

Kunjukrishnan Vs. State of Kerala and ors.

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Court : Kerala

Decided On : Dec-02-1982

Reported in : AIR1983Ker73

Judge : K. Bhaskaran and; K. Sukumaran, JJ.

Acts : [Contract Act, 1872](#) - Sections 32 and 56; Kerala Forest Act, 1962 - Sections 79; Revenue Recovery Act

Appeal No. : A.S. No. 267 of 1977

Appellant : Kunjukrishnan

Respondent : State of Kerala and ors.

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : P.H. Sankaranarayana Iyer, Adv.

Disposition : Appeal dismissed

Judgement :

Bhaskaran, J.

1. Plaintiff is the appellant. The suit was one for declaration that Ext. B4 agreement entered into by the plaintiff with the 3rd defendant on 20-11-1975 and Clause 8 of Ext. B-1 sale notification issued by the 3rd defendant regarding the

sale of residual tree growth from the plaint coupe were unenforceable in law and that the plaintiff was not liable to pay any amount to the defendants on the basis of the said agreement or Clause 8 of the sale notice; and also for a perpetual injunction restraining the defendants from recovering the amount mentioned in the notices issued OB 9-6-1976 (Ext. A-t) by the 3rd defendant by invoking the provisions of the Revenue Recovery Act or from appropriating the amount deposited by the plaintiff with 3rd defendant on 30-11-1975 as part of the earnest money. As a consequential relief the plaintiff also prayed for a decree to recover a sum of Rs. 13,640/-together with interest on the principal amount of Rs. 13,000/- from 7-10-1976 till realisation at the date of 7% per annum. The further relief sought in the suit was for the recovery of the movables described in Schedule 11 to the plaint, in case the defendants fail to deliver those movables, the plaintiff was to be given a decree for recovery of a sum of Rs. 13,510/- being the value thereof,

2. The material allegations in the plaint, relevant for the purpose of this appeal, could be stated as follows:-- Sub-coupe No, 1 of Anakkulam Coupe No. 5 in Ancfaal Range of Punalur Forest Division was vested with the 1st defendant, the State of Kerala and was under the control and supervision of defendants 2 and 3 (the Circle Conservator of Forests, Quilon, and the Divisional Forest Officer, Punalur, respectively) during the material time. The 3rd defendant sold the right to collect and remove all the residuary tree growth in the plaint coupe on 20-11-1975 by public auction. The conditions of sale are set forth in the notification published by the 3rd defendant on 11-10-1975 (Ext. B-1) of which Ext. B-2 was the gazette publication. As per the terms of this notification, the 3rd defendant was to accept the bid, and the 2nd defendant was to confirm the acceptance for completing the contract of sale. The timber and firewood had to be removed from the coupe before 31-3-1976. On acceptance of the bid by the 3rd defendant, the successful bidder had to deposit Rs. 10,000/-or 1/3 of the bid amount whichever is less as part payment of earnest money. The bidder had also to execute an agreement with the 3rd defendant providing that the bidder would not withdraw the bid before confirmation of the acceptance by the 2nd defendant. On confirmation by the 2nd defendant, the bidder would deposit one third of the bid amount as earnest money and execute a formal agreement with the State incorporating the terms and conditions governing the contract of sale. In the auction held on 20-11-1975 the

