

(1974) 06 MAD CK 0032

In the Madras High Court

Case No : Appeal No. 772 of 1968 and C.M.P. No. 4476 of 1974

The State of Madras and Another

APPELLANT

Vs

R. Ranganatham Chettiar

RESPONDENT

Date of Decision : 21-06-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 229
Contract Act, 1872 — Section 10, 2, 4
Sales of Goods Act, 1930 — Section 19

Citation : AIR 1975 Mad 292 : (1975) 88 LW 97

Hon'ble Judges : Ramaprasada Rao, J;Natarajan, J

Bench : Division Bench

Advocate : Addl. Govt. Pleader, A. Alagiriswami and K.J. Bhakthavatsalam, for the Appellant; K. Sarvabhauman and T.R. Mani, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—The State of Madras represented by the Collector of Thanjavur, the 1st defendant in O.S. No. 57 of 1967 on the file of the Court of the Subordinate Judge of Mayuram, is the appellant. The plaintiff respondent brought an action for declaration that he was entitled to the sum of Rupees 23,500.48, which was held in deposit in O.S. No. 90 of 1963 on the file of the Court of the Subordinate Judge of Mayuram, and also for the return of the sum of Rs. 1,420 together with interest which, according to the plaintiff, was payable and refundable to him and to which the defendants, namely, the State of Madras, which is the 1st defendant, and the District Forest Officer, Thanjavur, who was the 2nd defendant, had no right, title or interest. The circumstances under which the suit was filed may be stated thus.

2. Under Ex. B-I dated 16-7-1963 a Forest notification was issued by the District Forest Officer, Thanjavur, wherein the lease of the right to cut and remove the Casuarina trees in Sodikudy, which lay in two different coupes in the village of Sodikudy, Sodiakudy Taluk, was advertised to be sold in public auction. It is

common ground that there were two lots which were so advertised for sale. But the auction could not take place as notified, since there were no bidders. Again a fresh notification, but a similar one, was issued under Ex. A-1 dated 5-11-1963. The notification itself made it clear that the said right to remove the standing growth from the coupes will be sold in public auction by the District Forest Officer, Thanjavur, or by an Officer deputed for the purpose. There were several conditions which were fully and clearly reduced to writing in the said notification and the notification also attracted an agreement, a sample form of which was admittedly exhibited at the time of sale. Under the notification it was made clear that the conditions of the sale notice or the notification would form part and parcel of the above agreement to be executed. We shall refer to the conditions of the sale in detail as and when it becomes necessary. As already stated, the sale was held in two lots and on 18-11-1963 which was the date of auction held in pursuance of Ex. A-1, the plaintiff became the highest bidder for both the lots, he having bid for the first lot at Rs. 6,850 and for the second lot at Rs. 2,575. He was also called upon to give security as per the conditions of sale, and accordingly the plaintiff paid towards lot No. 1 a sum of Rs. 1,030 and towards lot No. 2 a sum of Rs. 390, making in all a sum of Rs. 1,420 towards security after he had been declared the highest bidder. As is usual, the District Forest Officer through his Range Officer executed receipts Exs. A-2, A-3 and A-4, receipting the above amounts from the plaintiff. In fact, under Ex. B-3, which is the list showing the bids made by the bidders at the said auction, it is made clear that the sale was knocked down in the name of the plaintiff and that besides the sale amount, security deposit in respect of the sale of the coupes in two lots was also receipted by one of the officers of the Forest Department. The District Forest Officer certified that the sale was conducted by him in person and in the presence of certain witnesses and the plaintiff in turn agreed to obey by the conditions of sale as notified in the Forest notification. On the next day the Collector of the District received information about the above auction and in fact, one of the co-bidders as well as a member of the Legislative Council of the State of Tamil Nadu complained that the bid secured by the District Forest Officer was too low and that there were parties who were prepared to pay higher amounts if a re-auction is undertaken. Such complaints were received by the Collector under Exs. B-4 and B-5. The Collector of the District forwarded the said complaints under Ex. B-6 to the District Forest Officer or the Divisional Forest Officer, Thanjavur for remarks. As by then no order of confirmation of the bid was made by the District Forest Officer and apparently because the Collector of the District also intervened on complaints made by third parties, the District Forest Officer, under Ex. B-12 equivalent to Ex. A-6, invited tenders for the removal of the Casuarina growth in the above coupes. The tender notice also contained a condition that the tender is subject to acceptance or rejection by the Divisional Forest Officer or Conservator of Forests whose decision shall be final and binding on the tenderers. Soon thereafter the District Forest Officer, under Ex. B-8, issued proceedings ordering refund of the sums paid by the plaintiff and as enumerated above. To continue the narrative, third parties tendered pursuant to

