

PETITIONER:
K. P. CHOWDHARY

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT:
15/03/1966

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1967 AIR 203 1966 SCR (3) 919
CITATOR INFO :
RF 1976 SC1533 (12)
D 1980 SC 680 (24)
R 1984 SC1326 (10,11)

ACT:
Constitution of India, 1950, Art. 299(1)-Implied contracts,
If permissible.
Madhya Pradesh Land Revenue Code, s.155(b)-Recovery under
implied contract.

HEADNOTE:

The appellant gave the highest bids for two forest contracts at an auction. As the amount of the contract was more than what the Division Forest Officer could accept. the matter was referred to the Chief Conservation of Forests who had the necessary authority to accept the bids. After the close of the auction the appellant had signed the contract form as required, and the documents were sent to the Chief Conservator of Forests for sanction and signature. Before the Chief Conservator of Forests could accept the contract, the appellant raised a dispute as to the marking of the trees. As that dispute was not settled to the satisfaction of the appellant he refused to complete the contract. The Divisional Forest Officer gave notice to the appellant that if he did not complete the formalities action would be taken under the conditions of the auction to re-auction the contract and if there was any deficiency it would be recovered from him. He did not comply and ultimately he was informed that the two contracts had been cancelled and would be re-auctioned at his risk. The contracts were re-auctioned at which there was certain deficiency in the amount. A letter was written to the Tehsildar for recovering this deficient amount from the appellant as arrears of land revenue as per the conditions of auction. Thereupon, the appellant filed a writ petition challenging the recovery of the amount as arrears of land revenue as the contract was not signed or completed by him. The High Court dismissed the petition. In appeal to this Court.

HELD: Section 155(b) of the Madhya Pradesh Land Revenue

Code does not assist the State in realising this amount as arrears of land revenue.

What was said in the earlier cases by this Court with respect to s. 175 (3) of the Government of India Act, 1935 applies with equal force to Art. 299(1) of the Constitution. Two consequences follow from these decisions. The first is that in view of Art. 299(1) there can be no implied contract between the Government and another person, the reason being that if such implied contracts between the Government and another person were &Rowed, they would in effect make Art. 299(1) useless for then a person who had a contract with Government which was not executed at all in the manner provided in Art. 299(1) could get away by saying that an implied contract may be inferred on the facts and circumstances of a particular case. This is of course not to say that if there is a valid contract as envisaged by Art. 299(1), there may not be implications arising out of such a contract. The second consequence which follows from then decisions is that if the contract between the Government and another person is not in full compliance with Art. 299(1) it would be no contract at all and could not be enforced either by the Government or by the other person as a contract [924 A-D]

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State of Bihar v. M/s. Karam Chand Thapar [1962] 2 S.C.R. 827, Seth Bikkraj Jaipuri v. Union of India [1962] 2 S.C.R. 880, State of the West Bengal v. M/s. B.K. Mondal [1962] Supp. 1 S.C.R. 876, Chaturbhuj Vithaldas Josani v. Moreshwar Prashram [1954] S.C.R. 817, and (5) Union of India v. A.L. Rallia Pam, [1964] 3 S.C.R. 164, followed.

In the present case there was no contract between the appellant and the Government before he bid at the auction nor was there any contract between him and the Government after the auction was over as required by Art. 299(1) of the Constitution. As there can be no implied contract between the Government and another person in view of the mandatory provision of Art. 299(1) of the Constitution there can be no question of recovery of any money under an implied contract under cl. (b) of S. 155 of the Madhya Pradesh Land Revenue Code. [924 E-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL No. 669 OF 1965. Appeal by special leave from the judgment and order dated October 5, 1961 of the Madhya Pradesh High Court in M. P. No. 153 of 1961.

J. P. Goyal, for the appellant.

L N. Shroff, for the respondents.