plaintiff participated and bid the coupe for Rs. 2,09,000/-. Since the plaintiff's bid was the highest, the 3rd defendant accepted it, subject to confirmation by the second defendant. The plaintiff deposited Rs. 10,000/- with the 3rd defendant as per the terms of the notification. The plaintiff also executed an agreement with the 3rd defendant agreeing to execute a formal agreement with the 1st defendant after the acceptance of the bid was confirmed by the 2nd defendant. As per the terms of the agreement, if the plaintiff failed to execute the formal agreement the 1st defendant shall have the power and authority to recover from the plaintiff any loss or damage caused to the Government as might be determined by the Government. The Government could also recover the loss or damage by appropriating the above earnest money deposited by the plaintiff and if that was found inadequate, the balance could be recovered from the plaintiff and his properties under the Revenue Recovery Act, the 2nd defendant confirmed the acceptance of plaintiff's bid by the 3rd defendant as per his proceedings dated 10-12-1975 (Ext. B-5). The confirmation of acceptance was communicated to the plaintiff on 20-12-1975. On 19-12-1975 the 3rd defendant had sold by public auction the residuary growth from 19 coupes in Punalur Division. The timber worth Rs. 17.2f.300/- was sold from the coupe. Timber from these coupes was also directed to be removed before 31-3-1976. Between 20-11-1975 and 20-12-1975 timber worth about 50 lakhs of rupees was sold from the neighbouring divisions of Konny and Kulathupuzha; and such a large scale sale of limber from Government Forests had never taken place any time before that. The result was that there was heavy slump in the price of timber and firewood. During this period the Government of Tamil Nadu also promulgated orders under the Essential Commodities Act. fixing the maximum price of firewood at Rs. 90/- per ton. This caused a further decline in the price of timber and firewood. This was not a situation contemplated at the time when the plaintiff bid in auction. It was humanly impossible for the plaintiff to sell timber from the plaint coupe within 31-3-1976. There were no bidders at the several auctions conducted by the defendants subsequent to 20-12-1975. The plaintiff and other persons who bid at the auction held on 10-11-1975 represented to the defendant for extension of the term by 10 months as a condition for executing the formal agreement. No reply was given by the defendants. As the plaintiff did not execute the formal agreement, on 20-2-

1976 the 3rd defendant issued a notice to the plaintiff intimating him that if he did not execute the formal agreement by 27-2-1976, the residuary tree growth from the plaint coupe would be resold by public auction. The plaintiff was also intimated that the part of the earnest money deposited by him would be forfeited, and the loss, if any, sustained by the 1st defendant as a result of the resale would be recovered from him.

Then the plaintiff urged the defendants to consider the representation made earlier. No orders were passed on the representation made by the plaintiff and others. The 3rd defendant resold the residuary tree growth to the plaint coupe by publication on 30-3-1976. One S. Prasanna Kumar was the highest bidder in the auction. The bid was for Rs. 1,38,200/-. The 3rd defendant accepted the bid; and the 2nd defendant confirmed it. On 9-6-1976 the 3rd defendant issued a notice (Ext. A-1) to the plaintiff demanding to pay Rs. 70,800/- as loss resulting from resale and a sum of Rs. 600.77, the proportionate cost for advertising the resale. The 2nd defendant was also taking steps to recover the amounts from the plaintiff by invoking the provisions of the Revenue Recovery Act. The action of the defendants was unauthorised, illegal and ab initio void. The agreement entered into by the plaintiff with the 3rd defendant on 20-11-1975 was only an agreement to enter into a formal agreement with the 1st defendant and as such it was unenforceable in law. Defendants were not entitled to recover any amounts from the plaintiff on the basis of that agreement. The agreement dated 20-11-1975 (Ext. B-4) and Clause 8 of the sale notice (Ext. B-I) are unsupported by consideration and are void and unenforceable. The 3rd defendant was not authorised by the Governor of Kerala to enter into an agreement dated 20-11-1975 (Ext. B-4). The agreement was not executed in the name of the Governor. So the Government did not comply with the provisions of Article 299 of the Constitution of India. It was not binding on the 1st defendant. The 1st defendant could not derive any right under that agreement. The terms of the formal agreement sought to be executed were not specified in the agreement dated 20-11-1975. So this agreement to enter into a formal agreement was not legally enforceable. The contract of sale of a residual tree growth from the plaint coupe to the plaintiff was not complete. Before the execution of the formal agreement it was open to the plaintiff to withdraw the bid. The refusal of the defendants in extending the term of the plaintiff by 10 months

