State Of Madhya Pradesh And Anr. vs Firm Gobardhan Dass Kailash Nath on 7 March, 1973

Equivalent citations: AIR1973SC1164, (1973)1SCC668, AIR 1973 SUPREME COURT 1164

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Bench: J.M. Shelat, Y.V. Chandrachud

JUDGMENT

J.M. Shelat, J.

1. The main question arising in these appeals, by certificate obtained from the High Court of Allahabad, is whether, on the facts and circumstances of the case, a concluded contract could be said to have been arrived at between the respondent firm and the Chief Conservator of Forests, Vindhya Pradesh for and on behalf of that State.

2. By a notice, dated August 27, 1953, the Chief Conservator of Forests invited tenders for the purchase of certain lac and lac products, the quantities whereof were set out therein. The conditions of sale, subject to which the said tenders were to be made, were as follows:

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> 5. 25 per cent of the purchase price shall be deposited in cash or G.C. notes immediately after the close of sale.-
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> 6. The sanction of the Government of final bids will be given at the spot.
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> 7. All lac purchased must be removed within one month and on full payment; credit will be given on 25 per cent deposit. The lac will remain at the godowns at the risk of the purchasers after the sales are finished.
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> 8. In case of default of payment of balance within one month the 25 per cent deposit shall be forfeited and the Government may resell lac in which case loss not recovered by the deposit will be recovered from defaulters....

These conditions were announced at the time of the sale.

3. The respondent-firm submitted tenders for two areas, for Rs. 3,80,000 relating to Umaria Division and Rs. 7000/- for Chhatarpur Division. These tenders, being the highest, were accepted for and on behalf of the Chief Conservator of Forests. Though the respondent-firm had to deposit 25 per cent of the aforesaid two amounts, it deposited two sums only, namely, Rs. 7000/- and Rs. 500/- and asked for a week's time to pay the balance of the said 25 per cent initial deposit.

4. The respondent-firm having failed to deposit the balance of the said initial deposit of 25 per cent as also the remaining 75 per cent of the purchase price within time, the Forest authorities served upon the firm a notice dated March 7, 1962 to the effect that the said goods would be resold, and the deficit, if any, would be claimed from the firm. Since the respondent firm persisted in their said default and did not take delivery of the said goods, the lots relating to the Umaria and Chhatarpur Divisions were resold respectively for Rupees 1,88,000 and Rs. 3500. The difference between the price at which the tenders were accepted and the price recovered as a result of the resale came to Rs. 139,000 and odd. The Forest authorities thereafter sent a certificate to the Collector of Mirzapur to recover the said difference as arrears of land revenue, purporting to do so under Section 82 of the Indian Forest Act, 1927, and the Rewa State Forest Contract Rules, 1935 relating to such tenders.

5. The respondent firm thereupon filed two writ petitions in the High Court raising three contentions, viz., (1) that the said transaction did not result into a concluded contract between the respondent firm and the State of Vindhya Pradesh, (2) that the said Forest Rules did not apply, and (3) that the said difference of Rs. 1,39,000 and odd did not amount to arrears of land revenue as neither Section 82 of the Forest Act nor the said rules applied. Those contentions were rejected by a learned Single Judge who heard the said writ petitions and the two writ petitions, were consequently dismissed. In a special appeal against the said judgment and order, a Division Bench of the High Court did not decide the first and the Second contentions. The Division Bench assumed that there was a concluded contract, but held that the amount claimed by the appellant State was in the nature of damages recoverable under Section 54 of the Sale of Goods Act and not as the balance of the price of the said goods, nor could it be the arrears of land revenue under Section 82 of the Act and Rule 30(3)(b) of the said Rules. On this reasoning, the High Court allowed the writ petitions, reversing the decision of the learned Single Judge. The appellant State filed an appeal in this Court under a certificate granted by the High Court. During the course of the hearing of that appeal, counsel for the State drew the attention Of the Court to Clause (e) of Rule 30(3) of the said Rules introduced therein in 1939, that is, long before the said tenders were offered and accepted. Under that clause, the State could recover as arrears of land revenue the difference between resale price and the price offered in the tenders. In view of the provisions of the said Clause (e), this Court considered a decision on the first two contentions urged by the respondent-firm in their writ petitions and left undecided by the High Court as necessary. The reason was that unless the acceptance of the said tenders resulted into a concluded contract, the said difference could not be recovered as arrears of land revenue even under the said Clause (e). This Court, therefore, remanded the case to the High Court for a decision on the said two contentions.

6. On remand, the High Court came to the conclusion that (1) there was no concluded contract between the respondent firm and the State of Vindhya Pradesh, (2) that being so, there was no question of termination of any such contract or of claiming any amount due or payable thereunder

or under Rule 30(3)(e) of the said Rules, and (3) therefore, the amount of Rs. 1,39,000 and odd was not one which could be claimed or recovered as arrears of land revenue. In this view, the High Court allowed the writ petitions.

