

ANDHRA PRADESH HIGH COURT

Raghunandhan Reddy

Vs

State of Hyderabad

(Jaganmohan Reddy, and C Sastry, JJ.)

17.01.1962

JUDGMENT

Jaganmohan Reddy, J.

1. In this appeal, the appellant seeks to challenge the Judgment and decree of the lower Court dismissing the suit filed by him for a perpetual injunction against the Government and for the return of the deposit amount of Rupees 2,949/- as earnest money.

2. It appears that the Government in the Excise Department notified the sale by auction of the leasehold rights for 1364 F. of country liquor shops at Akbarjah Bazaar, Malakunta and Sultan Bazar localities in Hyderabad City to be held on 18-8-1954. The toddy or sendhi auctions for the same year were fixed for 23-8-1954. On the date fixed for the auction of country liquor, objections were raised by the intending bidders before the Deputy Excise Commissioner who was the auctioning Officer authorised under the rules that the auction notifications for the country liquor do not specify whether the Sabucha tax is leviable on the toddy brought into the city or not. It may be stated that Sabucha tax is a tax of Rs. 7-8-0 imposed by the Government on each pot of toddy or sendhi of 40 seers on its entry into the City of Hyderabad. The bidders stated that they sought this clarification from the Deputy Commissioner before the auction started, because the imposition or otherwise of this tax is bound to affect the liquor sales. It is alleged that the Deputy Commissioner accepted this objection and adjourned the liquor auctions to 24-8-1954 by which date the sale of sendhi shops would have been held and the matter would have been by then clarified. Thereafter on 23-8-1954, the sendhi shop leases were auctioned subject to the sendhi contractors paying Sabucha tax and the next day, the country-liquor shops were auctioned on the basis of the Sabucha tax being levied on Sendhi. Plaintiff being the highest bidder, his bid was accepted and he deposited an amount of Rupees 2,949/-. Thereafter on 4-9-1954, the Excise Commissioner, purporting to act under Clause 10 of the proclamation of auction sales, set aside the auction held on 23-8-1954 and directed their re-auction on 15-9-1954 without the imposition of

Sabucha tax. Immediately thereafter on 7-9-1954, the plaintiff filed a petition before the Excise Commissioner saying that the auctions for toddy now directed to be held not subject to Sabucha tax are likely to affect, the liquor sales, inasmuch as Sendhi would be sold at a cheaper rate and the demand for liquor would correspondingly be decreased. He accordingly prayed that the shop rentals may be scaled down, but if the Excise Commissioner was not prepared to this, his offer must be deemed to be withdrawn and the auction revoked. The Excise Commissioner did not accept this stand taken by the appellant and by his letter Ex. P. 1 dated 15-9-1954 informed the appellant with reference to his application dated 7-9-1954 that his petition is not acceptable and in case of his failure to rent the shops in accordance with the rules and regulations and to pay to the Government amounts in time, proceedings will be taken against him. By Ex. P.6, dated 17-9-1954, he further informed the Deputy Commissioner that the petitioner's prayer was incorrect and as such he was directed to take action as per rules. Pursuant to these directions, the shops were re-auctioned at a loss of Rs. 31,9837- and the appellant was required by a notice dated 13-10-1954 to pay this amount within two weeks, which notice, according to the appellant, was received by him on 17-11-1954. Immediately thereafter a petition was filed before the Hon'ble Minister for Excise on the same day praying for the cancellation of that order and for directing the Excise Commissioner not to collect any moneys as claimed. The Minister gave a stay order, but the matter was finally disposed of only on 23-8-1955 rejecting the appellant's contention. The Minister by the said order gave three months' time from that date staying the demand made on the petitioner at his request that if that time was given for filing a civil suit, he will file a suit and obtain a stay for collection of arrears. It was further observed that if within three months any order is passed by the Civil Court, the Commissioner should act according to the orders; otherwise, the amount should be collected from the personal property of the defaulter.

