

## **Village Panchayat Of Jangareddigudem vs Kommireddy Narasayya on 28 July, 1964**

**Equivalent citations: AIR1965AP191, AIR 1965 ANDHRA PRADESH 191, (1965) 1 ANDH WR 176 ILR (1967) ANDH PRA 1252, ILR (1967) ANDH PRA 1252**

### **JUDGMENT**

Narasimham, J.

(1) This is an appeal under the Letters Patent against the judgment of Krishnarao, J. in S. A. No. 158 of 1959 by which he reversed the decree of the lower appellate Court and dismissed the suit. The plaintiff - the Village Panchayat of Jangareddigudem represented by its President - is the appellant.

(2) The suit was instituted to recover Rs. 3,683-2-0 with subsequent interest thereon, as the amount payable by the respondent herein under the auction held by the appellant on 10-3-1951 of the right to collect fees in weekly and daily markets and the cart stands of Jangareddigudem Panchayat Board for the year 1951-52.

(3) The relevant facts are these : The respondent was the highest bidder at the auction of the right to collect fees in weekly and daily markets and the cart stands in the Jangareddigudem Panchayat Board for the year 1951-52. The auction was held by the President of the said Panchayat Board on 10-3-1951 and knocked down in favour of the respondent for Rs. 4,150/-. The auction sale was confirmed by the Panchayat Board by its resolution dated 21-3-1951.

(4) Under the terms of the auction sale the highest bidder, who is the lessee, shall, within a week from the date of intimation of confirmation, pay a fourth of the bid amount and execute a muchilika on a stamp paper of the value of Rs. 1-8-0 and get it registered, bearing the stamp and registration expenses. In default, the President had the power to get the lease-hold right reauctioned without any further notice to the lessee. The initial deposit made by the defaulting lessee could be forfeited and any loss resulting from reauction could be realised from the defaulting lessee. The lease amount was payable in 12 equal instalments beginning from the date of the lease i.e. , from 1st April, for 9 months. The one-fourth sum of the bid paid towards deposit would be adjusted towards instalments due for the remaining three months.

(5) The Panchayat Board confirmed the bid and intimated its acceptance, but the respondent failed to deposit the one-fourth of the bid amount within the time allowed and execute the required muchilika. Nevertheless he exercised his right to collect the said fees from 1-4-1951 to 31-1-1952 ;

but he paid a sum of Rs. 984/ only on 17-7-1951 which was short of the required deposit. The Panchayat Board gave a notice Ex. B. 1 dated 29-12-1951 that his right was cancelled for having violated the conditions of the auction and calling upon him to pay the arrears of the instalments that were due from him. The respondent replied denying the allegations with the result that on 1-2-1952 the appellant reacquired the right for February and March, 1952. The Panchayat Board therefore filed the suit claiming the aggregate of the 10 monthly instalments in arrears for the period from 1-4-1951 to 31-1-1952 with interest thereon.

(6) The respondent opposed the claim pleading inter alia that he had revoked his bid prior to confirmation and that he did not collect the fees from 1-4-1951 to 31-1-1952 as alleged.

(7) The learned Subordinate Judge dismissed the findings that there was no concluded and enforceable agreement between the appellant and the respondent and even if there was, it was not valid as there was no registered lease as such and further that the respondent had not made any collections as alleged. He rejected the plea that the respondent had revoked his bid prior to confirmation by the Panchayat Board.

(8) The 1st appellate Court agreed with the trial Court that there was no concluded contract between the parties, and that even otherwise there was no valid and enforceable contract for want of a registered document as contemplated by S. 107 of the Transfer of Property Act and that there was no revocation of the bid as pleaded by the respondent, but disagreed with the trial Court and found that the respondent had collected fees during the period from 1-4-1951 to 31-1-1952. Consequently, the appellate Court held that the appellant was entitled to recover what was due from the respondent on the principle of quantum meruit giving credit to the deposit of Rs. 984/- made on 17-7-1951 and the initial deposit of Rs. 100/- made on the date of auction and Rs. 760/- realised by the resale of the right for the months of February and March, 1952. He therefore decreed the plaintiff's suit for Rs. 2306/- with interest at 12 per cent per annum from 1-2-1952 upto the date of the decree and 6 per cent thereafter till realisation. It awarded proportionate costs in both the Courts.