7. In our opinion the conclusions arrived at by the High Court on the facts and circumstances of the case were correct and require no interference from us.

8. The undisputed facts are that in response to the notice issued by the Chief Conservator the respondent firm offered their tenders for the purchase of the said forest products. Its tenders being the highest, they were accepted for and on behalf of the Chief Conservator. However, the tenders were, as aforesaid, made subject to the said conditions of sale and to such of the rules made by the then Rewa State as were applicable. Before the said tenders could be said to have ripened into a concluded contract, they had not only to be accepted but also sanctioned by the Chief Conservator for and on behalf of the State.

9. The conditions, subject to which the said tenders could be validly made, were that the person making such a tender had to deposit on the spot 25 per cent of the purchase price as the initial deposit and the final bid, if accepted, had to be sanctioned by the Chief Conservator at the spot. Condition 8 then provided that the balance of the price, that is to say, the remaining 75 per cent of such price, had to be paid within one month from the date of the purchase. If the person making the tender failed to pay the remaining balance of 75 per cent of the price, the State would be entitled to forfeit the initial deposit of 25 per cent and to resell the goods and recover the deficit, if any, from the purchaser. Conditions 5 and 6 were conditions of sale subject to which a tender could be validly accepted and sanctioned by the Chief Conservator. There was no proof, by way of anything in writing, to show that such a sanction was in fact given. There was equally no proof that the Chief Conservator had the authority to waive the conditions, subject to which only tenders could be validly accepted and sanctioned. In the absence of the initial deposit of 25 per cent of the purchase price having been made on the spot, the tenders could neither be validly accepted nor sanctioned by the Chief Conservator. In the absence of any authority to waive the said conditions, there was no valid acceptance or sanction of the said tenders. The true position, therefore, was that the offering of the said tenders by the respondent firm and their purported acceptance by the Forest authorities never ripened into a concluded contract. Further, the rules defined a forest contract and required that such a contract had to be in writing and in the prescribed form. It was contended that the prescribed form was such that such a contract could not fit in in any such form. That undoubtedly is so. But that only meant that the prescribed form would not apply, and would not mean that the rest of the rule requiring the contract to be in writing could not apply. It is not disputed that the contract in question was not in writing.

10. The conclusion that the offer and the purported acceptance of the said tenders did not result in a concluded contract is strengthened by a perusal of all the conditions of sale as a whole. When so read, they disclose that when a person offered a tender he had to deposit on the spot 25 per cent of the purchase price offered by him therein. The tender could not be accepted, much less sanctioned, unless such an initial deposit was made on the spot. Neither the said conditions nor the rules provided for waiving the condition of having to make the initial deposit of 25 per cent on the spot or

for extending time for making such initial deposit. The next stage provided by the conditions was that the remaining balance of the price, that is, the remaining 75 per cent of the price, had to be paid within one month from the date of the acceptance and sanction of the tender. Condition 8, therefore, provided as a consequence of Condition 5, that in the event of default by the purchaser in payment of the remaining balance of 75 per cent of the price, the State would become entitled to forfeit the initial deposit of 25 per cent already made and to resell the goods in question and claim the difference between the contract price and the resale price. Such difference would become payable by reason of Rule 30(3)(e) and under Section 82 of the Forest Act as arrears of land revenue. Condition 8 thus postulated that upon a tender being opened, but before it was accepted or sanctioned, the initial deposit was made by the would-be purchaser and upon such deposit having been made, the tender could be accepted and sanctioned resulting into a concluded contract and the person so making the tender would become the buyer of the goods. No rule or order was brought to our notice which permitted the Chief Conservator either to waive Condition 5 or to extend the time for making the initial deposit. Indeed, there could not be any such rule. The reason is that according to these conditions the balance of the price, that is, 75 per cent of the price remaining unpaid, had to be paid within one month and the goods had also to be taken delivery of and removed within that period. This can only happen if the initial deposit of 25 per cent was made on the spot and the tender was thereupon accepted and sanctioned on the spot. On such acceptance and sanction, the person whose fender was accepted would become the buyer, in whom property in goods would vest and who, therefore, would take delivery and pay the balance of the price within one month, and who in default of payment of the remaining 75 per cent of the price would become liable to lose the initial deposit of 25 per cent of the price deposited by him earlier when his tender was accepted.

11. The initial deposit not having been made according to Condition 5 to which acceptance of the tender was subject, the purported acceptance was not a valid one, there was no concluded contract and therefore neither Conditions nor Rule 30(3)(e) became applicable. That being so, the High Court was right in its conclusion that the said amount of Rs. 1,39,000 and odd was not recoverable as arrears of land revenue.

12. The appeals fail and are dismissed with costs. Such costs to be one set of costs for both the appeals.