

Gurmukh Singh

Vs

Amar Singh

Civil Appeal No. 1335 of 1977

(K. Ramaswamy, N. M. Kasliwal JJ)

15.03.1991

JUDGMENT

K. RAMASWAMY, J. –

1. The unsuccessful defendant/appellant resisted the suit of the respondent for specific performance of the agreement of sale of 27 bighas and 2 biswas of the land situated in Chakkar Karman Village. According to the respondent he and the appellant contracted that the appellant would participate on their behalf in a public auction to purchase the evacuee property. He contributed his share. The appellant agreed to convey half the property purchased at the auction. The appellant became the highest bidder for a sum of Rs. 5000 and he contributed his share and the sale was confirmed on March 11, 1964 and a sale certificate was issued by the custodian of the evacuee property but the appellant had not performed his part of the contract. Accordingly he laid the suit for specific performance or refund of the amount advanced by him. The suit was resisted by the appellant denying the execution of the agreement and also pleaded that the contract is illegal and void being opposed to public policy. The relief of specific performance being discretionary cannot be granted in favour of the respondent. The trial court decreed the suit; on appeal and on further second appeal the District Court and the High Court confirmed the same. Thus this appeal on special leave under Article 136 of the Constitution.

2. The contention neatly argued by Shri Khanna, the learned counsel for the appellant, is that the agreement is opposed to public policy and, therefore, it is void under Section 23 of the Contract Act, 1872. According to him the agreement was to knock out the public property on a minimum price and that, therefore, the object of the agreement is opposed to public policy and is hit by Section 23. We found no force in the contention. Section 23 of the Contract Act adumbrates that the consideration or object of an agreement is lawful unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provision of any law; or is fraudulent, or involved or implied injury to the persons or property of another; or the court regard it as immoral or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. The word object would mean the purpose and design which is the object of the contract, if it is opposed to public policy which tends to defeat any provision of law or purpose of law, it becomes unlawful and thereby it is void under Section 23 of the Contract Act. Section 23 is concerned with only the object or consideration of the transaction and not the reasons or motive which prompted it. Public policy imposes certain limitations upon freedom of contract. Certain objects of contract are forbidden or discouraged by law; though all other requisites for the formation of a contract are complied with, yet if these objects are in contemplation of the parties when they entered into the agreement, the law will not permit them to enforce any rights under it. Most cases of illegality are of this sort : the

illegality lies in the purpose which one or both parties have in mind. But in some instances the law strikes at the agreement itself, and the contract is then by its very nature illegal. Whenever a plea of illegality or against public policy is raised as a defence to a contractual claim, the test to be applied is : Does public policy require that this claimant, in the circumstances which have occurred, should be refused relief of which he would otherwise have been entitled with respect to all or part of his claim? In addition, once the court finds that the contract is illegal and unenforceable, a second question should be posed which would also lead to greater clarity : Do the facts justify the granting of some consequential relief (other than enforcement of the contract) to either of the parties to the contract.

3. In *Chandra Sreenivasa Rao v. Korrapati Raja Rama Mohana Rao* (AIR 1952 Mad 579 : (1951) 2 MLJ 264 : 64 LW 770), Subba Rao, J., as he then was, while considering to word "object" in Section 23 of the Contract Act in the context of enforceability of the debt secured to celebrate the marriage of the minor which was prohibited by the Child Marriage Restraint Act, held that the word "object" in Section 23 meant "purpose" or "design" of the contract. The purpose of borrowing was unlawful as it was opposed to the public policy of celebrating the marriage of a minor in violation of the statutory provisions, and therefore, the promissory note was held to be unenforceable. An agreement between A and B to purchase property at an auction sale jointly and not to bid against each other at the auction is perfectly lawful, though the object may be to avoid competition between the two. But if there is an agreement between all the competing bidders at the auction sale, be it of the court sale or revenue sale, or sale by the government of its property or privilege and formed a ring to peg down the price and to purchase the property at knock out price, the purpose or design of the agreement is to defraud the third party, namely the debtor or government whose property is sold out at the court auction or revenue sale, or public welfare. The object or consideration of the contract, oral or written, to share such property is unlawful. There is also implied "injury to the debtor" within the meaning of Section 23. Thereby the contract was fraudulent. The contract thus is also opposed to public policy and is void. Take for instance four persons participated at an auction sale; pursuant to their previous agreement, they made a pretext of participation in the auction; bid up to an agreed price though the real value of the property is much more than what they had offered for. Here the design or object of their forming a ring is to knock out the property for a song to defraud the debtor or public. What is the object of the public policy in this regard ? The scope of public policy was classified into five groups in paragraph 1134 at p. 686 of *Chitty on Contract* (26th edn., Vol. I) thus :

