
(2012) 08 KL CK 0227

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29276 of 2008

Abdul Basheer, K.

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 49(3), 50(2), 52, 53, 54

Citation : (2012) 3 ILR (Ker) 967 : (2012) 4 KLJ 76 : (2012) 4 KLT 257

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : M. Sasindran and Sri. M.V. Bipin, for the Appellant; Noble Mathew, Government Pleader for Respondents 1 to 3 and Sri. Liji J. Vadakedom, S.C. KSHB for 4th Respondent, for the Respondent

Judgement

Mr. Justice P.R. Ramachandra Menon

1. Can the District Collector, in exercise of the power under the proviso to Section 54 of the Revenue Recovery Act, set aside the sale once the sale is confirmed, is the point of dispute. An extent of 0.0324 hectares of land and building situated thereon, belonging to the 5th respondent, was subjected to revenue sale for realisation of amount due to the 4th respondent under a housing loan. The petitioner participated in the sale and turned to be the successful bidder, who remitted 15% of the bid amount of Rs. 50,000 on the same day, i.e. on 30-3-2006. The balance amount was satisfied within 30 days, as prescribed u/s 49(3) of the Revenue Recovery Act, as borne by Ext P-1 receipt. Since there was no complaint from any corner (as no objection was filed either u/s 52 or Section 53 of the Revenue Recovery Act, seeking to set aside the sale), further steps were pursued and the sale was confirmed in the name of the petitioner, as per Ext. P-2 Order dated 28-3-2007 passed by the 2nd respondent.

2. Quite after one year of confirmation of sale, as above, the petitioner was served with Ext. P-3 notice dated 3-5-2008 issued by the first respondent, referring to a "complaint" preferred by the requisitioning authority against the

sale. On receipt of Ext. P-3, the petitioner preferred Ext. P-4 objection, specifically pointing out that the petitioner had already satisfied the entire sale consideration; that he had produced "stamp papers" of the requisite value and that no valid applications were filed by anybody, either u/s 52 or Section 53 of the Revenue Recovery Act. It was pointed out that the belated application preferred by the 4th respondent, challenging the sale proceedings, was not liable to be entertained and thus sought to pursue further steps for causing registration of the Sale Certificate in the name of the petitioner.

3. After hearing both the sides and also on going through the materials on record including the contents of the report called for from the concerned authorities, the first respondent observed that the sale effected by the third respondent was not in conformity with the statutory requirements. Observing that the proceedings suffered much lapses, mistakes and infirmities at the hands of the departmental authorities, the sale was set aside, vide Ext. P-5 Order dated 9-6-2008 and the amount already remitted by the petitioner was ordered to be returned. The petitioner is challenging the said proceedings.

4. The first respondent has filed a counter-affidavit, explaining the facts and circumstances and the glaring mistakes committed by the third respondent, leading to the sale and its confirmation. The proceedings reveal that the building situated in the property was never got valued by the P.W.D. Authorities, which is stated as quite contrary to the relevant norms. The building itself was having a value of Rs. 1,49,687 as borne by Ext. R-1(a) valuation certificate, whereas the property (land and building) was sold for a paltry amount of Rs. 50,000 after fixing the upset value at an abysmally low rate of Rs. 30,000. The mistake on the part of the revenue stands conceded in the counter-affidavit filed by the first respondent and it was under such circumstance, that Ext. P-5 order was passed, intercepting the sale. It is pointed out in paragraph 3 of the said affidavit, that necessary steps were taken to return the bid amount to the petitioner, including refund of the collection charges.

5. The 4th respondent has filed a counter-affidavit pointing out that the Writ Petition itself is not maintainable. The crux of the contentions is to the effect that, the requisition made by the 4th respondent/Housing Board in October. 1997 was subsequently withdrawn as per the letter dated 15-12-2000 requesting to hand over the property to the petitioner and that there was no valid requisition on the date of sale effected almost after a decade; more so when the Government, as per letter dated 6-9-2002, had informed that necessary direction was given to the first respondent for handing over the property to the Housing Board after realisation of the actual expenditure in connection with the auction scheduled earlier. The contentions raised by the 4th respondent in paragraphs 3,4 and 5 are very relevant, which are extracted below;

3. It is respectfully submitted that the 5th respondent availed a housing loan of Rs. 3 lakhs from the KSHB in 1996 for the construction of a residential building in 8 cents of property comprised in Sy. No. 112/pt of Kankol Village of Taliparamba

