

(1984) 10 KL CK 0021

High Court Of Kerala

Case No: S.A. No. 353 of 1979

Tellicherry Municipal Council

APPELLANT

Vs

V.P. Samsu

RESPONDENT

Date of Decision: Oct. 10, 1984

Acts Referred:

- Kerala Municipalities Act, 1960 - Section 88

Citation: (1984) KLJ 756

Hon'ble Judges: P.C. Balakrishna Menon, J

Bench: Single Bench

Advocate: K.J. Joseph, for the Appellant; K.N. Karunakaran and K.G. Devarajan, for the Respondent

Final Decision: Allowed

Judgement

P.C. Balakrishna Menon, J.

The only question for decision in this second appeal, at the instance of the plaintiff - the Tellicherry Municipality, is as to whether there is a concluded contract between the plaintiff and the defendant on the acceptance by the plaintiff of the defendant's bid at an auction held by the Municipality of the right to conduct trade in a bunk shop belonging to it. The suit is for damages, Rs. 2,331.70 Ps., for breach of contract committed by the defendant. The trial court held that there is a valid contract between the parties, the defendant has committed breach of the contract and decreed the suit for damages as prayed for. In appeal, by the defendant, the lower appellate court reversed the decision of the trial court and dismissed the suit on its finding that there is no concluded contract between the parties. The facts of the case are not in dispute. The plaintiff - Tellicherry Municipality - notified sale by auction of the right to conduct trade in four bunk shops newly constructed at the Municipal Bus Stand for the period from 1-7-1972 to 31-3-1974. Ext. A1 dated 7-6-1972 is the auction notice. The defendant participated at the auction held on 20-6-1972 and was the highest bidder in regard to bunk No. 4, his bid being for

rental at the rate of Rs. 10.30 per day. The bid was accepted by the plaintiff-Municipality as per its resolution dated 27-6-1972 and communicated to the defendant on 28-6-1972. The defendant was required to deposit Rs. 1,500/- as security, pay 4 months rent in advance and execute a formal agreement. He paid the advance rent demanded and submitted a representation Ext. A4 dated 5-7-1972, addressed to the Chairman of the plaintiff-Municipality. Ext. A4 refers to the defendant's bid on rental at the rate of Rs. 10.30 per day and the deposit of the advance rent. It refers also to the letter dated 28-6-1972 of the Commissioner, Tellicherry Municipality, intimating the defendant of the acceptance of his bid and requiring him to remit the security deposit and execute a formal agreement before 30-6-1972 and take charge of the bunk on 1-7-1972. Ext. A4 contains a request to the Chairman of the Municipality to grant the defendant remission of rent for the period until the commencement of Onam season and also to grant extension of time till 1st October, 1972 for payment of rent and to remit the security deposit. It is stated in Ext. A4 that the defendant bid at the auction under the bona fide belief that he will be able to secure a good business at the bus stand, but to his dismay it is found that no buses are parked at the Bus stand and there is not much scope for business at the bunk shop until the Onam season commences. The Municipality issued Ext. A3 notice dated 6-7-1972 to the defendant requiring him to remit the security deposit of Rs. 1,500/-, and execute the formal agreement within 24 hours after the receipt of the notice failing which the defendant was told that the bunk will be re-auctioned at his risk and loss. Ext. A6 dated 3-8-1972 is a further notice issued by the Municipality to the defendant informing him that for the reason of his failure to comply with the terms of the contract there will be re-auction of the bunk shop at 3 p.m. on 17-8-1972 at his risk and loss. Ext. A5 and A14 are the public notices of re-auction and Ext. A7 is the notice published in the Mathrubhumi daily. Re-auction was held on 17-8-1972, as notified. Ext. A15 is the bidders list which would show that the highest bid was on rental at the rate of Rs. 3.25 per day. The Municipal Council finding the rent too low, did not accept the bid and resolved to conduct a further auction. Ext. A13 is the notice of auction to be held on 12-9-1972. Ext. A17 is the notice published in Mathrubhumi daily. Ext. A18 is the list of bidders at the auction held on 12-9-1972. The highest bid on rental at the rate of Rs. 5.50 per day was accepted. The suit is for the loss sustained by the Municipality based on the difference in the rate of rent at which the Municipality was obliged to let the shop after adjusting the 4 months rent advance paid by the defendant.

2. The defendant denied his liability for damages. His contention is that there is no concluded contract and that the bunk was not ready for occupation with effect from the date on which he was asked to take possession of the same. The defendant has no case that in case it is found that there is a concluded contract and he is guilty of breach of contract, the quantum of damages claimed is excessive. Relying on the evidence of P.w. 1, a clerk of the Municipality, the trial court found that the bunk was ready for occupation on 1-7-1972. The contention that it was not ready for

occupation was not pursued by the defendant and no such question is raised before me.