The Judgment of the Court was delivered by

Wanchoo J. This is an appeal by special leave against the judgment of the Madhya Pradesh High Court. The brief facts necessary for present purposes are these. A notice was issued by the Divisional Forest Officer, Jabalpur Division for auction of various contracts in that division in July 1959. The conditions of the auction specified inter alia (a) that no person would be allowed to bid for any forest contract at the auction unless he had signed the sale notice in token of his agreement to abide by the conditions thereof and deposited a sum of Rs. 5001- as earnest money in respect of each forest contract before bidding therefore; (b) that the Divisional Forest Officer reserved to himself the power without assigning any reason to accept the highest or any bid, (c) that the consideration due under a contract was to

be payable where it exceeded Rs. 3,000/-, in four equal instalments, the first instalment being payable immediately at the close of the auction; (d) that the successful bidder had to sign immediately at the close of the auction the bid-sheet for the contract knocked down in his favour; (e) that the sales of contracts beyond the power of sanction of the Divisional Forest Officer were subject to the sanction of the competent authority and the successful bidder was bound by his bid until orders were passed by the competent authority; (f) that the contract deed and the security bond were to be executed by the successful bidder and his surety immediately at the close

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of the auction; (g) that if the successful bidder fails to pay the full amount of the consideration, or the first instalment or to furnish the security required or to complete the formalities, the earnest money deposited by him was to be forfeited to Government and the contract would be re-auctioned at the risk of the successful bidder and any deficiency happening on such re-sale would be recoverable from the successful bidder as arrears of land revenue; and (h) that the act of bidding was deemed to be a complete and unreserved acceptance of these conditions and others which are not material for our purposes.

The appellant bid for two contracts at the auction and his were the highest bids. As the amount of the contract money was more than what the Divisional Forest Officer could accept, the matter was referred to the Chief Conservator of Forests who had the necessary authority to accept the bids. After the close of the auction the appellant had signed the contract form and a surety signed the security bond as required. These documents were sent to the Chief Conservator of Forests for sanction and signature. Before however the Chief Conservator of Forests could accept the contract, the appellant raised a dispute as to the marking of the trees according to the material notified at the time of the auction. As that dispute was not settled to the satisfaction of the appellant he refused to complete the contract or to pay the first instalment in respect thereof. Eventually the Divisional Forest Officer gave notice to the appellant on July 29, 1959 that if he did not complete the formalities within a week, action would be taken under the conditions of auction to re-auction the contract and if there was any deficiency it would be recovered from him and the earnest money would be forfeited. He did not however pay the first instalment due and ultimately on November 25, 1959 he was informed that the sale of the two contracts sold in the auction held on July 20, 1959 in his favour had been cancelled by the Chief Conservator of Forests and the amount of earnest money had been forfeited. He was also informed that the two contracts would be re-auctioned at his risk. Thereafter the contracts were re-auctioned in January 1960. At the re-auction there was a deficiency in the two contracts together of Rs. 51,500/-. The appellant was therefore asked to send this amount to the Divisional Forest Officer. When he failed to do so, a letter was addressed to the Tehsildar Jabalpur by the Divisional Forest Officer for recovering this amount as arrears of land revenue under the conditions of auction.

Thereupon the appellant filed a writ petition out of which the present appeal has arisen. The case of the appellant was that the claim of the respondent-State for recovery of the deficiency on re-sale was not covered by either s. 82 of the Indian Forest Act, (No. 16 of 1927) or rules 28 and 29 of the Madhya Pradesh Forest

