

GURMUKH SINGH

v.

AMAR SINGH

MARCH 15, 1991

[N.M. KASLIWAL AND K. RAMASWAMY, JJ.]

Indian Contract Act, 1872: Section 23—Contract opposed to public policy—What is—Agreement to purchase property in public auction and thereafter convey half the property—Specific performance of—Whether enforceable.

The respondent filed a suit for specific performance of an agreement of sale of land or refund of the money paid to him contending that he and the appellant had contracted that the appellant would participate, on their behalf in a public auction to purchase the evacuee property and the appellant would convey half the property purchased thereat and in furtherance of that he had contributed his share, but the appellant who became the highest bidder and got a sale certificate issued by the custodian of the evacuee property had not performed his part of the contract.

The appellant resisted the suit, and denied the execution of the agreement. He also pleaded that the contract was illegal and void, being opposed to public policy, and that the relief of specific performance being discretionary could not be granted in favour of the respondent.

The trial court decreed the suit. On appeal by the appellant, both the first appellate court and the High Court confirmed the decree. Hence the appeal, by special leave.

On behalf of the appellant it was contended that the agreement was opposed to public policy since it was to knock out the public property on a minimum price and, therefore, void under s.23 of the Contract Act, 1872.

Dismissing the appeal, this Court,

HELD: 1.1 Section 23 of the Contract Act adumbrates that the consideration or object of an agreement is lawful unless it is forbidden by law, or is of such a nature that, if permitted, it would defeat the provision of any law; or is fraudulent; or involved or implied injury to

A the persons or property of another; or the court regards it as immoral or opposed to public policy. In each of these cases, the consideration or object of an agreement is unlawful. Thus, every agreement the consideration or object of which is unlawful is void. [888F-G]

B 1.2 The word "object" would mean the purpose and design which is the object of the contracts; it is opposed to public policy if it tends to defeat any provision of law or purpose of law, and it becomes unlawful and void under s. 23 of the Contract Act. Section 23 is concerned with only the object or consideration of the transaction and not the reasons or motive which prompted it. Public policy imposes certain limitations upon freedom of contract. Certain objects of contract are forbidden or discouraged by law; though all other requisites for the formation of a contract are complied with, yet if these objects are in contemplation of the parties when they entered into the agreement, the law will not permit them to enforce any rights under it. Most cases of illegality are of this sort; the illegality lies in the purpose which one or both parties have in mind. But in some instances the law strikes at the agreement itself, and the contract is then by its very nature illegal. [888G-H, 889A-B]

E 1.3 The public policy is not static. It is variable with the changing times and the needs of the society. The march of law must match with the fact situation. A contract tending to injure public interest or public welfare or fraudulent to defeat the right of the third parties is void under s. 23 of the Contract Act. [892F]

F 1.4 The object of conducting public sale is to secure as much price or revenue as possible to redeem the debt of the debtor or to secure maximum price to the exchequer for use of public purpose. If such a contract to form a ring among the bidders was to peg down the price and to have the property knocked out at a low price it would defeat the above economic interest of the debtor or public welfare. Thereby the agreement becomes fraudulent and opposed to public policy and is void under s. 23. [890E-F]

G In the instant case, the facts demonstrate that the agreement between the appellant and the respondent was only a combination to participate at an auction of the evacuee property. There is no intention either to peg down the price or to defraud the Government to knock out the sale at a lower price. Thus, the object of the agreement is not opposed to public policy, and therefore, it is not void under s. 23 of the Contract Act. Therefore the agreement between the appellant and the

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respondent is lawful contract. The courts below committed no error of law warranting interference. [892H, 893A-B] A

Rattan Chand Hira Chand v. Askar Nawaj Jung, J.T. 1991 1 SC 433 and *Cheerulal Prakash v. Mabadeodas Maiyua & Ors.*, [1959] (Suppl.) 2 SCR 406, referred to. B

Scott v. Brown. Deorning McNab & Co., [1892] 2 K.B. 724 and *Mohomed Meerta v. S.V. Raghunadha Gopalar*, 27 Indian Appeals 17, referred to. C

Kayjay Industries (P) Ltd. v. Asnew Drums (P) Ltd. & Ors., [1974] 3 SCR 678; *Central Inland Water Transport Corpn. Ltd. & Anr v. Brojo Nath Ganguli & Anr.*, [1986] 2 SCR 278 and *Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors.*, A.I.R. 1991 SC 190, inapplicable. D