3. The only point for decision therefore is as to whether on the acceptance of the defendant's bid by the Municipality there is a concluded contract between the parties. In [M. Lachia Setty and Sons Ltd. Vs. Coffee Board, Bangalore](#), the Supreme Court at page 166 has quoted the following passage from Halsbury's Law of England (4th Edn) Vol. 9 para 231 page 102:

231. Auctions. At auction sales, it is a long-established rule that prima facie the auctioneer's request for bids is a mere invitation to treat, and that each bid constitutes an offer which is accepted on behalf of the seller by the auctioneer when he signifies his acceptance in the usual manner. It would seem, more over, that each bid lapses as soon as a higher bid is made.

4. In the case before the Supreme Court the terms and conditions of the auction permitted the rejection of the highest bid and acceptance of a lower bid. The contention that the lower bid had lapsed and on acceptance of the lower bid there is no concluded contract was rejected. The Supreme Court stated thus at page 167:

In the view which we are taking of Condition No. 6, it is clear that the Chief Coffee Marketing Officer in the instant case was within his rights when he accepted the lower bids received from Giri Coffee Works in respect of 5 lots. The appellants' contention in this behalf, therefore, must fail.

A Division Bench of this Court in the decision reported in *Bhaskaran Nair v. State of Kerala* (1980 KLT 462), stated thus at page 463:

Under the conditions of sale the appellant who had been declared to be the highest bidder and whose bid was accepted by the competent authority, was bound to remit the further instalments of the bid amount within the stipulated periods and on failure to do so, the amounts already deposited by him were liable to be forfeited and he was also liable to make good to Government any loss that may be suffered by the department consequent on a re-auction of the coupe.

From these decisions, it is clear that there will be a concluded contract on the acceptance of the bid unless the conditions of auction require something further to be done such as deposit of the security amount or the execution of a formal agreement on performance of which alone the contract is to come into force.

5. In [Kollipara Sriramulu Vs. T. Aswathanarayana and Others](#), it is stated thus at page 1031:

It is well established that a mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a mere formal shape does not prevent the existence of a binding contract. There are,

however, cases where the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal contract is signed. The question depends upon the intention of the parties, and the special circumstances; of each particular case.

The further question therefore is if there is anything on record to show the existence of such terms indicating that the parties did not intend to be bound until a formal agreement is signed. Counsel for the defendant-respondent refers to paragraph 2 of the plaint where there is a reference to the failure of the defendant to comply with the terms of the notice requiring him to furnish security and execute a formal agreement. Counsel refers also to Exts. A5 and A14, the re-auction notices, published by the Municipality where there are provisions requiring the successful bidder to make the security deposit and execute a formal agreement. Exts. A5 and A14 do not relate to the auction at which the defendant was the successful bidder. Neither the averments in the plaint nor even the conditions of auction contained in Exts. A5 and A14 would show that the parties intended that there will be a concluded contract only after the execution of a formal agreement. It is clear to my mind that what is provided for in the conditions of re-auction contained in Exts. A5 and A14 is only for the execution of formal agreement embodying the terms and conditions of the contract already concluded by the acceptance of the bid.

6. Counsel refers also to Sec. 88 of the Kerala Municipalities Act which requires that:

Every contract entered into by the commissioner on behalf of the council shall be entered into in such manner and form as to bind him if it were made on his own behalf, and may in like manner and form be varied or discharged.

There is nothing in the language of Sec. 88, which would require a formal agreement before a contract concluded by acceptance of the highest bid at an auction sale is rendered binding on the auction purchaser. For the aforesaid reasons, I am of the view that there is a concluded contract between the parties on acceptance of the defendant's bid by the plaintiff-Municipality. There is no dispute regarding the quantum of damages claimed. The plaintiff is, therefore, entitled to a decree for damages as claimed in the plaint. Counsel for the respondent submits that the defendant had bid at the auction with the hope that he would get a good business at the bunk shop at the Bus stand, the bus stand had not been functioning properly and it was found that he will not be able to earn a living by carrying on trade at such a place. It was for that reason that he did not furnish security and execute a formal agreement. He had, however, deposited four months rent in advance. There is evidence in the case to show that the intention of the defendant was bona fide to carry on trade by way of self employment to eke out a living. Under these circumstances, I leave it to the good sense of the Municipal Council to decide whether it should recover the damages from the defendant occasioned under the peculiar circumstances of the case.

Subject to the above observations, I allow this Second Appeal; set aside the judgment and decree of the lower appellate court and restore the decree of the trial court. There will be no order as to costs throughout.