(2014) 09 KL CK 0131

In the High Court Of Kerala

Case No : WA. No. 1201 of 2014

Johny Paul	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:
Kerala Revenue Recovery Act, 1968 — Section 49(2), 75(1), 75(2)

Citation : (2014) 09 KL CK 0131

Hon'ble Judges : Ashok Bhushan, Acting C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : V.V. Sidharthan, Senior Advocate and D.G. Vipin, Advocate for the Appellant; Lilly. K.T., Government Pleader, Devan Ramachandran and Siraj Karoly, Advocate for the Respondent

Judgement

A.M. Shaffique, J.—These appeals are filed against the common judgment in W.P.(C) Nos. 21678/2009 and 25968/2012. The writ petitioner in W.P.(C) No. 21678/2009 is the appellant in both the cases. He is the 5th respondent in W.P.(C) No. 25968/2012.

2. W.P.(C) No. 21678/2009 is filed challenging the orders passed by the revenue authorities confirming sale of property belonging to the appellant and having an extent of 72 cents out of a total extent of 4.34 acres of land situated in Kadavoor Village. Ext. P3 is an order passed by the District Collector refusing to set aside the sale. By Ext. P4 dated 9.7.2008, the sale conducted on 15.2.2007 was confirmed by the Revenue Divisional Officer. The petitioner preferred a revision before the Board of Revenue, which came to be dismissed as per order dated 2.5.2009 of the Land Revenue Commissioner (Ext. P6). W.P.(C) No. 25968/2012 is filed by the auction purchaser, alleging inaction on the part of the revenue authorities in delivering the property purchased by him despite the fact that the same was confirmed as per order dated 9.7.2008.

3. The short facts which led to the filing of the above writ petitions are as under:

Revenue recovery proceedings were taken against the petitioner for realisation of sales tax dues amounting to Rs. 20,08,440/- with interest at 24% p.a. and collection charge of 7.5%. The property having an extent of 4.34.66 acres was proclaimed for sale as Plot Nos. 1 to 4. The sale was to be conducted on 15.2.2007. The auction was held only in respect of Plot No. 4 having an extent of 72 cents. The property was sold for an amount of Rs. 5,16,000/- in favour of the auction purchaser, who is the petitioner in W.P.(C) No. 25968/2012. An application was filed for setting aside the sale which was rejected by the District Collector and the sale was confirmed on 9.7.2008. By the time, the auction purchaser had deposited the entire amount. Revision filed before the Land Revenue Commissioner also resulted in dismissal as per order dated 2.5.2009. Challenging Ext. P4, the writ petition is filed by the owner of the property inter alia contending that the procedure adopted for conducting the sale was improper and that the value of the property was substantially low and there is irregularity and illegality in the conduct of sale.

4. Further, it is contended that subsequent to the sale, an amnesty scheme was introduced by the Sales-tax Department and the petitioner was granted the facility to pay the amnesty amount, which he could not remit. Subsequently, plot nos. 2 and 3 were sold on 6.10.2008 for an amount of Rs. 36,10,000/-, which was remitted by the auction purchaser. The petitioner did not challenge the said sale and had requested for adjusting the sale amount against amnesty sanctioned as per Ext. P7 dated 29.7.2008. The said sale of plot nos. 2 and 3 was subsequently confirmed on 22.11.2008. The petitioner also seeks for adjustment of the amount recovered by sale of the property towards the amnesty scheme as pet Ext. P7.

5. In the meantime, since no steps were taken by the revenue authorities to deliver the property in favour of the auction purchaser, he filed W.P.(C) No. 25698/2012 seeking for a direction to the revenue authorities to hand over and deliver the property in his favour.

6. The learned Single Judge, by a common judgment, dismissed the writ petition filed by the land owner and directed the revenue authorities to hand over and deliver the property sold in favour of the auction purchaser forthwith.