Ex. A-6 in respect of the Casuarina growth in the two coupes as above. Whilst such proceedings were on, in the office of the District Forest Officer, the plaintiff, aggrieved by the action taken by the District Forest Officer, filed O.S. No. 90 of 1963 on the file of the Court of the Subordinate Judge of Mayuram, the plaint in which has been marked as Ex. B-13, seeking for an order of injunction restraining the defendants from dealing with the rights to remove the standing growth of the Casuarina on the coupes in question and for ancillary reliefs. As is seen from Ex. A-7, the Court in an elaborate order, while refusing to grant the relief as prayed for, felt that the only relief that could be given to the plaintiff would be to restrain the respondents from proceeding with the sale notified by them and in order to safeguard the trees, directed the petitioner, if he is so inclined, to apply for the appointment of a receiver to cut the trees and deposit the sale proceeds into Court so that he could ultimately withdraw the same from Court deposit if he succeeds and if he fails the State may withdraw the same after adjusting the equities. In effect, therefore, a partial interim injunction was granted as prayed for. Thereafter the plaintiff applied for appointment of a receiver in I. A. No. 104 of 1964 on the file of the Court of the Subordinate Judge of Mayuram. This was opposed by the State, In fact, the State attempted to canvass the correctness of the order of Court in granting a partial temporary injunction as above, but was unsuccessful in the said appeal ultimately filed by them. The learned District Judge who heard the appeal filed by the State as against the order of the trial Court which granted a partial temporary injunction, also agreed with the trial Court that it was conducive that a receiver be appointed to cut the trees and sell them in auction and deposit the sale proceeds into Court pending disposal of the suit. On such a direction also being given by the appellate Court, the State agreed to the course suggested by the plaintiff for the appointment of a receiver. Accordingly a joint memo was filed to that effect by both parties in the trial Court on 11-2-1965. Thereafter the right to cut and appropriate the trees was auctioned under the supervision of Court and there were several bidders in the said auction. One S. Abdul Jabbar was the highest bidder who tendered to purchase the right for a sum of Rs. 24,001. This was accepted by the Court and after appropriating the poundage charge, a net amount of Rupees 23,500-48 was credited to the suit O.S. No. 90 of 1963 on the file of the Court of the Subordinate Judge, Mayuram. It is still remaining in Court deposit. According to the plaintiff, the amount in Court deposit is payable to him. As he was the highest bidder in the auction held by the District Forest Officer pursuant to Ex. A-1 and that, he having performed his part of the contract and that his bid having been accepted and as he was called upon to pay an additional security deposit also in conclusion of the said auction, the plaintiff was solely entitled to the amount in Court deposit, as the property in the goods have already passed to him notwithstanding the absence of a formal order of confirmation by the District Forest Officer and the supervening communication of the said order of confirmation to him. On the foot of such an alleged vested right in him, the plaintiff sought for permission to withdraw O.S. No. 90 of 1963 and file a fresh suit for the purpose of establishing his right to withdraw the sum of

Rs. 23,500.48 in Court deposit to the credit of O.S. No. 90 of 1963. The permission was granted. Hence the present suit after the plaintiff issued the usual notice Ex. A-9 dated 13-2-1967 u/s 80, C. P. C.

3. The 1st defendant's contention is that the District Forest Officer was only an agency to sell the Casuarina growth in the coupes in question and at no time did he act as a statutory officer to confirm the said bid even though he was the person who took a major part in the auction held on 18-11-1963, and there being no concluded contract either in the eye of law or in accordance with the conditions of sale as is seen from Ex, A-1, the plaintiff would not be entitled to claim the sum in Court deposit as he has no right or title thereto. It is said that the plaintiff might describe himself as the highest bidder, but he has not become the successful bidder in accordance with the terms and conditions of the Forest notification as the bids were not accepted by the competent officer. There is no lawful contract of sale, much less a concluded contract. Further, the plaintiff did not offer, nor was he called upon by the Department, to execute an agreement which is also equally imperative under one or the other of the conditions of the Forest notification and in the absence of such an agreement there is no concluded contract between the plaintiff and the State. As in law there could be no implied contract as between a citizen and the State and as such contracts by implication are ruled out by the operation of Article 299 of the Constitution of India, it is said that the plaintiff cannot lay any claim to the amount in Court deposit. It is also stated that the complainants who were responsible to move the Collector of Thanjavur and which movement ultimately resulted in a resale of the goods, did not in any way influence the Department as alleged by the plaintiff. What is stated is that fresh tenders were called for because it was felt by the Department as well as by the Collector, who was also a contemporary supervisory authority, that the bids secured at the auction held on 18-11-1963 were too low and that as public revenue was involved it was felt desirable and expedient that a fresh auction should be held. One other contention of the defendants is that in the earlier action the plaintiff did not pray for a declaration, but sought for only a bare injunction and the plaintiff himself having agreed to have the coupes sold once again in Court by consent is estopped from claiming the amount in Court deposit which belongs solely to the State Government. The 1st defendant who filed the written statement, which was adopted by the 2nd defendant, reiterates that the plaintiff is not entitled to any interest and that he was only entitled to a refund of the amounts paid by him at or about the time when he was declared the highest bidder in the auction held pursuant to Ex. A-1 and that refund orders were also made forthwith and it was the plaintiff who defaulted in withdrawing the said amounts and therefore no question of payment of interest on such amounts would arise. It is also stated that the suit was barred by time. Lastly it was contended that the suit notice u/s 80, C.P.C. was not proper.