was arbitrary and unconscionable. This action on the part of the defendants has absolved the plaintiff from all liabilities under the agreement. Even if it was found that the contract of sale was complete, the 3rd defendant was not competent to resell the residual tree growth without cancelling the contract by the plaintiff. The defendants had not sent any notice to the plaintiff cancelling the contract. The 3rd defendant was not competent to cancel the contract. The 2nd defendant had not confirmed the cancellation, if any. Even if there was a concluded contract of sale, the contract was frustrated by the action of the defendants in effecting large scale sale of timber and firewood on 1-12-1975. The loss or damage referred to in the agreement dated 20-11-1975 (Ext. B-4) and Clause 8 of the sale notice (Ext. B-1) could only be the expenses of resale; it could not include the difference between the plaintiff's bid and the price fetched on the resale. The reasonable compensation could only be the loss or damage actually suffered by the defendants. It could not exceed the earnest money deposited by the plaintiff.

3. In their written statement defendants 1 to 3 contended that the suit was not maintainable either in law or on facts. The right, title and interest over sub-coupe 1 of Anakulam coupe No. 5 in Anchal Range scheduled in the plaint get vested in Sri S. Prasanna Kumar who bid it in resale conducted on 30-3-1976. The right of removal of residual growth was exercised by him on the basis of the agreement executed on 22-6-1976. The sale in which the plaintiff participated took place on 20-11-1975. The terms and conditions of the sale were as published in the Keraia Gazelle on 28-10-1975 as notice No. PAI.662/75 dated 11-10-1975. Short notices were also published in two prominent Malayalam dailies, Malayala Manorama dated 3-11-1975 and Keraia Kaumudi dated 2-11-1975. The above notices were signed, and were accepted by all the bidders who participated in the sale. After the acceptance of the bid by the 3rd defendant the plaintiff on 20-11-1975 executed a bond undertaking to abide by the terms and conditions of the sale notification. Subject to confirmation by the 2nd defendant the plaintiff's bid for Rs. 2,09,000/- was provisionally accepted by the 3rd defendant. The plaintiff deposited Rs. 10,000/- as a part payment of the earnest money. He had executed an agreement with the 3rd defendant agreeing to execute a formal agreement with the 1st defendant. As per the terms incorporated in the bond executed by the plaintiff he was liable to the respondents for all the loss incurred by the 1st defendant due to

laches on his part. R. R. proceedings sought to be enforced were legal, and could not be questioned by the plaintiff. The acceptance of the plaintiffs bid by the 3rd defendant was confirmed by the 2nd defendant, and It was communicated to the plaintiff on 15-12-1975(Ext. B-6). The plaintiff acknowledged it on 18-12-1975 (Ext. B-8). After the auction dated 20-11-1975, 17 sub-coupes of Punalur Division were sold on 19-12-1975, one sub-coupe on 8-1-1976 and 10 sub-coupes on 20-1-1976. The bidders including the plaintiff who participated in the auction on 20-11-1975 relating to the plaint coupe were fully aware of the probable sale of coupes coming up for sale subsequently. No assurance was given to the plaintiff that no further coupe would be sold. During the previous years also several coupes were sold one after another. The statistics regarding the sale of timber given in the plaint were not correct. The defendants were not responsible for the fall in price of timber or firewood. The plaintiff had not made any earnest attempt to perform his part of the agreement of sale. Several other bidders who bid other sub-coupes on 20-11-1975 along with the plaintiff had executed the agreements as they were bound to do, collected and removed the limber and firewood within the stipulated time and successfully completed the contracts. There was no information regarding the representation referred to in para 12 of the plaint. Even if there was any representation there was no provision for granting extension of time for a period of 10 months. The failure of the plaintiff to execute the agreement was in violation of the terms of sale notification and the bond already executed by him immediately after the sale. A sum of Rs. 70,800/- towards the loss resulting from resale and Rs. 600.77 towards advertising charges for the resale notification were due to the 1st defendant from the plaintiff. Steps were initiated for recovery of this amount from the plaintiff under the Revenue Recovery Act. After appropriating the earnest money of Rs. 10,000/- the balance to be realised was Rs. 61,400.77. Out of this amount, a sum of Rs. 13,512.80 had already been recovered and the balance at present was only Rs. 47,887.97. The 3rd defendant was an authorised agent of the 1st defendant and action taken by him was legal and valid. The agreement entered into by the plaintiff with the 3rd defendant on 20-11-1975 was enforceable. Clause 8 of the sale notice; was also enforceable by the defendants. It was supported by consideration and was valid. The 3rd defendant was authorised by the Government in Notification No. 82347/MS/55/PD dated 3-11-

