(2009) 07 KL CK 0031

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 8877 of 2009

Ayisha Teacher APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 2, 49, 50, 50(2), 71

Citation : (2009) 4 ILR (Ker) 105 : (2009) 4 KLT 53

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

Bench : Single Bench

Advocate : C.M. Mohammed Iqubal, for the Appellant; P.K. Babu, Government Pleader and Abraham Thomas, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.—Whether the property subjected to Revenue sale, pursuant to the requisition made by an Institution notified u/s 71 of the Kerala Revenue Recovery Act, can be taken over and appropriated by the Government as ''bought in land'', invoking the power and procedure u/s 50(2) of the said Act is the issue involved herein.

2. The petitioner is challenging the action on the part of the Government, whereby the property of her deceased husband, which devolved upon her and the three children, on his demise in 1999, was taken over by the Government as ''bought in land'', when there was no bidder in the public auction conducted pursuant to the requisition made by the ''Mumbai Customs'' for realization of the amounts due from the deceased to the said Department.

3. The petitioner is the widow of late Alliparambil Hamsa @ Babu, against whom some proceedings were taken by the Mumbai Customs in the year 1984, whereby the department imposed a fine of Rs. 2 lakhs and a requisition was made to the revenue authorities in Kerala for realization of the said amount. Invoking the machinery under the Kerala Revenue Recovery Act, the revenue

authorities proceeded against the properties of the deceased defaulter and since there were no bidders, the sale was adjourned as prescribed and subsequently, the property was bid by the Government as ''bought in land'' u/s 50(2) of the ''Act''.

4. The learned Senior Government Pleader submits that, the deceased husband of the petitioner was the absolute owner of the property in question, by virtue of Ext.PI Partition Deed dated 3.6.1993, where his share was earmarked and allotted separately. Pursuant to the requisition made by the Mumbai Customs, it was the said property that was taken over by the Government as ''bought in land'', invoking the power u/s 50(2) of the Kerala Revenue Recovery Act, when no bidders turned up in the revenue sale. But the fact remains that, the above property was never conveyed or no monetary equivalent was ever paid to the Mumbai Customs, at whose requisition, the revenue sale was conducted by the authorities in Kerala. To put it more clear, the deceased husband of the petitioner was never indebted to the State/Revenue in any manner and the only liability was towards the Mumbai Customs. In the instant case, pursuant to the requisition made by the Mumbai Customs, since no bidders had turned up, the property happened to be appropriated by the Government of Kerala as ''bought in land'', invoking the provision u/s 50(2), which shows that there is an unlawful enrichment by the State, at the cost of the petitioner''s husband and also the Mumbai Customs Department.

5. The learned Counsel for the petitioner submits that, the petitioner is ready and willing to satisfy the entire liability to the Mumbai Customs and admittedly the liability of the deceased husband still stands and the Revenue Authorities in Kerala have not paid any amount to the Mumbai Customs, at whose instance, the auction was conducted. The learned standing Counsel appearing for the Mumbai Customs, on instructions submits that, the department does not have any objection at all in reconveying the property to the petitioner, on condition that, she satisfies the entire liability to the Customs Department, particularly since the amount sought to be recovered is a ''fine''.

6. The crucial question to be considered is, whether the Government could have appropriated the land in question as ''bought in land'' invoking the power u/s 50(2) of the Kerala Revenue Recovery Act. Section 50 of the Kerala Revenue Recovery Act stipulates as follows:

50. Bidding on behalf of Government: - (1.) When an immovable property is put up for sale at the time and place specified in the notice under Clause (2) of Section 49 for the recovery of arrears of public revenue due on land, if there be no bid or if the highest bid be insufficient to cover the said arrears and those subsequently accruing due upto the date of sale, together with interest and cost of process, the officer conducting the sale shall postpone the sale to another date which shall not be later than sixty days from the date of the first sale and give notice of the subsequent sale as required under Clause (4) of Section 49.

(2) When the property is put up for sale on the date to which it was postponed under Sub-section (1), at the time and place specified in the notice,-

(i) if there be no bid, the officer conducting the sale may purchase the property on behalf of the Government for an amount of ten paise; and may apply to the Collector to set aside the sale;

(ii) if the highest bid be insufficient to cover the arrears referred to in Sub-section (1) and those subsequently accruing due upto the date of the sale and interest and cost of process, such officer may bid on behalf of the Government for an amount higher than such bid by ten paise, and in either case the Government shall acquire the property subject to the provisions of this Act.

