

(1988) 04 OHC CK 0041
In the Orissa High Court
Case No : O.J.C. No. 1965 of 1981

Sri Udayanath Mohapatra

APPELLANT

Vs

Revenue Divisional Commissioner and Others

RESPONDENT

Date of Decision : 19-04-1988

Acts Referred:

Orissa Forest Act, 1972 — Section 87

Citation : (1988) 66 CLT 85

Hon'ble Judges : K.P. Mohapatra, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : B. Senapaty, on behalf of B.B. Rath, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The core question that arises for determination in this case is whether the Petitioner, a forest contractor, is liable to pay the shortfall of the amount on re-sale of the forest coupe for which he was the highest bidder. The Petitioner has filed this writ petition seeking issue of certiorari to quash the order of the revisional authority under the Orissa Public Demands Recovery Act (for short "the Act") as per Annexure 5 holding him liable for the said amount.

2. The gist of the facts relevant for the present purpose may be stated thus:

In pursuance of the sales notice issued by the Divisional Forest Officer. Balliguda Division (opp. party No. 3) the Petitioner participated in the auction sale for Junglegghar U. R. F. Coupe No. 7, D. L. No. 23 of 1971-72. His bid for Rs. 35,000/- was the highest. One of the conditions but out in the notice was that the bidder whose bid would be accepted by the District Forest Officer had to make the security deposit in case of 10 to 20 per cent of the total purchase price subject to a minimum of Rs. 100/- and sign the post office security deposit form. The Petitioner could not deposit the security money within the stipulated period as required by opposite party No. 3. Therefore the sale was not ratified and no

agreement was executed between the parties. On being put to re-sale the coupe fetched Rs. 25,000/- only. Thereafter opp. party No. 3 demanded Rs. 10,000/- i.e. the shortfall amount on re-sale from the Petitioner. The latter having failed to comply with the demand he initiated proceeding under the provisions of the Act for recovery of the sum. The Petitioner denied his liability to pay the amount.

The Sub-divisional Officer and Certificate Officer. Ralliguda (opp. party No. 2) and the Additional District Magistrate. Boudh-Khondmal the first appellate authority construing the terms and conditions of the sale notice held that there was no concluded contract between the Petitioner and opp. party No. 3 relating to the coupe in question and, therefore, the former could not be made liable for the shortfall amount on re-sale of the coupe. The revisional authority the Revenue Divisional Commissioner, Southern Division (opp. party No. 1) however reversed the decision and held that the Petitioner was liable for the amount.

3. From the facts narrated in the foregoing paragraphs, it is clear that the decision in the case turns on answer to the question whether there was a completed contract between the parties. The task has been made somewhat easier since the revisional authority on interpretation of the conditions in the sale notice and provisions of the Orissa Forest Contract Rules has agreed with the findings of the Certificate Officer and the appellate authority that there was no valid contract between the parties. On that basis the revisional authority held that the demand in the case could not come under Clause (iv) of Schedule I of the Act. But he further held that the demand came squarely under Clause (ix) of Schedule I of the Act. It appears from the order that he relied on conditions laid down in Clause 10 (a) of the sale notice and Section 87 of the Orissa Forest Act in support of the aforesaid view.

4. It will be helpful at this stage to notice some of the clauses in the sale notice which has been annexed to the writ petition as Annexure 2. Under Clause 10 (a), it is provided that immediately after a bid is accepted, the bid-sheet shall be signed by the bidder whose bid is conditionally or finally accepted by the District Forest Officer. Under Clause (b) it is laid down that the bidder whose bid is conditionally or finally accepted by the District Forest Officer shall make the security deposit in cash of 10 to 20 per cent of the total purchase price at the discretion of the District Forest Officer subject to minimum of Rs. 100/- only and sign the Post Office Security Deposit forms. Clause (d) provides that on payment of security deposit as demanded by the District Forest Officer, the bidder shall sign the necessary agreement. This signing of the agreement by the bidder will not confer on him any right to the forest produce unless the sale is ratified by the competent authority and ratification order is communicated to him. Clause (e) which has been referred to by the revisional authority, the opposite party No. 1, lays down that no sale of any lot will be considered valid or complete unless the above conditions have been complied with and on the event of failure to comply, the District Forest Officer will be at liberty to quash the sale, forfeit the earnest money deposited under condition 4 or the deposit made under condition 10 (c)

or the security deposit under condition 10 (b) or (c), as the case may be, re-sale the lot and to recover from the successful bidder, short all in price, if any, on such re-sale, as arrears of land revenue. It is further provided that in case the price received on such re-sale is more than the accepted bid, the original middle should not be entitled to the excess. (Emphasis is mine), It is not in controversy that in the present case the bid offered by the Petitioner had not been finally accepted no agreement had been signed by the parties; and the sale had not been ratified by the competent authority, It is also the admitted position that deposit of security money demanded by the District Forest Officer which was a condition precedent for finally accepting the bid was not complied with by the Petitioner. Therefore the authorities under the Act including the revisional authority have rightly held that there was no valid contract between the parties in this case.

5. The question which then arise for consideration is whether the shortfall in the amount on re-sale of the coupe can be realised from the first bidder, relying on Clause 10 (e) of the sale notice. This question, arising in almost similar situations, came to be considered by the Supreme Court in the case of Union of India (UOI) and Others Vs. Bhim Sen Walaiti Ram, , construing the conditions 10 the sale notice which were similar to those in the present case, the Court held that the sale was deemed to have been made in favour of the highest bidder only on completion of the formalities before conclusion of sale and therefore the contract for sale was not complete till the bid was confirmed by the Chief Commissioner and before such confirmation the person whose bid had been provisionally accepted was entitled to withdraw his bid and when the bid was so withdrawn before the confirmation of the Chief Commissioner the bidder will not liable for damage on account of any breach of contract or for shortfall on the re-sale. The Court further observed that an acceptance of an offer may be either absolute or conditional. If the acceptance is conditional the offer can be withdrawn at any amount until absolute acceptance has taken place. This view was reiterated in the case of State of Madhya Pradesh and Anr. v. Firm Gobardhan Dass Kailash Math AIR 1973 S.C. 1165.. relating to a case of forest sale. In that case in response to the notice issued by the Chief Conservator of Forests, certain firms offered their tenders for purchase of certain forest products and their tendons being highest were accepted for and on behalf of the Chief Conservator, but the firm failed to make on the spot, the initiated deposit of 25 per cent of the purchase price as offered, which in view of the notice was condition precedent for the acceptance of the tender. The Court held that in absence of and power in the Chief Conservator to waive such conditions the purported acceptance was not a valid one and there was no concluded contract between the firm and the Chief Conservator. On these findings the Court approved the view taken by the High Court that the firm was not liable to pay Rs. 1,39,000/- and odd which was the difference between the price at which the tenders were accepted and the price recovered as a result of the re-sale.

In view of the position of law laid down by the Supreme Court in the above

mentioned cases there can be little scope for doubt that in the absence of a valid concluded contract between the parties, the Petitioner could not be made liable for the shortfall in the amount on resale of the coupe. The revisional authority was therefore clearly in error in taking the decision to the contrary.

6. In the result, the writ application succeeds and the same is allowed. The order of the Revenue Divisional Commissioner as per Annexure 5 is quashed and those passed by the Certificate Officer and the Appellants authority as per Annexures 3 and 4 are confirmed. The parties will bear their respective costs of this proceeding.

K.P. Mohapatra, J.

7. I agree.