1965 and 695030/MS/64/PD dated 22-2-65 to enter into agreement on behalf of the Government. The agreement was executed on behalf of the Government in the name of the Governor as per the provisions of Article 299 of the Constitution of India, In Clause 17 of the sale notification it was made clear that a draft of the agreement was available in the office, that the bidders might get themselves acquainted with the conditions of sale before participating in the sale and that any complaint raised afterwards regarding the conditions in the sale notice or draft agreement would not be accepted. The terms were quite clear and the plaintiff had made himself acquainted with them. The contract of sale was complete as soon as the offer made by the plaintiff was accepted by the competent authority and the acceptance was communicated to him. It was not correct to say that the acceptance became complete only when the execution of the agreement, which was a subsequent event, took place. Once the acceptance was complete, it was not open to any of the contracting parties to withdraw from the offer. The plaintiff had no right to withdraw at that stage. As per the existing rules there was no provision to extend the period for removal of timber by 10 months. As per the contract, the right to resale the coupe without formally cancelling the contract, was reserved with the defendants. No notice was contemplated for that purpose. The 3rd defendant through notice dated 24-3-1976 (Ext. B-12) informed the plaintiff about the reauction of the coupe at his risk and loss. The 2nd defendant had already confirmed the sale as per the provisions of the notification and it was duly communicated to the plaintiff by the 3rd defendant. As per his letter QC2-3095/76 dated 24-2-1976 the 2nd defendant authorised the 3rd defendant to reauction the coupe. The allegation that the contract was frustrated by action of the defendants was not correct. The plaintiff had no reason to believe that there would not be any further sale of the coupe during the current year. The loss or damage for which the plaintiff was made liable was determined on the basis of the terms and conditions contained in the sale notification and also in the written agreement dated 20-11-1975. Since the obligation of the contracting parties was definite, there was nothing unconscionable about it. There was no cause of action as against the defendants. The plaintiff was the auction-purchaser of coupe No. 2 of Oil Plantation. He successfully performed his part of the contract and was eligible for repayment of the earnest money. The total amount due to the plaintiff on that

ground including interest up to 13-10-1976 was Rs. 13,647.80. The liability of the plaintiff at the relevant period amounted to Rs. 145/-. The balance amount of Rs. 13,512.80 was adjusted towards the liability in the instant case. An amount of Rs. 10,000/- deposited by the plaintiff on 20-11-1975 was credited earlier. An amount of Rs. 47,887.97 was due from the plaintiff. The attachment of movables shown in the plaint was admitted. The movables were attached with due notice and as provided in the Revenue Recovery Act by the Tahsildar, Quiloa, who was authorised by the District Collector for realising the arrears due to the State. The plaintiff could recover the movables on payment of the dues for which the attachment was effected. The plaintiff's suit was mainly for declaration that the agreement entered into by him with the 3rd defendant on 20-11-1975 (Ext. B-4) and Clause 8 of the sale notification (Ext. B-1) are unenforceable. This requires court-fee on the market value under Section 25 (d) of the Court-fees and Suits Valuation Act. The prayer for setting aside the attachment of movables was not an ancillary relief. For that relief plaintiff had to pay court-fee under Section 41. The plaintiff was not entitled to any relief.

4. The issues settled for trial on the basis of the above pleadings were the following:

'1. Is not the suit maintainable?

2. Is the plaintiff liable to execute a formal agreement of sale regarding the right of collection of residual growth from the plaint coupe

3. Is there a concluded contract between the plaintiff and defendant No. 1 regarding the sale of the right to collect residual tree growth from the plaint coupe? If so, is the plaintiff absolved from liability to perform his part of the contract?

