

B. C. Mohindra Appellant

Vs

The Municipal Board Saharanpur

Civil Appeal No. 1036 of 1966

(S. M. Sikri, K. S. Hegde JJ)

20.11.1968

JUDGMENT

SIKRI, J. -

This is an appeal by special leave, and while granting it this Court confined it only to the point arising under Section 97 of the (U. P. Municipalities Act, 1916, hereinafter referred to as the Act.

The facts relevant to the point are as follows : The Municipal Board, Saharanpur, respondent before us and hereinafter referred to as the plaintiff brought a suit for the recovery of Rs. 12,044/- and future interest up to the date of realisation from B. C. Mohindra, appellant, before us and hereinafter referred to as the defendant. In brief the case of the plaintiff was that there was an auction on March 29, 1950, of the theka for collecting tehbazari dues of the mandi in Mazahir Gang alias Ganj Jadid, Saharanpur, for one year from April 1, 1950 to March 31, 1951, subject to the conditions of sale entered in the amended sale proclamation. The defendant bid Rs. 40,000/- subject to the confirmation by the Board. The Board did not confirm the auction sale, and on April 8, 1950, the tehbazari was re-auctioned. The defendant bid Rs. 53,025/-. At the time of the auction sale a meeting of the Board was also held in which the auction aforesaid was confirmed under Resolution No. 26, dated April 8, 1950, in the presence of the defendant, and only the condition relating to the payment of auction money was amended to provide for payment in four instalments. The defendant had to deposit 1/4th of the bid on April 8, 1950. He failed to deposit this instalment on April 8, 1950, but on April 10, 1950, he deposited the instalment and took charge of the mandi aforesaid and began to collect tahbazari dues. The defendant was asked to execute and complete an agreement in favour of the plaintiff according to the conditions and the rules but he continued to put off the matter. As the defendant failed to deposit the amount of the second instalment and execute the agreement, the plaintiff cancelled the theka of the defendant and began to collect tahbazari dues through its own staff and re-auctioned the theka on July 3, 1950. After taking into account the money received from the re-auction on July 3, 1950, and the money deposited by the defendant, according to the plaintiff there was a shortage of Rs. 12, 044/-/9.

The defendant did not dispute the fact that an auction was held and that he made the last bid of Rs. 53,025/- which was accepted. He also admitted that he had deposited Rs. 13,256/4/-. But he alleged that the plaintiff had committed various breaches of the contract in contravention of the rules, contract and the bye-laws as a result of which the defendant suffered a loss of Rs. 9,685/-.

The Trial Court framed various issues arising out of the pleadings but no issue was raised regarding non-compliance with Section 97 of the Act. It appears that an argument was raised before the Trial Court regarding Section 97. The trial Court observed :

"On the basis of this decision (A W R 1951 p. 560), it was urged on behalf of the defendant that it was necessary in the present case that a written contract should have been obtained by the plaintiff under Section 97 of the Municipalities Act In a public auction, the various bidders give their bids which may be called offers and the moment the auctioneer knocks the hammer down at a particular bid, that bid is to be taken as accepted between the parties. It is the knock of the hammer which concludes the contract. The list of bidders is the only evidence of the contract showing that out of various offers, the highest bid was accepted. In this particular case, the list of bidders bears the signature of the defendant and of the Chairman of the plaintiff Board, thus reducing the contract into writing, vide Ex. 17.

The contract in this case, is, therefore, a written contract evidence from paper Ex. 17. According to the provision of Section 97 of the Municipalities Act, such a contract should have been only in writing and this condition was fulfilled by drawing up the list of bidders and obtaining the signature of the highest bidder in whose favour the auction was concluded on such a list."

The Trial Court decreed the suit.

The defendant appealed to the High Court, and the High Court (Srivastava and Jagdish Sahai, JJ.), by its order, dated October 5, 1961, remanded the case two issues :

- (1) Whether the agreement relied upon by the plaintiff was in accordance with Sections 96 and 97 of the U.P. Municipalities Act of 1916 ? If not, what is the effect ?
- (2) Whether Section 65 of the Indian Contract Act applied ? If so, what compensation, if any, could be recovered by the plaintiff from the defendant on account of any advantage the latter may have received under the agreement ?