4. On the above pleadings the following issues were framed:

1. Whether there was a concluded contract between plaintiff and defendants of the right to cut the trees in Bits Nos. 1 and 2 of the standing growth on suit properties and whether plaintiff became entitled to cut the trees and remove them?
2. If there was a concluded contract, is it not valid as contended by defendant?
3. Whether plaintiff is entitled to the sum of Rs. 23,500.48 in deposit in O.S. No. 90 of 1963 of this Court?
4. Whether plaintiff is estopped "from claiming the same?"
5. Whether the suit is not sustainable as the cause of action in this suit is different from that in O.S. No. 90 of 1963 of this Court?
6. Whether the suit is barred by limitation?
7. Whether the suit notice is not proper and valid?
8. To what relief is plaintiff entitled?"

On issue No. 4 the lower Court came to the conclusion that no question of estoppel would arise as in the earlier action he could only ask for an injunction and not for a declaration. On issue No. 5 it held that part of the cause of action has arisen only after the Court auctioned the coupes by consent of parties and that it was only on 11-2-1965 the parties agreed jointly to have the standing growth on the coupes to be sold and that gave the cause of action for the plaintiff to institute the action. On issue No. 6 it found that the suit was in time, that the plaintiff filed it within three years from 27-3-1965 when the properties were sold. On issue No. 7 the lower Court was of the view that the notice u/s 80, C.P.C. was in order. On issues 1, 2 and 3, the lower Court came to the conclusion that there was a concluded contract between the plaintiff and the defendants of the right to cut the trees in two lots and that the plaintiff became entitled to cut the trees and remove them and in consequence the plaintiff was entitled to withdraw the sum of Rs. 23,500.48 which was admittedly in Court deposit. It also decreed the suit for the recovery of the sum of Rs. 1,420 which was admittedly the security deposit which the plaintiff deposited at the time of the first auction. It did not, however, grant interest, but gave interest for the period subsequent to the decree. It is as against this the present appeal has been filed.

5. Mr. Kumaraswami Pillai, learned Assistant Government Pleader, contended that on a close and careful scrutiny of the conditions of sale, as also the practice prevailing in the Department in the matter of the said auction, it cannot be said that there was a concluded contract which perforce compelled the State to recognise the plaintiff as the owner of the trees and in consequence the person entitled to the amount now in Court deposit. He filed certain documents in C. M. P. No. 4476 of 1974 at the time of the hearing of this appeal and sought for permission for their reception. This was opposed. The affidavit in support of this application was filed by the District Forest Officer who conducted the auction and

who had already retired about five years before. Whilst setting forth the practice which prevailed in this district and in other districts when such auctions take place under the auspices of the Forest Department, the District Forest Officer alleged that even though auctions are conducted by the District Forest Officer himself and he had the command on the day of auction and accepted amounts from the highest bidder showing that he was so or received amounts by way of security deposit as per the other clauses in the Forest notification, yet it is customary and usual for the Department to follow up such an auction by issuing a memorandum to the effect that the sale of the right to remove the forest property has been confirmed. On the strength of this the practice prevailing in the Department is put forth to the forefront. We see no reason to reject the application of the learned Assistant Government Pleader. Certainly it would have been better if these documents were brought to the notice of the trial Court, so that it could have by itself appreciated independently the force and effect of these exhibits. But that by itself does not prompt us to reject the request of the learned Assistant Government Pleader, for, by exhibiting such documents at this stage after giving an opportunity to the other side, we feel that justice could be furthered and done to both parties. If on the sole ground of delay the application is rejected, it would result in not only hindering justice but would be to perpetrate an irregularity in that we would be avoiding the scrutiny of acceptable material which might have an impact on the real question in issue. For these reasons we allow C. M. P. No. 4476 of 1974.

6. We may at once dispel certain misgivings in the minds of the parties to this litigation regarding the notification and applicability of Article 299 of the Constitution of India. Article 299 itself provides for contracts made on behalf of any State being executed on behalf of the Governor of the State by such person and in such manner as he may direct or authorise. The question, therefore, is whether the District Forest Officer or the Conservator of Forests, as the case may be, is one of the authorities who has been authorised to enter into such contract or enter into such negotiation leading to such contract. The Forest Manual has been produced before us, to which learned counsel for the respondent had also recourse, which suffered revision from time to time. But in so far as contracts in matters connected with the administration of forests and with the business of the Forest Department generally were divided into two classes. The first one is those in which the Department was engaged to extract and supply certain produce to purchasers and the second class of contracts related to those in which the Department sold to purchasers the right to extract certain produce for themselves. It was made further clear in the Forest Manual of 1916, Third Edition, that the contracts under class 2 would also include contracts to remove forest produce as well. In or about 1916 contracts not exceeding Rs. 3,000 would be entered into and dealt with by approved District Forest Officers; and contracts not exceeding Rs. 1,500 by other District Forest Officers. But contracts above these limits should be entered into and dealt with by the Conservator of Forests. In 1927 the instructions remained the same. In 1941 three classes of contracts

