

(2009) 04 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No's. 6132-6136 of 2009

K.N. Sakrappa

APPELLANT

Vs

Karnataka State Financial Corporation and Others

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 13, 14, 15

Citation : (2009) ILR (Kar) 2415 : (2009) 3 KCCR 1566

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : B.R. Satenahalli, for the Appellant; Rudragouda, for R1 and R2, Shivayogiswamy, HCGP for R3 and R4, S. Siddappa and S. Sunildutt Yadav for R5 to R7 and Veerendra Patil, for R10, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—Writ petitions by a person who was the auction purchaser of certain immovable properties which were put to auction sale on 5.4.2006 by the second respondent -Karnataka State Financial Corporation for non-payment of loan borrowed by the respondents 5 to 7 - partners of M/s. Hari Industries and Renuka Enterprises located at Challakere town of Chitradurga District.

2. The proposed auction which had been notified on 14.7.2005 and after the bid of the petitioner was accepted and the property itself conveyed to the petitioner as per sale deed dated 5.4.2006 has resulted in one misery after another suffered by the petitioner as it appears the erstwhile owners of the auctioned property were in arrears of payment of sales tax due to the third respondent - Assistant Commissioner of Commercial Taxes and the third respondent became active for recovery of the balance of the amount that was outstanding in the names of respondents 5. 6. 7 by having recourse to the property which the petitioner purchased in the auction sale and has also taken further coercive action such as attachment of bank accounts of the petitioner which is the latest coercive action on the part of the third respondent as per garnishee notice dated

4.3.2009 [copy at Annexure-B] served on the bankers of the petitioner in exercise of the powers u/s 14 of the Karnataka Sales Tax Act, 1957 [for short KST Act"] and indicating therein that a sum of Rs. 9,93,811/- has to be made over to the third respondent from the amount at the credit of the petitioner in the accounts maintained by the petitioner in its banks, namely, State Bank of Mysore, Challakere, Canara Bank, Challakere, ING Vysya Bank, Challakere.

3. The present round of writ litigation by the petitioner is not only for quashing of notice dated 3.2.2009 (copy at Annexure-A] indicating that unless the petitioner pays the outstanding tax arrears that was due by the erstwhile owners of the property purchased by the petitioner with interest upto date, the respondent - commercial taxes department will be constrained to take action for attachment and sale of the properties belonging to the petitioner and also for quashing of the garnishee notices issued u/s 14 of the KST Act.

4. The Karnataka State Financial Corporation which has sold the property belonging to the assessee who was a defaulter under the provisions of the State Financial Corporations Act, 1951 [for short "SFC Act"] and for recovery of the amount due to the bank through public auction sale in exercise of its powers u/s 29 of the SFC Act figures as first respondent, its Manager at Chitradurga as second respondent, Assistant Commissioner of Commercial Taxes - Challakere as the third respondent, the Commercial Tax Officer, Challakere as fourth respondent, erstwhile owners of the property as respondents 5 to 7 and the banks on whom the commercial taxes department has served the garnishee notices figuring as respondents 8 to 11 to the petition.

5. Emergent Notices had been issued to the respondents and learned Government Pleader had been directed to take notice for respondents 3 and 4.

6. While the first respondent - Karnataka State Financial Corporation is represented by Sri. Rudragouda, learned Counsel who takes notice for second respondent also, respondents 3 and 4 - officials of the commercial taxes department are represented by Sri. Shivayogiswamy, learned Government Pleader, fifth respondent - one of the partner of M/s. Hari Industries which had owed the property purchased by the petitioner is represented by M/s. Siddappa & Sunildutt Yadav, learned Counsel who takes notice for respondents 6 and 7 also, tenth respondent - State Bank of India is represented by Sri. Veerendra Patil, Advocate, respondents 8, 9 & 11 - banks who are said to have been served are not represented, these writ petitions, though had been listed for orders regarding taking fresh steps for service of notice on the sixth and the seventh respondent, with this service of notice on the respondents being complete , the matter is taken up for disposal with the consent of learned Counsel for the parties.

8. I have heard Sri. Satenahalli, learned Counsel for the petitioner, Sri. Rudragouda, learned Counsel for the respondents 1 & 2, Sri. K M Shivayogiswamy, learned Government Pleader appearing for respondents 3 & 4, Sri. Sunildutt Yadav, learned Counsel for the respondents 5, 6 and 7.

