

(2008) 03 PAT CK 0096**Patna High Court****Case No:** CWJC No. 12933 of 2007

Bhagwan Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: March 28, 2008**Acts Referred:**

- Sales of Goods Act, 1930 - Section 64

Citation: (2009) 1 PLJR 448**Hon'ble Judges:** Navaniti Pd. Singh, J**Bench:** Single Bench**Advocate:** Chitaranjan Sinha and Binodanand Mishra, for the Appellant; Narendra Kishore Sinha for the State and Mr. Dinesh Choudhari, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

The present dispute relates to settlement of right to collect tolls at Behat Bus Stand in the district of Madhubani. Being a right to collect tolls, it is a Sairat which is vested in the State. Pursuant to newspaper advertisements and notice on Notice Board, the said right was taken up for public auction on the 20th of August, 2007. Six persons participated after depositing earnest money. Auction was carried out and ultimately one Nand Kumar Jha bid the highest being Rs. 13,50,300/. He was then asked to deposit 50% of the amount as required on the knocking down of the hammer. He backed out. His earnest money was forfeited. One by one, the others in seriatim, backed out and ultimately the petitioner agreed to take the settlement on his highest bid. The settlement was so accepted. He deposited the requisite amount on demand immediately. On 23.8.2007, an agreement was executed as between the State and the petitioner in relation to acceptance of the said settlement. Agreement, inter alia, provided for payment schedule of the balance amount. It clearly provided

that the agreement would be fully binding on both the parties. It provided that actual collection would start after permission (Parwana) is granted. It appears respondent No. 5 who had not at all participated in the said bid then approached the authorities stating that there was no publicity of the settlement to be made and he was ready to offer Rs. 9,00,000/- as against Rs. 4.50 lacs offered by petitioner. Persuaded by the said two grounds, the Collector directed the Sub-Divisional Officer to hold a fresh auction after due publicity and notice to all but conspicuously no order cancelling the settlement and the agreement made thereafter was passed. It appears pursuant to the said orders on 25.9.2007, reauction was held in which undisputedly only respondent No. 5 appeared and the bid was knocked down in his favour for Rs. 9,00,000/- as he had undertaken earlier. Thereafter, petitioner was informed to take his money back. It is all these actions subsequent to the bid being knocked down in favour of the petitioner an agreement having been entered into between the petitioner and the State that are challenged in this writ application. Respondent No. 5 relies on a Circular No. 2526 dated 12.9.1978 issued by the Revenue Department wherein in paragraph-6 after earlier deprecating reauctions, an exception was carved out, *inter alia*, providing that if a person subsequently comes and offers 25% more than the settlement amount reauction can be done. With reference to the said Circular, it is submitted that in interest of revenue, such a course was permissible for the State. The same is the stand of the State as against the petitioner.

2. As affidavits have been exchanged and pleadings are complete, with consent of parties, this writ application is being disposed of at this stage itself.

3. Having given my anxious consideration to the facts, as noted above, I am of the opinion that the Circular, as issued, is wholly illegal and contrary to law and cannot be acted upon. All the actions of the respondents, after agreement was executed, are equally unsustainable.

4. From the facts as noted above, it would first be seen that the contention of respondent No. 5 that there was no adequate publicity before the first auction was made was palpably false inasmuch as newspaper publication was made of the intended auction. This was sufficient to reject the application of respondent No. 5 but it appears that the authorities were persuaded by his high offer and the Circular. The question is whether the subsequent higher offer or the Circular for that matter is of any consequence.

5. The law in this regard is well settled. I may only notice the principles enshrined in Section 64 of the Sales of Goods Act which deals with auction sale. The said Section clearly provides that if the acceptance of the bid is unreserved, the sale is complete the moment the hammer is knocked down. Therefore, if this be the common law and the law makes no exception or distinction between the citizen and the State. State not being exempt from the common law aforesaid, the law equally applies to the State or State's action. There may be justifiable reasons but if it is not

permissible in law, it cannot be done. This is moreso because if such steps are permitted on the plea of loss of revenue, there would be no sanctity in the auction process and the law in that regard. I may only refer to two judgments in this regard being in the cases of Zila Parishad, Muzaffarnagar & Another vs. Udai Veer Singh, AIR 1989 Allahabad 64 with regard to similar settlements and Sri P. V. K. Satyanarayana vs. The Government of Andhra Pradesh & Others, AIR 1993 Andhra Pradesh 42 wherein this principle of auction settlement has been elaborately discussed and the law is what I have stated above. If this be the law then the Circular being contrary to law and a mere executive fiat can have no validity or sanctity in law. Once the bid was knocked down unreservedly and an agreement executed between the parties, it is the agreement that binds the party for under the Law of Contract an agreement reduced in writing becomes a contract enforceable in law. Once it is a contract enforceable in law, the parties are bound by the terms of the agreement and no party can unilaterally relieve himself of the obligation thereunder may it be the State itself.

6. I may also at this stage refer to the manner in which the second auction was done. The Collector of the district ordered that before second auction is done, there should be wide publicity. In fact, there was no publicity except a so-called attempt to notice petitioner of the date of second auction. The publicity factor or the lack of it is evident from the fact that on the 25th of September, 2007, it was respondent No. 5 alone who appeared. If respondent No. 5 alone appeared, there was no sense in holding the auction because auction itself predicates competitive bidding.

7. In view of all the aforesaid, the actions of the respondents cannot be sustained and is quashed accordingly. The settlement, as originally made in favour of the petitioner, would continue, also because I have not been shown any order whatsoever of whomsoever ordering its cancellation. The settlement, as made with respondent No. 5, cannot be countenanced and is quashed as such. The writ application is, thus, allowed.