3. The case of the respondent Government was that the auctions were complete on its being knocked down in favour of the appellant as the highest bidder and his contention that his bid was dependant upon the Sabucha tax has no force and at any rate, the auction of one cannot affect the other. It was also contended that merely because the Excise Commissioner had a right to cancel the auction within thirty days from the date of the auction, it does not amount to a conditional acceptance of the offer. The respondent also took the plea that the suit was time-barred as the same has not been filed within six months from the date of the contract as contemplated under the Abkari Act.

4. On the pleadings, issues were framed relating to whether the auction of sendhi shops dated 18-8-1954 was postponed for the reason mentioned in para 1 of the plaint and any assurance was given to the appellant as stated in the same para; whether the suit contract was conditional or complete in itself and what is the effect of the Commissioner's right to cancel the auction within 30 days of the date of the auction; whether the plaintiff-appellant resiled from the contract and

intimated the same to the Commissioner on 7-9-1954 and what is its effect on the suit contract; what is the effect of the second auction on the suit contract and whether the plaintiff is liable to pay the loss sustained in the re-auction in accordance with the terms of the contract; was the plaintiff entitled to the refund of the earnest money and was the suit within the period of limitation. On the first issue, it was held on evidence that no undertaking was given by the Excise Commissioner that the lease of the Sendhi Shops will be subject to the payment of the Sabucha tax and the bidders did not bid at the liquor auction on such express assurance and that there was no basis for the argument that the auctions held on 24-8-1954 were subject to the imposition of Sabucha tax on sendhi shops leased out by auction held on 23-8-1954. On issues 2 and 3 also the lower Court held that the contract was a completed one and that the right reserved in the Commissioner of Excise does not make it incomplete and that further it was not shown that the appellant had resiled from the contract. The appellant was accordingly held liable for the loss of Rs. 31,983/- and that he was not entitled to a refund of the earnest money. On the question of limitation, the Court held that the suit was not barred by time, as the time spent in agitating the matter before the Revenue Minister can be taken into account.

5. The only two points that have been urged in this appeal are firstly, that the contract was not a concluded contract when the appellant withdrew his offer and consequently there is no contract at all between the parties and the appellant is entitled to the declaration asked for and the refund of the money paid; secondly that the suit is barred by limitation having regard to Section 41 of the Hyderabad Abkari Act.

6. On the first point, it is admitted by both the parties that the appellant had written the letter of 7th September 1954 in which he asked the Commissioner to scale down the rentals suitably having regard to the directions that no sabucha tax should be charged on the toddy brought into the city and if this is not accepted, then he withdraws the offer made by him. The validity of this contention depends on Rule 10 of the proclamation of Auction sales and the principles laid down in the Contract Act. The proclamation of auction sales was purported to have been made under Sections 3 and 15 of the Hyderabad Ab-kari Act, 1316 F., and Section 5 of the Hyderabad intoxicating Drugs Act, 1333 F. and Section 5 of the Indian Opium Act, 1878. Clause (1) prescribes the conditions to be satisfied before a person is permitted to bid at the auction such as the solvency certificate etc. while Clause (2) lays down that a former solvency certificate will not be sufficient and for entry into the auction hall a ticket will have to be obtained on submission of the solvency certificate or agreement bond. Clause (3) states that bidding will be permitted only to the extent of double the value of the property mentioned in the certificate or the amount for which security is given; and if any increase in bidding is to be done, payment of cash to the extent of the difference will have to be made. Clauses 4, 5, 6 and 7 deal with the bidding and tenders in respect of shops either individually or groupwise. Clause 7(2) deals with the conditions

to be complied with by the tenderer. Clause 8 deals with the power of the auctioning authority to reject the bid by any person who is convicted of any crime or punished for the contravention of the licences. The sub-clause states that the auctioning authority may refuse to accept the bid of any person without assigning any reason therefor. Clause 9 prohibits the granting of a contract for Abkari or intoxicating drugs to the persons named therein.