(9) In second appeal Krishna Rao, J. accepted the findings of fact of the first appellate Court but held that the requisites of Section 65 of the Indian Contract Act were not satisfied and that no relief could be given under Section 70 of the Indian Contract Act as there was no pleading invoking such relief. In the said view he reversed the decree of the 1st appellate Court and dismissed the suit with costs throughout.

(10) In the Letters Patent Appeal the said view of Krishna Rao, J. is challenged, and it is contended by the learned Advocate General that the applicant-plaintiff is entitled to relief under Section 65 or under Section 70 of the Indian Contract Act or under the principle of unjust enrichment.

(11) There is no controversy over the facts that the respondent was the highest bidder at the auction, that his bid was accepted and confirmed and that he was intimated to that effect. The respondent had also collected the fees, obviously exercising his right for which he bid at the auction; but a registered lease deed representing the terms was not executed. These are the basic facts which give rise to the question whether the Panchayat Board is entitled to recover a proportionate part of the

amount of the bid.

(12) We pause to notice here that the bid at an auction is an offer and by the acceptance thereof an agreement came into being within the meaning of Section 2 of the Indian Contract Act hereinafter to be referred as the Act. Under S. 2 (b) of the Act, a proposal, when accepted, becomes a promise, and under Section 2 (e) every promise and every set of promises forming the consideration for each other, is an agreement. The word 'proposal' used in the section is synonymous in English use with 'offer'. But as a registered document of lease was not executed, this was an agreement, the terms of which could not be enforced in law. Under Section 2 (g) an agreement not enforceable by law is said to be void. Under Section 2 (h) an agreement enforceable by law is a contract. With this clarification we may now peruse Section 65 of the Act which is in these terms :

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

The section deals with (a) agreements and (b) contracts. We are now concerned with an agreement. An agreement discovered to be void is one discovered to be not enforceable by law, and, the language of the section, would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void. Vide *Thakurain Harnath Kuar v. Indar Bahadur Singh*, 50 Ind Application 69 at pp. 75, 76 : (AIR 1922 PC 463 at pp. 404-405) (13) The respondent had collected the market fees in the purported exercise of his right under the agreement. When those essential are satisfied, then the respondent is bound to restore the advantage or to make compensation for it. The facts of the present case are covered by this particular provision. But Krishna Rao, J. took the view that Section 65 of the Act was not attracted as the respondent had collected the fees without executing the registered lease deed. He was of the view that the benefit or advantage of collecting the fees was derived by the respondent in contravention of the terms of the agreement. We do not think we can uphold the view that the respondent had made collections in contravention of the agreement. He collected the fees under the agreement but whose terms could not be enforced because a registered mutchilika as contemplated by the parties was not executed. If it is a case of enforcing the terms of the agreement, then there is no need to invoke this provision at all.

(14) We find that in similar circumstances Section 65 of the Act was held to be applicable in *Madura Municipality v. K. Alagirisami Naidu*, ILR 1939 Mad 928 at p. 939 : (AIR 1939 Mad 957 at p. 962). That was a case where the Municipality sued to recover the balance due to it in respect of the right of taking rubbish, etc., within the municipality, basing its claim on a contract which was entered into by its chairman without conforming to the provisions of Section 68 (2) of the Madras District Municipalities Act and also on an alleged ratification of the contract by the municipal council made more than a year after the said contract by the chairman and three months after the expiry of the period for which the bid was given by the defendant. It was held that there was no valid contract between the parties but that compensation could be recovered under Section 65 of the Indian Contract Act. The following observations made therein are quite pertinent :

"In a suit on the basis of a contract a party is trying to enforce its terms while in a suit under Section 65 a party merely asks for restoration or compensation as the agreement has not matured into a contract and he wants to be placed in the position in which he would have been if no agreement had been entered into."

(15) We do not see any force in the contention of Sri Veerabhadrayya that the conditions, which would attract Section 65 of the Act, are not present here. The learned counsel has cited, *Ram Nagina Singh v. Governor General In Council*, . That was a case of a supply of bricks to the Eastern Construction Company which was a firm of Engineers who were at the material time engaged in doing military work. But the contract did not comply with the provisions of Section 175 (3) of the Government of India Act, 1935. After an elaborate discussion the learned Judge held that Section 65 applied to the facts of the case and that the plaintiff was entitled to recover compensation under that section. In the course of the judgment dealing with the scope of Section 65, the learned Judge observed that the section embodied and was an expression of the principle of restitution and of prevention of unjust enrichment. This case renders no assistance to the respondent in opposing the claim.