Taluk owned by him vide Document No. 2224/96. The loan was to be repaid in 120 monthly installments @ Rs. 5860 p.m. from 10-10-1996. Thereafter, the 5th respondent mortgaged the said property in favour of the KSHB as per MD No. 2463/1996 of SRO, Payyannur. As the 5th respondent failed to repay the loan installments which he agreed to repay while taking loan, the KSHB was constrained to refer the matter to the 1st respondent District Collector, Kannur on 31-10-1997. The 1st respondent initiated action for the recovery of an amount of Rs. 3,76,663 due as on 30-11-1997 together with interest from the 5th respondent as per Clause 18 and 19 of Mortgage deed executed by him. Till the month of November 2000 no amount was recovered by the Revenue Recovery Authorities. On 28-11-2000, the 3rd respondent vide letter No. E3/11109/98 informed the KSHB that there was no bidders for the auction for the sale of mortgaged property and the property is proposed to be taken as Bought-in-land by Govt, for Rs. 1.

4. It is respectfully submitted that on 15-12-2000, in reply to the letter send by the 3rd respondent, KSHB through letter No. ROMHS/HIG 111/23/95 requested the Revenue Authorities to stop the auction proceedings of the mortgaged property and also requested to take necessary action for handing over the property to the Board. As per letter No. LRCI/17506/2000 dt. 14-1-2001 the Secretary of the Housing Board had requested 3rd Respondent to inform the procedure to be taken by the Board for handing over the property to the board. No response was received for this letter. As per letter No. 591/A2/02 Housing Dept., Kerala Government dt. 6-9-2002 it was informed that necessary direction was given to the 1st respondent for handing over the property to the Board after realizing the actual expenditure incurred by the revenue authorities for conducting the auction. Again on 28-2-2003 KSHB also requested the 3rd respondent to intimate about the actual expenses for which no reply was received. But the KSHB had not received any information regarding the auction and the sale of the mortgaged property. Thereafter, on 16-4-2007 by letter No. E2.11109/98/KSHB, after getting the confirmation of the sale by 2nd respondent, KSHB was offered the bid amount. Then only the KSHB came to know about the sale of the mortgaged property.

5. It is submitted that immediately after the knowledge of the sale, KSHB required the 1st and 2nd respondents on 22-5-2007 and 3rd respondent on 17-5-2007 to cancel the sale proceedings on the ground that 3rd respondent conducted the auction without obtaining the valuation certificate of the building situated in the property. Accordingly, by Exhibit P-5, on 9-6-2008 1st respondent set-aside the sale based on a hearing conducted on 21-5-2008 and stated that there was some unfair action in the conduct of auction and sale of property. It is submitted that there was no delay on the part of the KSHB to informing the above said matter to the concerned authorities. It is submitted that the amount of Rs. 47,476 received by KSHB earlier was refunded by DD No. 153096 on 7-10-2008 in favour of the petitioner through 3rd respondent which was acknowledged by 3rd respondent on 13-10-2008.

6. The learned Counsel for the petitioner submits that inadequacy of sale price is not a ground to set aside the sale, as held by this Court in *Subaida Sulaiman v. Hamsa* 1991 (2) KLT 158 (D.B.). It is further stated that, since no complaint whatsoever was filed by the 4th respondent or anybody else including the 5th respondent/ owner of the property, either u/s 52 or Sec. 53 of the Act, within the prescribed time, the sale ought not to have been intercepted by the first respondent u/s 54, that too, based on a belated complaint preferred by the 4th respondent. It is also contended that there is no power or jurisdiction for the first respondent to have the sale set aside, after having the same confirmed vide Ext. P-2. With reference to the alternative prayer raised in the writ petition, the learned Counsel submits, that the petitioner is at no fault and as such, is entitled to get compensation by way of granting substantial rate of interest or otherwise in view of the observations and direction given by the Apex Court in *Surinder Nath Kapoor Vs. Union of India (UOI) and Others*, .

7. The learned Government Pleader and the learned Standing Counsel for the 4th respondent Housing Board made submissions in tune with the contents of the counter-affidavit filed by the concerned parties. The learned Government Pleader submits that the sale has been set aside vide Ext. P-5, after completing all the statutory requirements and after giving an opportunity of hearing. The inference in Ex. P-5 is based on the actual facts and figures, as revealed from the materials on record and that the petitioner is not justified in contending that no remedial steps are liable to be taken by the first respondent, even after coming across the patent mistakes and irregularities in conducting the sale. The learned Counsel for the 4th respondent submits with reference to the counter-affidavit, that the sale was conducted in the absence of any standing/ valid requisition (having withdrawn the same followed by the Government direction to the first respondent to return the property to the 4th respondent after realising the cost of sale proceedings).