(3) The provisions of Clause (3) of Section 49 and Section 84 shall not apply to cases where immovable property is purchased on behalf of the Government under this section.

(4) Notwithstanding anything contained in this Act, after the confirmation of the sale, all the right, title and interest of the defaulter, purchased on behalf of the Government, shall be deemed to have vested in the Government from the date of purchase and if the defaulter is in actual possession of the property or if he is entitled to possession, the Collector or the authorized officer shall, immediately after the confirmation of the sale, take possession of the property. If the Collector or the authorized officer is opposed or impeded in taking possession, he shall, if a Magistrate, enforce the surrender of the land to himself and, if not a Magistrate, he shall apply to a Magistrate, and such Magistrate shall enforce the surrender of the land to the Collector or the authorized officer, as the case may be.

7. It is very much clear from the said provision that the power is vested with the Government to appropriate the concerned property when there are no bidders, for the recovery of arrears of public revenue due on land. The words arrears of "public revenue due on land" have been defined u/s 2(j) of the Act, which is extracted below:

2(j): "public revenue due on land" means the land revenue charge on the land and includes all other taxes, fees and cesses on land, whether charged on land or not and all cesses or other dues payable to the Government on account of water used for purposes of irrigation.

8. Reading of the above provisions together, will make it crystal- clear that the power u/s 50(2) to appropriate the ''bought in land'' can be invoked only when it is to recover the arrears of public revenue due on the land and the Government will not be justified to invoke the said power under any other circumstances. To put it more clear, the Kerala Revenue Recovery Act confers power on the Government to notify different institutions, to which the Kerala Revenue Recovery Act could be made applicable, as provided u/s 71 of the Act. Once an institution is notified u/s 71 of the Act, the dues to the said institution can be

sought to be recovered invoking the machinery under the Kerala Revenue Recovery Act as in the case of arrears of public revenue due on land. In other words, just because of the notification u/s 71, the amount due to such institution will not automatically get converted as ''public revenue due on land''.

9. In the instant case as well, when the respondents resorted to the steps under the Kerala Revenue Recovery Act, based on the requisition issued by the Assistant Commissioner of Customs, Kozhikode, presumably on the basis of the instructions given by the ''Mumbai Customs''; since nobidders had turned up in the auction scheduled, the property was subsequently taken over by the Government. There is absolutely no case for the Government that the deceased husband of the petitioner was a ''defaulter'' to the Government/Revenue or that any amount was due to the Government from him. This being the position, because of the requisition submitted by the Customs authorities and since no bidders had turned up for the auction, the property of the deceased husband of the petitioner has now come to be vested with the Government of Kerala, to whom the former did not owe any amount. To put it further clear, by virtue of the exercise pursued, invoking the power u/s 50(2), there is an "unlawful enrichment" by the Government of Kerala and the due amount to the Customs stands yet to be satisfied.

10. The learned Senior Government Pleader, however submits that the norms for re-conveyance of ''bought in land'' are clearly given in Ext. R1(a) GO., wherein it is stipulated that the property can be re conveyed subject to the conditions specified therein and only if the requisite application has been made in this regard within the specified time. It is also pointed out by the learned Senior Government Pleader that, subsequently, the norms have been re-stated by issuing necessary GO.s in the year 1995 - 96, whereby the time for submitting the application to reconvey the land was enhanced as ''two'' years, subject to realization of the ''market value''. However, this Court does not find it necessary to go into these aspects; since the legal point being considered is whether the Government was justified in resorting to the power conferred u/s 50(2) to take over the property of the deceased husband of the petitioner, pursuant to the requisition made by some other authority, admittedly when the deceased did never owe any amount to the Government. If only the exercise of such power was justified u/s 50(2), then alone will the question come up for consideration, as to the applicability of the relevant GO.s including Ext.R1(a). Thus, in the instant case, the very basic exercise of power invoking Section 50(2) is being examined and it is held that, the Government cannot have any unlawful enrichment as made clear herein before.

11. In the said circumstances, the taking over of the property by the Government, is declared as wrong and illegal and sale has to be conducted afresh with vide publicity, in accordance with law, for realization of the dues, to be satisfied to the ''Mumbai Customs'' Department. It is made clear that, this will not preclude the petitioner from satisfying the liability to the Mumbai Customs

Authorities in the meanwhile and to save the property in question, which otherwise (but for the wrong exercise pursued by the Government) would have devolved upon the petitioner and the children, as the legal heirs of the deceased.

The Writ Petition is allowed to the above extent. No cost.

