
(2016) 06 KL CK 0081
In the High Court Of Kerala
Case No : WP(C).No. 8062 of 2010

C.K. Chandrasekharan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 23(2)(a)
Kerala Revenue Recovery Act, 1968 — Section 50

Citation : (2017) 2 BC 61 : (2016) 2 DRTC 704 : (2016) 3 KerLJ 233 : (2016) 3 KHC 761 : (2016) 3 KLT 63

Hon'ble Judges : A.M. Shaffique, J.

Bench : Single Bench

Advocate : Sri. K.P. Balagopal, Advocate, for the Appellant; Sri. Liju V. Stephen, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—;This writ petition is filed challenging Ext.P5 by which the request of the petitioner to re-convey the "bought in land" has been rejected by the District Collector. Petitioner further seeks for a direction to respondents 1 and 2 to consider re-conveyance of these properties which were purchased by the Government in auction.

2. The facts involved in the writ petition would disclose that the petitioner was an assessee under the Kerala General Sales Tax Act (hereinafter referred to as "the Act"). His taxable turn over for the years 1995-96 and 1996-97 was estimated and an assessment order was passed, which was confirmed in appeal. The matter was again taken up before the Tribunal who also confirmed the order of the 1st appellate authority. Petitioner preferred revision before the High Court and the matter was remitted back to the Tribunal. The Tribunal, by order dated 06/11/2008, allowed the appeal with certain observations. It is stated that during the pendency of the appeal, revenue recovery proceedings were taken for

recovery of tax dues and the property of the petitioner was sold in auction on 15/12/2006. Since there were no bidders, the Government purchased the property as bought-in-land. The property was having an extent of 41.11 Ares in Survey No.561/2, 18.40 Ares in Survey No.560/9 and 4.65 Ares in Survey No.550/17. The sale was confirmed on 26/11/2007. It is submitted that pursuant to the order passed by the Tribunal, assessment orders were passed and the petitioner remitted the amount under the amnesty scheme on 15/01/2009 as evident from Ext.P3 receipt. Petitioner thereafter submitted Ext.P4 representation before the District Collector seeking re-conveyance of his properties. A reply was sent by the District Collector as Ext.P5, that re-conveyance of property sold in auction/bought-inland is not contemplated in the Kerala Finance Act, 2008 and therefore the said request cannot be considered. Petitioner submitted further reply as Ext.P6 on 30/10/2009 requesting for reconveyance. But since no action has been taken in the matter, this writ petition is filed.

3. In the Counter affidavit filed, it is stated that revenue recovery proceedings were initiated against the petitioner for realisation of Rs. 64,74,883/- towards sales tax dues. Since the defaulter did not remit the dues, revenue recovery proceedings were taken. When such proceedings were taken and the properties were proclaimed for sale, petitioner approached this Court by filing WP(C) No. 18805/2006. Stay was granted on the petitioner remitting Rs. 5 lakhs within two weeks. Petitioner did not comply with the said condition. Therefore the property was again put up for auction sale on 23/08/2006 and the same was adjourned several times and finally on 15/12/2006, since there were no bidders, the property was bid in favour of the Government and taken as "bought-in-land". The sale was confirmed on 26/11/2007. Subsequently the requisitioning authority had withdrawn the revenue recovery proceedings since the petitioner remitted the tax arrears under the amnesty scheme directly to the Government. It is also contended that the amnesty scheme does not provide re-conveyance of the land already sold under the Revenue Recovery Act.

4. Heard the learned counsel for the petitioner and the learned Government Pleader appearing on behalf of the respondents.

5. Kerala Revenue Recovery Act is an Act promulgated for the purpose of recovery of arrears of public revenue in the State of Kerala. KGST Act also provides for a provision by way of Section 23(2)(a) that the amount due under the Act can be recovered as a public revenue due on land. Specific provision is provided under the Act for bidding the property on behalf of the Government, by virtue of Section 50, which reads as under:

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. up to 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;

(ii) if the highest bid be insufficient to cover the arrears referred to in sub-section (1) and those subsequently accruing due up to 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 authorised officer shall, immediately after the confirmation of the sale, take possession of the property. If the Collector or the authorised 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 authorised officer as the case may be."