7. At this stage it would be convenient to examine the language of Clause 10, as the point to be determined would depend upon the construction to be placed upon it. Clause 10 is as follows:

"It will be competent for the auctioning officer, i.e., in the Districts the Collector, and in the cities of Hyderabad and Secunderabad and Hyderabad District, the Deputy Commissioner of Excise, to approve the third call. However, the Excise Commissioner has the power within one month from the date of the approval of the auction to suspend or revoke the approval of the auction of any group or shops whether the auctionee has been given possession or not and can order its re-auction or make such other arrangements. In this particular, the decision of the Excise Commissioner shall be final. No appeal shall lie against this order of the Excise Commissioner. If the Excise Commissioner does not pass orders suspending or cancelling the approval of the auction within one month of the approval of the auction, the auction shall become final."

8. It is contended by the learned advocate for the appellant on the strength, particularly of the last portion, of this clause that the approval of the Deputy Commissioner of the third bid is provisional till the period of one month prescribed under that clause for the cancellation or suspension of the contract by the Excise Commissioner is over, and as such a person can withdraw his offer till the auction has become final. Learned Government Pleader, on the other hand, submits that the clause relating to the cancellation or suspension by the Excise Commissioner is a condition subsequent and has nothing to do with and does not affect the contract which has become final between the parties. He also refers to the other clauses of the proclamation of sales viz., Clauses 15 and 16, where under the person whose third bid has been accepted has to forthwith deposit the earnest money within the period prescribed failing which, under Clause 16, if the advance money or surety bond or solvency certificate is not paid or filed within the prescribed period, the earnest money and other amounts deposited shall be forfeited and the lease shall be put up for auction again or some other arrangement made, in which event any loss incurred by the Government is liable to be recovered from the person in whose favour the auction has been concluded. But on the other hand, by reason of re-auction or other arrangement, if there is any increase, he will not be entitled to that increase. Learned Government Pleader contends that these clauses indicate definitely that when once the third bid is approved, there is a concluded contract and the bidder cannot resile from it. In our view, the consideration

of these rival contentions would depend upon the principles governing offer and acceptance and the point of time at which the contract is said to have been concluded and binding between the parties.

9. It is a well-established principle of law that only when an offer is accepted that the contract is concluded and binds the parties. It is equally well settled that before an offer is accepted, the offerer can withdraw his offer, but if the acceptance is conditional or is not final, then there is no concluded contract. Section 5 of the Indian Contract Act states that a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards, Similarly, an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Generally, in a sale by auction, the auctioneer is the agent of the person whose property or rights are being auctioned. The agent invites offers and every bid is an offer and it is only binding on either side when it is assented to, that is, when the hammer falls at the third bid. Sometimes the owner reserves a right as part of the conditions of auction and even though the bid is the highest it need not necessarily conclude the agreement. Before the final acceptance of the bid or before the hammer falls, it is always open to the bidder to withdraw his bid and the condition to the contrary in auction that the bid shall not be retracted has been held to be invalid. Following the English rule, in *Agra Bank v. Hamlin*, 1LR 14 Mad. 235 it was held by a Bench consisting of Muttusami Ayyar and Best, JJ. that it was competent for a bidder at a Court auction to withdraw his bid. Two estates by name 'Chembali' and 'Burnside' being the properties of the judgment debtor, were put up for sale by Court auction. At the sale, one person acting on behalf of the plaintiff made a bid for both the properties, but later intimated to the Nazir that he wished to withdraw these bids and also informed the court the next day of his wish to withdraw. A reference was made to the High Court as to whether it was permissible for bidders at court sales to withdraw their bids.

Muttusami Ayyar, J.

answered the question in the affirmative and pointed out that until the lot is knocked down and the sale is concluded, the court may, in its discretion, adjourn the sale. He observed:

"It is clear then that until the lot is knocked down, the court has a *loes penitentiae* and it follows, in the absence of some specific provision to the contrary, that bidders are intended to be placed in a similar position."