8. It has been specifically contended by the 4th respondent in their counter-affidavit, that the total outstanding arrears of the 5th respondent under the Housing Loan availed in the year 1996 was Rs. 3,76,663 as on 30-11-1997, which was sought to be recovered by sending necessary requisition to the first respondent on 31-10-1997. It was pursuant to this requisition, that the recovery proceedings were initiated. But when the third respondent vide letter dated 28-11-2000 informed the 4th respondent that there were no bidders and that the property was proposed to be taken over by the Government as "bought-in-land" for "Re. 1" the 4th respondent replied as per letter dated 15-12-2000. withdrawing the requisition and requesting to take necessary action to hand over the property to the Board. The 4th respondent sought to clarify the modalities to be pursued in this regard by writing a letter dated 14-1-2001 to the third respondent. Later, as per letter No. 591/A2/02/ Housing Department/ Government, of Kerala dated 6-9-2002, it was informed by the Government that necessary direction had been given to the first respondent for handing over the property to the Board, after realising the actual expenditure incurred by the

revenue authorities for conducting the auction.

9. It has been asserted by the 4th respondent that they were never told of the sale proceedings scheduled on 30-3-2006 and that they came to know about the sale only on receipt of the letter dated 16-4-2007 sent by the second respondent offering the bid amount, pursuant to confirmation of sale. Immediately on receipt of the same, the 4th respondent rushed to the first respondent, pointing out the sequence of events and seeking to set aside the sale. It is pleaded that there was absolutely no delay on the part of the 4th respondent in this regard and that the sale conducted without any authority (Sec. 69 requisition having been withdrawn) cannot confer any right or interest on the petitioner, to have the property conveyed to him.

10. With regard to the course pursued by the first respondent leading to Ext. P-5 order, it remains a fact that Ext. P-5 order was passed after issuing Ext. P-3 notice, inviting objections. It was pursuant to the said notice, that the petitioner preferred Ext. P-4 reply, which was considered and the matter was finalised by the first respondent by issuing Ext. P-5 order setting aside the sale. As such, there cannot be any grievance referring to violation of principles of natural justice or infringement of any statutory prescription.

11. The sequence of events leading to the requisition sent by the 4th respondent on 30-11-1997; the intimation given by the third respondent on 28-11-2000 as to the steps being pursued to take over the property as "bought-in-land" by the Government u/s 50(2) of the Revenue Recovery Act (since there was no bidder), writing of the letter dated 15-12-2000 by the 4th respondent to stop auction proceedings withdrawing the requisition and requesting to hand over the property to the Board; the further letter dated 14-1-2001 requesting the third respondent to inform the modalities/procedure in this regard; the letter dated 6-9-2002 issued by the Government informing the 4th respondent that instructions had already been given to the first respondent to hand over the property to the Board after realising the actual expenditure incurred by the Revenue, etc., stand un-controverted, insofar as the parties concerned have not chosen to rebut the same by filing any reply affidavit. As such, there cannot be any further dispute with regard to the sequence of events as narrated by the 4th respondent. In spite of the withdrawal of the requisition, followed by the Government instructions to the first respondent to cause the property to be returned after realising the incidental expenses in connection with the auction proceedings, the sale was conducted on 30-3-2006, which cannot but be held as wrong and unsustainable. No valid sale could have been there, for want of standing/valid requisition and the 4th respondent was never let known, as to the sale proceedings held on 30-3-2006 or the confirmation vide Ext. P-2 in this regard, which hence has been rightly intercepted by the first respondent by passing Ext. P-5.

12. Now, coming to the power and competence of the first respondent to have intercepted the sale after its confirmation, vide Ext. P-2, it has been given effect

to, by invoking the power vested on the first respondent by virtue of the "proviso" to Section 54. Section 54 reads as follows:

54. Order confirming or setting aside sale.--On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made u/s 52 or 53 or if any such application has been made and rejected, the Collector shall make an order confirming the sale;

Provided that if the Collector has reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

13. The above provision gives power to confirm the sale after expiry of 30 days, if no application to have the sale set aside is made u/s 52 or 53, or if such application has been made and rejected. But it does not mean that confirmation of sale is "automatic", in view of the law declared by this Court as reported in *Joseph v. Tahsildar S. Wynad* ILR 1980 (2) (Ker.) 650, *Captain v. District Collector* 1996 (2) KLT 898 and also by a Division Bench of this Court in *Gopalakrishnan v. State of Kerala* ILR 2006 (2) Ker. 102 (paragraph No. 14).