4. Is the agreement dated 20-11-1975 entered into by the plaintiff with the third defendant legally enforceable?

5. Is Clause 8 of the sale notice valid and enforceable ?

6. Is the plaintiff absolved from liabilities under the agreement dated 20-11-75?

7. Is the 3rd defendant competent to resell the right of collection of residual growth from the plaint coupe?
 8. Are the defendants entitled to get compensation from the plaintiffs? If so what is the quantum?
 9. Is the plaintiff entitled to the declaration prayed for?
 10. Is the plaintiff entitled to the injunction prayed for?
 11. Is the plaintiff entitled to recover any amount from the defendant If so, what is the quantum?
 12. Is the plaintiff entitled to recover the movables described in Schedule II to the plaint?
 13. Is not the notice served on the defendants under Section 80 of the C. P. C. valid? Is the suit bad for failure to serve a valid notice under Section 80, C. P. C. ?
 14. Is the suit properly valued? Has proper court-fee paid ?
 15. Relief and costs?'
5. On the side of the plaintiff P. Ws. 1 and 2 were examined and Exts. A-1 to A-5 marked; on the side of the defendants P. W. 1 was examined and Exts. B-1 to B-15 were marked.
6. The trial Court considered issues 4 and 6 together. The discussion is found in paragraphs 6 and 7 of the judgment of the trial Court. The finding was that since Ext. B-4 was not legally enforceable, it did not bind the plaintiff; these issues were answered in favour of the plaintiff, the discussion on issues 3, 5 and 8 which were considered together is found in paras 8 to 10 of the judgment appealed against. The finding of the Court below was that the defendants were entitled to claim by way of compensation the difference between the two bid amounts and the actual cost for effecting the resale. The finding on issue No. 2 recorded in para 11 was that by virtue of the conditions in Ext. B-1 the plaintiff was liable to execute a formal agreement after the confirmation of the sale in his favour under Ext. B-5. In

para 12 under issue No. 7 the Court below found that the 3rd defendant was competent to resell the right of collection and removal of the residual tree growth from the plaint coupe. The finding under issue No. 9 recorded in para 3 of the judgment was that the plaintiff was entitled to a declaration that Ext. B-4 was not valid and binding on the plaintiff. The finding under issue No. 10 recorded in para 14 of the judgment was that the plaintiff was not entitled to an injunction restraining the defendants from enforcing Clause 8 of Ext. B-1. The finding under issue No. 11 in para 15 of the judgment was that the plaintiff was not entitled to recover any amount from the defendants, since the action of the defendants in enforcing Clause 8 of Ext. B-i was perfectly legal. In para 16 the finding under issue No. 12 was that the movables described in Schedule II to the plaint were attached by the defendants for the amounts due from the plaintiff and as such the plaintiff was not entitled to recover the movables described in Schedule II. Under issue No. 13 in para 17 of the judgment the finding recorded was that the notice under Section 80, C. P. C. was perfectly valid. The finding on issue No. 14 discussed in para 18 was that the court-fee paid was correct. The finding in para 19 of the judgment on issue No. 1 was that the suit was maintainable and in para 20, dealing with issue No. 15. The Court declared that Ext. B-4 agreement was null and void. As the success was partial, the parties were directed to suffer their costs.

7. Clause (8) of Ext. B-1 sale coupe auction notification provides:

'(8) For failure to remit the security, balance value etc., on the due date or extension, the right acquired shall be cancelled and the amount already paid will be forfeited to Government. The right shall also be resold at the risk and loss of the contractor who shall then be held responsible for any loss to Government resulting from each resale; but shall have no claim over the gain, if any. The loss will be recovered as per the Revenue Recovery Act in force or by any other legal means.'

6. Sri P.H. Sankara Narayana Iyer. The counsel for the appellant-plaintiff, contended that as there was no concluded contract in conformity with the provisions of Article 299(1) of the Constitution, the plaintiff was under no obligation to the respondents with respect to the bidding which took place on 20-11-1975.