Best, J. concurred and said:

"An offer to buy or sell may be retracted at any time before it is unconditionally and completely accepted, by words or conduct "Later Leach, C. J., delivering the judgment of the bench in

Somasundaram Pillai v. provincial Government of Madras, AIR 1947 Mad 366, referred to the dictum of Muttusami Ayyar, J. -- Particularly to the observations, "It appears that, in the case under reference, it was not one of the conditions of sale that bidders were not at liberty to withdraw their bids" and said at page 368, that they do not regard this statement as a definite acceptance of the proposition that where there is such a condition a bid cannot be withdrawn, and expressed dissent if Muttusami Ayyar intended to hold so. In Somasundaram Pillai's case, AIR 1947 Mad 365, the appellant was the highest bidder for four shops and his bids were provisionally accepted by the Sub-Collector, but the Collector accepted only two of them. He refused to confirm the bids made by the appellant for the other two licences and directed that the sale should be continued under the conditions of sale. Pursuant to this the Tansn-dar informed the appellant that his bids for the two shops had not been accepted and that the Collector had ordered that the auction sale should be continued from the bids already made by him. The appellant, however, presented a petition to the Tahsildar on the day fixed for the continuance of the auction, in which he stated that he did not require the two shops and asked that the amount of his deposit should be returned to him. This petition was rejected forthwith and subsequently his pleader wrote on his behalf pointing out that his bids had not been accepted by the Government and that he was entitled to withdraw them. The Collector, after referring to the rule that bids could not be withdrawn, rejected this contention and accepted his bid, but the appellant refused to take out licences, which resulted in a loss to the Government of Rupees 1148/-. The Advocate General on behalf of the State conceded that the publication of the conditions of sale did not amount to a notification under Section 69 of the Madras Abkari Act and said that they were merely rules drawn up by the Board for the conduct of sales of liquor licences and had no statutory force. It was consequently held that the lower court was wrong in holding that the conditions of sale had the force of law. The learned Judges referred to the case in *Joravarmull Champalal v. Jeygopal das Ghanshamdas*¹, and the cases considered by that Bench in *Payne v. Cave*², approving the dictum in both the cases, particularly of Lord Kenyon in the latter case that nothing could be clearer than that at the time of entering into the contract, the engagement was all on one side and that the other party was not bound and therefore it was a nudum pactum.

Leach, C. J., observed at page 367 as follows: "To have an enforceable contract there must be an offer and an unconditional acceptance. A person who makes an offer has the right of withdrawing it before acceptance, in the absence of condition to the contrary supported by consideration. Does the fact that there has been a provisional acceptance, make any difference? We can see no reason why it should. A provisional acceptance cannot itself make a binding contract. There must be a definite acceptance or the fulfillment of the condition on which provisional acceptance is based." In the result it was decided that the appellant was entitled to withdraw his bids, because a prohibition against withdrawal has no force of law. This case is sought to be distinguished by the learned Government Pleader on the ground that under Rule 10,

the acceptance was final and not provisional and the condition of cancellation or suspension by the Excise Commissioner within thirty days is only a condition subsequent. In support of this argument he relied on the judgment of Sanyanarayana Rao, J., sitting singly in *Rajanagaram Village Co-operative Society v. Veera-sami Mudaly*, and the passage in *Pollock and Mulla* -- 8th Edition -- | pages 44-45. Sanyanarayana Rao, J. in *Rajanagaram* case, tries to distinguish the Bench decision in *Somasundaram Pillai's* case, AIR 1947 Mad 366 on the ground that there is a difference between a provisional acceptance and a conditional acceptance. In the former case the officer accepting the offer provisionally has no authority to accept the bid. As such the offeror can withdraw, while in the latter case the offeror cannot withdraw. In his view *Somasundaram Pillai's* case, AIR 1947 Mad 36B is one where the auctioning authority had only power to accept the bid provisionally and pass it on to the Collector for his confirmation. At page 488 (of Mad LJ): (at pp. 324-325 of AIR) he observed:

"Under the terms of the sale which were approved by the Board of Revenue, he could only signify a kind of provisional acceptance whatever that expression might mean; but the final and actual acceptance rested with the Collector. The appellant who was the highest bidder in that case did not thereby acquire any rights under the sale as there was no concluded contract in his favour."