were created; but we are not, however, concerned with the third class. In so far as the suit matters are concerned, the position remained the same. Uniformly in all these instructions it was made clear that the Officer empowered to make a contract will finally decide on his own responsibility in regard to each contract. He could, however, take advice from his superiors. This would mean that even though he had the right to participate as the auction officer, if he so chooses, he had also equally the right to refuse confirmation after having received the highest bid from the highest bidder for reasons which he need not disclose. We shall presently consider this aspect with reference to the conditions of sale also. In 1954, under the Madras Financial Code, Volume I, Clause 51 it was imperative on the part of every Government servant who enters into a contract on behalf of the Government to be responsible for strictly enforcing the terms of the contract and for seeing that no act is done that would tend to nullify or vitiate the contract. Again in the Madras Financial Code, Volume II, corrected upto 31-7-1953, the list of authorities empowered to execute contracts, deeds, etc., on behalf of the Governor of the State was enumerated, it runs as follows;--

"Under Article 299(1) of the Constitution of India, the Governor has directed the under mentioned classes of deeds, contracts and other instruments shall be executed as follows:

By the Chief Conservator of Forests, Conservators of Forests, Collectors of Districts, Deputy Conservators of Forests; Assistant Conservators of Forests, the Forest Engineer and Rangers".

5. Contracts and other instruments relating to the Forest Department (subject to any limits and conditions) fixed by departmental order P.

Again we have in the Madras Forest Department Code an enumeration of the duties of officers and office business. In Clause 67 (1) of the Madras Forest Department Code, corrected upto October, 1941, it is said that the District Forest Officer is responsible for the general management of the forest situated in his division and (possesses direct control over the forest establishment employed therein. It is also provided that the Collector as the head of the district possesses general supervision over the District Forest Officer who shall, pending any reference to higher authority, obey any orders which the Collector may issue and that the Collector may call for any paper or any information from the District Forest Officer. With the above background it is seen that the contention of the State that the contract is not in full compliance with Article 299(1) is not acceptable. In fact, under the manual of instructions, the District Forest Officer is one of the authorities who is empowered to negotiate and forge contract, but in accordance with the prescribed conditions and it was this which was attempted by the District Forest Officer in the instant case when he auctioned the growth in the coupes pursuant to Ex. A-1. As was pointed out by the Supreme Court in Union of India (UOI) and Others Vs. N.K. Private Limited and Another, :

"Though the words "expressed" and "executed" in Article 299(1) might suggest

that it should be by a deed or by a formal written contract, a binding contract by tender and acceptance can also come into existence if the acceptance is by a person duly authorised on this behalf by the President of India. A contract whether by a formal deed or otherwise by persons not authorised by the President cannot be binding and is absolutely void."

No doubt the District Forest Officer is one of the authorised Officers to forge a contract. But the question is whether the acceptance of the highest bid by the District Forest Officer and the receipting of the said amount as having been accepted by the State as the bid amount of the highest bidder, and also the receipting of security deposits which could be called for under the conditions of sale by the auction officer, by themselves would create a concluded contract of sale.

7. For this purpose it is necessary to scan the various provisions of the Forest notification and ultimately find whether by any act of omission or commission on the part of the District Forest Officer, a concluded and legally enforceable contract was entered into between the parties.

8. We shall refer to the salient clauses in the Forest notification in question. The right to remove the standing growth from the coupes was to be sold in public auction by the District Forest Officer, Thanjavur division, or by an officer deputed for the purpose. Under Clause 5 a solvency certificate as prescribed has to be produced by the intending bidders. Clause 5 (d) says that if the bidders do not produce solvency certificates at the time of the sale, they will be allowed to bid at the auction provided they deposit as earnest money an amount of Rs. 1,000 before commencement of the sale. Such deposits of unsuccessful bidders would be returned after the sale is concluded. The successful bidder should, however, pay the full sale amount, and the security deposit as provided in Clause 19. If the successful bidder fails to pay the full sale amount and the security deposit as prescribed after the conclusion of the sale, the earnest money will be forfeited and the coupe resold at his risk. Sub-clause (j) of Clause 5 provides for an alternative in lieu of the solvency certificate. Clauses 6 and 7 refer to the production of sales tax clearance certificate and the Income Tax clearance certificate in cases where the sale amount of the coupe exceeds Rs. 1,000 and if the lease amount exceeds Rs. 10,000 respectively. Discretion is given in clause 3 to the District Forest Officer or other officer authorised to conduct the sale to accept any deposit from any intending bidder. Clause 13 reads as follows:--

"The sale is subject to confirmation by the District Forest Officer, Thanjavur or the Conservator of Forests, Coimbatore as the case may be, who reserves to himself the right to reject any bid including the highest bid without assigning any reason for so doing. Subject to the right of the District Forest Officer or the Conservator of Forests to reject any bid without assigning any reason therefore, and subject to the fact that the condition of the sale notice have been fulfilled, bidders are warned that the highest bid will be accepted. Even though the bids are absurdly high, sales will not, on this account, be refused confirmation nor will

there be any scaling down of the bid nor sale by negotiation at a lower figure". Clause 15 runs as follows:--

"The sales list shall be signed by the highest bidder and also by any other bidder, if he is asked to do so, immediately after the sale is knocked down and a certificate must be appended thereto by them to the effect that they have read and understood the conditions of the sale notice, supplemental conditions that may be prescribed at the time of sale and the conditions of the agreement and that they agree to abide by them. A sample form of the agreement will be exhibited at the time of sale. The conditions of the sale notice and any supplemental conditions that may be prescribed at the time of sale will be read out and explained and any other information required will be given at the auction time., and the intending bidders will be required to sign the sale notice in token of their having accepted the conditions mentioned above. All modifications and concessions shall be discussed and settled before the sale commences."