His case was that Ext. B-4 provided for the execution of a further agreement to the 1st respondent Government; not to the Governor; and even that agreement not having been executed, there was no enforceable contract to give rise to any liability against the plaintiff. Article 299(1) of the Constitution provides :

'(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.'

Analysing the provisions of Article 299(1) of the Constitution, it was submitted by the counsel that in order to comply with the requirements of the Article, firstly, it must be executed by a person duly authorised by the President or the Governor, as the case may be; secondly, it must be executed by such person on behalf of the President or the Governor; and thirdly, it must be expressed to be by the President or the Governor, as the case may be. None of the respondents, he pointed out, had absolutely any authority for executing a contract in the nature of Ext. B-4 on behalf of the Governor, and, therefore, Ext. B-4 did not either confer any right on the respondents, or cast any obligation on the appellant.

9. The Govt. Pleader, appearing for the respondents, conceded fairly that Ext. B-4 could not be treated as a contract executed in conformity with the provisions of Article 299(1) of the Constitution. All the same, he would contend that even in the absence of Ext. B-4, the respondents were entitled to succeed, and no interference with the judgment and decree of the Court below was called for. According to him, the plaintiff participated in the auction that took place on 20-11-1975 pursuant to Ext. B-1 sale notification, of which Ext. B-2 is the gazette publication. The signature of the intending bidders, including that of the plaintiff, was obtained on Ext. B-1 in token of their having accepted the terms and conditions of the sale. As per the conditions, the successful bidder of each sub-coupe was required to execute an agreement on a stamp paper worth Rs. 3/- at the time of the auction to the effect that he shall not withdraw his offer and that he would carry out the works in the sub-coupe as per the provisions of the sale

notification in case the sale was confirmed in his name. The draft of the agreement to be executed after the confirmation of the sale also was appended to the notification. Clause 3 of the sale notification provided that the sale might ordinarily be knocked down in the name of the highest bidder subject to the approval of the competent authority provided that the character and financial status of the bidder were found satisfactory; but the Divisional Forest Officer reserved the right of accepting or rejecting any bid without assigning any reasons therefor. The 2nd respondent had by Ext. B-5 proceedings dated 10-12-1975 confirmed the bid in favour of the plaintiff, and that information was duly communicated to the plaintiff by the 3rd defendant as per Ext. B-6 letter dated 15-12-1975. Exhibit B-8 dated 18-12-1975 is the postal acknowledgment for the receipt by the plaintiff of Ext. B-6. By Ext. B-9 letter dated 29-12-1975, addressed to the 3rd defendant, the plaintiff, while acknowledging the receipt of Ext. B-6 letter, requested him for a further period of one month for complying with the requirements. What he wrote reads as follows:--

* * *

It cannot, therefore, be contended for a moment that the sale was not confirmed by the 2nd respondent or that the plaintiff was not aware of such confirmation. In view of the authorisation by the Governor contained in Exts. B-14 and B-15, respondents 2 and 3 were competent to enter into contract with respect to matters touching the Forest Department for and on behalf of the Governor. As per Ext. B-15 notification No. 69530/M3/ 64/PD dated 22-2-1965, published in gazette dated 30-3-1965, in the case of Forest Department, the Chief Conservator of Forests, Conservator of Forests, Deputy Conservator of Forests and Divisional Forest Officers are authorised to execute agreements on behalf of the Governor of Kerala. This authorisation is under Article 299(1) of the Constitution of India, and it extends to all contracts relating to the Departmental working and supply on purchase of timber and other forest produce as defined in the Forest Act by consumers and purchasers.

