

Pushpa Devi
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and another

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compensation which could be made under section 110-A. At any rate, whatever the position may be with regard to other parties, it seems to me that the position of the local authority under section 94 in whose case a special fund has been created is analogous to that of an insurer and for that reason also there is no escape from the conclusion that the Claims Tribunal would have jurisdiction to entertain the claims preferred before it by the appellant in the appeal and by the respondents in the writ petitions.

For all these reasons the appeal is allowed and the order of the Tribunal is set aside and it is directed to give an award in accordance with law in respect of the claim of the appellant. The writ petitions are, however, dismissed. Keeping in view all the circumstances, the parties are left to bear their own costs.

B.R.T.

LETTERS PATENT APPEAL

Before Daya Krishan Mahajan and Shamsher Bahadur, JJ.
MESSRS BHIM SEN-WALAITI RAM—Appellant.

versus

THE COLLECTOR OF DELHI AND OTHERS,—Respondents.

Letters Patent Appeal No. 50-D of 1960.

1963
August, 19th.

Delhi Liquor Licence Rules—Rule 5.34. clause 21—Auction sale of liquor shop—Conditions of sale providing that the final bid would be subject to the confirmation of the Chief Commissioner—Chief Commissioner withholding his confirmation—Auction sale—Whether complete—Auction purchaser whether liable for the short-fall on re-auction.

Held, that the Chief Commissioner of Delhi has the over-all control and is the final authority in respect of excise auctions in Delhi. His sanction is an essential *sine qua non* for the close of auction sales. One of the conditions of the auction sale provided that the final bid would

be subject to the confirmation of the Chief Commissioner. This condition is not in disharmony or in conflict with clause 21 of rule 5.34 of the Delhi Liquor Licence Rules. If the Chief Commissioner withholds the confirmation, the essential pre-requisite of a completed sale is lacking and no liability can arise under the bidding which did not result in a completed sale. The highest bidder at the auction is, therefore, not liable for the shortfall, if any, occurring on the re-auction.

Letters Patent Appeal from the decree of the Court of Hon'ble Mr. Justice Falshaw, dated the 17th day of March, 1960 in R.S.A. 80-D/1955 accepting the appeal, thus reversing that of Shri Hans Raj, Senior Sub-Judge, Delhi, dated the 6th August, 1955, who affirmed that of Shri B. L. Maggo, Sub-Judge, 1st Class, Delhi, dated the 13th July, 1954, and dismissing the plaintiff's suit.

S. N. CHOPRA, ADVOCATE; for the Petitioner.

S. N. SHANKER, ADVOCATE, for the Respondent.

JUDGMENT

SHAMSHER BAHADUR, J.—The short point for decision in this appeal under Clause 10 of the Letters Patent is whether the respondents, Collector of Delhi and the Union of India, are entitled to take recovery proceedings in respect of a sum of Rs. 1,18,000 against the appellant firm of Bhim Sen Walaiti Ram.

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An auction was held for the sale of license for the vend of country liquor for a shop in Bela Road for the year 1949-50 on 23rd of March, 1949. The auction took place in pursuance of the conditions which were read out before the bidding started. These conditions at Exhibit D. 28 are in respect of "Auction of Excise Shops in Delhi for the year 1949-50". Only two conditions need to be noted and these are reproduced in clauses 31 and 33 and are to this effect:—

"31. The Chief Commissioner is under no obligation to grant any license until he is

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assured of the financial status of the bidder. At the conclusion of the auction, an enquiry will be made into the financial position of any bidder not known to the excise staff and any such bidder shall if necessary be called upon to furnish security for the observance of the terms of his license as required by sub-section (2) of section 34 of the Punjab Excise Act 1 of 1914, as extended to Delhi Province.

* * * * *

33. All final bids will be made subject to the confirmation by the Chief Commissioner who may reject any bid without assigning any reasons. If no bid is accepted for any shop, the Chief Commissioner reserves the right to dispose it of by tender or otherwise as he thinks fit. . . ."

