

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka

Senior Civil Judge, Khurda.

**Dated this the 27<sup>th</sup> day of November, 2013**

**C.S. 79/ 2007**

Khordha Municipality, Khurda, At./P.O./P.S./Dist.- Khordha  
represented through, its Executive Officer, Khordha Municipality, .

..... Plaintiff.

-Versus-

Ambika Prasad Das, aged about 42 yrs., S/o- Sri Rajakishore Das of  
Vill.- Palla, P.O.- Pallahat, P.S./ Dist.- Khordha.

.....Defendant

Counsel for Plaintiff ... Sri A.K. Pattnaik and associates,  
Advocates, Khordha

Counsel for Defendant ... Sri S.K. Das and associates,  
Advocates, Khordha

.....  
Date of Argument – 19.11.2013

Date of Judgment – 27.11.2013  
.....

JUDGMENT

The plaintiff has preferred this suit for recovery of dues of Rs. 1,50,000/- (Rupees One lakh fifty thousand) Only from the defendant.

02. The plaintiff's case is that, the plaintiff is a body corporate and the executive officer being the head of the body has filed the present suit in his official capacity. The plaintiff's specific case is that one official tender was published for collection of the parking fees from the lease area of the plaintiff for the year 2005-06. The defendant who applied for the same was also selected and authorized for collect the parking fees within the municipality area till 31.03.2006 as per the terms and conditions stipulated in the face of the letter granting the lease. The bid was approved with a condition to deposit the consideration amount of Rs. 5,50,001/- to the plaintiff within 30.06.2005 by the defendant. Accordingly, the defendant entered with an agreement with the plaintiff and deposited Rs. 1, 00,000 and kept Rs. 4,50,001/- unpaid. Therefore, the plaintiff intimated the defendant through various letters to deposit the same. The defendant in different occasions deposited some amounts in total Rs. 4, 00,000/- and kept unpaid of Rs. 1, 50,001. Thereafter, the plaintiff issued notice through his pleader on 07.03.2006 to deposit the amount within 7 days but, the defendant failed to deposit the contract amount and as such the plaintiff preferred the suit claiming the said amount from the defendant along with 12 per cent interest over the said amount. The plaintiff shows the cause of action to be on 31.03.2005 when the letter of lease was given to the defendant as well as on 07.03.2006, when the notice was issued to him. The plaintiff therein

made prayer not only for recovery of the amount with interest, but also cost and any other reliefs at the discretion of the court.

03. The defendant after institution of the suit effected his appearance and submitted his written statement and instantly challenged the maintainability of the suit on the point of limitation, cause of action as well as on other accounts. The defendant has to say that he was not authorized to collect the parking fees from within the municipality area till 31.02.2006 on payment of Rs. 5,50,001/- as per the letter No. 891 dated – 31.03.2005 as mentioned by the plaintiff. There was no written agreement between the plaintiff and defendant at any point of time nor was he intimated by the plaintiff to deposit any such amount. The defendant's specific case is that, after publication of the notification by the plaintiff for collection of parking fees for the year 2005-06, the defendant participated in the proceeding and selected for collection of parking fees. The Plaintiff intimated about the terms and conditions of the tender through letter No. 891 dated 31.03.2005 and the defendant complied the condition No. 1 and 2 of the said letter by depositing Rs. 10,000/- and Rs. 1,00,000/- respectively by April, 2005. But, on the other hand in spite of approached by the defendant, the plaintiff did not made any agreement with him as per the above letter and as such the owners of the vehicles who were using the parking area did not pay the parking fees. Therefore, the defendant stopped paying the amount after depositing sum of Rs. 4,10,000/-. The defendant again contended that the plaintiff intentionally with a malafied intention did not comply the terms and conditions and as such the defendant sustained a huge loss and he was unable to

deposit the amount as the part of the condition as not complied by the plaintiff. The defendant in several occasions issued letters to the plaintiff, so also on 11.01.2006 for extending of the period of tender till Dec., 2006 so as to enable him to collect the dues from the defaulters and to deposit the amount. While the same was under the consideration, the plaintiff 14.02.2006 made a paper publication inviting tender for collection of parking fees for the period from 2006-2007. On the above circumstances, it was become difficult for the defendant to deposit the said amount. It is lastly contended by the defendant that he is not responsible for the due amount as he is not entitle to pay the same and as such the suit is liable to be dismissed.

