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In the High Court Of Kerala

Case No : Writ Appeal No. 1827 of 2007

George APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Revenue Recovery Act, 1968 — Section 52, 53, 54

Citation : (2014) 2 KHC 688 : (2014) 3 KLJ 265

Hon'ble Judges : Dr. Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : Dinesh R. Shenoy, Advocate for the Appellant; Bobby John, Government Pleader and S. Vidyasagar, Advocate for the Respondent

Judgement

Dr. Dr. Manjula Chellur, C.J.—Appellant before us was the unfortunate writ petitioner, who is trying to get his right, title and interest confirmed over the property purchased by him from the fifth respondent. Admittedly, the fifth respondent was due certain amounts to the Sales-Tax Department and after demand notice, the matter was sent to the revenue officer concerned under the Kerala Revenue Recovery Act for recovery of the amount by sale of the properties belonging to the fifth respondent. Apparently, auction notice was issued on 22/12/1997 in respect of 40 cents of property of the fifth respondent. Subsequently, sale was conducted on 28/01/1998 which came to be confirmed on 28/03/1998. Admittedly, the sale in favour of the appellant-writ petitioner was in December, 1997. According to the appellant-writ petitioner, by virtue of Ext. P3, when the order of assessment came to be set aside on 19/03/1998, virtually there was no amount due from the fifth respondent to be recovered by the department. Further, by virtue of Ext. P5 dated 26/09/1998, the entire assessment came to be dropped against the fifth respondent. In other words, there was no amount due as sales tax from the fifth respondent. It is also not in dispute, second respondent herein admittedly was the auction purchaser, in whose favour confirmation of sale came to be done on 28/03/1998 later on

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followed by document of conveyance. Meanwhile, Original Suit also came to be filed by the appellant in the month of January, 1998, i.e., on 23/01/1998 and apparently, no interim order of any nature came to be made so far as auction sale. Subsequently, only in the month of November, 1998, under Ext. P6 the appellant, challenging the auction and also confirmation of sale, approached District Collector seeking setting aside of sale of property in favour of second respondent.

2. From the material on record it is discernible neither the original owner, fifth respondent nor this appellant after 19/03/1998 approached any of the authorities under the Revenue Recovery Act intimating that confirmation of sale cannot be made in the light of the sales tax authorities opining that no amounts were due from the fifth respondent towards sales tax. Till 26/09/1998, when the confirmation order came to be made by the Revenue Divisional Officer only in November such objection came to be raised, which were not considered by the District Collector concerned and aggrieved by the same, Writ Petition came to be filed before the learned Single Judge. The learned Single Judge dismissed the Writ Petition opining that the sale in favour of the writ petitioner-appellant does not appear to be a genuine sale at all. This conclusion was arrived at probably opining that the appellant-writ petitioner is a relative of defaulter fifth respondent and so also an agreement of sale between the appellant and the fifth respondent relates back to seven years prior to the so called sale in December, 1997. It is also on record that a portion of 40 cents purchased by the auction purchaser is sold in favour of third respondent. However, we are not concerned with said conveyance. If auction in favour of the second respondent is set aside, automatically the second sale also will be invalid. The question before us is whether the appellant-writ petitioner is entitled for the reliefs sought by him, i.e., setting aside the sale in favour of the second respondent auction purchaser. The provisions under which he could seek for setting aside sale of immovable property are Sections 52, 53 and 54of the Kerala Revenue Recovery Act. Section 52 of the Act is an occasion when the amounts under demand are deposited. We are not concerned with such situation. The other provision under which sale could be set aside is Section 54, which has to be read along with the proviso, which reads as under:

54. Order confirming or setting aside sale.--On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made under Section 52 or Section 53 or if any such application has been made and rejected, the Collector shall make an order confirming the sale:

Provided that if the Collector has reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

3. Admittedly, in November, 1998 application came to be made seeking setting aside of sale on the ground that there was no amount due as such to be

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recovered by sale of property of the assessee under commercial tax. This application, if so filed even after 21/08/1998, but prior to 28/03/1998 confirmation of sale, probably the revenue authorities, who had the authority to confirm the sale, could have entertained on the ground that when the sale was to recover amounts due under the Sales-Tax Act, which was not liable to be paid by the assessee, question of selling the property would not arise.

4. In the present case neither the owner nor the appellant-writ petitioner brought to the notice of concerned authorities that sale cannot be confirmed in favour of second respondent, as fifth respondent owner was not due any amounts towards sales tax. In the absence of such information to the revenue recovery officer, confirmation of sale cannot be faulted with. In other words, there was no application raising any such objection which would come in the way of confirmation of sale. Therefore, the authority who confirmed the sale was justified in passing confirmation of sale. It is also discernible from records, though this writ petitioner-appellant was careful enough to file Original Suit questioning the sale of property by the revenue authorities making revenue authorities as a party on 23/01/1998, we fail to understand why no interim order of any nature was sought in the said proceedings prior to 28/03/1998 confirmation of sale. On the other hand, we are surprised to see, the Original Suit was withdrawn on the ground that there were proceedings under the Revenue Recovery Act seeking setting aside of sale. In the present case, many factual issues have to be looked into whether revenue authorities were aware of the Original Suit filed in January, 1998, whether the revenue authorities were informed by sales tax department that recovery proceedings has to be stopped and whether confirmation was made in spite of knowledge of no assessment order being in existence as on the date of confirmation of sale. None of these facts could be proved or ascertained nor established in a proceeding under Article 226 of the Constitution of India, except for the reasons mentioned under Sections 52 and 53 and in particular, Section 54 of the Kerala Revenue Recovery Act. So far as the present case is concerned, an issue seeking setting aside of sale of property could be done only in accordance with the procedure contemplated under the Revenue Recovery Act. If the sale is to be set aside for various other reasons, and if such applications were not pending, we cannot blame the revenue authorities which confirmed the sale on 28/03/1998. In the light of above observations, we are of the opinion, there was no error on the part of learned Single Judge in dismissing the Writ Petition. Liberty is reserved to the appellant to seek remedy in any other forum or Court in accordance with procedure contemplated.

Accordingly, the Writ Appeal is dismissed.

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