While passing the order of remand the High Court observed :

"While hearing arguments in this appeal we discovered that a very important point was apparently missed both by the parties and by the learned Civil Judge. We feel that the case cannot be properly decided without having findings of the learned Civil Judge on that point. The point involves two questions."

We are in agreement with the contention of the learned counsel for the plaintiff that there was no justification in remanding the case. The Trial Court had dealt with the question of Section 97 of the Act and this apparently escaped the notice of the High Court.

Be that as it may, the Trial Court, in a very careful and reasoned order, dated August 24, 1962, held that on the facts, Sections 96 and 97 of the Act had been fully complied with.

The High Court (Jagdish Sahai and Broom, JJ.), came to the conclusion that Section 97 of the Act did not apply to the facts of the case. The High Court observed :

"The suit, therefore, is one for the failure to execute the contract deed and to pay the amounts which have become due from him by way of damages. Section 97 of the Act deals with contracts which have been executed. It is for this reason that we have

come to the conclusion that the provisions of Section 97 of the Act are not attracted to the present case."

Section 97 of the Act reads as follows :

"Execution of Contracts (1) Every contract made by or on behalf of a Board whereof the value of the amount exceeds Rs. 250/- shall be in writing : Provided that unless the contract has been duly executed in writing, no work including collection of materials in connection with the said contract shall be commenced or undertaken.

(2) Every such contract shall be signed

(a) by the President or a Vice-President and by the Executive Officer or a Secretary, or

(b) by any person or persons empowered under sub-section (2) or (3) of the previous section to sanction the contract if further and in like manner empowered in this behalf by the Board."

It seems to us that on the facts of the case it is clearly proved that there was a contract in writing within the meaning of proviso to Section 97(1) and the provisions of sub-section (2). We agree with the conclusion of the Trial Court in this respect. The list of bids, Ex. 17, at the auction sale held on April 8, 1950, is signed by the defendant, the Chairman and the Executive Officer. This auction was held before the Board and Resolution No. 26, dated April 1950, was passed on that day, which reads as follows :

"Auction of the tahbazari contract of mandi Mazahar Ganj for the year 1950-51 (Boards Resolution No. 431, dated March 30, 1950).

Auction held before the Board. Terms of auction were announced. During the auction, at the request of the bidders, the Board unanimously, passed the following amendment in the terms of auction :-

"One-fourth of the auction money will be deposited at the fall of hammer and the remaining amount in three equal instalments at the interval of two months each, i.e.

1st instalment today 8-4-50 2nd instalment on 8-6-50 3rd instalment on 8-8-50 4th instalment on 8-10-50##

Auction sanctioned to the highest bidder Shri B. C. Mohindra for Rs. 53,025/- w.e.f. 9-4-50 to 31-3-51. Chairman Finance Committee to please deliver the possession and to decided the disputes, if any."

The original proceedings book was produced before the Trial Court and it was proved by Ram Swarup, clerk. He proved that after the entire proceedings were over, it was signed before him by Shri Madho Prasad, Executive Officer of the Municipal Board and Shri Jamshed Ali Khan, the Chairman.

In our opinion the list of bids and the Resolution No. 26, dated April 8, 1950, Ex. 18, constituted a contract in writing within the meaning of Section 97 of the Act. It was held by this Court in Union

of India v. Ralliaam ((1964) 3 SCR 164, 173) that for the purposes of Section 175(3) of the Government of India Act, 1935, a valid contract could be spelt out of correspondence. It seems to us that similarly it is not necessary for the purpose of complying with Section 97 of the Act that the contract should be contained in one document signed by both the parties.

In view of our conclusion it is not necessary to consider what would have been the rights of the plaintiff if there had been no such contract in writing.

In the result the appeal fails and is dismissed with costs.

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