10. Though the words 'expressed' and 'executed' in Article 299(1) might suggest that it should be by a deed or by a formal written document a contract had to be

entered into on behalf of the President or the Governor, a binding contract by tender and acceptance could also come into existence if the acceptance was by a person duly authorised in that behalf by the President of India or the Governor of the State concerned. Equally so, even if a contract by a formal deed is executed on behalf of the President or the Governor, if it is executed by a person who is not authorised by the President or the Governor, such contract would not be binding; it is absolutely void. This position has been made clear by the Supreme Court in *Union of India v. A.L. Rallia Ram* (AIR 1963 SC 1685) while construing the provisions of Section 175(3) of the Government of India Act, 1935, and later in *Union of India v. N.K. Private Ltd.* (AIR 1972 SC 915) interpreting the scope of Article 299(1) of the Constitution. In the latter case acceptance by the Secretary of the Railway Board an offer made by a company for purchases of materials was found to be not in terms of a contract expressed or executed in the name of the President, inasmuch as the only authorised person to enter into contract on behalf of the President was the Director of Railway Stores, so far as the Railway was concerned. A decision of this Court in *Vidhyadharan v. State of Kerala* (1980 Ker LT 421) : (AIR 1980 Ker 212) was relied on by Sri. Sankaranarayana Iyer. Therein Vadakkal J., had observed that where the contract was not executed in the name of the Governor, there was no contract in compliance with Article 299 of the Constitution, and, therefore, the breach of the alleged contract would not give rise to damages recoverable under the Revenue Recovery Act. That decision was rendered on the facts of that case. The position in law, where an auction purchaser had affixed his signature in the auction paper undertaking to be bound by the terms and conditions of the sale notification, and had also, at the conclusion of the auction, signed in the sale list accepting the sale to be governed by the conditions mentioned in the sale notification, and the competent authority had accepted the tender, came up for consideration before a Division Bench consisting of Eradi and Vadakkal, JJ. reported in *Bhaskaran Nair v. State of Kerala* (1980 Ker LT 462) and there it was held that in such cases the bidder was bound to remit the further instalments; otherwise the earnest money could be forfeited and the instalments due could be recovered under the provisions of the Revenue Recovery Act, particularly in view of the provisions contained in Section 79 of the Kerala Forest Act.

11. Sri. Sankaranarayana Iyer cited the decisions of the Supreme Court in K.P. Chowdhry v. State of M.P. (AIR 1967 SC 203); Syed Israr Masood v. State of M.P. (AIR 1981 SC 2010 (2)); Union of India v. B.W. Ram (AIR 1971 SC 2295); State of M.P. v. Firm G. Dass (AIR 1973 SC 1164) and State of U. P. v. Kishon Lal (AIR 1980 SC 680). None of these decisions, in our opinion, would apply to the facts of the present case. In K.P. Chowdhry's case (AIR 1967 SC 203) what the Supreme Court laid down was that Article 299(1) of the Constitution does not contemplate an implied contract between the Government and any other person. In that view it was held that the Government was not entitled by resorting to Section 155 (b) of the Madhya Pradesh Land Revenue Code to realise the deficiency between the original auction bid amount and the amount fetched in reauction where, before the bid was accepted, the contract was cancelled due to the failure on the part of the bidder to pay part consideration. In Syed Israr Masood's case (AIR 1981 SC 2010(2)) in an auction sale of certain forest coupes the details regarding the quantity and quality of timber available for cutting were announced by the Range Officers and it was on the basis of the said information that the participants in the auction were invited to bid. Subsequent to auction substantial areas in the concerned coupes were declared to be 'reserved'. Notwithstanding that there was a condition in the sale notice that no claim for compensation would lie against the State Government if details were found to be incorrect, it was held that in a suit for recovery of first instalment of the sale price together with damages, it was open to the plaintiff to repudiate the contract and claim a refund of the first instalment of the sale price, as the very foundation of the contract was substantially altered. In State of M.P. v. Firm G. Dass (AIR 1973 SC 1164) the position was this: Where in response to notice issued by the Chief Conservator of Forests, certain firm offered their tenders for purchase of certain forest products and their tenders being highest were accepted for and on behalf of the Chief Conservator, but the firm failed to make, on the spot, the initial deposit of 26 per cent of the purchase price as offered, which in view of the notice was condition precedent for the acceptance of the tender, in the absence of any power in the Chief Conservator to waive such conditions, the purported acceptance was not a valid one and there was no concluded contract between the firm and the Chief Conservator. Union of India v. B.W. Ram (AIR 1971 SC 2295) was a case where resale was ordered without the

