
(2015) 10 KL CK 0012
In the High Court Of Kerala
Case No : W. P. (C) No. 28850 of 2014

Chandran C.

APPELLANT

Vs

v. State of Kerala

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Citation : (2015) 5 KHC 162

Hon'ble Judges : Mr. A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : Ranjith Thampan (Senior Advocate); P. R. Reena, Advocate, for the Petitioner; George Mecheril (Special Government Pleader), for the Respondents

Final Decision : Disposed Off

Judgement

Mr. A. K. Jayasankaran Nambiar, J. - The petitioner is stated to be the owner in possession of 40 cents of land in Sy. No. 551/1 of Manavalasery Village. The property is a residential property, and the petitioner obtained title in respect of the property pursuant to Ext. P1 sale certificate that was issued to the petitioner by the Munsiff Court, Irinjalakuda, It would appear that one Manikyan and his brother Ramakrishnan, who were neighbours of the petitioner, had borrowed amounts from the petitioner against mortgage of the aforesaid property by deposit of title deeds. When the said persons defaulted in repayment of the amounts to the petitioner, the petitioner filed OS No. 1823/2000 before the Munsiff Court, Irinjalakuda, which suit was decreed based on an award dated 19/01/2001 of the Lok Adalat, Irinjalakuda, charging the property in question for realisation of the amounts due to the petitioner. Pursuant to EP No. 679/2001 that was filed by the petitioner to bring the property to auction sale, the petitioner purchased the property and obtained Ext. P1 sale certificate. On receipt of Ext. P1 sale certificate, the petitioner approached the revenue authorities by paying the basic tax on the said property and also effected a mutation of the title to the property in the revenue records. Thereafter, the petitioner effected a change in the water connection and electricity connection so

as to reflect the name of the petitioner as the owner of the property in question. It is the case of the petitioner in the writ petition that he has been in possession of the said property since obtaining the sale certificate in respect of the property.

2. While the petitioner continued to be in possession of the property, by Ext. P5 communication dated 11/07/2011, the petitioner was informed by the Tahsildar/ Village Officer, who had visited the property of the petitioner, that the said property had been purchased by the Government as bought-in-land under Section 50 (2) of the Kerala Revenue Recovery Act [hereinafter referred to as the 'RR Act?']. By Ext. P5 notice, the petitioner was directed to hand over possession of the said property to the revenue authorities. The petitioner then; made enquiries with the revenue authorities when he was informed that Sri. Manikyan and his brother Ramakrishnan had defaulted in payment of sales tax dues to the Government, and accordingly, their property [the property purchased by the petitioner pursuant to the decree in OS No. 1823/2000] had been purchased by the Government as bought-in-land pursuant to a revenue auction conducted by the Government. It was apparent, however, that ever after the purchase of the land, as bought-in-land, the revenue authorities had not effected any mutation of the property in the revenue records, and further, had not taken any steps to secure possession of the property that was purchased by the Government as bought-in-land. The petitioner, thereafter, approached the Commercial Tax Officer and sought permission to discharge the entire sales tax arrears, for which the property of Sri. Manikyan and his brother Ramakrishnan had been brought to sale by the revenue authorities. He also sought benefits under the Amnesty Scheme. On being informed of the sales tax arrears due under the Amnesty Scheme, the petitioner approached the Commercial Tax Officer and paid the entire dues under the Amnesty Scheme and obtained Ext. P6 certificate dated 29/11/2013 certifying that the petitioner had discharged the entire sales tax arrears under the Amnesty Scheme. It was thereafter that the petitioner approached the respondents seeking a re-conveyance of land. When the said request of the petitioner was denied, the petitioner approached this Court through the present writ petition, wherein, he seeks a direction to the respondents to effect re-conveyance of the property measuring 40 cents of land in Sy No. 551/1 of Manavalasery Village to the petitioner.

3. A counter-affidavit has been filed on behalf of the official respondents, wherein, it is stated that revenue recovery notices were issued to Sri. Manikyan and his brother Ramakrishnan on 30/09/1983. When despite service of notice, there was no payment effected by the said defaulters, the property in question was attached and notified for sale. It is stated that there were no bidders in the several attempts to sell the land, and therefore, eventually, the land was bid as bought-in-land on 10/03/1986. Thereafter, the sale to the Government was confirmed by the Revenue Divisional Officer, Thrissur, on 17/04/1991 as evidenced by Ext. R3(c) produced along with the counter-affidavit of the official respondents. It is the stand of the official respondents that inasmuch as the Government officials were not parties to OS No. 1823/2000, the sale in favour of

the petitioner was not binding on them, it is further pointed out that although the petitioner has subsequently cleared the sale tax dues of the defaulters, the KSEB dues amounting to Rs.2,26,555/- and excise dues arrears of Rs.18,283/-for which revenue recovery steps are pending against the erstwhile defaulters have not been cleared till date. It is the stand of the official respondents that the petitioner cannot merely, by clearing the sales tax arrears of the erstwhile defaulters under the Amnesty Scheme, seek a re-conveyance of the land as of right since the revenue sale effected under the RR Act conferred a title on the Government, which was free from any encumbrance, and the mere pendency a suit would not attract the doctrine of lis pendens as far as the revenue sale was concerned.