(16) We now turn to Section 70 of the Act, which is in these terms :

"Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

(17) We notice here that Section 70 is one of a fasciculus of sections dealing with what the Act calls "certain relations resembling those created by contract". By this section three conditions are required to establish a right of action at the suit of a person who does anything for another : (1) the thing must be done lawfully ; (2) it must be done by a person not intending to act gratuitously ; and (3) the person for whom the act is done must enjoy the benefit of it. The section is very widely worded and it was observed in *Suchand v. Balaram*, ILR 38 Cal 1 that "the terms of Section 70 are unquestionably wide, but applied with discretion they enable the Courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations actually created by contract."

(18) Sri Veerabhadrayya, the learned counsel for the respondent pressed upon us a contention that the Panchayat Board in this case has not lawfully permitted the respondent to make collections. He invited our attention to Rule 6 (10) (e) of the Rules under the Madras Village Panchayat Act, 1950 which says that "no person shall be allowed to exercise his rights under the lease until he has executed the lease deed", and argued that the Panchayat Board acted unlawfully in permitting the respondent to make collections without the execution of a lease deed and so the applicability of the section is excluded. The term "lawfully" occurring in the section has been interpreted in *Muthayya Chetty v. Narayanan Chetti*, AIR 1928 Mad 317 as merely "bona fide".

(19) In a recent decision, the SC<sup>2</sup> considered this question in *State of West Bengal v. B. K. Mondal*, . That was a suit filed against the State of West Bengal claiming a sum of money for works done by the Plaintiff for the State of West Bengal . The claim was made on the foot of a contract or in the alternative, if the contract in question was invalid, that the money could be recovered under Sec. 70 of the Indian Contract Act. It would appear that the contract entered into did not comply with the provisions of Sec. 175 (3) of the Government of India Act, 1935 and that for that reason the terms of the contract could not be enforced. The claim was, however, upheld under Sec. 70 of the Indian Contract Act. A contention was advanced against the application of Sec. 70 that the word "lawfully" in Sec. 70 must be read in the light of Sec. 23 of the said Act and that a thing could not be said to have been done lawfully if the doing of it was forbidden by law. That contention however, did not prevail. It was observed that it was not possible to hold that the delivery of a thing or a doing of a thing the acceptance and enjoyment of which gave rise to a claim for compensation under Sec. 70 was forbidden by Sec. 175 (3) of the Act and that the interpretation of the word "lawfully" suggested did not show that Sec. 70 could not be applied to the facts of that case.

It was observed at page 788 thus :

"Therefore/, in our opinion, all that the word "lawfully" in the context indicates is that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of Sec. 70 gives rise to a claim for compensation."

The learned Judges further observed thus :

"In this connection it is necessary to emphasise that what Sec. 70 provides is that compensation has to be paid in respect of the goods delivered or the work done. The alternative to the compensation thus provides is the restoration of the thing so delivered or done. In the present case there has been no dispute about the amount of compensation but normally a claim for compensation made under Sec. 70 may not mean the same thing as a claim for damages for breach of contract if a contract was subsisting between the parties. Thus considered it would, we think, not be reasonable to suggest that in recognising the claim for compensation under Sec. 70 we are either directly or indirectly nullifying the effect of Sec. 175 (3) of the Act or treating as valid a contract which is invalid. The fields covered by the two provisions are separate and distinct ; Sec. 175 (3) deals with contracts and provides how they should be made. Section 70 deals with cases where there is no valid contract and provides for compensation to be paid in a case where the three requisite conditions prescribed by it are satisfied. We are, therefore, satisfied that there is no conflict between the two provisions."

(20) These passages bring out lucidly the utter fallacy of the argument that we would be circumventing a statutory provision if we uphold the claim under Sec. 70 of the Act.