The learned Judge then proceeds to observe that 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 and that a provisional acceptance means that the auctioneer had only a right to receive the bids and pass them on to his superior who is the final authority to confirm and conclude the contract, while a 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. As such he cannot resile from the contract, nor is it open to him to withdraw the offer. With great respect, we fail to appreciate this distinction. In our view, where the offer and acceptance culminating in a concluded contract are themselves subject to conditions and are not final, there is no contract at all till these conditions are fulfilled and an offer before the fulfilment of these conditions can be withdrawn. The distinction between a condition and an ordinary term of the agreement must not be confused, for, the non-performance of a term would give rise to a right to an action for the breach of the contract while the failure of a condition acts as a release of the corresponding duty. Such a condition is one where the promisor's obligation becomes effective only if some state of facts exists or if and when some future event happens. In other words, it is said to be a condition precedent. Learned editors of *Pollock and Mulla's Indian Contract Act* classify both these cases and another case of *Chittibobu Adenna v. Garimalla*³, as cases of a condition precedent where the bidder could have retracted his offer before the final

acceptance, as in Sundaram Pillai's case, AIR 1947 Mad 366. It was further submitted by them that the two cases, viz., Chittibobu's case, AIR 1916 Mad 75(Supra) and Rajanagaram case, 1950-2 Mad LI 436: (AIR 1351 Mad 322)(Supra) were wrongly decided. In the first case, it is said that the Court misunderstood the nature of a condition subsequent. With respect to the second case, it is observed that the acceptance is either absolute or conditional and there is no half-way house between the two. If an acceptance is conditional, the offeror can withdraw at any moment until absolute acceptance has taken place. In that case before Salyanarayanarao, J. the terms of the auction sale were that the sale will be knocked down in favour of the highest bidder subject to the approval of the Mahasabha and the District Bank. The plaintiff had become the highest bidder in the auction and deposited the necessary price money and later on the bank took up the matter for consideration and accepted the bid, but before it could be communicated to the plaintiff, the Bank rescinded it and ordered re-sale. The question was whether there was a concluded contract. There can be little doubt that where the acceptance is conditional, as in this case, there is no concluded contract and the offeror can withdraw. A condition precedent is a condition which must happen before either party becomes bound by the contract and since there was in fact no approval, there can be no concluded contract and the Bank was justified in ordering the resale. The decision of the single bench of the Madras High Court, was, in our view, not warranted either on principle or on the authority of the Bench decisions which preceded it. An examination of Chittibobu's case, AIR 1916 Mad 75(Supra) would show that the decision of the Bench was based on there being a condition precedent and not a condition subsequent. A condition subsequent is one which arises only on there being a concluded contract. A condition subsequent is one, which follows the performance of the contract, and operates to defeat and annul it, upon the subsequent failure of either party to comply with the condition. It goes to the discharge of the obligations under the contract. The statement of Poilock and Mulla at pages 44-45 dealing with Chittibobu's case, AIR 1916 Mad 75 which has been relied upon by the learned Government pleader, is in the following terms:

". . . . It is a resolute condition, as distinct from a suspensive condition or condition precedent, which prevents the existence of any obligation until the condition is satisfied. Yet the Court clearly decided that there was no binding agreement at any rate until V, the special agent, approved. In other words, their Lordships held that the condition was a condition precedent, for had the condition been a condition subsequent, there would have been a binding contract the moment D's bid was accepted, name-to be defeated by V's failure to approve. Appropriate wording to impose a condition subsequent would have been to the effect that the bid was accepted, but if V should not approve the contract was to be at an end."

10. Even at the risk of repetition, it is necessary to point out that the important thing to note in a

condition subsequent is that the promisor's duty is perfect in its inception, but later events, according to express or unexpressed terms of the agreement, may absolve him from performance wholly or in part.