4. I have heard the learned Senior Counsel Sri. Ranjith Thampan, on behalf of the petitioner and Sri. George Mecheril, the learned Special Government Pleader on behalf of the official respondents.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that this is a case where the State Government had proceeded against the defaulters, namely, one Manikyan and his brother Ramakrishnan, for recovery of arrears of sales tax due from them as early as in 1983. Although revenue recovery notices were issued to the defaulters, there was no payment forthcoming from them, and, consequently, the property was attached and notified for sale, and ultimately purchased by the Government itself as bought-in-land on 10/03/1986. The sale in favour of the Government was also confirmed by the Revenue Divisional Officer, Thrissur, on 17/04/1991 as evidenced by Ext. R3(c). Under normal circumstances, the said confirmation of sale in favour of the Government would have sufficed to confer a title to the said property on the Government to the exclusion of all others. What is relevant to note, in the instant case, however, is that, subsequent to the confirmation of sale in favour of the Government, the State Government did not take any steps to ensure that the possession of the property was vested in the State Government, and further, no steps were taken in terms of the Registration Act, 1908, and the Transfer of Registry Rules, 1966, to effect a mutation of the property in the name of the Government. It is, in particular, relevant to refer to Section 50(4) of the RR Act, which clearly mandates that notwithstanding anything contained in the Act, after the confirmation of the sale, all rights, 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 authorised officer shall immediately after the confirmation of the sale, take possession of the property. The provision further enables the Collector or authorised officer, in the event of the taking of possession being opposed or impeded, to enforce the surrender of land to himself and, if he is not a Magistrate, to apply to a Magistrate for enforcing the surrender of the land to him. The said provision highlights the importance of taking actual possession of the property subsequent to a confirmation of the sale in favour of the

Government. It is also relevant to note the provisions of Section 17 of the Registration Act, 1908, which deals with documents that are not compulsorily registerable. Section 17(2)(xii) makes it clear that any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer, is a document, the registration of which is not compulsory. Even in respect of those documents which are not compulsorily registerable, there are provisions under the Registration Act, which mandate a procedure to be followed so as to ensure that the Registering Officer within the local limits of whose jurisdiction, the whole or any part of the immovable property comprised in such certificate, is situated, is informed of the sale of the property so that a noting of the said sale can be effected in Book No. 1, which is required to be maintained in the said Registry. Section 89(4) of the Registration Act, 1908, reads as follows:

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed.?

(1) xxxx xxxx xxxx

(2) xxxx xxxx xxxx

(3) xxxx xxxx xxxx

(4) Every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.

The rationale for the procedure contemplated under Section 89(4) of the Registration Act, 1908, has been enumerated by the Supreme Court in *Shanti Devi L. Singh v. Tax Recovery Officer and Others*, 1990 (3) SCC 605 in paragraphs 7, 8 and 9 which read as follows:

7. This takes us to the second question as to whether filing of a copy of the certificate in Book No. 1 within the meaning of Section 89 is tantamount to the registration of the document under the Registration Act or it is a totally different concept. The registration of a document under the Act is conditional on the fulfilment of several requirements (Sections 32 to 35). The document has to be presented for registration by a person competent to do so. The person executing the document should appear before the Sub-Registrar and admit or deny execution of the document. The Sub-Registrar may conduct an enquiry, where needed, to satisfy himself as to the proper execution of the document. He will decide to admit the document to registration only if he is satisfied on this. What he has to do once he admits a document to registration is laid down in Sections 51 to 67. First, he is bound to endorse full particulars and details of the registration on the document presented to him and also obtain the signature of every person presenting the document. He should then, without delay copy the entire document in the appropriate book maintained for the purpose (which, in

respect of non-testamentary instruments relating to immovable property, is Book No. 1). The entries in each book have to be consecutively numbered year-wise and corresponding entries should be contemporaneously made in current indices to be maintained in every office. The officer should affix his signatures to the endorsements made in his presence and then endorse a certificate on the document that it is registered together with the registration particulars which shall be signed, sealed and dated by him. The document is then returned to the person presenting it for registration. The books and indices are available for public inspection and certificate copies thereof are to be given to parties applying for them. This, in brief, is the process of registration.

8. On the other hand, the process of filing that is contemplated under the Act is somewhat different though the Act does interchange the two expressions in some places. For instance, Section 51(2) itself refers to all documents or memoranda registered under Section 89 being entered or filed in Book No. 1. But there appear to be vital differences between the two processes:

(i) It is the original of a document that is registered whereas only copies or memoranda are filed;

(ii) The executant of a document which is required to be registered, has to present it for registration and go through the attendant and subsequent processes described above. A copy to be filed under Section 89 or memoranda that are led under Sections 64 to 66 is simply transmitted to the concerned Sub-Registrar for being filed. Apparently, the procedure of presentation is dispensed with in regard to the latter because they are issued by public authorities discharging their official duties.

