

(1964) 02 KL CK 0019
In the High Court Of Kerala
Case No : A.S. No. 458 of 1961

State of Kerala

APPELLANT

Vs

A.R.A.S. Arumughaswamy Nadar and Co.

RESPONDENT

Date of Decision : 06-02-1964

Acts Referred:

Citation : (1964) KLJ 514

Hon'ble Judges : T.K. Joseph, Acting C.J.; T.C. Raghavan, J

Bench : Division Bench

Advocate : P. Subramonian Potti and S.A. Nagendran, for the Respondent

Final Decision : Allowed

Judgement

Joseph AG., C.J.—Shorn of unnecessary details, the case is a simple one. On 9-1-1952 there was an auction of timber at the Government Forest Depot at Thenmala. The plaintiff bid several lots of logs. He bid 4 lots of timber consisting of ebony, etc., for Rs. 2,528-11-9. At about the close of the auction he bid some other lots of Kongu logs at 101 annas per cubic foot. The sales were subject to confirmation by the Government, and such confirmation was made only on 20-2-1952. Long before that date he had withdrawn the offer in respect of Kongu logs on the ground that there was misrepresentation on the part of the officer who conducted the auction regarding the number and nature of the logs and that he was not allowed to inspect the logs before the auction. There is dispute as to whether he entered a protest on the date of the auction itself but it is clear that he did so before the bid was accepted by the Government. He also refused to sign the auction register. After confirmation of the sale by the Government he was asked to pay the price of all the lots purchased by him including the Kongu logs. He refused to do so. Thereupon the sale was cancelled and the logs were reaucted. It is stated that the price fetched in resale was lower than that at which the plaintiff had bid by Rs. 8,422-14-8, and he was asked to pay the same. The State threatened to recover the amount under the provisions of the Revenue Recovery Act. Thereupon he filed this suit for a declaration that the

State was not entitled to recover anything from him as damages but on the other hand he was entitled to recover a sum of Rs. 3,165-4-0. The details of this claim will be dealt with while dealing with the specific points arising for decision. The learned District Judge held that the sale would become complete only on acceptance by the State and that the plaintiff having withdrawn the offer in respect of the Kongu logs, there could not be a concluded contract in respect of the same. It was also held that part of the claim for damages was allowable, and accordingly a decree was passed granting the declaration prayed for as well as a decree for recovery of Rs. 500/- being the amount initially deposited by the plaintiff, a sum of Rs. 287-12-0 as damages for wrongfully detaining certain other logs which the plaintiff had purchased earlier and had paid for and a further sum of Rs. 10/- as general damages for breach of contract. The defendant--the State--has therefore preferred this appeal. The plaintiff--respondent has filed a memorandum of cross-objections regarding the findings against him.

2. The main point arising for decision is whether there was a concluded contract of sale in respect of the Kongu logs. It was the case of the State that the sale had to be confirmed by the Government and that the Government had the power to accept or reject the highest bid. In such circumstances the mere fact that the officer who conducted the auction accepted the highest bid would not result in a concluded contract. The learned Judge has discussed this question at length while dealing with issue No 1, which was in these terms:

Is there a completed contract of sale in respect of the Kongu logs mentioned in para 1 of the plaint?

The question is considered by the learned Judge in paragraph 7 of his judgment. Relying on the decision in *Mackenzie Lyall & Co. v. Chamroo Singh & Co.* (I.L.R. 16 Cal. 702) it was held that where a bid was accepted subject to sanction by another, the bidder could withdraw the offer before the same was finally accepted. Accordingly it was held that there was no completed contract of sale in respect of the Kongu logs. This position is supported by later decisions of other courts as well. In *Somasundaram Pillai Vs. The Provincial Government of Madras*, it was held:

To have an enforceable contract there must be an offer and an unconditional acceptance. A person who makes an offer has the right of withdrawing it before acceptance, in the absence of a condition to the contrary supported by consideration. Does the fact that there has been a provisional acceptance make any difference ? We can see no reason why it should. A provisional acceptance cannot in itself make a binding contract. There must be a definite acceptance or the fulfilment of the condition on which a provisional acceptance is based.

The position is well settled and it is unnecessary to discuss other decisions on the point. We may however mention that the same view has been taken in the decisions reported in AIR 1930 114 (Lahore) , AIR 1930 325 (Lahore) , A. T. R.

1939 Oudh. 249, Raghunandhan Reddy Vs. State of Hyderabad, and several other decisions. We do not see any reason to differ from the conclusion reached by the learned District Judge on this point. We accordingly hold that there was a valid withdrawal of the offer by the plaintiff in respect of the Kongu logs with the result that there was no concluded contract of sale. It follows that the plaintiff cannot be made liable for loss if any by resale of the logs.

3. Another point which arises is the position as regards the four lots of timber purchased earlier that day. The plaintiff was prepared to take delivery of the same on payment of the price at which he had bid, provided the confirmation was limited to that sale. The State was not prepared to do this. In view of the wide power given to the Government to accept or reject the bids, it cannot be said that the acceptance of all the bids together must be split up and limited to such as the plaintiff wants. It may be that the price offered for the Kongu lots may have induced the Government to accept the other bid also. The plaintiff was not prepared to accept the confirmation as made by the Government. It cannot therefore be said that the State will be liable to pay damages in respect of the sale of the other logs. The learned Judge has also found that the plaintiff has not proved that he sustained any damage thereby. The award of Rs. 10/- must therefore be set aside.

4. As regards the other items allowed to be recovered, one was the sum of Rs. 500/- the initial deposit by the plaintiff. This the plaintiff is entitled to get back and there was no serious controversy about the same. Another item is a sum of Rs. 287-12-0. We have already stated that the plaintiff was not allowed to remove certain logs he had purchased and paid for on an earlier occasion on account of the controversy in respect of the auction held on 9-1-1952. There was no right to detain those logs, and the measure of damages was fixed by the learned Judge at 6 per cent interest on the value of those logs. The plaintiff is entitled to get this and the decree in respect of the same does not require modification.

5. Coming to the declaration granted, that is the logical result of the finding that there was no concluded contract in respect of the Kongu logs; and there is no reason to interfere with the same. In the result, we confirm the decree except as regards the sum of Rs. 10/- which forms part of the damages awarded to the plaintiff. The appeal is allowed only to that extent and is dismissed in other respects. The memorandum of cross-objections is also dismissed. The appellant will pay the costs of the respondent in this court.