The conditions set out in the notification are to be deemed to form part and parcel of the agreement contemplated in Clause 15. Clauses 18 and 19 refer to the method by which the successful bidder of the coupe deposits the sale amount as prescribed therein. Clause 19 is the clause where under the successful bidder is bound to deposit, in addition to the sale amount, a security deposit, and it compels him to execute an agreement within ten days of the receipt by him of the order confirming the sale in the prescribed form.

On a fair reading of these clauses it is clear that a distinction is made between the highest bidder and the successful bidder at such auctions. The plaintiff could only claim to be the highest bidder. Though in certain clauses the expressions "highest bidder" and "successful bidder" have been interchange, yet we are of the view that, having regard to the substance of the agreement, though not form, the notification does make out a distinction between the "highest bidder" and "successful bidder". A successful bidder should be deemed to be one to whom a communication has been sent by the appropriate officer intimating him of the order confirming the sale in the prescribed form. Clause 19 makes this very clear. Until, therefore, a confirmation of the sale is sent, persons like the plaintiff can only be pigeon-holed in the compartment of "highest bidder" whose bid may or may not be accepted (see Clause 13). A "successful bidder" would be one who was not only the highest bidder, but also one who has paid the sale amount and the security deposit and a person to whom an intimation as to confirmation of the sale has been sent and who is ready and willing to execute an agreement as provided in Clause 19 within ten days of the receipt of the order of confirmation.

9. Bearing the above distinction in mind the argument of Mr. M. S. Venkatarama Iyer has to be considered Strong reliance was placed upon the text Of Ex. B-3 wherein the language deployed by the auctioning officer was to the effect that the sale has been knocked down in the name of the plaintiff in respect of the two coupes and that the security deposit has also been collected as prescribed. What

was urged before us was that the plaintiff signed as highest bidder in Ex. B-3 after having been apprised that the sale has been confirmed in his favour, it is singular in this case that the plaintiff did not even go into the box to say that such was the purpose and intent when he appended his signature to Ex. B-3 as highest bidder. There is intrinsic evidence in Ex, B-3 itself to show that the signature of the plaintiff was taken only as highest bidder, and not as the successful bidder. The dichotomy between the two expressions "highest" and "successful" has been maintained and kept up from the beginning of the issue of the notification till it reached its normal end. The record made by the District Officer in Ex. B-3 is only to the effect that it was he who conducted the auction and that the plaintiff was the highest bidder and that the sale was knocked down in his name, he having paid the full sale amount as also the security deposit called for. But this does not, however, take us any further to infer unequivocally that there was a concluded contract as between the State represented by the District Forest Officer and the plaintiff. The salient feature which is given the go-by in the instant case is that it is imperative in all circumstances for the District Forest Officer or the Conservator of Forests, who are the officers named in the contract or any other officer duly authorised in that behalf to confirm the sale in a manner administratively known. As a matter of fact, clause 15 says that the sale list shall be signed by the highest bidder after the sale is knocked down and a certificate should also be appended thereto by them to the effect that they have read and understood the conditions of the sale notice, as also the supplemental conditions that may be prescribed at the time of sale and the conditions of the agreement to be executed by them as provided in this Clause and Clause 19. As required under Clause 19, no order confirming the sale has been communicated. Therefore, it is clear to our mind that Ex. B-3 which is the main document relied upon by Mr. M. S. Venkatarama Iyer for the purpose of making out a case of a concluded contract between the plaintiff and the State in the above circumstances does not appear to be tenable or fair.

10. It is in this conspectus that the additional documents produced before us by the State at the appellate stage, which, we have allowed, gain importance. Beyond reasonable doubt, it has been established before us that Ex. B-3 is only the formal form prescribed under the Forest notification which introvertically makes a record of contemporaneous events which include mentioning of the various bidders who participated in the auction, the amounts for which they bid, the price at which the lot was knocked down in favour of the highest bidder and how the sale was provisionally confirmed in the name of the highest bidder. The more important aspect which is seen from the practice prevailing in the department is that after making such a record of contemporaneous events on the date of auction, a memorandum invariably is issued by the authorised officer, may be the District Forest Officer or the Conservator of Forest, informing the highest bidder that the sale has been confirmed in his favour. We may express the view that precedents do not only have a binding force in law, but equally have such a value even in the course of administration. The fundamental rule is