(21) Very much the same reasoning appears in the Madras case, ILR (1939) Mad 928 : (AIR 1939 Mad 957), to which reference has been made. Repelling the observations that by giving relief the mandatory provisions governing contracts were circumvented and the statutory provisions were so defeated, the learned Judges observed thus at page 939 (of ILR Mad) : (at p. 962 of AIR) :

"So far as the second ground for the decision is concerned, the underlying assumption appears to be that a party in asking for restoration or compensation under Sec. 65 Indian Contract Act, on account of the agreement having been denied the status of a contract, is nonetheless enforcing the same. This is not correct. In a suit on the basis of a contract a party is trying to enforce its terms while in a suit under Sec. 65 a party merely asks for restoration or compensation as the agreement has not matured into a contract and he wants to be placed in the position in which he would have been if no agreement had been entered into. Moreover a perusal of these sections in the District Municipalities Act would show that the municipalities or their officers and members were not forbidden to enter into contracts. What they appear to lay down is that if a certain contract is entered into either by a person not mentioned in these sections or without the formalities regarded by them to be indispensable it would not be binding on the board or the municipality. First of all the rule only safeguards the interests of the municipalities and does not specifically lay down that the contracts would not be enforceable at their instance. But even if the doctrine of mutuality is held to be applicable the only inference would be that the contracts could not be enforced by either party. It cannot be legitimately contended that in asking for a relief under Sec. 65 of the Indian Contract Act they are doing indirectly the same thing that was forbidden by the Municipalities Act. It would be extremely inequitable to find that, when a contract has not been entered into by authorized persons or is found to be unenforceable for want of certain formalities, the advantage gained by a party should not, when it was not intended to be gratuitous, be restored or compensated. The courts in India are and have been administering both law and equity and there is no reason why this equitable relief, which since the passing of the Judicature Act is grantable even by the courts in England, should not be grantable here. The relief which a person asks for under Sec. 65, Indian Contract Act, has not been forbidden by any law and it cannot be legitimately argued that in trying to secure such a relief he is attempting to do indirectly what he had been forbidden by law to do directly. By asking for an equitable relief he cannot be said to have got round the law. Indeed he ought to be taken to have admitted that the law does not permit such agreements to be enforced and it is only then that he asks the court to exercise its equitable jurisdiction in resorting the parties to the position in which they were before these infructuous agreement came into existence. By holding Sec. 65, Indian Contract Act, to be applicable, we will be giving effect to both the letter and the spirit of the law.

The same conclusion would be arrived at if we hold that the contract did not exist in the eye of the law. In the absence of such a contract. Sec. 70, Indian Contract Act, could well be applied. It cannot be said that there was anything unlawful in

permitting the defendant to remove the rubbish or night-soil. The permission was not intended to be given gratuitously and the benefit was on the defendant's own showing enjoyed by him.

We must therefore hold that as the defendant is unable to restore the rubbish and the night-soil which he had taken from the municipal depots, he must make compensation for it to the plaintiff municipality."

(22) We are not therefore persuaded that there is any substance in the contention that the appellant did not do anything lawfully for the respondent. The respondent cannot deny the fact that he enjoyed the benefit by making collections and also that the Panchayat Board did not intend to permit him to make collections gratuitously. The essentials of Sec. 70 are therefore fully satisfied.

(23) Our attention has been invited to another case of the Supreme Court in *Subramanyam v. Thyappa*, (1961) 2 SCJ 191. That was a case of a building contractor Thyappa suing Subramanyam the appellant for compensation for putting up some constructions. On the facts it was found that the business contractor made additional constructions to business, and that they were not done gratuitously. It was contended that the compensation could not be awarded, firstly because no oral agreement was proved and secondly, because there was no specific claim to compensation on the principle quantum meruit. The learned Judge dismissed the contention as having no substance. These are the pertinent observations of their Lordships in the reported judgment :

"As we have already observed, in respect of the additional work done by the respondent, both the parties set up conflicting oral agreements. These were not accepted by the High Court. If a party to a contract has rendered service to the other not intending to do so gratuitously and the other person had obtained some benefit, the former is entitled to compensation for the value of the services rendered by him. Evidently, the respondent made additional constructions to the building and they were not done gratuitously. He was therefore entitled to receive compensation for the work done which was not covered by the agreement. The respondent claimed under an oral agreement compensation at prevailing market rates for work done by him; even if he failed to prove an express agreement in that behalf, the Court may still award him compensation under Sec. 70 of the Contract Act."