bid having been confirmed by the Chief Commissioner; the final bid was subject to final confirmation under the conditions of auction. It was held that for any short-fall in the re-auction, the auction-purchaser, whose bid was accepted provisionally only, was not liable. *State of U. P. v. Kishori Lal* (AIR 1980 SC 680) was a case where in an auction sale the highest bidder was required to deposit the prescribed minimum. On failure of the highest bidder to do so, there was re-auction fetching smaller amount than the amount offered by the earlier auction purchaser. The State filed a suit against the highest bidder in the previous occasion for the loss suffered by it, which was found to be not maintainable in view of the fact that the bid offered was not sanctioned by the Excise Commissioner as required under Rule 357 (2) of the U. P. Excise Manual; and it was held that there was no concluded contract between the State and the auction purchaser to hold him liable for breach of contract. We do not think that any of the decisions cited above by the appellant-plaintiff would apply to the facts and circumstances of the case on hand.

12. Then it was contended by Sri Sankaranarayana Iyer that in view of the subsequent sale of coupes in the same range in quick succession by the respondents there was a glut in the market and slump in price, and that therefore the contract could not be enforced. For one thing, there is no condition in Ext. B-1 sale notification that for any specific period there would not be any coupe sale. Secondly, what exactly was the extent of the fluctuation of the price of timber in the market, there is no evidence. Assuming that there was some fall in price of Umber in the market, that by itself would not render the contract void on the plea that it is an agreement to do an act impossible in itself, we have absolutely no hesitation in holding that the sale pursuant to Ext. B-1 sale notice is unenforceable either under Section 32 or Section 56 of the Indian Contract Act.

13. It was further contended by Sri. Sankaranarayana Iyer before us that in the absence of a proper adjudication as to what exactly was the extent of damage, if any, suffered by the defendants, the provisions of the Revenue Recovery Act could not have been resorted to, as there was no amount found due or presently due from the plaintiff, to attract the provisions of the Revenue Recovery Act. We do not think that this contention is correct. As the contract itself prescribes the mode of determining the quantum of damages without the intervention OF aid of

an outside agency, there is no reason why, applying that method, the quantum could not be arrived at, and the amount so determined recovered under the provisions of the Revenue Recovery Act, which are made applicable to the transaction in terms of the agreement and by virtue of the provisions of Section 79 of the Kerala Forest Act. In this case, the condition is that in the event of the highest bidder failing to deposit 1/3 of the auction amount of Rs. 10,000/-, whichever is less within the prescribed time, it shall be open to the defendants to reauction the coupe at the risk and cost of the successful bidder, who would be liable to the loss resulting from such reauction, but not entitled to the gains, if any, resulting therefrom. For determining what exactly the difference between the auction amount in the first instance and what was fetched in the reauction, if no intervention of an outside agency is necessary, on determination of such liability, H could be recovered by resort to the Revenue Recovery Act wherein the provisions of the Act are applicable to the case, and the plea that what is sought to be recovered is. unliquidated damages will have little or no meaning in such cases.

14. One other contention raised by Shri Sankaranarayana Iyer is that a certain amount due from the Kerala Plantation Corporation to the appellant-plaintiff also has been attached or adjusted by the Government for the satisfaction of the amount due to it from the appellant. It was argued before us that this was clearly illegal and could not be sustained. We do not propose to examine the correctness of this contention for want of pleadings. We find no averment at all with regard to this in the plaint; and no issue also is seen to have been raised before the trial Court on this point. For the foregoing reasons we dismiss the appeal, however, in the circumstances of the case, without any order as to costs in the appeal.

Immediately after the judgment was pronounced, the counsel for the appellant made an oral request that the appellant may be granted leave to appeal to the Supreme Court. We do not find any substantial question of law of general importance, which, in our opinion, requires to be decided by the Supreme Court. Hence the request for leave is rejected.