According to Exhibit D.3, which is the record of bidding, the highest bid was that of the plaintiff, Bhim Sen-Walaiti Ram, for Rs. 4,01,000. The Collector made an order underneath that the vend license had been sold for Rs. 4,01,000 in favour of Bhim Sen of Gurdwara Road, New Delhi and Walaiti Ram of Pahar Ganj, New Delhi. This was on 23rd of March, 1949. A communication was addressed to the Chief Commissioner by the Deputy Commissioner, Delhi, on 2nd of April, 1949, and in reply to it the Chief Commissioner directed that the "country liquor shop at Bela Road may be resold" (*Vide Exhibit D. 4*). In resale, the highest bid was that of Daulat Ram and Amar Singh for a sum of Rs. 2,20,000. This auction was approved by the Chief Commissioner in his letter of 7th of July, 1949 (*Exhibit D. 7*) addressed to the Deputy Commissioner, Delhi. Reference may also be made to another letter of the Chief Commissioner to the address of the Deputy Commissioner on 6th of

May, 1949 (Exhibit D. 26) in which approval was expressed in respect of the "auction of licenses for vend of country spirit, opium and *bhang* for the year 1949-50 except the auction in respect of the country liquor shop at Bela Road". Holding Bhim Sen—Walaiti Ram responsible for the loss of Rs. 1,81,000, the Collector of Delhi started proceedings for recovery of this amount and a suit was brought on 22nd of July, 1949 by Bhim Sen-Walaiti Ram against the Collector, the Provincial Excise Collector and the Union of India for restraining the collecting authorities from recovering the amount in respect of the auction held on 23rd of March, 1949. It is unnecessary to refer to the pleadings in this case and it would suffice for the purposes of this appeal to mention that the suit was decreed by the learned trial Judge on 13th of July, 1954, broadly on two grounds. The contention of the plaintiffs was accepted that the premises of the shop at Bela Road, in respect of which the auction was held, were not made available to them for the purposes of the license. It was further held by the trial Judge that the sale was in any event subject to confirmation of the Chief Commissioner under clause 33 and the auction in favour of the plaintiffs not having been accepted by him there was no binding obligation on the parties. In the appeal preferred by the defendants, the lower appellate Court did not allow the first contention of the plaintiffs to prevail and it was rightly held that what had been actually sold was a license and there was no obligation on the part of the Collector to provide for the premises to carry on the vend license. The view of the trial Judge that the auction did not fructify into a sale, the Chief Commissioner having withheld the confirmation, was, however, upheld and the appeal was accordingly dismissed. In second appeal, Falshaw J. (as the Chief

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Messrs Bhim Sen Justice then was) took the view that clause 33 not
 Walaiti Ram being in consonance with the statutory rules could not
 v. The Collector of vitiate the completed contract which was brought
 Delhi about when the bidding was closed in favour of the
 and others plaintiffs on 23rd of March, 1949, and the plaintiffs
 Shamsheer were accordingly liable to make good the loss which the
 Bahadur, J. Government sustained in resorting to resale of the vend
 license. The appeal was accordingly allowed and
 the plaintiffs feeling aggrieved have come in Letters
 Patent appeal.

What weighed with the learned Single Judge was rule 5.34 of the Delhi Liquor License Rules, which are statutory in nature and clause 21 of which makes it imperative for the highest bidder to deposit one-sixth of the sale price. The plaintiffs having failed to deposit the requisite amount, resale had to be resorted of the sale price. The plaintiffs having failed to became liable for the resultant shortfall. The learned Judge declined to give effect to clause 33 of the conditions on the ground that it was in conflict with the statutory rules.

It becomes necessary to examine clause 21 of rule 5.34 and its relevant provisions are reproduced below:—

“A person to whom a shop has been sold shall pay one-sixth of the annual fee within seven days of the auction. . . . By the 7th of the month in which he begins his business under his licence and by the 7th of every subsequent month the licensee shall pay one-twelfth of the annual fee till the whole fee is paid. But he may at any time pay the whole amount due if he wishes. . . . If any person whose bid has been accepted by the officer presiding at the auction fails to make

the deposit of one-sixth of the annual fee, or if he refuses to accept the licence, the Collector may resell the licence either by public auction or by private contract, and any deficiency in price and all expenses of such resale or attempted resale shall be recoverable from the defaulting bidder in the manner laid down in section 60 of the Punjab Excise Act, 1 of 1914, as applied to the Delhi Province."