11. Applying these principles to the facts of this case, the question is whether there has been a concluded contract and whether the Excise Commissioner's power to suspend or cancel the contract within one month is a condition subsequent or a condition precedent. The answer to this question would necessarily depend upon the view we take of the terms of Clause 10. It is not denied by the learned advocates that this condition is not a statutory condition. There is nothing in the Abkari Act which reserves a power such as that in Clause 10 to the Excise Commissioner. The learned Government pleader had at one stage referred us to Section 4 in his attempt to spell out that the condition in Clause 10 is a statutory condition, but on examination of Section 4, he was unable to sustain it. In our view, his initial contention is not justified on a reading of the section which is as follows:

(4) Subject to such conditions as may deem fit, the Government may grant, for a fixed period to any person at any place, (1) a lease jointly or severally for the supply, manufacture or sale of any inebriating or intoxicating drug or mohwa flower.

Explanation: A lease shall not take effect until the Collector or any other competent officer has issued a licence in the prescribed form.

(2) The Government may confer on any officer the power mentioned in Sub-section (1).

What this section is dealing with is a condition relating to the grant of a lease to any person at any place and for a fixed period, which are in fact the terms of the contract whereby the lease is granted and not to reservation of powers relating to the very grant of the lease which relate to the promisee's and promisor's obligations. Clause 10 must, therefore, be considered as relating to the formalities requisite for the conclusion of the contract and must be governed by the general law of contracts. A perusal of Clause 10 would make it evident that the auction is not final until the expiration of one month, because within that period, the Excise Commissioner can suspend or revoke the auction. The Deputy Excise Commissioner has no doubt the power to accept the bid, but that bid is not final till after the expiry of one month, during which period the Excise Commissioner has the power of revocation. We are unable to see any difference between acceptance of a bid subject to approval and the acceptance of the bid subject to its rejection or suspension. The one is in the positive form and the other is in the negative form in either case, we are not persuaded by the argument of the teamed Government pleader that it is a condition subsequent, nor can the last sentence of the passage from Mulla cited above, be of any assistance to him, because, there what is envisaged is the condition following the conclusion of the contract.

The language of Rule 10 throughout meticulously used the words approval of the auction and the rejection by the Excise Commissioner within the period specified of the approval of the auction, The clue to the intention of that clause is, in our view, found in the last stipulation where the auction is said to become final only after the expiration of one month, if during that period the Excise Commissioner has not cancelled or suspended the auction. If the approval of the auction is not binding on the Government, within that period, it is certainly not binding on the bidder also.

In the language of Pollock and Mulla, there can be no halfway house between the two, nor can it be said that the offer is unconditionally and completely accepted. The other conditions relating to the deposit of money, payment of advance rentals, this execution of security bond etc. immediately after the bid is approved by the Deputy Excise Commissioner are tentative and subject to the auction becoming final, if the Excise Commissioner does not finally approve the approval of the auction and directs suspension or revocation, it cannot be contended that the amounts paid are not returnable. The payment in such circumstances of these amounts immediately on the Bid being approved by the Deputy Excise Commissioner does not affect the legal position that the auction is only final on the expiry of one month. That the auction is not final is also evident from the fact that even where the successful bidder is put in possession, he can be ousted, if the auction is not finally approved, and it is re-auctioned or suspended. Such a unilateral reservation of power makes the acceptance a provisional one. In this view, the appellant can certainly withdraw his offer before the expiration of that period. The Excise Commissioner had in fact cancelled the toddy auctions in exercise of the powers vested in him under Clause 10 and had ordered their re-auction, which was the reason for the appellant's withdrawal of his bid before the expiration of one month, as he considered that the auction on the part of the Excise Commissioner had prejudiced his interests.