7. The above common judgment is impugned in these appeals inter alia contending that while conducting sale in respect of the property, the revenue authorities had not complied with the provisions of law applicable for proper publication. It is submitted that though Section 75(2) of the Kerala Revenue Recovery Act (hereinafter referred as ''the Act'') contemplates publication of notice of sale and in terms of Section 49(2), such publication has to be made before 30 days prior to the date of sale, the records available in the case would reveal that a publication was made only on 14.2.2007, a day before the date on which the property was sought to be sold. This, according to the appellant, amounts to gross procedural irregularity, which warrants setting aside the sale. That apart, it is contended that the property is grossly undervalued. The property

is having substantial potential for being used as a residential property and the same was sold in the year 2007 only for a meagre amount of Rs. 7,176/- per cent. It is also argued that the amount recovered by sale of plot nos. 2 and 3 ought to have been adjusted towards the amount declared under the amnesty scheme, which would have wiped off the entire liability of the appellant.

8. On the other hand, it is argued on behalf of the auction purchaser and the learned Government Pleader on behalf of the revenue authorities that the sale had been conducted after complying with all the procedural formalities. Due publication was made under Section 75(1) whereas only a news item appeared in a daily on 14.2.2007 regarding the sale to be held on 15.2.2007. Such a news item, according to the revenue authorities and the action purchaser, is not a publication as warranted under Section 75(2) of the Act. It is also argued that Section 75(2) is not a mandatory provision and publication was effected and notice was served to the petitioner 30 days prior to the date of sale. Publication was made in the property, Taluk Office, Village Office as well as the Panchayat. It is also argued that several persons attended the sale process. About 40 persons purchased the tender application and 14 persons participated in the auction in respect of plot no. 4. Hence, it is contended that no prejudice had been caused to the appellant on account of the notice not being published in the newspapers. There was wide publicity and several persons participated in the auction and the property was sold for the highest bid amount. As far as the valuation is concerned, it is argued that the property was sold at a much higher price and there is no material to indicate that the value of the property was less than what was obtained at the time of sale.

9. Heard the learned senior council Sri. V.V. Sidharthan appearing for the appellant, Sri. Devan Ramachandran appearing for the auction purchaser and the learned Government Pleader Smt. Lilly K.T. appearing on behalf of the revenue authorities.

10. Learned counsel for the appellant relied upon the judgment of the Supreme Court in Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, , to contend that when a revenue sale is conducted by the revenue authorities, the intention is not only to get price for the property but also to ensure fairness in the activities of the State and public authorities. They should act fairly and legitimately and their dealing should be above board. Transaction should be without aversion or affection and nothing suggestive of discrimination. The act done by them should be bona fide and in the best interest as a prudent owner in the given facts and circumstances of the case.

11. Another judgment relied upon by the learned counsel for the appellant is K. Mahadevan Pillai Vs. The Managing Director, The Kerala Financial Corporation, Thiruvananthapuram and Others, , to contend for the position that the discretion to publish in news papers under Section 75(2) should be exercised by the revenue authorities.

12. Yet another judgment relied upon is Aboobacker v. State of Kerala, 2006(2) KLT S.N. 65 (Case No. 81) for the proposition that failure to exercise discretion by the Collector or other officers under Section 75(2) in a given case may vitiate the sale. When a discretionary power is conferred on an authority such authority must exercise that power applying his mind in a just and equitable manner depending upon the facts and circumstances of the case and failure to exercise the discretion in a given set of facts may vitiate the proceedings.

13. On this basis, it is argued that there was lack of paper publication and the publication made was only on the previous day when the statute contemplates that such a publication should be 30 days prior to the date of sale.

14. We have also perused the file in this connection which was made available by the learned Government Pleader. The files would reveal that a notice for sale was published in the Taluk Office, Village Office and Panchayat in terms of Section 49(2) of the Act. The publication was made 30 days prior to the date of sale, i.e. on 12.1.2007.

15. The mahazar for sale prepared by the revenue authorities on 15.2.2007 would show that 14 persons participated in the sale. The highest bidder was the auction purchaser who remitted the initial amount of 15% on the same day. The records also reveal that on 13.2.2007, the Tahsildar concerned has given a press release to various news papers, informing about the sale of the aforesaid property on 15.2.2007. A news item has appeared in a news paper viz. Thejas regarding the sale of the property on 14.2.2007.