that even when guidelines are set for administrative action, there should invariably be uniformity unless the exigencies of circumstances requires otherwise. Of course, care has to be taken to see that uniformity does not degenerate into a line of least resistance. As in judicial doctrines, so in administrative actions; decisions taken and acts performed by the executive under similar circumstances are normally uniform. Any tinkering or deviation in the acceptance and working of the age-old practice is fraught with danger, as automatic acceptance of such a change might affect vested rights. It is a common and an equitable rule too that if anything analogous has happened before, then it is desirable to proceed on the same lines. If we bear these fundamental principles in view and particularly the rule of uniformity as of universal application unless there are compelling reasons to deviate there from, then we have no hesitation to find that the practice in the Forest Department is that notwithstanding the fact that the District Forest Officer himself is the auctioning officer, and he declares a particular person as the highest bidder and issues a certificate to that effect after receiving both the sale amount and the security deposit, yet by such an act of commission on the part of the District Forest Officer it cannot be said that everything is at an end and a concluded contract of sale has been forged as between the State on the one hand and that person on the other. Under the Contract Act, all agreements which are legally enforceable are contracts. The question for consideration is whether the plaintiff at the stage when he has become the highest bidder and not the successful bidder as contemplated in the Forest notification can claim to have gained a vested right to enforce the so-called contract which, according to him, was concluded at or about the time when the sale has been knocked down in his favour by the District Officer. Mr. M. S. Venkatarama Iyer's contention is that he has secured such a right. He would go to the extent of stating that as it is an open auction and as the plaintiff has become the highest bidder, it cannot be set aside unless an order of rejection is made by the District Forest Officer. This would be begging the question. The option to reject the highest bid of the plaintiff would arise only if there is further processing before concluding the contract. When there is no concluded contract and so long as that highest bid is subject to further processing and acceptance by the District Forest Officer or the Conservator of Forests, as the case may be, and if it is also imperative as is seen from the language of Clauses 15 and 19 that an order of confirmation should be sent by the auctioning officer or other authorised officer to the bidder, then something more has to be done in the instant case so as to complete the link and make it a completely forged and legally enforceable contract. Under Clause 13, the sale is subject to confirmation by the District Forest Officer or the Conservator of Forests, as the case may be, who reserves himself the right to reject any bid, including the highest bid, without assigning any reason for so doing. It is also made clear that the highest bid is accepted only subject to the above features. This unambiguous language in Clause 13 is also a pointer to the effect that the nomenclature "highest bid" has a meaning different from "successful bid" and that "highest bid" has to be further accepted and it is only

on such acceptance it becomes a "successful bid". As long as there is no acceptance by the District Forest Officer and so long as such a communication was not sent and receipted by the plaintiff as stipulated in clause 19, we are of the view that there is no "scope for holding that there was a concluded contract of sale of goods by the State through its authorised officer to the plaintiff on the date when the auction was held and when the plaintiff was declared as the highest bidder. From the trend of events that happened it is seen that we would be encouraging unjust enrichment if the plaintiff were to be allowed to take the amount in Court deposit pursuant to a contract which obviously did not give him any right which could be enforced in a Court of law.

11. It is also necessary at this stage to refer to the various instructions given to the Forest Department by the Government of Madras under the Forest Codes already referred to. Suffice it for our purpose to refer to the instructions given in page 31 of the Madras Forest Department Code (corrected upto October, 1941) which refer to the duties of officers and office business. u/s 67 therein, the District Forest Officer is made responsible for the general management of the forest situated in his division and the Collector as the head of the district, possesses general supervision over the District Forest Officer who shall, pending any reference to higher authority, obey any orders which the Collector may issue. We have already referred to the fact that the Collector on receipt of some intelligence about the low bid for the coupes in question passed on the said information to the District Forest Officer under Ex. B-6 for urgent remarks. Obviously, therefore, the auction in question was not a normal one, but which provoked a further investigation or probe due to the supervening complaints by third parties including public men. The Collector, therefore, in exercise of his prerogative, desired that matters should be set right. It was in those circumstances that the District Forest Officer positively acted and never communicated to the plaintiff about the acceptance of the bid. We have already made it clear that until such a letter of acceptance was sent, the subject-matter could only be dealt with as being in the region of an offer which has to be accepted by the appropriate authority to result in a concluded enforceable contract. We are unable, therefore, to accept the argument of Mr. M. S. Venkatarama Iyer that in the instant case there was a concluded contract. The learned trial Judge fell into an error when he expressed the view that later events were taken into consideration by the officers which resulted in the non-acceptance of the highest bid. It is common ground that under Ex. B-7 which is an office note made by the Divisional Forest Officer, he categorically noted that he was not accepting the bid and that he was arranging for a re-auction. The learned trial Judge was of the view that it was mandatory on the part of the Divisional Forest Officer to intimate the essence of the above office note to the plaintiff and put him on notice that his bid was rejected. We searched in vain the various clauses in the Forest notification in support of the conclusion of the trial Judge that it was obligatory on the part of the Divisional Forest Officer to intimate to the plaintiff that his bid was rejected. The only obligation, contractual

