(2014) 09 MAD CK 0203

In the Madras High Court

Case No : W.A. (MD). No. 324 of 2013 and W.A. (MD). No. 377 of 2014 and M.P. (MD). Nos. 1 of 2013 and 2014

D. Katturaja — APPELLANT

Vs

M. Vaiyapurai — RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)(2)
Madras Revenue Recovery Act, 1864 — Section 36, 36(3)

Citation : (2014) 09 MAD CK 0203

Hon'ble Judges : R. Mahadevan, J;M. Jaichandren, J

Bench : Division Bench

Judgement

M. Jaichandren, J.—Heard the learned counsel appearing on behalf of the parties concerned.

2. The Writ Appeals have been filed against the order of the learned Single Judge, dated 12.07.2011, made in W.P. (MD). No. 10118 of 2005.

3. Since common issues are arising for the consideration of this Court, both the Writ Appeals are heard together and a common judgment is being passed.

4. The Writ Petition, in W.P. (MD). No. 10118 of 2005, had been filed, before this Court, praying for a Writ of Certiorarified Mandamus to call for and quash the impugned order of the first respondent, dated 03.10.2005 and to forbear the third respondent, his men and agents from dispossessing the petitioner of his property, situated at Kuunnakudipatti, Karungalakudi, Melur Taluk, Madurai District, bearing Survey No. 596/9B2, having an extent of 59 cents. The Writ Petition, in W.P. (MD). No. 10118 of 2005, had been filed against the order of the District Collector, Madurai District, dated 03.10.2005, directing that the property in question, belonging to the petitioner therein, should be auctioned in execution of the award passed in favour of the workman, namely, one A. Raja.

5. It has been stated that the workman had filed a petition, under Section 33(C)

(2) of the Industrial Disputes Act, 1947, for the payment of the determined dues, payable to him. The Labour Court concerned had passed an award in favour of the workman. Pursuant to the said award, the workman had approached the District Collector, Madurai District, for the execution of the Award passed in his favour, by invoking the relevant provisions of the Industrial Disputes Act, 1947. Based on the request made by the workman, the District Collector, Madurai District, had initiated proceedings, under Section 36 of the Tamil Nadu Revenue Recovery Act, 1864, by attaching the land belonging to the petitioner and by bringing it for auction, on 05.04.2005. The third respondent in the Writ Petition was the highest bidder in the auction. He had deposited 15% of the auction amount, at the time of the auction. The total bid amount was Rs. 3,68,750/-. The balance 85% of the auction amount was to be deposited, by the auction purchaser, within a period of 30 days from the date of the auction, as per 36(3) of the Tamil Nadu Revenue Recovery Act, 1864.

6. It has been further stated, by the petitioner in the Writ Petition, that the third respondent had paid only a sum of Rs. 1,00,000/-, on 03.05.2005. The balance amount had been deposited, only on 26.05.2005. In fact, it is the case of the petitioner that the third respondent had failed to deposit the balance amount, as noted from the information received by the petitioner, under the provisions of the Right to Information Act, 2005. Therefore, the auction sale of the property in question is liable to be set aside.

7. The learned counsel appearing on behalf of the petitioner had submitted that the auction sale of the property in question cannot be sustained, in the eye of law, as the sale had been made in violation of the statutory provisions applicable to such sale. It has been further stated that the provisions of Section 36(3) of the Tamil Nadu Revenue Recovery Act, 1864, are mandatory in nature and non-deposit of 85% of the auction sale amount, within a period of 30 days from the date of sale renders it void.

8. The learned counsel appearing on behalf of the petitioner in the Writ Petition had placed reliance on the decision of the Supreme Court, in Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, , in support of the said contention. The Supreme Court had held that the provisions relating to the payment of the balance of the sale amount, within a period of 30 days from the date of auction, is mandatory in nature. The auction purchaser would forfeit the Earnest Money deposited by him, on his failure to deposit the balance amount. Considering the fact that, the petitioner had deposited 50% of the amount due to the workman, pursuant to an interim direction issued by the Court, and as the petitioner had undertaken to pay the balance 50% of the amount due to the workman, within a period of one month from the date of receipt of a copy of the order to be passed by this Court, the Writ Petition had been allowed, setting aside the auction sale of the property in question.

9. Mr. A.R.L. Sundaresan, the learned Senior Counsel appearing on behalf of appellant, in W.A. (MD). No. 324 of 2013, had submitted that the learned Single

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Judge had erred in setting aside the auction sale of the property in question, without giving sufficient opportunity to the appellant to put forth his case. He had further submitted that the learned Single Judge had not considered the fact that the decision of the Supreme Court, in Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, , is not applicable to the facts of the present case. In fact, the appellant had been granted further time for depositing the balance auction sale amount and therefore, the mandatory provision of Section 36(3) of the Tamil Nadu Revenue Recovery Act, 1864, would not be applicable to the case on hand.

