(2014) 07 KL CK 0038

In the High Court Of Kerala

Case No : WP (C). Nos. 21678 of 2009 and 25968 of 2012

Johny Paul APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2014) 07 KL CK 0038

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : P. Fazil, A.C. Thomas Adhikaram and Anala Khusi Bhasker, Advocate for the Appellant; K.T. Lilly, Government Pleader and Siraj Karoly, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—The subject matter of these writ petitions relates to a revenue sale of certain properties for realisation of sales tax arrears.

2. The petitioner in W.P(C) No. 21678 of 2009 is the owner of the property having a total extent of 4.34.666 acres comprised in Sy. No. 863/2A/9C in Kadavoor village in Kothamangalam taluk. He is challenging the recovery proceedings and the consequential sale of his property.

3. The petitioner in W.P(C) No. 25968 of 2012 is the person who bid the property in auction and in whose name the sale has been confirmed. He has approached this Court alleging inaction on the part of the authorities in delivering the property purchased by him.

4. For convenience of discussion, the parties can be referred to as they are arrayed in W.P(C) No. 21678 of 2009.

5. The petitioner is a defaulter of payment of sales tax for the periods 1998-99 and 1999-2000 to the tune of 20,08,440/- as on 22.02.2006. The petitioner''s property having a total extent of 4.34.666 acres comprised in Sy. No. 863/2A/9C in Kadavoor village in Kothamangalam taluk were brought to sale by initiating

revenue recovery proceedings by the 6th respondent dividing the property into four plots.

6. The petitioner alleges that Plot No. 4 having an extent of 72 cents which was notified for sale on 14.2.2007 could not be sold on that date for reasons not disclosed by the respondents. He further alleges that later, he came to know that the property was sold on 15.02.2007 on the basis of publication in Mangalam daily dated 14.02.2007 and, therefore, there was no sufficient notice and time for the prospective buyers. The allegation is that respondents 7 to 9 colluded with the 10th respondent and the property having an extent of 72 cents was sold for a paltry sum of 5,16,000/-.

7. According to the petitioner, on a proper sale, the property would fetch a minimum of 18,00,000/- i.e., @ 25,000/- per cent at that point of time. The petitioner further alleges that the said sale was only an outcome of the conspiracy hatched out by respondents 7 to 9 in collusion with the 10th respondent. The petitioner challenged the same before the 5th respondent in appeal which was dismissed by Ext.P3 order. Therefore, he filed revision challenging the same, but it was without success, as it was dismissed by Ext.P6 order.

8. The petitioner further alleges that as per Ext.P7, the 4th respondent has sanctioned settlement of entire sale tax arrears under the Amnesty Scheme 2008-2009 for an amount of 32,34,101/-. However, he could not remit the first installment within the time stipulated in Ext.P7. While so, Plot No. 2 having an extent of 2.71.500 acres and Plot No. 3 having an extent of 81.500 cents were sold in revenue recovery proceedings for an amount of 36,10,000/-. The petitioner intimated the respondents that he challenged the sale of plot numbers 2 and 3 and the amount of 32,34,101/- as per Ext.P7 could be adjusted from the sale proceeds and requested them to return the cost amount of 3,75,899/-. The petitioner alleges that in spite of that, the respondents are taking steps to proceed against plot nos.1 and 4 and it is with this background, the petitioner has come up before this Court.

9. In the counter affidavit filed by the State, it was contended that the properties except Plot No. 1 were notified for sale on 15.2.2007. As there is a house in Plot No. 1, valuation report from the PWD authorities is necessary for conducting the revenue sale. According to them, the notice was published strictly in accordance with law and it was published in the office of the Tahsildar, concerned Village Office and Grama Panchayat. Press release was also issued on 15.7.2007. Plot No. 4 was sold to the 10th respondent who was the highest bidder, the sale was competitive and the value would fetch more than the then existing market rate.

10. In the meantime, the petitioner filed O.S No. 68/2007 and for this reason the sale was not confirmed. Ultimately, the said suit was dismissed on 28.06.2008. Thereafter the petitioner filed an appeal before the 2nd respondent which was dismissed. Subsequently auction was confirmed by the 6th respondent on

9.7.2008. Though the petitioner has availed option under Amnesty Scheme, he did not pay the amount as stipulated in the intimation. Subsequently, Plot Nos. 2 and 3 were sold in revenue sale after complying with the legal formalities. According to the State, there was collusion between the authorities and the 10th respondent. Therefore, they prayed for a dismissal of the writ petition.

11. The 10th respondent filed a detailed counter affidavit refuting the allegations in the writ petition. According to him, the petitioner was a chronic defaulter. The property was sold by complying with all formalities and the 10th respondent has purchased the property in good faith. The 10th respondent contended that the petitioner was fully aware of the notification and auction sale on 15.02.2007. According to him, the auction sale was notified on 15.02.2007. It was further contended that he was the highest bidder among the persons who participated and the property was sold for the best available price. Therefore, he also prayed for a dismissal of the writ petition.

12. In W.P(C) No. 25968 of 2012 the 10th respondent has reiterated the same contentions. In the writ petition he has prayed for a direction to the authorities concerned to hand over the suit properties sold in favour of the petitioner by the 4th respondent.

13. Arguments have been heard.

14. The main prayers in the writ petition filed by the registered owner of the property are to quash the sale in respect of Plot No. 4 belonging to him in the name of the 4th respondent and for a direction to respondents 3 and 4 to adjust the amount of 32,34,101/- received by the sale of Plot Nos. 2 and 3 belonging to the petitioner as per Ext.P7 towards full and final settlement. The further relief was for a direction to the respondents not to proceed against Plot Nos. 1 and 3 of the petitioner.