Chandra Sreenivasa Rao v. Korrapati Raja Rama Mohana Rao and Anr., A.I.R. 1952 Madras 579; *Ram Lal Misra v. Rajendra Nath Sanyal*, A.I.R. (1933) Oudh P. 124 at 127; *Nand Singh @ Ghuddha v. Emperor*, A.I.R. (30) 1943 Lahore 101; *Huthegowda v. H.M. Basaviaiah*, A.I.R. 1954 Mysore 29; *Ratanchand Hirachand v. Askar Nawaz Jung & Ors.*, A.I.R. 1976 A.P. 112; *Mo. Issac V. Sreeramula*, A.I.R. Mad. 289=[1946] 1 Madras Law journal, 187; *Ramalingiah v. Subbarami Reddi* A.I.R. 1951 Mad. 390; *Mohafazul Rahim v. Babulal*, A.I.R. 1949 Nagpur 113 and *Lachhman Das & Ors v. Hakim Sita Ram & Ors.*, A.I.R. 1975 Delhi 159, referred to. E

Chitty's Contract, 26th Edn., Vol. I Paragraph 1134, P. 686 and *Halsbury's Laws of England. Fourth Edition*, Vol. 9 Paragraph 392 at p. 266 and paragraph 746 at 383, referred to. F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1335 of 1977.

From the Judgment and Order dated 7.3.1977 of the Punjab & Haryana High Court in R.S.A. No. 1162 of 1966. G

J.M. Khanna and Mr. I.B. Gaur for the Appellant.

Dhruv Mehta, Aman Vachhar, S.K. Mehta, Arvind Verma and Romesh Chand for the Respondent. H

A The Judgment of the Court was delivered by

K.RAMASWAMY, J. The unsuccessful defendant/appellant resisted the suit of the respondent for specific performance of the agreement of sale of 27 Bhigas and 2 Biswas of the land situated in Chakkar Karman Village. According to the respondent he and the
B appellant contracted that the appellant would participate on their behalf in a public auction to purchase the evacuee property. He contributed his share. The appellant agreed to convey half the property
C purchased at the auction. The appellant became the highest bidder for a sum of Rs.5,000 and he contributed his share and the sale was confirmed on March 11, 1964 and a sale certificate was issued by the
D custodian of the evacuee property but the appellant had not performed his part of the contract. Accordingly he laid the suit for specific performance or refund of the amount advanced by him. The suit was resisted by the appellant denying the execution of the agreement and also pleaded that the contract is illegal and void being opposed to public policy. The relief of specific performance being discretionary cannot be granted in favour of the respondent. The Trial Court decreed the suit; on appeal and on further second appeal the District Court and the High Court confirmed the same. Thus this appeal on special leave under Art. 136 of the Constitution.

The contention neatly argued by Shri Khanna, the learned
E counsel for the appellant, is that the agreement is opposed to public policy and, therefore, it is void under s. 23 of the Contract Act, 1872. According to him the agreement was to knock out the public property on a minimum price and that, therefore, the object of the agreement is opposed to public policy and is hit by s. 23. We found no force in the contention. Section 23 of the Contract Act adumbrates that the
F consideration or object of an agreement is lawful unless it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provision of any law; or is fraudulent; or involved or implied injury to the persons or property of another; or the court regard it as immoral or opposed to public policy. In each of these cases, the consideration or
G object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. The word object would mean the purpose and design which is the object of the contract, if is opposed to public policy which tends to defeat any provision of law or purpose of law, it becomes unlawful and thereby it is void under s. 23 of the Contract Act. Section 23 is concerned with only the object or consideration of the transaction and not the reasons or motive
H which prompted it. Public policy imposes certain limitations upon free-

dom of contract. Certain objects of contract are forbidden or discouraged by law; though all other requisites for the formation of a contract are complied with, yet if these objects are in contemplation of the parties when they entered into the agreement, the law will not permit them to enforce any rights under it. Most cases of illegality are of this sort: the illegality lies in the purpose which one or both parties have in mind. But in some instances the law strikes at the agreement itself, and the contract is then by its very nature illegal. Whenever a plea of illegality or against public policy is raised as a defence to a contractual claim, the test to be applied is: Does public policy require that this claimant, in the circumstances which have occurred, should be refused relief of which he would otherwise have been entitled with respect to all or part of his claim? In addition, once the court finds that the contract is illegal and unenforceable, a second question should be posed which would also lead to greater clarity: Do the facts justify the granting of some consequential relief (other than enforcement of the contract) to either of the parties to the contract.

