

(2010) 02 KL CK 0035
In the High Court Of Kerala
Case No : W.A. No. 192 of 2010

District Collector, Alleppey and Others	APPELLANT
Vs	
Subaida Beevi and Another	RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 2(a), 2(j), 34, 44, 47

Citation : (2010) 3 BC 372 : (2010) 1 KLJ 542 : (2010) 1 KLT 913

Hon'ble Judges : P.N. Ravindran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : Renjith Thampan A.A.G, for the Appellant; Sathish Ninan and Vinoy Varghese Kallumoottil, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The respondents 1 to 4 in the Writ Petition are the appellants, The writ petitioner is the first respondent, The point that arises for decision in this Writ Appeal is whether, in the absence of a purchaser for a property, put to sale under the provisions of the Kerala. Revenue Recovery Act (for short, "the Act"), at the instance of an institution covered by the notification issued u/s 71 thereof, it can be purchased by the Government, as provided u/s 50(2) of the Act. The brief facts of the case are the following: The first respondent and her husband purchased certain properties from Smt. N.K. Bharathi and her father. The said properties included the 5 cents of property, which is involved in this case. The first respondent's husband, later settled his rights in the said 5 cents of property, in favour of the first respondent and she became the absolute owner of the said property.

2. Smt. Bharathy had availed a loan from the second respondent Bank, mortgaging the aforementioned 5 cents of property. Since she defaulted in repaying the loan, the Bank moved the revenue recovery officials and the property was put to sale. Since there were no purchasers for the property, the Revenue Recovery Officer purchased the property u/s 50(2)(i) of the Act, on

22.5.1989, for one rupee. The sale of the property in favour of the State was confirmed on 1.9.1989. The sale of the property by Smt. Bharathy in favour of the first respondent and her husband took place on 6.7.1995. Thereafter, from the sale consideration, Smt. Bharathy paid the entire amount due to the Bank, to the revenue recovery officials, as evident from Ext.P5 receipt dated 28.6.1995. Earlier, she moved the District Collector, Alappuzha, on 20.3.1994, for release of the property, but she was informed by Ext.R1(a) that since the time limit of two years was already over, the property cannot be re-conveyed. Later, the first respondent moved the District Collector for re-conveyance of the land. When the said attempt failed, she moved under the Right to Information Act and she was informed by Ext.P8 dated 3.4.2009 that the aforementioned 5 cents of land was vested in the State Government as "bought-in-land".

3. The Bank received the entire amounts due to it and it also issued Ext.P6 clearance certificate dated 20.4.2009 that no amount is due to it from Smt. Bharathy. In the above background, the Writ Petition was filed by the first respondent, challenging Ext.P10, which is an order of the Sub Collector, Chengannur dated 1.9.1989, confirming the sale of the property in favour of the State, for Re. 1. The first respondent obtained a copy of the said order, under the Right to Information Act, along with Ext.P8 dated 3.4.2009. In the Writ Petition, she also prayed for consequential reliefs.

4. The first respondent in the Writ Petition, who is the first appellant herein, filed a counter affidavit, resisting the prayers in the Writ Petition. Along with the counter affidavit, Ext.R1(a) dated 18.12.1995 was produced. It was a communication issued by the District Collector, Alappuzha, to Smt. Bharathy, stating that the 5 cents of land had been purchased by the State as "bought-in-land" and the same vested in the Government. Relying on Section 50 of the Act, the first appellant supported the orders impugned in the Writ Petition. The learned Single Judge, after hearing both sides, allowed the Writ Petition. The learned judge took the view that in so far as the revenue recovery proceedings initiated on the requisition of an institution notified u/s 71 of the Act are concerned, Section 50(2) has no application. This view was taken, relying on an earlier judgment of this Court, rendered by the very same learned Judge, in W.P. (C) No. 8877/2009 dated 30.7.1999, reported in *Ayisha Teacher Vs. District Collector*, . The learned Judge, quashed Ext.P10 and directed to release the property concerned to the first respondent/writ petitioner, on payment of collection charges. The official respondents, being aggrieved by the said judgment, have preferred this Writ Appeal.