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Contract Rules or under any other provision of the law, and the amount therefore could not be recovered as arrears of land revenue as the contract was not signed or completed by him. He therefore claimed the issue of an appropriate writ quashing the notice issued to him and stopping the respondent from recovering as arrears of land revenue the sum of Rs. 51,500/-. The State contested the case and contended that recovery of the amount could be effected as arrears of land revenue under s. 82 of the Indian Act read with rr. 28 and 29 of the Forest Contract Rules in view of the conditions of auction, which the appellant had accepted. The petition was heard finally by a Full Bench of the High Court in view of a reference by a Divisional Bench. The Full Bench seems to have held that rr. 28 and 29 of the Forest Contract Rules did not apply to the case as they dealt with breaches arising after the contract in writing had been executed. In this case the admitted position was that the contract in writing had never been signed by the Chief Conservator of Forests and therefore the question which fell to be considered, according to the Full Bench, was whether the liability arising under the conditions of auction could be enforced and the deficiency on re-auction recover as arrears of land revenue even without the execution of a valid contract in writing. On this question the Full Bench went on to hold that this was a case of an implied contract resulting from the appellant's accepting the conditions of auction and that such an implied contract was not hit by Art. 299 of the Constitution as that applied plainly to contracts which are required to be reduced to writing and an implied contract in its very nature was not such a contract. Finally the full Bench held that s. 155(b) of the Madhya Pradesh Land Revenue Code, 1959, applied to this case of implied contract and the amount could be recovered thereunder as arrears of land revenue. On this view the petition was dismissed. The High Court having refused to grant a certificate, the appellant applied for and obtained special leave from this Court; and that is how the matter has come before us.

Two questions arise for decision in this appeal. The first is whether the High Court's view that Art. 299 of the Constitution does not hit an implied contract and therefore the amount could be recovered under s. 155(b) of the Madhya Pradesh Land Revenue Code is correct. The second is that if that view is not correct, whether the amount can be recovered as arrears of land revenue under any other provision of law.

It may be mentioned that Art. 299(1) of the Constitution with which we are concerned is practically in the same terms as S. 175(3) of the Government of India Act, 1935. This Court had occasion to deal with s. 175 in *The State of Bihar v. Messrs. Karam*

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Chand Thapar(1) It held that under S. 175(3), three conditions had to be satisfied before a binding contract against the Government could arise. These three conditions are: (1) the contract must be expressed to be made by the Governor or the Governor-General, (ii) it must be executed in writing, and (iii) the execution should be by such persons and in such manner as the Governor or the Governor-General might direct or authorise. This Court further held in that case that S. 175(3) did not prescribe any particular mode in which the authority must be conferred and where an ad hoc authority was conferred on any person, the requirement must be held to be satisfied.

The matter was again considered by this Court in *Seth Bikhrai Jaipuria v. Union of India*(2) It was again emphasised that S. 175(3) of the Government of India Act, 1935, required that a contract, if it was to bind the Government, had (a) to be expressed to be made by the Governor or Governor General, (b) to be executed on behalf of the Governor or Governor General, and (c) to be executed by an officer duly appointed in this behalf and in such manner as the Governor or the Governor General directed or authorised. It was also held that the provisions of s. 175(3) were mandatory, as the object of enacting these provisions was that the State should not be saddled with liability for unauthorised contracts.

The matter was considered again by this Court in *State of West Bengal v. Messrs. B. K. Mondal and Sons*(3) It was held that the provisions contained in S. 175(3) were mandatory. The intention of Parliament in enacting the provision was that the State should not be burdened with liability based on unauthorised contracts. The provision was made in public interest and so the word "shall" used therein must be held to make it obligatory and not directory. Further the case of *Chaturbhuj Vithaldas Jasani v. Moreshwar Prashram*(4) was explained in that decision and it was held that it should be confined to its own facts in the context of the Representation of the People Act. Finally it was held in that case that S. 70 of the Indian Contract Act (No. 9 of 1872) could be invoked against the Government if the person invoking it could show that he had acted lawfully and had not intended to act gratuitously and the State had enjoyed the benefit.

Lastly this court had occasion to consider the matter again in *Union of India v. A. L. Rallia Ram*,(5) and it was held that so long as all the requirements of S. 175(3) of the Government of India Act were fulfilled and were clear from the correspondence, S. 175(3) did not necessarily require the execution of any formal document.