In *Chandra Sreenivasa Rao v. Korrapati Raja Rama Mohana Rao and Anr.*, A.I.R. 1952 Madras 579, Subba Rao J., as he then was, while considering the word "object" in s. 23 of the Contract Act in the context of enforceability of the debt secured to celebrate the marriage of the minor which was prohibited by the Child Marriage Restraint Act, held that the word "object" in s. 23 meant "purpose" or "design" of the contract. The purpose of borrowing was unlawful as it was opposed to the public policy of celebrating the marriage of a minor in violation of the statutory provisions, and therefore, the promissory note was held to be unenforceable. An agreement between A & B to purchase property at an auction sale jointly and not to bid against each other at the auction is perfectly lawful, though the object may be to avoid competition between the two. But if there is an agreement between all the competing bidders at the auction sale, be it of the court sale or revenue sale, or sale by the government of its property or privilege and formed a ring to peg down the price and to purchase the property at knock out price, the purpose or design of the agreement is to defraud the third party, namely, the debtor or Govt. whose property is sold out at the court auction or revenue sale, or public welfare. The object or consideration of the contract, oral or written, to share such property is unlawful. There is also implied "injury to the debtor" within the meaning of s. 23. Thereby the contract was fraudulent. The contract thus is also opposed to public policy and is void. Take for instance four persons participated at an auction sale; pursuant to their previous agreement, they made a pretext of partici-

- A pation in the auction; bid upto an agreed price though the real value of the property is much more than what they had offered for. Here the design or object of their forming a ring is to knock out the property for a song to defraud the debtor or public. What is the object of the public policy in this regard ? The scope of public policy was classified into five groups in paragraph 1134 at p. 686 of Chitty's on Contract, 26th Edn.,
- B Vol. I, thus:

C "Objects which on grounds of public policy invalidate contracts may, for convenience, be generally classified into five groups; first, objects which are illegal by common law or by legislation; secondly, objects injurious to good government either in the field of domestic or foreign affairs; thirdly, objects which interfere with the proper working of the machinery of justice; fourthly, objects injurious to marriage and morality and fifthly, objects economically against the public interest."

- D In *Halsbury's Laws of England*, Fourth Edition, Vol. 9, in paragraph 392 at p. 266 it is stated that an agreement which tends to be injurious to the public or against the public good is invalidated on the grounds of public policy. "The question whether a particular agreement is contrary to public policy is a question of law, to be determined like any other by the proper application of prior decisions" The object
- E of conducting public sale is to secure as much price or revenue as possible to redeem the debt of the debtor or to secure maximum price to the exchequer for use of public purpose. If such a contract to form a ring among the bidders was to peg down the price and to have the property knocked out at a low price would defeat the above economic interest of the debtor or public welfare. Thereby the agreement
- F becomes fraudulent and opposed to public policy and is void under s. 23. In *Ram Lal Misra v. Rajendra Nath Sanyal*, A.I.R. (1933) Oudh p. 124 at 127 the finding was that the agreement was not merely of an honest combination between two bidders to purchase the property at an advantageous price but goes further by resorting to secret artifice for the purpose of defrauding a third person, namely, the rival decree-holder. Accordingly, it was held that the agreement was fraudulent
- G and that, therefore, void under s. 23 of the Contract Act; Same is the view expressed by the Lahore High Court in *Nand Singh @ Ghudda v. Emperor*, A.I.R. 30 1943 Lahore 101 and in *Huthegowda v. H.M. Basaviah*, A.I.R. (1954) Mysore 29. In *Rattan Chand Hira Chand v. Askar Nawaj Jung*, J.T. 1991 1 SC 433 this Court held that an agree-
- H ment to influence authorities to obtain favourable verdict was held to

be opposed to public policy and void under s. 23 and approved the decision of the A.P. High Court in *Ratanchand Hirachand v. Askar Nawaz Jung & Ors.*, A.I.R. 1976 A.P. 112. An agreement to rig the market for share has been held to be fraudulent and unenforceable in *Scott v. Drown, Deorning McNab & Co.*, [1892] 2 K.B. 724.