12. The only other question which has been strenuously urged by the [learned Government Pleader is of limitation based on Section 41 of the Abkari Act, which is in the following terms:--

41 (1) No action for damages shall be entertained by a Civil Court against Government or against any Abkari officer for any act done or ordered to be done in good faith and in accordance with this Act (2) All actions against any Abkari Officer and all actions which may be lawfully brought against Government or against any Abkari Officer on account of any act or thing alleged to have been done in accordance with this Act, shall not be entertained after six months from the date of doing the act or the thing.

(3) If, in a suit for compensation for damages it is proved that adequate compensation was being tendered before the institution of the suit, it shall be lawful for the Court in its judgment to disallow costs to the plaintiff and lay on him the costs of the defendant.

It would appear that Sub-section (1) bars suits for damages against Government or against Abkari officers for acts done in good faith, while Sub-section (2) prescribes a period of limitation of six months for all actions which may be lawfully brought against Government or against Abkari officers. Learned advocate for the appellant, shri Raghuvir, sought to contend that this is confined to suits for damages, but later recognised the force of the contention of the learned Government Pleader that all suits which can be lawfully brought, whether for damages or otherwise, are governed by the limitation prescribed therein. There is in our view no ' difficulty in the applicability of this section to the present suit inasmuch as it arises out of the action of the Excise Commissioner and the Excise Department in claiming loss incurred by the Government as a result of the purported breach of contract by the appellant. In order to determine whether the suit is in time and whether the period spent in agitating the matter before the Minister for Excise could be taken into account in computing the period of six months, it would be profitable to note the several dates relating to this transaction.

As we have already stated, on 24-8-1954 the bid of the appellant was accepted by the Deputy Commissioner. On 4-9-1954 the Excise Commissioner revoked the sendhi auctions and directed their reauction. On 7-9-1954 the appellant filed a petition for revision of the rentals, failing which he stated that he was withdrawing his offer. On 15-3-1954 the Excise Commissioner rejected the petition and a demand for payment was made on 13-10-1954 which reached the appellant on 17-11-1954. The alleged demand itself is not before us, but these dates and facts are not disputed. On the same date, the appellant filed a petition before the Minister for excise and the petition was dismissed by the Minister on 23-8-1956. On 16-11-1955, the suit was filed. If the period of six months is to be reckoned as from the date of the rejection of the petition on 15-9-1954. or even for that matter if it is to be reckoned from the date of the receipt of the demand viz., 17-11-1954, the suit is beyond six months. But if the period spent in agitating the matter before the Minister is to be taken into account, and in this case it has been noticed that the Minister has specifically given three months.' time to file a suit and obtain stay orders from the Civil Court -- then the suit will be within six months whether from the date of the, rejection of the petition, or the date of the receipt of the demand for payment. It may, however, be stated that the relief sought for in the suit is a perpetual injunction and recovery of the deposit. In so far as the first relief is concerned, the appellant's cause of action would be a continuing one as long as the threat to recover the amount continues. It is admitted that no steps have so far been taken to recover this amount by the revenue officers as required by Sections 116 to 123 of the Land Revenue Act. The only step taken in pursuance of the demand for payment is that the Excise Superintendent of Mahboobnagar has addressed a letter to the Tahsildar intimating to him that there is demand of the Excise Department against the appellant. But the Tahsildar has to give a notice as required by Section 118 of the Land Revenue Act, which has not been done. In any case, the appellant has clearly averred in paragraph 16 of his plaint that the cause of action arose on 23-8-1955 when the