9. Submission of Sri. Satenahalli, learned Counsel for the petitioner is that the notices at Annexures - A & B are clearly an abuse of the statutory provisions; that the petitioner is not an assessee who was liable to pay any tax arrears; that the petitioner purchased the property in public auction sale conducted by the respondents 1 & 2 admittedly for realization of the amount due to them and owed by the respondents 5 to 7; that it was the duty of the respondents 5 to 7 to have cleared any sales tax dues if at all were due from respondents 5 to 7 and which even if had constituted a charge on the property of respondents 5 to 7 upto the date of auction sale; that the property having been sold in a public auction by the Karnataka State Financial Corporation in exercise of its statutory powers u/s 29 of the SFC Act, the property vests free from encumbrances in favour of the auction purchaser; that the petitioner is a bonafide auction purchaser for valuable consideration having paid a sum of about Rs. 23 lakhs for the property; that such person cannot be saddled with an earlier liability of erstwhile owners of the property, namely, liability of respondents 5 to 7; that the provisions of Section 55[1][g] read with Section 69[4] of the Transfer of Property Act, 1882 come in the way of the respondents 3 and 4 seeking to recover the tax arrears of erstwhile owners of the property in question which is put to public auction sale by the respondents 1 and 2; that if at all any dues were there it was the responsibility of the Corporation who has conducted the auction sale to discharge such liability in terms of the provisions of Section 29[4] of the SFC Act; that a bonafide auction purchaser like the petitioner who has purchased the property which had been mortgaged in favour of respondents 1 and 2 is well protected by the provisions of Sections 55[1][g] and 69[4] of the Transfer of Property Act, 1882 which reads as under:

55. Rights and liabilities of buyer and seller:

[1] The seller is bound:

[g] to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

69. Power of sale when valid:

[4] The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not made subject, or after payment into court u/s 57 of a sum to meet any prior encumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage - money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

and it is therefore submitted that while the respondents 3 and 4 could not have even proceeded against the property purchased by the petitioner in an auction sale, it is not only abuse of the statutory provision to issue a notice for attachment of the properties of the petitioner as at Annexure-A but also further aggravation of the abuse by attaching the bank accounts of the petitioner by exercising the powers u/s 14 of the KST Act; that both notices are per se misuse and abuse of the statutory powers, illegal and are liable to be quashed.

9. In support of the submission that the petitioner is a bonafide purchaser for valuable consideration and particularly having purchased the property which had been secured in favour of the Karnataka State Financial Corporation by the borrower from the bank and for realization of the amount due to the bank in a public auction sale in exercise of its statutory power u/s 29 of the SFC Act and therefore is well insulated from any recovery proceedings by respondents 3 and 4 for realizing any tax arrears that perhaps was due by the erstwhile owners of the property. In support of such submission, Sri. Satenahalli, learned Counsel for the petitioner has placed reliance on the following decisions of the supreme court, namely,

[a] Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others,

[b] "Union of India and Ors. v. Sicom Ltd. and Anr." reported in 2009 AIR SCW 635

[c] "State of Karnataka v. Shreyas Papers Private Limited" reported in 2006 AIR SCW 169.

10. Placing reliance on these decisions, submission of Sri. Satenahalli, learned Counsel for the petitioner is that the petitioner being a purchaser of the property sold in public auction by the Karnataka State Financial Corporation for realization of its dues and the Corporation being in the position of a secured creditor was entitled to priority over even crown debts like the amount of sales tax arrears due by the erstwhile owner and if the property is sold by the Karnataka State Financial Corporation for realization of its dues by enforcing its security, purchaser like the petitioner from the Corporation cannot be saddled with the liability for payment of earlier sales tax dues of the erstwhile owners etc.

11. Further submission is that such property can neither be attached nor sold and at any rate even when the provisions of the KST Act only indicated recourse to the property which was subject to a charge in favour of the State Government for any tax arrears due by the owner, attachment of the bank account of the petitioner which has nothing to do with the properties owned by an erstwhile assessee in default has absolutely no legal basis and is to be quashed etc.,.

12. Statement of objections have been filed on behalf of the respondents 3 & 4 - State Government. It is brought on record that the present action is not an isolated action; that it has a history behind it; that in a proceeding for recovery of the amount from the erstwhile assessee by resorting to Section 13[3] of the

KST Act for realizing amount as fine imposed by criminal court and in such proceedings the assessee in default: had made an application for impleading the purchaser of the auctioned property, in S.T. Mis. 10 of 2000 on the file of the court of Munsiff & JMFC, Challakere; that the application though was allowed as per order dated 23.5.2008 [copy at Annexure-R1 to the statement of objections], the learned Magistrate nevertheless having observed that the newly added respondent - the present writ petitioner was not liable to pay the tax amount, that order had been carried in revision by respondents 5 to 6 in criminal revision petition Nos. 742, 744, 745, 746 of 2008 and this Court having allowed the criminal revision petitions as per order dated 28.8.2008 [copy at Annexure-R2 to the statement of objections] and having set aside the order of the Magistrate exempting the petitioner from liability and holding that the petitioner having knowledge of sales tax liability of respondents 5, 6 and 7 and such being the condition of sale also was bound to make good the amount, the respondents 3 & 4 are entitled to recover the amount from the petitioner as that was one of the conditions of sale and the petitioner had notice of the same and having allowed the revision petition on such terms, it is not open to the petitioner to now dispute the liability and therefore the petition has no merits.

13. Learned Government Pleader also submits that in view of the statutory provisions of Section 15 read with Section 13 of the KST Act, the petitioner becomes an assessee in default and all coercive measures as are available to the commercial taxes department as against an assessee in default can also be pursued against the petitioner and therefore the impugned notice as at Annexures-A & B are valid in law and the writ petitions are to be dismissed.