"Objects which on grounds of public policy invalidate contracts may, for convenience, be generally classified into five groups; first, objects which are illegal by common law or by legislation; secondly, objects injurious to good government either in the field of domestic or foreign affairs; thirdly, objects which interfere with the proper working of the machinery of justice; fourthly, objects injurious to marriage and morality; and, fifthly, objects economically against the public interest".

4. In *Halsbury's Laws of England* (4th edn., Vol. 9, in paragraph 392 at p. 266) it is stated that "any agreement which tends to be injurious to the public or against the public good is invalidated on the grounds of public policy. The question whether a particular agreement is contrary to public policy is a question of law, to be determined like any other by the proper application of prior decisions". The object of conducting public sale is to secure as much price or revenue as possible to redeem the debt of the debtor or to secure maximum price to the exchequer for use of public purpose. If such a contract to form a ring among the bidders was to peg down the price and to have the property knocked out at a low price it would defeat the above economic interest of the debtor or public

welfare. Thereby the agreement becomes fraudulent and opposed to public policy and is void under Section 23. In *Ram Lal Misra v. Rajendra Nath Sanyal* (AIR 1933 Oudh 124, 127 : 8 Luck 233 : 142 IC 595) the finding was that the agreement was not merely of an honest combination between two bidders to purchase the property at an advantageous price but goes further by resorting to secret artifice for the purpose of defrauding a third person, namely, the rival decree holder. Accordingly, it was held that the agreement was fraudulent and that, therefore, void under Section 23 of the Contract Act. Same is the view expressed by the Lahore High Court in *Nand Singh & Ghudda v. Emperor* (AIR 1943 Lah 101 : 45 PLR 129 : 44 Cri LJ 518) and in *Hutchegowda v. H. M. Basaviah* (AIR 1954 Mys 29 : ILR 1953 Mys 340 : 32 Mys LJ 167). In *Rattan Chand Hira Chand v. Askar Nawaj Jung* ((1991) 3 SCC 67 : JT (1991) 1 SC 433) this Court held that an agreement to influence authorities to obtain favourable verdict was held to be opposed to public policy and void under Section 23 and approved the decision of the A.P. High Court in *Rattanchand Hirachand v. Askar Nawaj Jung* (AIR 1976 AP 112 : (1975) 1 APLJ (HC) 344 : ILR 1975 AP 843). An agreement to rig the market for share has been held to be fraudulent and unenforceable in *Scott v. Brown, Deorning McNab & Co.* ((1892) 2 KB 724 : 61 LJ QB 738).

5. In *Halsbury's Laws of England* (4th edn., Vol. 2, paragraph 746 at p. 383), it was stated that "Where goods are purchased at an auction by a person who had entered into an agreement with another or others that the other or the others, or some of them, shall abstain from bidding for the goods, and he or the other party, or one of the other parties, to the agreement is a dealer, the seller may avoid the contract under which the goods are purchased. Where a contract is avoided by virtue of this provision, then, if the purchaser has obtained possession of the goods and restitution thereof is not made, the persons who were parties to the agreement are jointly or severally liable to make good to the vendor any loss he sustained by reason of the operation of the agreement." In *Md. Issac v. Doddapaneni Sreeramulu* (AIR 1946 Mad 289 : (1946) 1 MLJ 187), the Madras High Court held that an agreement between two bidders not to bid against each other at an auction is not illegal and is not opposed to public policy. The same was followed in *Pattipati Ramalingaiah v. Nigulagunta Subbarami Reddi* (AIR 1951 Mad 390 : (1950) 2 MLJ 634 : 1950 MWN 781). In *Mohafasul Rahim v. Babulal* (AIR 1949 Nag 113 : 1948 NLJ 259 : ILR 1948 N 431) the Nagpur High Court also held that persons agreeing not to bid against each other is not opposed to public policy.