In *Halsbury's Laws of England*, Fourth Edition, Vol. 2, paragraph 746 at p. 383, it was stated that where goods were purchased at an auction by a person who had entered into an agreement with another or others that the other or the others, or some of them, shall abstain from bidding for the goods, and he or the other party, or one of the other parties, to the agreement is a dealer, the seller may avoid the contract under which the goods are purchased. Where a contract is avoided by virtue of this provision, then if the purchaser has obtained possession of the goods and restitution thereof is not made, the persons who were parties to the agreement are jointly or severally liable to make good to the vendor any loss he sustained by reason of the operation of the agreement. In *Mad. Issac v. Sreeramulu*, A.I.R. 1946 Mad. 289=(1946) 1 Madras Law Journal, 187 the Madras High Court held that an agreement between two bidders not to bid against each other at an auction is not illegal and is not opposed to public policy. The same was followed in *Ramalingiah v. Subbartami Reddi*, A.I.R. 1951 Mad 390. In *Mohafazul Rahim v. Babulal*, A.I.R. 1949 Nagpur 113 the Nagpur High Court also held that persons agreeing not to bid against each other is not opposed to public policy.

The Division Bench of Delhi High Court in *Lachman Das & Ors. v. Hakim Sita Ram & Ors.*, A.I.R. 1975 Delhi 159 had to consider that an agreement entered into by the parties not to bid at the auction against each other is not opposed to public policy, and therefore, it is not void. While upholding the agreement it was also held that where agreements are likely to prevent the property put up for sale in not realising its fair value and to dump the sale would certainly be against public good and, therefore, is void being opposed to public policy. In *Cheerulal Prakash v. Mabadeodas Maiyua & Ors.*, [1959] (Suppl.) 2 SCR 406 this court held that though a wagering contract was void and unenforceable under s. 30 of the Contract Act, it was not forbidden by law and agreement collateral to such a contract was not unlawful within the meaning of s. 23 of the Contract Act. A partnership with the object of carrying on wagering transaction was not therefore, hit by s. 23. In *Mohomed Meerta v. S.V. Raghunadha Gopalar*, 27 Indian Appeals, 17 the sale was impugned, on one of the grounds that the agreement was made for the benefit of the Papanand Zamindar and

- A the appellant, intended to sell the property back to the former when he should be in a position to repurchase it and both of them had combined to dissuade persons from bidding, and did in fact dissuade them. Thereby they purchased the property for lesser price than the real value. The execution was set aside. On appeal, the High Court did not agree with the finding that the appellant and the Jainilabdin and the
- B Papanand Zamindar did combine to dissuade the persons from bidding but found that the appellant played fraud on the court by suppressing the contract as being a decree holder obtained leave of the court and bid in the auction. Therefore, the sale was void on that ground. On further appeal the judicial committee found that the ground on which the High Court set aside the sale was not pleaded, nor an opportunity given to the appellant. Therefore, for the first time that ground cannot
- C be taken before the High Court and having disagreed with the executing court that there was an agreement to dissuade third party to participate in the bid, the sale cannot be set aside on the new ground. The Privy Council confirmed the sale. On those facts the ratio is of no assistance to the appellant since there is no agreement between the
- D appellant and the respondent to dissuade third party to participate in the bid.

- The ratio in *Kayjay Industries (P.) Ltd. v. Asnew Drums (P) Ltd. & Ors.*, [1974] 3 SCR 678 is of no assistance to the appellant. Therein the executing court, on the previous occasion, with a view to secure
- E better price did not confirm the sale, the conduct of the second sale, therefore, was held not to be vitiated by any material irregularity. The general principles of public policy discussed by this Court in *Central Inland Water Transport Corpn. Ltd. & Anr. v. Brojo Nath Ganguli & Anr.*, [1986] 2 SCR 278 and one of us (K.R.S., J.) in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors.*, A.I.R. 1991 SC 190
- F are of no assistance on the facts in this case. The public policy is not static. It is variable with the changing times and the needs of the society. The March of law must match with the fact situation. A contract tending to injure public interest or public welfare or fraudulent to defeat the rights of the third parties are void under s. 23 of the Contract Act.

- G From the record it is clear that there were as many as six bidders who participated in the auction, the upset price was fixed at Rs.1,000. The auction was started with the bid at Rs.1,000 and ultimately at 20th knock the highest bid of the respondent was at Rs.5,000. Thus, the facts demonstrate that the agreement between the appellant and the
- H respondent was only a combination to participate at an auction of the

✕ evacuee property. There is no intention either to peg down the price or to defraud the Government to knock out the sale at a lower price. Thus, the object of the agreement is not opposed to public policy, and therefore, it is not void under s. 23 of the Contract Act.

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✕ Thus, on the facts of this case we have no hesitation to conclude that the impugned agreement between the appellant and the respondent is lawful Contract. The Courts below committed no error of law warranting interference. The appeal is accordingly dismissed, but in the circumstances without costs as we did not call upon the respondent to argue the case.

B

N.P.V.

Appeal dismissed.