
(2009) 09 KL CK 0043

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29736 of 2007 (M)

K.G. Unnikrishnan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Citation : (2009) 09 KL CK 0043

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : K.B. Gangesh, for the Appellant; K.N. Chandrababu, for the Respondent

Judgement

Antony Dominic, J.—Challenge in this writ petition is against Ext.P9, an order passed by the 1st respondent.

2. The 5th respondent had availed of a loan from the 4th respondent Bank. Default was committed, and that led to filing of ARC No. 221/2000, in which an award was passed in favour of the Bank. Execution Proceedings were initiated, and finally, when the property was auctioned on 26/05/2003, the petitioner herein purchased the property for a bid amount of Rs. 84,800/-, which was remitted as per Ext.P1 receipts.

3. There are several litigations between the parties, and finally, by Ext.P4 order, the 2nd respondent confirmed the sale in favour of the petitioner. This order was passed pursuant to Ext.P3 judgment of this Court. Accordingly, Ext.P5 sale certificate and Ext.P6 ownership certificate in respect of the building were issued. Irrespective of all these, in an appeal filed by the 5th respondent against Ext.P4 order of the 2nd respondent, the 1st respondent passed Ext.P9 order, allowing the appeal. It is this order, which is challenged in this writ petition.

4. A reading of Ext.P9, the order passed by the 1st respondent, shows that the appeal was allowed mainly for the reason that Ext.P4 order confirming the sale was passed by the 2nd respondent in violation of the directions contained in

Exts.P2 & P3. By Ext.P2, the Tribunal reduced the interest rate and allowed the petitioner to pay in instalments. By Ext.P3 judgment of this Court, the 2nd respondent was directed to consider the matter with notice to all parties. As stated in Ext.P9, notice was not issued in all the parties before confirming the sale. This means that the directions in Ext.P3 judgment has not been complied with. That apart, there is nothing on record to indicate that the Bank quantified the dues of the 5th respondent in terms of the directions contained in Ext.P2 order of the Tribunal and that despite intimation given in that behalf, the 5th respondent failed to remit the dues. In such circumstances, I see no good ground to disagree with the view taken in Ext.P9.

5. However, fact remains that as a result of Ext.P9, effectively the sale itself stands set aside, and it is a fact that as early as in May-June, 2003, the petitioner has remitted the bid amount of Rs. 84,800/-, and that even as of now, the property is not delivered to him. Therefore, when this contention was raised, the learned Counsel for the 5th respondent, undertook to refund the amount deposited by the petitioner together with interest as applicable to fixed deposits accepted by the Respondent Bank. This offer made by the 5th respondent seems to be fair and reasonable. In view of this, this writ petition is disposed of with the following directions:

That within two months from today, the 5th respondent shall refund to the petitioner, the amount deposited by him together with interest as applicable to the fixed deposits accepted by the 4th respondent Bank. Once the payment is made as above, respondents 3 & 4 will ensure that the sale certificate and the ownership certificates issued in favour of the petitioner are cancelled, and the documents deposited by the petitioner shall be returned to him.

6. Needless to say that in case of failure of the 5th respondent in complying with the above directions, the property, in respect of which Ext.P5 sale Certificate and Ext.P6 ownership certificate have been issued, will be delivered to the petitioner within one month thereafter.

The writ petition is disposed of as above.