
(2001) 05 OHC CK 0021

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3928 of 2001

Pradipta Kumar Das

APPELLANT

Vs

Sub-Collector and Others

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Citation : (2001) 2 OLR 85

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S. Patra and S. Panda, for the Appellant; A.G.A. (OPs. 1 and 2), M.K. Khuntia and K.A. Mateen (OP-3), for the Respondent

Judgement

P.K. Misra, J.—The petitioner in this writ application has prayed for quashing the order dated 21.3.2001 settling the Sairat in favour of opposite party No. 3 and forgiving opportunity to the petitioner to participate in the fresh auction.

2. Notice dated 4.3.2001 had been issued by Tahsildar, Salepur as per Annexure-1 for auction in respect of Sand Sairat in river Luna. As per the notice, auction was to be held in the office of the S.D.O., Cuttack on 21.3.2001 at 3.00 P.M. The minimum upset price had been fixed at Rs. 25,000/- It is alleged by the petitioner that while he was coming to participate in the auction, he was prevented by some anti-socials from attending the auction and as such he could not give his offer. However, it is further alleged that he subsequently filed an application on the very same day before the Sub-Collector, Cuttack, as per Annexure-2 wherein he had prayed that he should be allowed to participate and he had indicated that he was ready to pay more than Rs. 30,000/-. From Annexure-3 it appears that on 21.3.2001, the Sub-Collector, Sadar, Cuttack, accepted the highest bid of Rs. 25,300/- made by the present opposite party No. 3 and permitted opposite party No. 3 to pay a sum of Rs. 12,650/- as first instalment and to deposit the balance amount by 30.3.2001. The petitioner had filed this writ application on 30.3.2001 and interim order was passed on 4.4.2001 directing that the Sairat source shall not be operated by any person.

Subsequently, opposite party No. 3 has appeared and filed counter. He has denied the allegations made in the writ application and submitted that if, in fact, the petitioner was prevented, he could have lodged, F.I.R. regarding the incident. It has been further submitted that the petitioner had filed a writ application in 1998 making similar allegations and such statement of the petitioner should not be accepted. No counter has been filed on behalf of opposite parties 1 and 2.

3. During pendency of the writ application, I had called upon the petitioner as well as opposite party No. 3 to give their offers in Court in closed covers and accordingly, they have submitted their bids. Learned counsel appearing for opposite party No. 3 has submitted that disputed questions of fact being involved, such a writ application should not be entertained.

4. It is, of course, true that opposite party No. 3 had denied about the alleged incident and has stated that F.I.R. should have been lodged. However, in the writ application it has been asserted that on the very same day, the petitioner had filed an application before the Sub-Collector offering Rs. 30,000/- for the Sairat. No counter affidavit has been filed on behalf of the Sub-Collector denying such assertion and as such it must be taken that on the very same day the petitioner had complained about the illegal detention by some anti-socials preventing the Petitioner from participating in the auction. In the said application, the petitioner had offered Rs. 30,000/- which was more than the offer made by opposite party No. 3. On opening of the offers made by petitioner and opposite party No. 3, it now appears that the petitioner has offered a sum of Rs. 1,00,000/- (one lakh) for the source, whereas opposite party No. 3 has offered a sum of Rs. 40,000/- (forty thousand). Since question of revenue is of prime importance, and since the assertion made by the petitioner regarding submission of application under Annexure-2 has not been denied by the Sub-Collector, I am inclined to allow the writ application and accept the offer made by the petitioner. Out of the offer by the petitioner, a sum of Rs. 50,000/- (fifty thousand) should be deposited within a period of two weeks from today and the petitioner should be settled with the sairat source for the year in question. The balance amount of Rs. 50,000/- should be deposited in two further instalments of Rs. 25,000/- by 15th September, 2001 and 15th. December, 2001. Since this order is passed on the basis of affidavit of the petitioner giving the offer, failure to make the deposit would amount to contempt of Court and appropriate action can be taken for realisation of the amount as well as for punishment of the petitioner under the Contempt of Courts Act. Out of the first instalment of Rs. 50,000/-, the entire amount deposited by opposite party No. 3 with a further sum of Rs. 500/- (five hundred) towards interest shall be paid to opposite party No. 3 by the Sub-Collector. This direction regarding refund should be carried out within a period of ten days from the date of deposit by the petitioner. If the petitioner fails to make deposit of any instalment as directed, the order in his favour shall be inoperative and the Sub-Collector would be free to take any action for settlement of the source in favour of any other person. Moreover, as already indicated, appropriate action under the Contempt of Courts Act can be initiated and steps may be taken

for realisation of the amount from the petitioner.

5. Subject to aforesaid directions, the writ application is disposed of