16. The main contention urged by the learned counsel for the appellant is with reference to the publication of notice on 14.2.2007. A perusal of the said news paper does not reveal that it is a publication in terms of Section 75(2) of the act.

17. Section 49(2) reads as under:

"49. Procedure for sale of immovable property:-

(1) xx xx xx

(2) Previous to the sale, the Collector or the authorized officer, as the case may be, shall issue a notice thereof in English and in Malayalam and also in the language of the locality where such language is not Malayalam specifying:-

(i) the name of the defaulter;

(ii) the position and extent of the land and his buildings and another known improvements thereon.

(iii) the amount of revenue assessed on the land, or upon its different sections;

(iv) the amount for the recovery of which the sale is ordered;

(v) the proportion of the public revenue due during the remainder of the current financial year; and

(vi) the time, place and conditions of sale.

The notice shall be duly served and published at least thirty days before the date of sale."

The manner of service of notice and publication is made in terms of Section 75(1) and (2) of the Act, which reads as under:

"75. Mode of publication of notices etc.:-(1) Where any notice, order or list is required to be published under this Act, the publication shall unless it is expressly provided otherwise, be made as follows:

(i) by affixture of a copy of the notice, order or list-

(a) where it relates to immovable property, on a conspicuous part of the property; or

(b) where it relates to movable property, on a conspicuous part of the premises from where the property was attached; and

(ii) by affixture of a copy of the notice, order or list on the office of the village in which, and on the office of the local authority within whose jurisdiction, the attachment or sale takes place.

(2) The Collector or the authorized officer may, in his discretion, publish any notice, order or list in the Gazette or in one or two newspapers having circulation in the area in which the attachment or sale takes place or in both."

18. It is clear from the records made available that the revenue authorities had complied with the provisions of Section 75(1) of the Act and within the time as stipulated under Section 49(2) of the Act. Notice had also been served on the appellant/defaulter within the time stipulated under Section 49(2). The only question is whether failure to advertise the notice by way of newspaper publication as contemplated under Section 75(2) has caused any prejudice to the petitioner.

19. The first contention is with reference to the notification in Thejas newspaper on 14.2.2007. Apparently, it is not a publication in terms of Section 75(2). It is only a news item on the basis of a request made by the revenue authorities to publish the date of sale.

20. Then the next question is whether a publication as contemplated under Section 75(2) is warranted under the circumstances. The statutory provision clearly indicates that a discretion is left with the revenue authorities to either proceed with a publication or not. If it is a case where the valuable property is proclaimed for sale and there are only a few bidders, discretion is always left with the revenue authorities either to proceed with the sale or to conduct a re-sale after due publication. But in the case on hand, a perusal of the records clearly revealed that about 40 persons had purchased tender documents and 14 persons had participated in the auction. Apparently, there was proper publication

in terms of Section 75(1) of the Act. Therefore, even if there was no publication under Section 75(2) of the Act, no prejudice had been caused to the petitioner since there was sufficient number of bidders who participated in the auction. Hence, we do not think that the learned counsel for the appellant was justified in contending that there was no proper publication for conducting sale with reference to the property in question.

21. No materials had been placed either before the Collector or during appeal before the Land Revenue Commissioner to indicate that the value of the property was grossly undervalued. If the petitioner had a case that the sale price obtained was not reasonable, he could have adduced necessary evidence to support the said contention. In the absence of any further materials to indicate otherwise, it is not open for this Court to sit in appeal over a decision rendered by the revenue authorities.

22. The next contention urged by the learned counsel for the petitioner is with reference to adjustment of amounts obtained by sale of plot nos. 2 and 3 towards amount payable under the amnesty scheme. Amnesy is given to enable the defaulter to pay the amount, without undertaking the process of recovery. He cannot claim any benefit of amnesty when revenue sale is conducted and auction amount is appropriated towards the entire balance dues.

Having regard to the aforesaid findings, we do not think that the learned Single Judge has committed any error in dismissing the writ petition filed by the appellant and allowing the writ petition filed by the auction purchaser. There being no grounds to interfere in the said judgment, the appeals are dismissed.