6. The settled position of law is that once the sale is confirmed in favour of the Government, the right in respect of the property vests with the Government. The right to get reconveyance arises only if there is a statutory provision which enables such re-conveyance, or by a scheme formulated by the Government, or if there is a contract between the parties for the same. In *State of Kerala and Others v. George Jacob* [2010 (3) KLT 483], it was held that the Court cannot order reconveyance of property retained by the Government as "bought-in-land" unless Amnesty Scheme specifically provides for such reconveyance. In *Laxmi Devi Tile Works v. District Collector, Thrissur* [2009 (2) KLT 587], this Court referred to Government Order dated 22/03/1996 wherein a scheme was brought in, to permit persons to seek re-conveyance of properties which had been purchased by the Government as bought-in-land, on certain conditions. It is *inter alia* indicated that in respect of sale held after 01/11/1983, the applicants are liable to pay the market value for the re-conveyance. Clauses 2 and 3 of the said

Government order is extracted in the said judgment, which reads as under:

"4. Still later, by Ext.P2 G.O. dated 22.3.1996, the Government has, inter alia, ordered as follows:

"2. Now it has come to the notice of Government that in spite of the above procedures for the disposal of bought-in-land, large extents of land remain idle in various parts of the State without proper management. Moreover, Government are also receiving requests for reconveyance from the original owners of the said land even after the grace period of two years allowed under the existing orders. All the above aspects necessitates a review of the existing orders for the disposal of bought-in-land.

3. Government are, therefore, pleased to order as follows:

(i) The existing order allowing reconveyance of bought-in-land to the original owner or his undisputed heirs if applied within a period of two years from the date of confirmation of sale and after clearing the dues as provided in 4(iii) of G.O. read as paper (1) above, will continue.

(ii) In cases wherein the date of sale confirmation of bought-in-land is on or after 1.11.1983, the requests for reconveyance from the original owner or his undisputed heirs, will be allowed provided the current market value of the land is also remitted. Six months time from the date of issue of this order will be allowed for submitting applications for the purpose and after that date, no such applications will be entertained under any circumstances.

(iii) Requests of reconveyance of bought-in-land, the date of confirmation of sale of which is prior to 1.11.1983 will not be considered under any circumstances.

(iv) District Collectors will forward applications received under (ii) above through Board of Revenue with a detailed report indicating the current market value of the land to Government for final orders."

It is thereafter held as under:

"6. The admitted facts are that the sale was conducted on 18.10.1995. It stood confirmed on 22.1.1996. If that be so, under Ext.P5 G.O. as amended by Ext.P6, the petitioner had a legal right to apply for reconveyance within a period of two years. This is for the reason that though the Note to subpara.(iii) of Para. (4) of Ext.P5 G.O. provided only for a period of one year, but it stood extended to two years by Ext.P6 G.O. Clause 3(i) of Ext.P2 G.O. clearly entitles persons covered therein to apply within two years of date of confirmation of sale and get reconveyance on payment of dues as provided in Clause 4(iii) of Ext.P5 G.O. Admittedly, the petitioner has filed the application for reconveyance on 22.7.1996. What is more, he has paid the entire amount on 29.7.1996. Therefore, if it is the terms of sub-para. (3) of Para.4 of Ext.P5 which govern the issue, clearly the petitioner had made out a case for reconveyance of land and it is precisely for this reason that Ext.P1 was issued by the Revenue Divisional

Officer. The question that then arises is as to what is the effect of Ext.P2 G.O. Clause 3(i) of Ext.P2 G.O. categorically ordered that the prevalent right flowing from Ext.P5 G.O. read with Ext.P6, for reconveyance of the land after clearing the dues as provided in Clause 4(iii), will continue. Under this clause, it is indisputable that the application for reconveyance of the petitioner upon clearing the dues as provided in Clause 4(iii) is only to be allowed. The area of controversy is introduced by virtue of the provisions contained in Clause 2. After perusing the Clause which I have already extracted, I am of the firm view that the interpretation of the same by the respondent Collector is unsustainable. Apparently, what is intended by Ext.P2 is to continue to give the right to the owners of lands to apply for reconveyance upon payment of the dues within the meaning of Clause 4(iii) of Ext.P5 G.O., if they make applications within two years from the date of confirmation of the sale. But, the Government has also intended to confer a right upon the original owners or their undisputed heirs to apply for reconveyance, even though they have not made applications within the period of two years from the date of confirmation of the sale. There are three conditions imposed by Clause 3(ii) for deriving this right. Firstly, the confirmation of the sale has to be after 1.11.1983. Secondly, the application must be made within six months from the date of issue of Ext.P2 G.O. Thirdly, such owner must have remitted the current market value of the land. This view gains reinforcement from the provisions of Clause 3(iii). It prohibits entertainment of request for reconveyance if the date of sale is prior to 1.11.1983. In other words, the provisions contained in Clause 3(ii) is not intended to cover a case where a person makes an application for reconveyance even after the issuance of Ext.P2 G.O., which is within a period of two years from the date of confirmation of the sale. However, a substantial right is created apparently in view of the reasons which I have indicated, upon persons who had failed to make applications within the period of two years provided in Ext.P5 G.O. On such an interpretation of Exts.P2, P5 and P6 G.O.'s, I am of the view that the petitioner had made out a case for reconveyance upon remitting the amount on 29.7.1996 after having applied within a period of two years. Accordingly, the Writ Petition is only to be allowed and it is allowed and Ext.P4 is quashed. The land will be reconveyed to the petitioner within a period of two months from the date of receipt of a copy of this Judgment."