14. Sri. Rudragouda, learned Counsel for the respondents 1 and 2 submits that the property in question having been sold subject to sales tax liability being taken over or to be met by the purchaser and that having been made known to the auction purchaser before the execution of sale deed the provisions of Section 55[1][g] and Section 69(4) of the Transfer of Property Act, 1882 cannot rescue the petitioner from the present situation as it is a term of the sale that such liability is to be met by the auction purchaser.

16. It is also pointed out that the provisions of Section 29[4] of the Act will not in any way advance the case of the petitioner as it is only a matter of application of the amount realized from the sale of the secured property and that in no way enures to the benefit of the auction purchaser as it is a matter of apportionment of the amount as between the Corporation and its borrower and while applying the money received by the auction sale towards discharge of the loan borrowed by its customer.

17. Sri. Sunil Dutt Yadav, learned Counsel for the respondents 5 to 7 with reference to the proceedings in criminal revision petition Nos. 742, 744, 745 and 746 of 2008 referred to by the learned Government Pleader, submits that in the light of the order it is no more open to the petitioner to contend that the liability for realization of the tax dues of the erstwhile owners of the property sold in

public auction cannot now be disputed in the present writ petition by the petitioner, that the petitioner in fact had filed writ petitions for a like relief in WP Nos. 826 of 2009, 1675 to 1677 of 2009; that this Court dismissed the writ petitions in the light of the above developments as pointed out by the learned Government Pleader and also learned Counsel for the respondents 5 to 7 and in the light of the order dated 22.1.2009 passed by this Court in WP Nos. 826 of 2009, 1675 to 1677 of 2009 the writ petitions filed by the very petitioner and the writ petitions having been dismissed, the present writ petitions should not be entertained and should be dismissed.

17. A perusal of the earlier proceedings while can indicate that the petitioner had not objected to a condition of sale i.e., of discharging the sales tax liability of the erstwhile owners and owing to the state Government. Though it is now sought to be disputed by Sri. Satenahalli, learned Counsel for the petitioner by pointing out that precise amount of sales tax dues had not been made known, it was for the petitioner to have taken further care to ascertain the amount and if at all could have rescaled from the sale before the execution of the sale deed, if it was found to be not to the convenience of the petitioner and therefore to this extent though the law declared in terms of the Judgments referred to and relied upon by Sri. Satenahalli, learned Counsel for the petitioner would support the case of the petitioner as this Court has given a finding that the petitioner is liable in respect of the amount of sales tax dues etc., that may not be a question which can be reagitated before this Court even by relying upon the decisions of the Supreme Court referred to above.

18. But Sri. Satenahalli, learned Counsel for the petitioner is justified in contending that bonafide auction purchaser like the petitioner who has purchased the property sold by the first respondent - Karnataka State Financial Corporation is not a person who is taking over a running concern or who is taking over the business of an assessee in default which alone can attract the provisions of Section 15 of the KST Act; that the petitioner having merely purchased the property does not step into the shoes of the assessee in default and even on the findings by this Court earlier if at all the property can be charged with the liability notwithstanding the purchase and therefore the other actions of the respondents 3 and 4, particularly, for attaching the bank account exercising the powers u/s 14 of the KST Act which is available only against the assessee in default and not against others is still bad in law is an argument which merits acceptance.

19. An auction purchaser like the petitioner is not a person who steps into the shoes of an assessee in default per se. He is a purchaser of the property which if had been charged with the liability such as sales tax liability of the erstwhile owners and if he is a person with some notice of the charge, the charge binds the purchaser also.

20. The present is clearly a case to which Section 15 of the KST Act is not attracted and if at all it can be said provisions of Section 13 of the KST Act are attracted. Even then, the entitlement of the Department for realization of such

amount which was an arrears of tax due by the erstwhile owners is only to the extent of enforcing the charge on the property and nothing beyond. It is for this reason, while there is nothing to interfere with Annexure-A notice at this stage which is only a proposal to attach the property and to take further action against the property, the notice being one not mentioning specific property but generally of all the properties of the petitioner both movables and immovables, notice cannot be allowed to operate to such a large extent and in a general manner, but has to be construed as one relating to the property purchased by the petitioner at the auction sale conducted by Karnataka State Financial Corporation and nothing beyond.

21. It is made clear that Annexure-A can operate only in respect of the property purchased by the petitioner, a property which had a charge on the date of auction sale, for payment of sales tax dues which were dues to the State by the erstwhile owners respondents 5, 6 and 7 and for nothing else. Notice is permitted to be enforced only for such purpose and not for any other purpose.

22. In this view of the matter, Annexure-B garnishee notice is definitely not supported by law. Respondents 3 and 4 are not entitled to attach the bank accounts of the petitioner which has nothing to do with the property in question and cannot enforce the notices to compel the respondents 8 to 11 to make over the amount at the credit of the petitioner to the State Government.

23. In this view of the matter, Annexure-B notice dated 4.3.2009 is quashed by issue of a writ of certiorari, Annexure-A intimation dated 3.2.2009 is permitted to operate to the limited extent indicated above.

24. Writ petitions are disposed of accordingly. Rule issued and made absolute to the extent indicated above.