15. Admittedly, the petitioner is a defaulter. The revenue recovery proceedings were initiated against the properties of the petitioner which was divided into four plots. In the first plot, there is a residential building and the authorities are waiting for valuation by the PWD authorities. The petitioner has no challenge regarding the sale of Plot Nos. 2 and 3. However, they would allege that as per Ext.P7 Amnesty Scheme, the petitioner was allowed to settle his entire sale tax dues for an amount of 32,34,101/- and, therefore, the said amount has to be adjusted towards the sale consideration of 36,10,000/- received out of sale on Plot Nos. 2 and 3 and the balance sum of 3,75,899/- has to be repaid to the petitioner.

16. It is an admitted case that the petitioner has failed to perform the conditions of the Amnesty Scheme. He did not remit the first installment in time. Therefore, the authorities had no option, but to proceed with the recovery. It was pointed out by the learned Government Pleader that intimation was issued by the concerned department directing the petitioner to pay the amount in four installments. As the petitioner did not pay the amount as stipulated in the

intimation, the intimation was cancelled with due notice to the petitioner. Therefore, now the petitioner cannot turn round and say that the benefit of the Amnesty Scheme has to be extended to him and the amount arrived at by the authorities concerned has to be adjusted against the sale proceeds of Plot Nos. 2 and 3.

17. The remaining question that has to be considered is whether the sale in respect of Plot No. 4 is valid or not.

18. The stand taken by the petitioner is that sale notice was published on 14.2.2007 in the local daily and the properties were was sold on 15.2.2007. Therefore, the learned counsel for the petitioner submitted that there was no sufficient notice and time for the prospective buyers and, therefore, the sale in respect of the Plot No. 4 in favour of the 10 respondent has to be branded as a result of collusion between the authorities concerned and the 10th respondent. This argument is controverted by the learned counsel for the 10th respondent in the light of the documents produced by him along with his counter affidavit.

19. Admittedly, the sale was conducted on 15.02.2007. According to the 10th respondent for auction and sale of Plot No. 4 prospective bidders were present and 14 of them have remitted earnest money at 5,000/-. To substantiate the argument that the auction and sale were notified sufficiently early, the 10th respondent has produced Ext.R10(a) which is the true copy of the notice dated 11.1.2007 issued by the 7th respondent. In fact, what was published in the Mangalam daily dated 14.02.2007 was only a news regarding the factum of sale. Ext.R10(b) which is the copy of the report prepared by the Deputy Tahsildar counter signed by the Tahsildar would reveal that number of prospective bidders have attended the auction from different parts of the district and 14 of them have remitted earnest money. Copy of the Performa Report by the Deputy Tahsildar which is submitted to the higher authorities is also produced as Ext.R10(c).

20. It is crucial to note that the petitioner has no complaint regarding the auction and sale of Plot Nos. 2 and 3 in favour of one K. I. Thomas. Plot No. 3 having an extent of 81.500 cents consist of 210 yielding arecanut trees and 40 coconut trees and is situated on the western side of Pothancheeni public road. Similarly Plot No. 2 is having an extent of 2 acres and 53 cents of property and having 350 yielding rubber trees and other improvements. The said property is situated on the northern side of Punnamattom-Palli road and is having Panchayat road frontage on the eastern side also. These facts are evident from Ext.R10(d) which is the true copy of the mahazar prepared by the 9th respondent which the 10th respondent had obtained under the Right to Information Act. The sketches of Plot Nos. 2, 3 and 4 prepared by the Village Officer is produced as Exts.R10(e) to R10 (h) respectively. What can be seen from Ext.R10(h) is that there is no road access to the property purchased by the 10th respondent.

21. In fact, the access to the said property is through a pathway. The mahazar

reveals that in the property purchased by the 10th respondent there were only rubber saplings. The total bid amount for Plot Nos. 2 and 3 being the total extent of 3 acres and 53 cents is 3,61,000/-. That means the centage value would come to about 10,226/- (3,61,000/353) whereas Plot No. 4 having an extent of 72 cents auctioned by the 10th respondent was for 5,16,000/- which would indicate that the centage value of the property is 7166.6 per cent (5,16,000/77).

22. It is relevant to note that Plot Nos. 2 and 3 were sold in auction after one year and 8 months from the date of sale of Plot No. 4. Therefore, it can be seen that no prejudice has been caused to the petitioner and no loss was sustained. It is also relevant to note that the petitioner has no complaint against the sale and centage value of Plot Nos. 2 and 3. The aforesaid data are available from Ext.R10(i) which is the true copy of the report dated 26.3.2007 with regard to the value of Plot No. 3 at the time of auction.

23. It is argued by the learned counsel for the 10th respondent that the 10th respondent was aggrieved by the pendency of the writ petition. Though he parted with a substantial amount of 5,16,000/- as early as on 2007, the plot which he had bid in auction has not been handed over to him. It was pointed out that the agriculture and other improvements in the property are at peril as nobody is there to look after the same.

24. On a consideration of the entire materials now placed on record, this Court is of the view that the petitioner in W.P(C) No. 21678 of 2009 is not entitled to get the relief as prayed form.

In the result, W.P(C) No. 21678 of 2009 is dismissed. W.P(C) No. 25968 of 2012 is allowed. Respondents 2 to 4 therein are directed to handover and deliver the property sold in favour of the petitioner in W.P(C) No. 25968 of 2012 forthwith.