(1) [1962] 1 S.C.R. 827. (2) [1962] 2 S.C.R. 8 80.

(3) [1962] Supp. 1 S.C.R. 876. (4) [1954] S.C.R. 817.

(5) [1964] 3 S.C.R. 164.

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What was said in these cases with respect to S. 175(3) of the Government of India Act, 1935, applies with equal force to Art. 299 (1) of the Constitution. Two consequences follow from these decisions. The first is that in view of Art. 299(1) there can be no implied contract between the Government and another person, the reason being that if such implied contracts between the Government and another person were allowed, they would in effect make Art. 299(1) useless, for then a person who had a contract with Government which was not executed at all in the manner provided in Art. 299(1) could get away by saying that an implied contract may be inferred on the facts and circumstances of a particular case. This is of course not to say that if there is a valid contract as envisaged by Art. 299(1), there may not be implications arising out of such a contract. The second consequence which follows from these decisions is that if the contract between Government and another person is not in full compliance with Art. 299(1) it would be no contract at all and could not be enforced either by the Government or by the other person as a contract. In the present case it is not in dispute that there never was a contract as required by Art. 299(1) of the Constitution. Nor can the fact that the appellant bid at the auction and signed the bid-sheet at the close thereof or signed the declaration necessary before he could bid at the auction amount to a contract between him

and the Government satisfying all the conditions of Art. 299(1). The position therefore is that there was no contract between the appellant and the Government before he bid at the auction, nor was there any contract between him and the Government after the auction was over as required by Art. 299(1) of the Constitution. Further, in view of the mandatory terms of Art. 299(1), no implied contract could be spelled out between the Government and the appellant at the stage of bidding for Art. 299 in effect rules out all implied contracts between Government and another person. The view taken by the High Court that s. 155 (b) of the Madhya Pradesh Land Revenue Code which provides for recovery of money as arrears of land revenue would therefore enure in favour of the Government and enable it to recover the deficiency cannot be sustained. That clause provides for recovery of all moneys falling due to the State Government under any grant, lease or contract and says that they shall be recoverable in the same manner as arrears of land revenue. The High Court was of the view that the word "contract" in this clause includes an implied contract. But if there can be no implied contract between the Government and another person in view of the mandatory provision of Art. 299(1) of the Constitution there can be no question of recovery of any money under an implied contract under cl. (b) of s. 155. The view therefore taken by the High Court that this amount could be recovered under s. 155(b) is not correct.

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This brings us to the second question, namely, whether the amount can be recovered under any other provision of law as arrears of land revenue. In this connection learned counsel for the State has referred us to s. 82 and s. 85 of the Indian Forest Act. The question whether the amount can be recovered either under s. 82 or under s. 85 of the Indian Forest Act read with the rules framed thereunder has not been investigated by the High Court. The view of the High Court that rr. 28 and 29 of the Forest Contract Rules apply after a contract in writing has been executed appears to be correct. But the question whether the State can still recover the amount as arrears of land revenue by virtue of the conditions of auction, even though rr. 28 and 29 do not apply has not been investigated. This question will require investigation before the petition can be finally disposed of. The appellant had claimed in para 17 of the petition that the claim of the State for recovery of the deficiency on re-sale was not covered under any other provision of law so as to make it recoverable as arrears of land revenue. That question has still to be investigated and it would be for the State to show whether the amount can be recovered under any provision of law or rules relating to forest contracts. So the matter will have to be remanded for further investigation on these lines.

We therefore allow the appeal and hold that s. 155(b) of the Madhya Pradesh Land Revenue Code does not assist the State in realising this amount as arrears of land revenue. We however remand the matter to the High Court for determining after hearing both parties whether there is any other provision of law or rules which would permit the recovery of this amount in view of the conditions of auction. In the circumstances we order parties to bear their own costs of this Court.

Appeal allowed.

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JUDIS