Similarly, the Division Bench in *George Jacob* (supra), held at paragraph 3 as under:

"3. The Amnesty Scheme admittedly entitles the respondent for settlement of liability and it was in fact granted to him by waiving accrued interest of around Rs. 58 lakhs and on collection of the principal amount of Rs. 27,61,131/-. So far as revenue recovery proceedings are concerned, Ext.P2 Amnesty Scheme states as follows:

"Revenue recovery action initiated if any will be withdrawn in these cases and collection charges shall be waived."

The question to be considered is whether withdrawal of revenue recovery action involves automatic cancellation of revenue sale made in recovery proceedings. Government Pleader submitted that once sale is made under Section 50 of the Act where under Government purchased the property for rupee one and when the sale is confirmed, it is like a sale made to a stranger which cannot be interfered through executive orders issued by the Government under Amnesty Scheme. Counsel for the respondent contended that the very purpose of settling liability under the Amnesty Scheme is to regain the lost property and so long as the purchaser is Government, Ext.P2 scheme entitles the respondent for reconveyance of the property after settlement of liability under Amnesty Scheme. We are unable to accept this contention of the respondent because Ext.P2 scheme does not provide for cancellation of sale effected under the Revenue Recovery Act. Withdrawal of revenue recovery action contemplated under Ext.P2 order can only mean that there will be no further revenue recovery proceedings and it does not invalidate revenue recovery proceedings that have culminated in sale and confirmation of sale of property. It is to be noted that for recovery of the very same arrears, the co-licencee's property was sold to a stranger and such stranger has obtained title over the property which is not sought to be unsettled by it's owner based on the amnesty benefit availed by the respondent. So far as sale of property is concerned, it makes no difference whether purchaser is the Government under Section 50 or whether the sale is to a stranger because title in both cases pass on to the purchaser. Therefore, unless the Amnesty Scheme provides for reconveyance of property retained by the Government as bought in land, the court cannot order reconveyance to the defaulter who has settled the liability under Amnesty Scheme. Long before Ext.P2, Government had issued several orders on the subject, two of which are produced as Exts.R1(a) dated 9.2.1968 and Ext.R1(b) dated 22.3.1996. In these two Government orders what is stated is that property purchased by the Government and retained as bought-in-land could be reconveyed only if application is made within two years from such sale and only if defaulter clears arrears with interest or in the alternative, the market value of the land. The latest decision of the Government which is a Cabinet decision produced in court shows that even under Amnesty Scheme, bought-in-land has to be dealt with by the Revenue Department or at least in consultation with the Revenue Department. Government certainly has the authority to reconvey land purchased by it in revenue sale and retained as bought-in-land on the defaulter satisfying Government Orders in regard to reconveyance. However, in this case we do not find any specific provision in Ext.P2 Amnesty Scheme for cancellation of sale of property in recovery proceedings by Government to itself under Section 50 of the Act or a provision for reconveyance of such property to the defaulter on settlement of liability under Amnesty Scheme. We are, therefore, not in a position to uphold the finding of the learned Single Judge declaring respondent's entitlement for reconveyance of the bought in land under Ext.P2."

The judgment in George Jacob (supra) has been followed by the learned Single

Judge in Sibi Francis v. State of Kerala [2013 (2) KLT SN 82 (C.No.98)].

7. Taking into consideration the aforesaid factual situation, there cannot be any situation where permission should be granted to re-convey the land merely for the reason that the amount has been subsequently remitted by the petitioner under the Amnesty scheme. Hence I do not find any merit in the writ petition.

8. Writ petition is therefore dismissed.