14. True, in the instant case, the sale was confirmed vide Ext. P-2 order passed by the second respondent. The question is whether the power u/s 54 could have been invoked by the first respondent, once the sale was confirmed. As mentioned herein before, Sections 52 and 53 deal with different circumstances to set aside the sale, on filing necessary applications. But coming to Section 54, the "proviso" says that the Collector can set aside the sale for reasons to be recorded in writing, if he has reason to think that it has to be set aside and this power is frilled with a non-obstante clause/rider, stipulating that it could be invoked notwithstanding that no application to set aside the sale has been made either u/s 52 or 53. So, for invoking the power under the "proviso" to Section 54, non filing of an application u/s 52 or 53 is of no significance.

15. The "proviso" adds that, even if any application has been preferred either u/s 52 or 53 and the same stands rejected, still it is open for the first respondent to invoke the power u/s 54 and set aside the sale on grounds other than those alleged in any application which has been preferred and rejected. This clearly shows that, the power vested with the first respondent by virtue of the "proviso" to Section 54 is very wide. In other words, the power conferred u/s 54 to confirm a sale is always subject to the power of the first respondent/District Collector to interfere in appropriate cases; even after rejecting an application to set aside the sale--of course on grounds other than those already dealt with in such application to set aside the sale, which stands rejected.

16. Going by the scheme of the statute, enabling a party to make an application to set aside the sale u/s 52 or 53, such application has to be filed in the manner specified therein and of course within 30 days. Once the application preferred is considered and rejected, the sale has necessarily to be confirmed in favour of the

bidder, though the bidder does not get any vested right, till confirmation order is passed; more so, when confirmation of sale is "not automatic". But, when the "proviso" to Section 54 says that the power to set aside the sale can be invoked by the District Collector, even after the rejection of an application u/s 52 or 53, on grounds other than those contained in such application already rejected, it necessarily indicates that confirmation of sale immediately after the rejection of the application preferred u/s 52 or 53 is no bar for considering the matter on other grounds (other than those contained in the applications already rejected). To put it more clear, whether any such circumstances to cause for interference exist or not, is a matter to be considered with proper application of mind, which is a stage after the rejection of the application u/s 52 or 53 and this situation is consciously taken care of by the law makers with an intent to do justice in deserving cases. The power that is being exercised by the first respondent, is of course that of a quasi-judicial authority. Necessarily, the affected parties have to be heard and that's all. This is more so, when there is no time limit for exercising such power u/s 54 and the above power can be invoked by the first respondent, who can set aside the sale on grounds other than those which are contemplated u/s 52 or 53 of the Revenue Recovery Act. This Court finds support in this regard from the decisions rendered by this Court, reported in ILR 1980 (2) (Ker.) 650 (cited supra) and Asha v. District Collector 1990 (2) KLT 289. Viewed in the above circumstance, it has to be declared that the District Collector is competent to set aside the sale invoking the power under the "proviso" to Section 54 of the Revenue Recovery Act, notwithstanding the confirmation of sale passed already, subject to satisfaction of the ingredients as mentioned herein before. As it stands so, Ext. P-5 order passed by the first respondent is perfectly within the four walls of law and is not assailable under any circumstance.

17. However, this Court finds that the learned Counsel for the petitioner is justified in contending that there is no fault or lapse on the part of the petitioner for having participated in the sale and in satisfying the entire bid amount, besides submitting the stamp papers of the requisite value of Rs. 5000 for getting the sale certificate executed and registered, years back. It is specifically pointed out by the first respondent and also by the 4th respondent that the amount satisfied by the petitioner was immediately caused to be returned, which however was not accepted by him. The first respondent has added that necessary steps were taken to effect refund of the "collection charges" as well and that the petitioner had not turned up to accept the same. Whether the petitioner is entitled to get compensation in the said circumstance, is a matter to be decided, on the basis of the pleadings and evidence to be let in before the appropriate forum, which hence is left open. In the above facts and circumstances, while interference is declined on merits, the respondents are directed to take further steps to see that the amount deposited by the petitioner vide Ext. P-1 pursuant to the sale conducted on 30-3-2006 and the value of the "stamp papers" procured and produced by the petitioner for getting the sale certificate executed and registered, shall be refunded to the petitioner forthwith.

The first respondent shall take all necessary action to see that the due amount is disbursed to the petitioner within "three months".