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The first portion of clause 21, in our opinion, simply requires a successful licensee to deposit one-sixth of the total annual fee within seven days of the auction. Now, the sale will be deemed to have been made in favour of the highest bidder only on the completion of the formalities before the conclusion of the sale. The auction was held subject to conditions laid down by the Chief Commissioner. That the Chief Commissioner is the final authority in respect of the excise auctions is not a matter left in any doubt even under rule 5.34. Clause 16 says that "all sales are open to revision by the Chief Commissioner". Under clause 18, the Collector has to make a report to the Chief Commissioner where in his discretion he is accepting a lower bid. Clause 20 requires the Collector to furnish to the Chief Commissioner a statement showing the locality of each shop sold, the probable sales during the year and other particulars. It has been made clear that Exhibit D. 28 are the conditions of auction of all shops in Delhi for the year 1949-50. Mr. Shanker, the learned counsel for the respondents, has not contested before us that the Chief Commissioner is the final authority in excise matters and like the Financial Commissioner who is his counterpart in the Punjab, his jurisdiction is pervasive. With great respect to the learned Judge, we think that there is nothing in clause 21 of rule 5.34 which is in disharmony

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or conflict with clause 33 of the conditions laid down in Exhibit D. 28. The first part of clause 21, as observed before, deals with a completed sale and the second part concerns a situation where the auction is conducted by an officer lower in rank than the Collector. The overall control of the Chief Commissioner is tacitly accepted even in rule 5.34 and his sanction is an essential *sine qua non* for the close of the sale. In the instant case, the Chief Commissioner has definitely accorded his disapproval of the sale. How could it then be said that the plaintiffs are liable for the auction which did not receive the approval and sanction of the Chief Commissioner?

In an exactly similar situation it was held by Kapur J. (later Justice of the Supreme Court) in *The Union of India v. S. Narain Singh* (1), that:—

“Where the conditions of auction sale of a liquor shop expressly provide that the acceptance of the bid shall be subject to the confirmation of the Chief Commissioner, there will be no completed contract till the acceptance of the highest bid is confirmed by the Chief Commissioner and the person whose bid has been provisionally accepted is entitled to withdraw his bid. Where the bid is so withdrawn before the assent of the Commissioner the bidder will not be liable on account of any breach of contract or for the shortfall on the resale.”

There can be no manner of doubt that if the Chief Commissioner had accorded his sanction under clause 33 of Exhibit D. 28, the auction sale in favour of the plaintiff-appellants would have been a completed transaction and they would have been liable for any

(1) A.I.R. 1963 Punj. 274

shortfall on the resale. The essential pre-requisite of a completed sale being missing we feel constrained to hold that no liability can arise under the bidding which did not result in a completed sale. The learned Single Judge did not assail the cogency of the reasoning in the Judgment of Kapur J. but considered that its acceptance would nullify the statutory rules embodied in clause 21 of rule 5.34. As in our view there is neither any inconsistency between the statutory rule and condition 33 nor is there any denial in the form of the final authority which undoubtedly vested in the Chief Commissioner in excise matters either expressly or by implication, full effect has to be given to clause 33 which formed an essential condition of a completed sale. The plaintiffs cannot, therefore, be made accountable in respect of sale for which their liability did not arise.

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In this view of the matter, we allow the appeal and restore the judgments of the Courts below. In the circumstances, we make no order as to costs of this appeal.

D. K. MAHAJAN, J.—I agree.

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K.S.K.

FULL BENCH

Before Mehar Singh, A. N. Grover and Shamsher Bahadur, JJ.

GANGA RAM AND OTHERS,—Appellants

versus

SHIV LAL,—Respondent.

Regular Second Appeal No. 1486 of 1961

Code of Civil Procedure (Act V of 1908)—Order 20 Rule 14(1)—Title of pre-emptor to pre-empted property—when accrues—Whether on deposit of price in Court on or

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August, 27th.