6. The Division Bench of Delhi High Court in *Lachhman Das v. Hakim Sita Ram* (AIR 1975 Del 159) had to consider that an agreement entered into by the parties not to bid at the auction against each other is not opposed to public policy, and therefore, it is not void. While upholding the agreement it was also held that where agreements are likely to prevent the property put up for sale in not realising its fair value and to dump the sale would certainly be against public good and, therefore, is void being opposed to public policy. In *Gherulal Parakh v. Mahadeodas Maiya* (1959 Supp 2 SCR 406 : AIR 1959 SC 781), this Court held that though a wagering contract was void and unenforceable under Section 30 of the Contract Act, it was not forbidden by law and agreement collateral to such a contract was not unlawful within the meaning of Section 23 of the contract Act. A partnership with the object of carrying on wagering transaction was not, therefore, hit by Section 23. In *Mahomed Meera Ravuthar v. S. V. Raghunadha Gopalar* (27 IA 17 : AIR 1923 Mad 227), the sale was impugned, on one of the grounds that the agreement was made for the benefit of the Papanand Zamindar and the appellant, intended to sell the property back to the former when he should be in a position to repurchase it and both of them had combined to dissuade persons from bidding, and did in fact dissuade them. Thereby they purchased the property for lesser price than the real value. The execution was set aside. On appeal, the High Court did not agree with the finding that the appellant and the Jainilabdin and the Papanand Zamindar did combine to dissuade the persons from bidding but found that the appellant played fraud on the court by suppressing the

contract as being a decree holder obtained leave of the court and bid in the auction. Therefore, the sale was void on that ground. On further appeal the Judicial Committee found that the ground on which the High Court set aside the sale was not pleaded, nor an opportunity given to the appellant. Therefore, for the first time that ground cannot be taken before the High Court and having disagreed with the executing court that there was an agreement to dissuade third party to participate in the bid, the sale cannot be set aside on the new ground. The Privy Council confirmed the sale. On those facts the ratio is of no assistance to the appellant since there is no agreement between the appellant and the respondent to dissuade third party to participate in the bid.

7. The ratio in *Kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd.* ((1974) 2 SCC 213 : (1974) 3 SCR 678) is of no assistance to the appellant. Therein the executing court, on the previous occasion, with a view to secure better price did not confirm the sale, the conduct of the second sale, therefore, was held not to be vitiated by any material irregularity. The general principles of public policy discussed by this Court in *Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly* ((1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103 : (1986) 2 SCR 278) and one of us (K. Ramaswamy, J.) in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* (AIR 1991 SC 101) are of no assistance of the facts in this case. The public policy is not static. It is variable with the changing times and the needs of the society. The march of law must match with the fact situation. A contract tending to injure public interest or public welfare or fraudulent to defeat the rights of the third parties is void under Section 23 of the Contract Act.

8. From the record it is clear that there were as many as six bidders who participated in the auction. The upset price was fixed at Rs. 1000. The auction was started with the bid at Rs. 1000 and ultimately at 20th knock the highest bid of the respondent was at Rs. 5000. Thus, the facts demonstrate that the agreement between the appellant and the respondent was only a combination to participate at an auction of the evacuee property. There is no intention either to peg down the price or to defraud the government to knock out the sale at a lower price. Thus, the object of the agreement is not opposed to public policy, and therefore, it is not void under Section 23 of the Contract Act.

9. Thus, on the facts of this case we have no hesitation to conclude that the impugned agreement between the appellant and the respondent is lawful contract. The courts below committed no error of law warranting interference. The appeal is accordingly dismissed, but in the circumstances without costs as we did not call upon the respondent to argue the case.

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