(iii) Additional particulars relevant to a document admitted to registration need to be got endorsed thereon from time to time as contemplated in Sections 58 and 59 but this rule does not apply to a copy or memorandum filed under the Act.

(iv) When a document is registered, the entirety of the document has to be copied out into the relevant book and the original document, returned to the person who presents the document with necessary endorsements. This requirement is absent in the case of a copy or memorandum which is just filed.

(v) Where a document is registered, a certificate of registration has to be issued which will be admissible to prove the due registration of the document.

9. There are thus some differences between the two procedures and this aspect has been touched upon in some very early decisions under the Registration Act, 1877: vide, *Fatteh Singh v. Daropadi*, *Siraj-un-nissa v. Jan Muhammad*, *Masaratun-nissa v. Adit Ram*. Reference may also be made to *Premier Vegetable P. Ltd. v. State of M. P.* We need not, however, consider for the purposes of this case whether filing and registration mean one and the same thing for all purposes and what the legal effect of these differences is. For, though the processes are different, the purchaser at a Court or revenue sale is under no

disadvantage because of the lack of registration. The certificate of sale itself not being a compulsorily registrable document: vide Section 17(2)(xii), the transfer of title in his favour is not vitiated by the non-registration of the certificate. The copy of the certificate filed in Book No. 1 contains all the relevant details. These details are reflected in the indices maintained under Section 55 which are open to inspection to all persons. (We may point out here that Section 55(2) only refers to memoranda filed but it seems clear, particularly in the light of various State amendments, that the index to Book No. 1 should also contain the details of copies of document filed by him). These requirements are sufficient to ensure that any person intending to purchase or deal with the property is put on notice about the principal contents of the certificate of sale provided he inspects the relevant book, and/or index. It is sufficient to say, for the purposes of this case, that all that the Sub Registrar required to do is to file the copy of the certificate in Book No. 1 and no more. He does not have to copy out the certificate or make any other entries in Book No. 1.

It is evident therefore that the procedure of filing copies of sale certificates issued by the revenue authorities is designed to ensure that any person intending to purchase or deal with the property, subsequently, is put on notice of the contents of the sale certificate, should he inspect the relevant books/entries maintained in the Local Land Registry. In the instant case, what is evident is that, even after the confirmation of sale and the issuance of a sale certificate in favour the Government, no step was taken by the Government to obtain an actual physical possession of the property in question. That apart, the procedural requirements under the Registration Act, 1908, and the Transfer of Registry Rules, so as to ensure that copies of the certificates or entries thereof were available in the Local Land Registry, within the limits of whose jurisdiction the immovable property was situated, were also not taken by the Government authorities. It was this lapse on the part of the Government that paved the way for the petitioner to obtain a sale certificate in respect of the very same land, in an auction sale that was conducted based on the decree in OS No. 1823/2000 before the Munsiff Court, Irinjalakuda. The question to be considered, therefore, is whether, more than 20 years after the sale was confirmed in its favour by the revenue authorities, and more than 10 years after the petitioner obtained the sale certificate in respect of the same land, in a Court auction, the State Government, could, in the absence of taking physical possession of the land, insist on a surrender of physical possession of the land by the petitioner, who admittedly continued to have possession of the property from 15/07/2002 till 2011, when Ext. P5 notice was issued to him. In my view, even in a situation where a document is not compulsorily registrable, the perfecting of title over the immovable property in question, can be effected only by following the procedure contemplated under the Registration Act and Rules. In the absence of a compliance with those procedural requirements that are designed to put a subsequent purchaser or dealer of the same property, on notice of the transfer of title in the property, the title holder of the property runs the risk of losing his title

over the property to a bona fide third party purchaser for value without notice, on equitable grounds. In the instant case, while it would have been open to the State Government to deny a title to the petitioner based on the prior sale concluded in its favour, at the instance of the revenue authorities, their inaction as regards taking of physical possession of the property as also complying with the procedural requirements under the Registration Act and Rules, to bring the contents of the sale certificate to the notice of the Local Land Registry, effectively estops them from contending that the petitioner has not obtained a valid title over the property in question pursuant to Ext. P1 sale certificate issued in his favour by the Munsiff Court, Irinjalakuda. Thus, on equitable grounds, the petitioner is entitled to seek a formal re-conveyance of the land from the Government subject of course to his discharging the liabilities due to the State Government on behalf of the erstwhile defaulters of dues to the State Government.

The learned Government Pleader would submit, on instructions that the balance amount of sales tax dues and interest that is due and payable by the petitioner on behalf of the erstwhile defaulters is Rs.9,58,047/-. This is over and in addition to the amounts of Rs.2,26,555/- towards KSEB dues and Rs.18,283/- towards excise duty arrears that are stated to be outstanding. The respondents shall quantify the exact amount payable to them under the aforesaid heads and communicate the same to the petitioner within three weeks from today. On receipt of the said intimation, the petitioner shall within two weeks thereafter pay the amounts to the respondents. Thereupon, the respondents shall issue formal orders re-conveying the property in question to the petitioner within three weeks thereafter. I make it clear that if the petitioner commits any breach in the matter of payment of the dues, he will lose the benefit of this judgment.