04. In view of the rival pleadings of both the parties as above, the following issues have been settled for an useful adjudication.

### **I S S U E S.**

- i. Is the suit is maintainable?
- ii. Is there any cause of action for the present suit?
- iii. Whether the suit is barred by law of limitation?
- iv. Whether the defendant was authorized to collect the parking fees within the plaintiff's lease area till 31.02.2006 on payment of Rs. 5,50,001/- to the plaintiff within 30.06.2005 in pursuance of plaintiff's letter No. 891 dated – 31.03.2005?
- v. Whether the defendant had entered into an agreement with the plaintiff with regards to the condition No. 2 of plaintiff's letter No. 891 dated – 31.03.2005.?

- vi. Whether the defendant is liable to deposit a sum of Rs. 1, 50,001/- before the plaintiff?
- vii. What relief, if any, the plaintiff is entitled to?

05. In order to prove its case the plaintiff examined two witnesses in all. Out of which P.W. - 1 Surendranath Sahoo is the Carriage Inspector In-charge of Khordha Municipality. P.W. - 2 Narayan Chandra Swain is the executive officer, Khordha Municipality. On the other hand defendant examined himself as D.W. - 1.

The plaintiff also relied upon two documents. The agreement between the Khordha Municipality and the defendant in a stamp paper marked as Ext. 1 and the letter to the defendant vide letter NO. 618 dated – 07.03.2006 is marked as Ext. 2.

### FINDINGS.

#### **Issue Nos. iv & v**

06. Now the question is whether the defendant was authorized to collect the parking fees within the area of Khordha Municipality by the plaintiff. Firstly, it should be remember that the authorization means giving official permission to do a certain act as per its preconditions. In sense of the present context, authorization has been mentioned by the plaintiff to be issuance of letter by giving permission to the defendant to collect parking fees as per the terms and condition of the Bid. But, surprisingly the said authorization letter has not been relied upon by either parties. It is quite important to mention that the defendant in his written statement as well as in the evidence while disputing any authorization by the plaintiff, admitted that he was

selected for collection of parking fees by the plaintiff and accordingly he was communicated about the terms and conditions of the tender through the letter of the plaintiff office vide letter No. 891 dated – 31.03.2005. In this way defendant advanced a very peculiar fact.

07. Selection and authorization are two distinct terms. Selection does not authorize a person or itself does not provide any assignment. Only an authorization gives the authority and responsibility to discharge a particular work. The defendant in his subsequent pleading as well as in the evidence has stated that he started collecting parking fees by virtue of the letter as noted above issued to him by the plaintiff. In this way the defendant admitted that the letter was issued to him and accordingly as per the terms and conditions of the letter he collected the parking fees. While the plaintiff has to claim that the letter was issued by the office of the plaintiff to the defendant is nothing, but an authorization to collect the parking fees. The defendant also admitted the said fact only by descending to the term 'authorization'. If the defendant's admission be taken into account, it reveals that the defendant has stated that the Plaintiff intimated about the terms and conditions of the tender through letter No. 891 dated 31.03.2005 and the defendant complied the condition No. 1 and 2 of the said letter by depositing Rs. 10,000/- and Rs. 1,00,000/- respectively by April, 2005. But, on the other hand in spite of approached by the defendant, the plaintiff did not make any agreement with him as per the above letter and as such the owners of the vehicles who were using the parking area did not pay the parking fees. Therefore, the defendant stopped paying the