as well as legal, appears to be that he should send a communication when he accepts the highest bid and call upon the highest bidder to become the successful bidder by executing an agreement in the prescribed form. It is common ground that no such agreement has been entered into either. This is a notable lacuna in the case of the plaintiff. One other reason why the learned trial Judge came to the conclusion that the contract was concluded between the plaintiff and the defendants is that the Divisional Forest Officer retained the bid amount and the security deposit amount without immediately causing a refund of the same to the plaintiff if his bid was not accepted. The auction was on 18th November, 1963. The Collector communicates about the complaint received by him from Sri C. Muthiah, M.L.C and another competitor, by his letter dated 23-11-1963. The Divisional Forest Officer, on 23-11-1963, acts on the said information and was satisfied that the highest bid ought not to be accepted by him and on 29-11-1963 he calls for fresh tenders from the public in the matter of the sale of the forest growth in question and soon thereafter on 9-12-1963, under Ex. B-8, intimates the plaintiff that he could come and take back his sale amount and the security deposit amount. In actions concerning Government Officials, more precision cannot be expected. In fact, within a month from the date of auction the officer has made it clear to the plaintiff that he could take back the amounts deposited by him, which obviously means that he was not prepared to accept his highest bid for which the sale was knocked down on the relevant date of auction. We are therefore unable to agree with the learned trial Judge that the District Forest Officer made a belated offer of refund and that itself is another indication to confirm the plaintiff's view that the contract is concluded. In the case reported in Maddala Thathiah Vs. Union of India (UOI), the facts were entirely different. After calling for tenders and accepting the same the railway authorities placed a definite order for supply of goods pursuant to such acceptance of tender. In those circumstances Rajamannar, C. J. and Panchapakesa Iyer, J., held that the railway has committed a breach of contract when they cancelled the "balance of quantity outstanding under the contract and desired that the plaintiff should treat the contract as cancelled. In the instant case we have not reached that stage at all. The salient features in this case are that the plaintiff was the highest bidder and he was one who paid both the sale amount and the security deposit. But he did not receive any communication in writing about the acceptance of the bid, nor is it his case that he executed any agreement as specifically called for under the Forest notification; if these are the, admitted facts in the instant case, we are of the view that the District Forest Officer still had the right not to accept the bid. He may have myriad reasons for not accepting. But once the bid is not accepted as the facts and circumstances of the case prove, the plaintiff can have no cause of action at all.

12. Mr. M. S. Venkatarama Iyer thereafter relied upon Ex. A-7 to sustain his case, Ex. A-7 is the certified copy of the order in I. A. No. 787 of 1963 in 6. S. No. 90 of 1963. The learned Judge was constrained to grant an injunction restraining the State from proceeding with the sale as notified by the officer and

contemporaneously gave an advice to the plaintiff to apply for the appointment of a receiver to sell the forest growth obtained from the coupes. What was urged before us is that at that stage if the Government was a party to the appointment of a receiver for the sale of the Casuarina, then it should be understood that the Government accepted that there was a contract and that the property in the goods passed to the plaintiff, and that therefore they had no right in the goods. With respect to the learned counsel, we are of the view that this is a far-fetched contention. The joint memo filed by both the State and the plaintiff for a sale of the coupe property projected a bilateral interest of both the parties over the situation and which did not have the effect of creating any right in either of them. It was only a measure adopted by the parties under directions of Court so as to safeguard the interests of all concerned. The fact that an injunction was granted restraining the State from proceeding with the tenders by then called for, for which purpose alone O.S. No. 91 of 1963 was filed, does not by itself create any vested right in the parties. It is in this way we are of the view that the order Ex. A-7 relied upon by Mr. M. S. Venkatarama Iyer cannot be availed of by the plaintiff to pursue the present action which is essentially one for a declaration that he is the owner of the property which was the subject-matter of the auction and that he is entitled to follow up his rights by laying his hands on the proceeds of such a sale.

13. Incidentally Mr. M. S. Venkatarama Iyer raised the question that the facts and circumstances of this case raises a presumption that the property in the goods has passed to the plaintiff when he was declared as the highest bidder. No doubt it is accepted law that on the fall of the hammer a contract of sale is concluded invariably in an auction sale. But this is only a prima facie presumption. This can be set at naught by establishing a manifest intention on the part of the parties to the said auction which would prevent an automatic application of the rule. The passing of title on the fall of the hammer may be an accepted practice in the case of ordinary auctions. But in a peculiar auction of the kind before us one has to gather the intention of the parties by meticulously invoking each and every condition under which the auction was so held. Whether the fall of the hammer or as in this case the acceptance of the highest bid would amount to absolute acceptance or provisional acceptance or conditional acceptance of the offer made by the bidder is a matter which has to be adjudged with reference to the facts of each case and in particular to the conditions and stipulation under which the auction by the department of a State is undertaken. It is by now the accepted principle that the guiding or the controlling factor to determine whether a sale is concluded in all its aspects and particularly whether an auction sale which is subject to certain specified conditions has protected a concluded contract of sale depends upon the intention of the parties which has to be gathered from the circumstances and in an auction sale from the conditions under which the auction is held. The ordinary and well accepted rule of construction in all contracts which are reduced to writing is that such writing should be the primary guide for interpreting the contract and the