Honourable Minister for Revenue directed him to obtain necessary orders from a civil court. The question is whether this could be taken as the point of time from which the period of six months limitation could be reckoned. The lower Court allowed the period spent in agitating the matter before the Minister under the Suits Against Government Act V of 1320 F. This Act has, however, been repealed by Act V of 1955 on 29-4-1955 and consequently the contention of the learned Government Pleader, Shri N. S. Raghavan is that when the suit was not filed in accordance with that Act, the provisions of that Act would not apply. There is force in this contention nor could it be said that this was a pending proceeding, because under that Act, the application to file a suit against the Government duly verified as required by the Code of Civil Procedure should be filed before the Legal Adviser to the Government and if such an application had been filed, then certainly Sub-clause (2) of Section 2 of the repealing Act V of 1955 saving pending proceedings would come to the rescue of the appellant, but an application to a Minister is not an application under the Suits Against Government Act. In the circumstances, the judgment of the lower court on this point cannot be sustained. It is then contended by the learned advocate for the appellant that the application before the Minister would be deemed to have been disposed of under the powers vested in the Government in accordance with the rules framed under Clause (0) of Sub-section (2) of Section 3 of the Abkari Act which came into force on the 14th April 1955. It is further contended that though the Minister had powers of revision as from the 14th of April, 1955, he could call for the record and rectify the orders passed before that date. In support of this contention, he refers to the case of Indira Sohanlal v. Custodian of Evacuee Property, (S). But an examination of the facts of that case would show that this contention cannot be sustained. It appears that originally under Section 5-B of the East Punjab Act 14 of 1947, any original order passed by the Custodian or Additional Custodian is not subject to appeal or revision and it was specifically declared to be final and conclusive. Under Section 30(1) (b) of the Central Ordinance No. 12 of 1949, though an appeal to the High Court was provided, there was no provision for revision against an order of the Custodian or Addl. Custodian or authorised Deputy Custodian. Subsequently, under Section 24 of the Central Ordinance No. 27 of 1949, it was, provided inter alia that any person aggrieved by an order made under Section 38 which corresponds to the previous Section 5-A of the East Punjab Act 14 of 1947, may prefer an appeal in such manner and within such time as may be prescribed to the Custodian General where the original order has been passed by the Custodian, Addl. Custodian or an Authorised Deputy Custodian. Section 27 provided for revisional powers of the custodian General, but it was specifically confined to appellate orders and there was no power given thereunder for revision by the Custodian General of an original order passed by the Custodian. This however, was changed under the Central Act 31 of 1950 which repealed and replaced the Central Ordinance 27 of 1949. Though the provision for appeal was virtually the same as under Section 24 the Act provided by Section 27 for general revisional powers of the Custodian General to call for and examine the records either on his own

motion or on an application made to him in this behalf for the purposes of satisfying himself as to the legality or propriety of any such order and to pass such order in relation thereto as I think fit. An application for confirmation was pending on the date of this Ordinance and the confirmation was only made on 20-3-1952. It was this confirmation order that was revised by the Custodian General on 20-5-1953, which order was disputed before the Supreme Court. It cannot, therefore, be said that this case is an authority for the proposition that acts prior to the conferment of the revisional powers could be revised on the subsequent conferment of such powers.

13. It would, however, appear to us on a reading of Section 3(1) (a) of the Abkari Act which empowers the Government to appoint a Commissioner and other officers of the Abkari Department, that the Commissioner who is appointed under the Act is to function under the control and subject to the orders of the Government. In other words, his acts are to be controlled and supervised by the Government. In this view, the appellant could certainly move the Government to revise the order of the Commissioner disallowing his application withdrawing his offer. Consequently, the appellant would be entitled to file a suit within six months from that order of the Government which confirmed the order of the Commissioner and directed collection of the amount of loss from the appellant alleged to have been incurred by the Government. Section 41 also envisages suits against acts of the Government. In this view the suit is within time. In any view the claim for refund of earnest money deposited is not governed by Section 41 of the Abkari Act. The general law of limitation will be applicable thereto under which a suit could be brought within 3 years. We accordingly confirm the finding of the lower court holding the suit to be within time, but for different reasons.

14. In the result, the appeal is allowed with costs and the suit of the appellant for perpetual injunction and for recovery of the deposit amount paid by him is decreed with costs. The amount will bear interest at 4% from the date of the suit to the date of recovery.

Cases Referred.

11LR 45 Mad 799 : (AIR 1922 Mad 488)

2(1789) 3 TR 148 : 100 ER 502 and Cooke v. Oxley, (1790) 3 TR 653: 100 ER 785

3AIR 1916 Mad 75

