

(1996) 01 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 4124 of 1985

Sia Ram

APPELLANT

Vs

Collector/Additional District Magistrate (F.and R.) Agra and
Others

RESPONDENT

Date of Decision : 04-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 146

Citation : (1996) 01 AHC CK 0058

Hon'ble Judges : R.S.Dhavan, J and A.B.Srivastava, J

Final Decision : Dismissed

Judgement

Ravi S. Dyavan, J.

1. The petitioner was given a contract upon acceptance of his bid in a public auction to realise the fee representing Tahbazari as also market fee under the Kshetra Samiti and Zila Parishad Adhiniyam, 1961 and the rules under the Act, aforesaid, also the U. P. Zila Parishad and Kshetra Samiti (Imposition and Collection of Fees and Tolls) Rules, 1968.

2. The petitioner contends in his writ petition that he could not work the duration of the contract and, thus, of the bid of Rs. 52,100 an amount of Rs. 25,000 having been deposited, he is not liable to pay the balance of consideration of the contract.

3. The grounds of the objections in the writ petition are that the petitioner was not permitted to work the contract by the agents and assignees of the three respondents ; the contract had not been formally signed and thus, there is no liability upon him on the obligation of the contract and of any dues which may be due to the respondents they cannot be realised in the manner in which it is being done, i.e., the realisation of it being as arrears of land revenue. The respondents in their defence submit out that the petitioner had in fact reap the fruits of the contract by realising the Tehbazari and the market fee and his allegations that he

was not permitted to work the contract are incorrect; that the documents for the purpose of executing the contract, after the terms had been drawn up, were submitted by the petitioner himself along with stamp duty but he would not come forward to append his signatures on the contract thus in these circumstances the contract did not see the formality of execution and further the law does invest the respondents with the authority to realise the dues in the manner in which they have done it.

4. Upon perusal of the record of the writ petition, the counteraffidavit and the rejoinder affidavit, this court finds that upon the petitioner's showing there are disputed questions of fact and a writ jurisdiction may not be the forum for the petitioner to receive the reliefs which he seeks. In paragraph 5 of the rejoinder affidavit, the petitioner has no hesitation in placing on record that he could not carry out the work under the contract for nine months. This in itself implies that of the contract which was assigned to him for two years, he had worked on the contract for more than one year. On the objections which the petitioner gave to the District Magistrate and Collector in objecting to pay the balance of the amount on which his bid had been accepted, the District Magistrate in his order of 22 March 1985, Annexure 8 to the writ petition, has placed on record that the petitioner had not only carried out the contract which had been awarded to him, but had, in fact, of the money which he has realised as Tehbasari and market fee deposited a sum of Rs. 13,100 with the Collector's treasury. Of the contract, for whatever reason it remained unexecuted, the order, aforesaid, records that after the documents had been typed and the stamp duty deposited with the office of the Collector by the petitioner himself, he declined to sign the documents for the execution of the contract. In his representation submitted to the Collector, dated 30 March, 1982, Annexure 4 to the writ petition, in paragraph 9 the petitioner places on record that there were certain circumstances which prevented him from carrying out his functions under the contract. In another representation, dated 19 September, 1984, Annexure 6 to the writ petition, the petitioner places on record that there are differences between him and the respondents in matters of accounting as a consequence of the contract. This in itself places on record that the issue is not that the petitioner did not carry out his functions under the contract as the record shows that he, in fact, did. The question only is of issues whether the petitioner completed the duration of the contract or in fact was prevented by the respondents so as to frustrate part of the contract. A part of the contract, the petitioner himself acknowledges as having been carried out, of which part he has even deposited the fee as was collected by him.

5. The contention of the petitioner that by law the respondents cannot realise the balance of the bid money which the petitioner had promised to pay, but would not pay, as arrears of land revenue, is misconceived. Equity is against the petitioner when he contends in his petition that the contract had been frustrated and the record otherwise reveals that he had, in fact, discharged his functions under the contract, notwithstanding that it may be only part of it. Whether

damages are due to the respondents or the situation is to be mitigated in favour of the petitioner is not a matter which this court can decide in its writ jurisdiction with disputed questions of facts. On what the petitioner claims and alleges the only recourse to him if he is serious on his contentions is to bring an action against the respondents by way of a suit. Of the inhibition which the petitioner alleges against the respondents in realising the amount which he had promised to pay, but would not deposit, the petitioner, apparently though drawing the court's attention to Chapter VIII of the U. P. Kshetra Samiti and Zila Parishad Adhiniyam, 1961, has not paid attention to Section 146 of the Act, aforesaid. If Chapter VIII is seen in isolation, then, what the petitioner contends is probably correct. But, Section 146 provides for recovery of fees and tolls which are levied under the Act. This section prescribes that any unpaid fees and tolls referred to in Sections 144 and 145 of the Act may be recovered in the manner prescribed in Chapter VIII. Thus, is not that any unpaid fees and tolls which the petitioner was meant to and may have realised under the contract as an agent of the State escapes from being realised as a public debt under Chapter VIII. Thus, on this contention the petitioner is in error. The act itself provides for realising the unpaid fees and tolls and the respondents are not without authority of seeking the balance of the bid on which the petitioner's contract had been accepted.

6. In these circumstances, this Court does not find any merit in the petition and is not inclined to interfere with the action of the respondents, thus, the petition is dismissed.

7. The interim order of 21 November, 1985 is discharged. It will be open to the respondents to execute the security which was deposited in terms of the interim order, aforesaid.

8. The petition is dismissed with costs.

Petitions dismissed.