intention of the parties has to be gathered from the matter as well as the spirit of such a written contract. It is also well established that in all such contracts reduced to writing, effect has to be given, unless there are compelling circumstances otherwise, to each and every word used in the said contract, and thus harmoniously and grammatically interpret the entirety of the contract according to the natural and ordinary meaning of the words deployed therein. The only exception in such cases is when there is a clear, unambiguous and manifest intention on the part of the parties to depart from such a natural and ordinary meaning of such words. No doubt, when the terms and words used in a contract are incomplete by themselves or ambiguous in their scope and understanding, then it is possible for Courts to find the sense and spirit of the contract and thereafter liberally Interpret them so as to avoid any absurdity or uncertainty in analysing such a contract. We are not in the instant case confronted with any such ambiguity or uncertainty. The words and the conditions in the Forest notification are clear. A strict interpretation therefore is called for in the instant case. Non-compliance with any one or more of the conditions so expressed in the contract would necessarily lead to the conclusion that the contract is not concluded though the hammer has fallen in the auction.

14. The other aspect which is connected with this argument is whether there has been an absolute acceptance of the contract. Strong reliance was placed by Mr. M. S. Venkatarama Iyer on the judgment of Satyanarayana Rao, J., in the *The Rajanagaram Village Co-operative Society Vs. P. Veerasami Mudaly*, . There the learned Judge dealt with ordinary auctions and in the course of the discussion quoted the observations of the learned Chief Justice in *Somasundaram Pillai Vs. The Provincial Government of Madras*, . The observations are to the following effect:

"An absolute acceptance is where the sale officer, or the auctioneer, as the case may be is given full authority to accept a bid unconditionally. A provisional acceptance means that the auctioneer had only a right to receive the bid and pass them on to his superior who is the final authority to confirm and conclude the contract. In that case, the auctioneer acts merely as a sort of conduit pipe to convey the highest bid to the superior. Conditional acceptance has the effect of binding the highest bidder to the contract if finally there is the approval or confirmation by the superior person indicated in the terms of sale. He cannot resile from the contract. It is not open to him to withdraw the offer as in the case of a provisional acceptance and if there is approval the contract becomes concluded and becomes enforceable. No further communication of the approval is needed as there is already a conditional acceptance when the bid was accepted."

Based on the above observations it, was said that in the instant case there had been a conditional acceptance and therefore there was no need for any further communication of the approval. This general principle is not of universal application when the parties bid at an auction which is subject to certain specified conditions. When the District Forest Officer did was only ministerial in

that he knocked down in the bid in favour of the plaintiff and accepted him as the highest bidder. The receipt of the security deposit is one further step in the same direction and does not throw any conspicuous light on the situation, as neither expressly or by necessary implication the District Forest Officer announced his acceptance of the highest bid. He reserved for himself his right to approve of the bid as this enabling power was available to him under the conditions of the notification. This power could be exercised by him after striking the hammer as well. He did not communicate his acceptance and take a contract in writing as required in the notification. In the instant case, therefore, the facts project only an inchoate contract towards which something more had to be done so as to make it a binding enforceable and concluded contract.

15. In the above circumstances we are unable to hold that the property in the goods in question did pass to the plaintiff on the fall of the hammer. The property therefore remained as the property of the Government. The subsequent treatment of the property in the auction field by the receiver appointed by Court in O.S. No. 90 of 1963, is, therefore, to be understood as a treatment of the property of the Government and not that of the plaintiff. The parties agreed mechanically for the appointment of a receiver and the sale of the property in a Court auction. But that was obviously without prejudice to the rights of either party. That does not throw any light upon the Court order, or on the right each party held towards the forest growth in the coupes in question.

16. We are therefore unable to agree with the learned trial Judge when he found on issues 1 to 3 and held that the plaintiff is entitled to the sum of Rs. 23,500.48 in deposit in O.S. No. 90 of 1963 on the file of the Court of the Subordinate Judge, Mayuram. Regarding the claim for a refund of the sum of Rs. 1,420 being the security deposit made by the plaintiff under Exs. A-4 and A-5 on 18-11-1963 the plaintiff is certainly entitled to it. As a matter of fact, the District Forest Officer made it clear in his proceedings under Ex. B-8 that the unsuccessful bidder might take back the sale amounts as well as the security deposits. The State of Madras in the written statement have admitted that the plaintiff is entitled to a refund of the sum of Rs. 1,420 deposited by him as security along with the amount of Rs. 9,425 which he has deposited as sale price. The claim made by him is this suit as if the plaintiff was denied such a right and that he was forced to institute an action for its recovery obviously is misconceived. We however, make it clear that the plaintiff would be entitled to a refund of the sale price and the security deposit and it is expected that the State would as expeditiously as possible refund the same. The plaintiff, however, would not be entitled to any interest on those amounts as the orders for refund of the amount, as was pointed out even by the learned trial Judge, was made as early as December, 1963.

17. The appeal is therefore allowed with costs in this Court only.