(24) Section 70 had been invoked in awarding relief on the principle of quantum meruit. A claim under quantum meruit or quantum valebant arises where work is done or goods are supplied, not in pursuance of any express or tacit contract, but under circumstances which would import in law and obligation to pay for the services or goods. The quantum meruit principle has been applied in quite a number of cases. In *Pallonjee Eduljee and Sons v. Lonavala City Municipality*, ILR 1937 Bom 782 : (AIR 1937 Bom 41) where a building contract was unenforceable by reason of failure to conform to the provisions of the Bombay Municipal Boroughs Act, but the plaintiff had carried out all his obligations, the Bombay High Court held that Sec. 70 specifically met the case and that its applicability was not excluded by the fact that there was no enforceable contract. In *Mohammed Ebrahim Molla v. Commissioners for the Port of Chittagong*, ILR 54 Cal. 189 : (AIR 1927 Cal 465)

where a contract for the hire of a tug was under seal as required by Section 29 of the Chittagong Port Act, the Court while holding that the plaintiff could not sue on the contract, held that he may succeed on a quantum meruit. The Rangoon High Court also held in *Zulaing v. Yamethin District Council*, ILR 10 Rang 522 : (AIR 1932 Rang 176), in similar circumstances, that under Section 70 of the Contract Act, the plaintiff was entitled to compensation on the quantum meruit principle. Similarly, the Lahore High Court in *Municipal Committee, Lahore v. Miran Baksh*, ILR 13 Lah 561 : (AIR 1933 Lah 15) allowed compensation to a lessor whose lease was unenforceable for want of a registered document, as required by Sec. 47 of the Punjab Municipal Act, in the Madras High Court also, it has been held recently in *Palaniswami Gounder v. E. and S. Co-operative Wholesale Societies, Ltd.*, AIR 1933 Mad. 145 that the invalidity of a contract as not fulfilling particular statutory requirements is no bar to a suit to recover money advances under such contract, and that relief could be awarded under this section or on the basis of quantum meruit.

(25) Our learned brother would appear to have ruled out Sec. 70 on the ground that there was no pleading to that effect. We will presently examine the relevant pleading ; but even assuming that there is no express pleading, we cannot deny relief for that reason only. Be it noted that the appellate court did grant relief on the principle of quantum meruit, which is embodied in Sec. 70 of the Indian Contract Act.

(26) Further, para 4 of the plaint states thus in its relevant part :

"The defendant nevertheless exercised the right to make the collections of the fees in respect of the weekly and daily markets and cart-stands referred to above from 1-4-1951 onwards till 31-1-1952 ..... The defendant is bound to pay the several instalments in respect of the above said contracts from April, 1951 to January, 1952 ..... or in any view by way of damages, the defendant having made the collections of fees payable during the time to the plaintiff panchayat."

(27) Sri Veerabhadrayya contended that damages is not the same as compensation. Even so, the pleading have to be construed as a whole and not too stringently. We do not therefore consider that we can rule out the relief under Sec. 70 of the Act on the footing that there was no pleading to that effect.

(28) Even otherwise, it is to be seen that O. 6, R. 2 C. P. C. provides that :

"Every pleading shall contain and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be ..... " and this has been complied with.

(29) Further we may notice that the observations of the Supreme Court in (1961) 2 SCJ 191 do not support any stringent view of the case. It was also observed in *Mohan Manucha v. Manzoor Ahmad Khan*, AIR 1943 PC 29 at p. 34 thus at page 34 :



"With all due respect to the Chief Court, their Lordships think that their attitude towards the question of pleading was unduly rigid. A defendant who when sued for money lent pleads that the contract was void can hardly regard with surprise a demand that he restore what he received thereunder."

(30) It does not appear also correct to say that Sec. 70 was for the first time sought to be applied in Second Appeal.

(31) For these reasons, we are of the view that the plaintiff would be entitled to relief under Sec. 70 of the Indian Contract Act as well.

Sec. 70 of the Indian Contract Act as well.

(32) We could also sustain the claim on the equitable principle of unjust enrichment.

(33) For these reasons, we find that the plaintiff-appellant Panchayat Board is entitled to relief either under Sec. 65 or under Sec. 70 of the Indian Contract Act or on the principle of unjust enrichment.

(34) There is no dispute before us about the quantum as decreed by the first appellate court. But the learned counsel for the res complained against the award of 12 % interest. As suggested by the learned Advocate-General we think that interest could be reduced to 6 % per annum.

(35) In the result, we set aside the judgment of Krishna Rao, J. and restore that of the first appellate court, that is to say, the additional District Judge, West Godavari at Eluru, in A. S. No. 166 of 1954, with the modification that the interest granted is reduced to 6 % per annum. The appellate will get proportionate costs throughout.

(36) Appeal allowed.