5. We heard the learned Additional Advocate General, Sri. Ranjith Thampan for the appellants, Sri. Vinoy Varghese Kallumoottil for the first respondent and Sri. Sathish Ninan for the second respondent. The learned Additional Advocate General submitted that if the view taken by the learned Judge that Section 50(2) will apply only to the revenue recovery proceedings initiated for the recovery of arrears of public revenue due on land, is allowed to stand, it will be impossible to

apply the provisions of the Act for recovery of the amounts, on the requisition of an institution notified u/s 71 of the Act. The learned Additional Advocate General brought to our notice, the scheme of the Act and the relevant provisions. Reference was made to Sections 2(a) and 2(j). Section 2(j) defines, what is public revenue due on land and Section 2(a) defines, arrears of public revenue due on land. The learned Additional Advocate General submitted that initially, the Act was designed to collect only public revenue due on land, but Section 68 of the Act enabled the State to recover certain other dues to the State also, by applying the provisions of the Act. Section 71 enabled the Government to notify specified institution or any class or classes of institutions, in public interest, making the provisions of the Act applicable for recovery of the amounts due from any person or class of persons to those institutions. The learned Additional Advocate General also brought to our notice that Sections 7 and 34 only speak of arrears of public revenue due on land, for which notices of attachment of movable and immovable properties could be issued. Section 47 deals with release of property, on payment of public revenue due on land. Section 49 deals with the procedure of publication of notice for the sale of an immovable property. Section 49(2)(iii) would give the impression that such publication is permissible only to recover the revenue assessed on land, if the view taken by the learned Single Judge is accepted, it will be impossible to take steps to issue attachment notices or take further proceedings for the sale of movable/immovable properties at the instance of the institutions notified u/s 71, it is pointed out. It is also pointed out that if the Government cannot purchase the property u/s 50(2), the same will take the teeth out of the revenue recovery proceedings. So, the appellants prayed to recognise the right of the State to purchase the property u/s 50(2) of the Act.

6. The learned Additional Advocate General also brought to our notice that the decision in *Ayisha Teacher v. District Collector* (supra) is pending in Writ Appeal. The learned Additional Advocate General referred to another decision of this Court, reported in *Varkey T.U. and Others Vs. State of Kerala and Others*, wherein the learned Single Judge has taken the view that the institution concerned shall also have a right to purchase the property u/s 50(2) of the Act. In *Baby v. State of Kerala and others* (1981 KLT 510), a learned Single Judge of this Court held that the provisions of Section 65 of the Act can be invoked to recover the amounts due under the Kerala Toddy Workers Welfare Fund Act, 1969, as if the amount due is public revenue due on land. The learned Additional Advocate General, therefore, submitted that the view taken by the learned Judge, which is impugned in the Writ Appeal, is liable to be vacated.

7. The learned counsel for the second respondent, on the other hand, pointed out that the decision in *Varkey v. State of Kerala* (supra), is one, in favour of the first respondent. He also relied on a decision of this Court in *Canara Bank Vs. T.K. Thankappan*, wherein, this Court held that if the revenue recovery steps failed to recover the amount, the Bank can cancel the requisition and attach the property, by filing a civil suit and then the property can be brought to sale, in

execution of the decree obtained in that suit. The learned counsel further pointed out that in any view of the matter, the State, which is the collection agent, cannot appropriate the property. If the same is allowed, the creditor or the Bank will lose the loan amount, as also the security. Such an interpretation may not be placed on Section 50(2), it is submitted.

8. We heard the learned counsel for the second respondent Bank. He submitted on behalf of the Bank that it has received the entire amount and has no objection in releasing the property to the first respondent. We considered the rival submissions made at the Bar and perused the materials on record. Before dealing with the rival contentions, it will be fruitful to refer to some of the relevant provisions of the Revenue Recovery Act. Section 71 of the Act reads as follows:-

71. Power of Government to declare the Act applicable to arty institution --The Government may, by notification in the Gazette declare, if they are satisfied that it is necessary to do so in public interest that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery.

