar, Assistant Engineer of Nalbari Municipal Board, as PW-2 and had also exhibited certain documents including the work order (Ext-1) and the bill submitted by the plaintiff against supply of materials (Ext-2). The defendant side had examined the Chairman of the Nalbari Municipal Board as DW-1.

7. On conclusion of trial, the learned trial court had decided all the issues in favour of the plaintiff/respondent and decreed the suit for recovery of Rs.68,600/- along with interest at the rate of 8% per annum for the period from 23.08.2008 till 21.12.2010 i.e. from the date of approval of the bill till institution of the Money Suit. The learned trial court had also awarded additional interest at the rate of 6% per annum on the aforesaid amount to be calculated from the date of

filing of the suit till realization of the amount.

8. Being aggrieved by the judgment and decree dated 11.09.2012, the defendant as appellant had preferred Money Appeal No.2/2012 which was partly allowed by the learned First Appellate Court by affirming the decree in so far as the recovery of Rs.68,600/- along with interest at the rate of 6% per annum from the date of submitting the appeal till realization of the decretal amount is concerned. However, the learned lower Appellate Court had interfered with that part of the decree passed by the learned trial court whereby, interest at the rate of 8% per annum was awarded for the period from 23.08.2008 till 20.12.2010. Aggrieved thereby, the instant Second Appeal has been filed.

9. By referring to the materials available on record Mr. D. Choudhury, learned counsel for the appellant has strenuously argued that the work order dated 21.06.2008 was unauthorized in as much as before issuing the same, the Chairman of the Nalbari Municipal Board did not comply with the requirement of Section 64 of the Assam Municipal Act, 1956 by obtaining the approval of the Board. Mr. Choudhury submits that as per section 64 no contract involving value in excess of five hundred rupees will be binding on the appellant unless sanctioned by the Board. Moreover, submits Mr. Choudhury, no tender notice was floated before issuing the work order to the plaintiff. It is also the submission of Mr. Choudhury that the work in question was required to be executed with the financial assistance provided by the District Urban Development Agency (DUDA), Nalbari and since no such fund was provided by the aforesaid agency, the question of the Board making payment to the plaintiff did not arise. Mr. Choudhury has, however, in his usual fairness, submitted that the appellant Board is not denying or disputing the fact that the plaintiff had in fact supplied the materials in terms of the work order dated 21.06.2008.

10. Responding to the above argument, Mr. Sharma, learned counsel appearing for the respondent submits that since the plaintiff was not required to construct the drain, hence, there was no question of executing any contract agreement with the Board. As such, Section 64 of the Assam Municipal Act, 1956 would not have any application in the facts and circumstances of the case. According to Mr. Sharma, the then Chairman of the Nalbari Municipal Board had merely asked the petitioner to supply certain materials and in view of the provisions of Section 54 of the Act of 1956, the Chairman of the Board had the power to issue such orders if the same was required in the exigencies of public service. Since the procedure to be followed while issuing the work order was an internal matter of the Nalbari Municipal Board, in view of the fact that the Board has not initiated any action against the then Chairman for issuing the work order to the plaintiff and considering the fact that the supply has admittedly been made by his client, the appellant cannot now refuse to make payment for the goods and articles received by the Board. Mr. Sharma, therefore, submits that there is no scope for this Court to interfere with the concurrent finding of facts recorded by the learned court below.

11. I have considered the arguments advanced by the learned counsel for both the parties and have also gone through the materials available on record.

12. As has been noted herein above, the plaintiff has exhibited the work order dated 21.06.2008 as Ext-1 as well as the bill submitted by him for a sum of Rs.68,600/-(Ext-2). There is no dispute about the fact that these documents have been duly proved. The PW-2, who is an official of the appellant Board and was fully aware of the facts and circumstances of the case, has also deposed before the court supporting the claim of the plaintiff. The appellant Board has also not denied or disputed the fact that the plaintiff had in fact made the supply of the materials indicated in the work order dated 21.06.2008. There is also no complain against the plaintiff as regards the quality of the materials supplied as well as the time period within which the same was made. If that be so, even if there is no contract agreement executed between the appellant Board and the plaintiff, the matter would, in the opinion of this Court, squarely fall within the ambit of Section 70 of the Indian Contract Act, 1872. Section 70 of the Act of 1872 is quoted herein below for ready reference :-

"70. Obligation of person enjoying benefit of non-gratuitous act.-- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

13. The learned counsel for the appellant could not invite the attention of this Court to any material available on record to show that the plaintiff had not supplied the materials in a lawful manner. The bill submitted by the plaintiff (Ext-2) bears ample testimony of the fact that the plaintiff had never intended to make those supplies gratuitously. It is also not denied that the materials supplied by the plaintiff under work order (Ext-1) was used for the purpose of construction of the public drain. If that be so, there cannot be any question of denying payment to the plaintiff for the materials supplied by him merely on the ground that no contract agreement in writing was executed by and between the appellant and the respondent.

14. In so far as the argument advanced by Mr. Choudhury regarding non-compliance of Section 64 of the Act of 1956 is concerned, this Court is not convinced with such argument for the following reasons. Firstly, there is no written contract signed between the plaintiff and the appellant Board. Section 64 would come into play only when the Board enters into a contract for the purpose of fulfillment of any of the provisions of the Act. It is in such circumstances that the contract would have to be ratified and/or approved/sanctioned in a Board meeting and the same will have to be in writing and signed by at least two of the members, one of whom shall have to be the Chairman or Vice-Chairman and shall be sealed with the common seal of the Board. Unless so executed, such contract shall not be binding on the Board. Since there is no contract executed between the Board and the plaintiff/respondent, the provisions of Section 64

would have no relevance in the facts and circumstances of the present case.

15. Secondly, even assuming that the work order dated 21.06.2008 was issued by the then Chairman in an unauthorized manner, the appellant Board ought to have initiated action against the then Chairman as and when the same was detected. However, it is the admitted position of fact that no such action was initiated against the then Chairman. Instead, the materials supplied by the plaintiff were used for construction of the public drain. The above fact, viewed in the perspective of the peculiar facts and circumstances of the case, in the opinion of this Court, would amount to tacit approval of the appellant Board as regards the action on the part of the then Chairman of the Nalbari Municipal Board. If that be so, the appellant cannot be permitted to deny the fruits of the decree passed in favour of the plaintiff/respondent merely by taking a technical plea. Therefore, the stand adopted by the appellant is found to be wholly untenable in the eye of law and hence, is hereby rejected.

16. For the reasons discussed herein above, I am of the view that there is no scope for this Court to interfere with the concurrent judgment and decree passed by the learned courts below inasmuch as the decree passed by the learned court below does not suffer from any infirmity in the eye of law.

The substantial questions of law stand answered accordingly.

The appeal is held to be devoid of any merit and is accordingly dismissed. There would be no order as to cost.

Registry to send back the LCR.