10. The learned counsel had further submitted that the auction was conducted, on 05.04.2005. The appellant, in W.A. (MD). No. 324 of 2013, was the highest bidder in the said auction. He had paid 15% of the auction sale amount, at the time of the auction and the balance amount had also been paid by the appellant. On such payment being made, the sale of the property in question had been confirmed in favour of the appellant, on 30.10.2005, and a Sale Certificate had also been issued, as per the provisions of the Tamil Nadu Revenue Recovery Act, 1864. The Sub-Registrar, Karungalakudi, had also been directed to make necessary changes in the register concerned. The patta had also been issued in favour of the appellant and all the relevant revenue records had also been altered in favour of the appellant. The appellant had been in a position to show that the property in question has been with him for over a period of five years. However, considering the claims made by the third respondent, in the Writ Petition, in W.P. (MD). No. 10118 of 2005, the learned Single Judge, had passed an order, dated 12.07.2011, allowing the Writ Petition.

11. Mr. C. Selvaraj, the learned Special Government Pleader appearing on behalf of the appellants in Writ Appeal in W.A. (MD). No. 377 of 2014, had submitted that the learned Single Judge had failed to see that the appellants were under a legal obligation to implement the orders passed by this Court, in W.P. (MD). No. 2233 of 2002, dated 30.06.2004, to recover the amounts payable to the workman, as per the Award of the Labour Court, dated 15.09.1995, made in W.C. No. 7 of 1993, within a period of two months from the date of receipt of a copy of the order. Accordingly, necessary action had been initiated, under the provisions of the Tamil Nadu Revenue Recovery Act, 1864.

12. It had been further stated that the learned Single Judge had erred in holding that, if the mandatory provisions contained in Section 36(3) of the Tamil Nadu Revenue Recovery Act, 1864, had been violated, the auction sale of the property in question is invalid in the eye of law. It has also been stated that the successful bidder had deposited 15% of the auction sale amount, on the day of the sale, complying with the statutory provisions of Section 36(3) of the Tamil Nadu Revenue Recovery Act, 1864.

The balance amount had also been paid, on 26.05.2005. As such, there is no violation of the statutory provisions of the Tamil Nadu Revenue Recovery Act, 1864. Therefore, the auction sale of the property in question, in favour of the

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auction purchaser, namely, Katturaja, is valid in the eye of law.

13. Mr. M. Kannan, the learned Counsel appearing on behalf of the first respondent had relied on the following decisions to support his contentions:-

(i) Sri Anbalayam Textiles Private Ltd. Vs. The Chairman cum Managing Director, No. 692, Tamil Nadu Industrial Investment Corporation Ltd., Anna Salai, Nandanam, Chennai 35, The Branch Manager, Tamil Nadu Industrial Investment Corporation Ltd., No. 405/1, Perundurai Road, Erode 11 and Palaniappan, .

(ii) Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, .

14. It is noted that the third respondent in the Writ Petition, namely, Katturaja, the appellant in W.A. (MD). No. 324 of 2013 and the second respondent in W.A. (MD). No. 377 of 2014, was the successful auction bidder in the auction sale of the property in question, held on 05.04.2005. Though he had paid 15% of the auction sale amount, on the date of the auction, he had failed to pay the balance amount, within 30 days of the said sale, as per Section 36(3) of the Tamil Nadu Revenue Recovery Act, 1864. It is clear that the said provision is mandatory in nature. In such circumstances, it cannot be held that the purchase of the property in question, by the auction purchaser, is valid in the eye of law. It is also noted that the learned Single Judge, had passed an order, dated 12.07.2011, in W.P. (MD). No. 10118 of 2005, having taken note of the fact that the petitioner in the Writ Petition had not paid the amount, within the time limit prescribed.

15. It is also noted that the petitioner, in the Writ Petition, in W.P. (MD). No. 10118 of 2005, the owner of the property in question, had paid the entire amount, due to the workman, pursuant to the award passed in his favour. In such circumstances, the learned Single Judge had passed the order, dated 12.07.2011, in W.P. (MD). No. 10118 of 2005, allowing the Writ Petition, setting aside the auction sale of the property in question, relying on the decision of the Supreme Court, in Lakshmanasami Gounder Vs. Commissioner of Income Tax , Selvamani and Others, .

16. In such circumstances, we are of the considered view that the appellants in the present Writ Appeals have not shown sufficient cause or reason for this Court to interfere with the order passed by the learned Single Judge, dated 12.07.2011, in W.P. (MD). No. 10118 of 2005. Hence, the Writ Appeals are liable to be dismissed. Accordingly, both the Writ Appeals are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

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