It is common ground that the second respondent is an institution covered by the notification issued u/s 71 and therefore, the loan due from Smt. Bharathy was recoverable, invoking the provisions of the Act. Sections 2(a) and 2(j) of the Act respectively read as follows:-

2. Definitions--In this Act, unless the context otherwise requires,-

(a) "arrear of public revenue due on land" means the whole or any portion of any kist or instalment of such revenue not paid on the day on which it falls due according to the kistbandy or any engagement or usage.

xxxxxxx

(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.

Going by the provisions of the Act, they are meant to recover arrears of public revenue due on land. Sections 68 and 71, further expanded the scope of the recovery. Section 68 reads as follows;-

68. Application of the Act for the recovery of certain other dues to Government--

(1) All sums due to the Government on account of quit rent or revenue other than public revenue due on land;

all moneys due from any person to the Government which under a written agreement executed by such person are recoverable as arrears of public revenue

due on land or land revenue, and all specific pecuniary penalties to which such person renders himself liable under such agreement or contract;

all sums declared by any other law for the time being in force to be recoverable as arrear of public revenue due on land or land revenue; and

all fees and other dues payable by any person to the Government, may be recovered under the provisions of this Act.

(2) Any person who has received from the Government a free grant of money for any agricultural or other purpose, on default to refund the same consequent on his failure to observe any of the conditions of the grant, shall be liable to be proceeded against under the provisions of this Act for the recovery of the amount granted to him together with interest thereon and cost of process.

(3) Arrears of rent due to the Government, recoverable, as a result of any agreement, through a Civil Court, shall, notwithstanding anything contained in such agreement, be recoverable as an arrear of public revenue due on land under the provisions of this Act.

(4) For the removal of doubts, it is hereby declared that the provisions of Sections 44 and 50 shall apply in the case of recovery of any sum under the provisions of this section.

(5) Without prejudice to the provisions of sub section (4), where any person has, by a written agreement, agreed that specific immovable property belonging to such person shall be security for the payment by him of any tax or other amount due by him to the Government, any engagement entered into by such person with any one in respect of such property, during the period when the agreement is in force, shall not be binding on the Government.

The above provision enables the State to recover other amounts due to it also, mentioned in the above Section, invoking the provisions of the Act.

9. Section 50(2) reads as follows:-

50. Bidding on behalf of Government.--xxxxx

(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 subsection (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.

Going by the scheme of the Act, we are of the view that when a notification is issued u/s 71 the provisions of the Act apply mutatis mutandis to the recovery of the amounts due to the said institution. If that be so, in Section 50(2), the words, "on behalf of the Government" should be read as "on behalf of the institution concerned". Therefore, if there was no bidders, the Revenue Recovery Officer could have purchased the property on behalf of the second respondent Bank only. But, in this case, it was purchased on behalf of the State, for Re. 1. So, the entire proceedings were vitiated. Therefore, the quashing of the proceedings and the directions issued by the learned Single Judge are sustained, though for a different reason. The reasoning of the learned judge that Section 50(2) will not apply to recovery proceedings for the institution covered by the notification u/s 71, is not tenable. The said provision also applies mutatis mutandis to the recovery proceedings for such institution. The view taken by the learned judge in Varkey v. State of Kerala (supra), is in tune with the scheme of the Act, The observation of the learned judge in Ayisha Teacher v. District Collector (supra), concerning the scope of Section 50, vis-a-vis the revenue recovery proceedings initiated at the requisition of an institution covered by Section 71 of the Act, does not lay down the correct legal position. The view taken by the Division Bench of this Court in Canara Bank Vs. T.K. Thankappan, , though not directly applicable to the facts of the case, supports the view that the financial institution will not lose the property, if the Government fail to find a purchaser for it.

In the result, the Writ Appeal is dismissed, subject to the clarifications mentioned above.