amount after depositing a sum of Rs. 4,10,000/-. For the said act of the plaintiff he sustained huge loss and he was unable to deposit the amount as the part of the condition as not complied by the plaintiff. The defendant in several occasions issued letters to the plaintiff, so also on 11.01.2006 for extending of the period of tender till Dec., 2006 so as to enable him to collect the dues from the defaulters and to deposit the amount. On the above circumstances, it was became difficult for the defendant to deposit the said amount. At this stage, it is the opinion of this court that if the plaintiff has not completed the conditions as per his letter, the defendant need not be interested to extend his assignment for another couple of months. Similarly, if the vehicles were not paying the parking fees to him it would be more unprofitable for the defendant to proceed with the said assignment. The defendant appears to somehow inconsistent with his own pleadings. Even though the letter has not been relied upon by the plaintiff, the pleading of the defendant and evidence of D.W-1 I in this way substantiates the claim of the plaintiff. As the municipality is an official body it is too hard to believe that without any authorization the defendant started collecting the parking fees for the whole year and also deposited the substantial amount without any written instruction. If so, it is completely an illegal act and the defendant would be liable for the same. Therefore it is the opinion of this court that the letter basing on which the defendant started discharging his specific duty by depositing the amount as per the condition is nothing, but a complete authorization to the defendant to collect the parking fees.

08. Coming to the subsequent question, admittedly the defendant was selected for collection of the parking fees in the year 2005-06 within the Khordha Municipality area. Now the question is on which basis the defendant deposited Rs. 4,10,000/- before the Khordha municipality and stop paying the suit amount of Rs. 1,50,000/-. Being an admitted case of both the parties, it is the legal obligation of the defendant to establish on which basis he deposited amount of Rs. 4,10,000/- and not entitled for the rest of Rs. 1,50,000/-. Either he is abided by any fixed term and condition or he was confined upon the letter communicated to him vide letter No. 891 date – 31.03.2005.

Let's accept that the act of the defendant was quite voluntary, but while the plaintiff did not make any agreement with him causing loss to him, it would be good for the defendant to initiate legal action against the plaintiff for cancellation of the tender and for refund of the deposited amount. But, he remained silent. It should be kept in mind that the above transaction between the plaintiff and defendant is an official matter which required agreement. It involves with huge amount and personal responsible of the parties. Therefore, the question of going with a good faith does not arise. If at all, it is the personal responsible of the parties and the liability cannot be shifted to others. If the defendant was collecting the parking fees without any such agreement, his act was unauthorized and he cannot demand for a legal sanction for the same.

09. Lets now come to the most crucial question regarding the execution of the agreement. The agreement on a stamp paper is marked as Ext. 1 by the P.W–

2, who in his evidence in chief while corroborating the pleading has stated that the defendant had been authorized to collect the parking fees from within the municipality area till 31.03.2006 on payment of Rs. 5, 50,001/- within 30.06.2005 and accordingly the defendant entered into an agreement with the municipality by depositing Rs. 1, 00,000/-. The said agreement is marked as Ext. 1. The defendant disputed the said agreement saying it to be null and void and manufactured only for the purpose of the case. P.W- 2 has been cross-examined at length and he has admitted that he has no personal knowledge about the execution of the agreement as the same was a matter between the Ex-execution officer of the Municipality namely Ashok Kumar Kanungo and the defendant. He again admitted that Ext-1 does not bear the date and place of execution of the agreement. On the above score it is desirable for the court to note that the P.W. 2 is deposing as per his official capacity being the successor of the previous executive officer. He deposed as per the record. While coming to the genuineness of the agreement the defendant suggested that it is completely a false document. It is also pleaded by the defendant that no such agreement was executed between the plaintiff and defendant. A bare perusal of the Ext.1 reveals that the same has been executed between the defendant and the executive officer, khordha municipality. The signature of the defendant is appearing on each page of the agreement paper. The defendant himself in his evidence in chief has deposed that the so called agreement which is marked an Ext. 1 is a forged and manufactured one. He subsequently contended that he has not put his signature on the so called agreement. The defendant in this

way completely disputed Ext-1 to be in any manner a agreement between the plaintiff and himself. Now it is the right place to have a discussion on the evidence of the defendant. In the cross-examination he stated that he put his signatures in oriya as well as in English in his different representations to the plaintiff. The defendant in his cross-examination has admitted his signature on the agreement (Ext-1), on being perused before him by the counsel for the plaintiff. The defendant has specifically admitted that the signature on the reverse side of the agreement in his own. It reveals that on each page the signature of the defendant is appearing which is quite similar to the signatures on the reverse side of the Ext-1 as admitted by the defendant. The defendant offered no explanation on which circumstances he only put signature on the reverse side of Ext-1. Being an educate person, he supposed to know on which paper he was going to put his signature. If the admission of the defendant is taken into count, he put signature on the agreement paper on its reverse side and the agreement paper also reveals that the stamp paper has been purchase by the defendant himself as endorsed by the stamp vendor, Khordha. At this juncture there should not be any doubt that the agreement has been execute by the plaintiff and defendant and the terms and conditions is well known to the defendant and the agreement is also binding on the defendants.

#### **ISSUE NO. Vi.**

10. Now the question is whether the defendant is liable to deposit the unpaid amount. The entire fact and circumstances has been discussed elaborately while dealing with the former issues. Therefore, it is needless to say that

there was an agreement between the parties and as such the defendant was authorized by the plaintiff to collect the parking fees for the municipality area and in view of the admitted facts the defendant has deposited Rs. 4,10,000/- out of 5,50,001/-. The defendant also in his evidence in chief has deposed that being the highest bidder the tender was allotted to him for the bid amount of Rs. 5,50,001/- for the financial year 2005-06. Being allotted with the assignment to collect the parking fees he has to pay the consideration amount of the bid irrespective of the turnout. On the above circumstances, the defendant taken certain pleas and stated that the vehicles refused to pay the parking amount as he was not authorized by the plaintiff and also stated in his cross-examination that he has not received a single pie towards the parking fees. This type of plea is not tenable as completely out of pleading. Rather he in his cross-examination in para – 12 admitted that some users of the parking area defaulted to pay anything towards the parking fees to him. He again stated that he is unable to produce a scrap of paper to show that he has made any written correspondence to the Khordha Municipality for providing him the work order. He also admitted that he has not filed any case against the Khordha Municipality to recovery the amount deposited by him towards the auction price. The defendant again stated that he used to pay the receipts for collection of the parking fees. In face of such admitted position of the case, there should not be any doubt that the defendant was collecting the parking fees on exchange of a money receipt as it is a general practice for collecting the parking fees. His evidence towards not receive of any amount for parking fees appears to be completely false

and misleading. In case the plaintiff violated any term and condition of the agreement or failed to provide any authorization to him, it was open for the defendant to approach the appropriate forum. But he fails to do so and ultimately admit that he was duly authorized for the work of collecting parking fees during those periods without any hurdles from the side of the plaintiff. The plea taken by the defendant has not been supported by a scrap of paper. The whole plea of the defendant appears to be highly confusing and the defendant conceded to the facts as raised by the plaintiff and as such he is abided by the terms and condition of the agreement and liable to pay the rest amount to the plaintiff amount Rs. 1,50,000/- as claimed by the plaintiff. So far as the interest is concern the defendant is liable to pay interest to the above sum of due amount @ Rs. 06% per annum, from the date of institution of the suit.

**ISSUE NO. 1, 2, 3 & 7.**

The issues relating to maintainability, limitation and cause of action being not pressed by the defendant, need no further discussion, but so far as the question of relief is concern it has been held by this court that the defendant is liable to pay Rs. 1,50,000/- to the plaintiff as the unpaid amount with interest at the rate of Rs. 6 per cent annum from the date of institution of the suit. Hence it is order.

**ORDER**

The suit be and the same is decreed on contest against the defendant, but in the circumstances without any cost. The defendant is directed to pay Rs. 1,50,000/- to the plaintiff as the unpaid amount with an interest @ Rs. 6 %

per annum from the date of institution of the suit until payment is made, within three months hence. Failing of which, the plaintiff is at liberty to execute the order by the process of the court.

Senior Civil Judge, Khordha.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 27<sup>th</sup> day of November, 2013.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiffs :-

P.W.1 Surendra Nath Sahoo.

P.W. 2 Narayan Chandra Swain.

List of witnesses examined on behalf of Defendants. :-

D.W.1 Ambika Prasad Das.

List of documents admitted on behalf of the Plaintiffs :-

Ext.1 The stamp paper agreement between the plaintiff and defendant for the year 2005-06.

Ext.1/a Signature of Ashok Kanungo, Executive Officer on Ext. 1.

Ext. 2 Advocate Notice to the Defendant.

Ext. 2/a Postal Acknowledgement.

List of witnesses examined on behalf of Defendants :-

Nil.

Sr. Civil Judge, Khurda.