

(2006) 06 KL CK 0059
In the High Court Of Kerala
Case No : W.A. No. 610 of 2006

K.S.I.D.C. Ltd.

APPELLANT

Vs

Parisons Milling Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Constitution of India, 1950 — Article 246
Kerala General Sales Tax Act, 1963 — Section 26A, 26B, 5
Kerala Revenue Recovery Act, 1968 — Section 41(2), 44(1)
State Financial Corporations Act, 1951 — Section 29

Citation : (2006) 3 ILR (Ker) 188 : (2006) 3 KLT 287 : (2007) 9 VST 519

Hon'ble Judges : V. Ramkumar, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : V.B. Unniraj, for the Appellant; Roy Chacko, Spl. Government Pleader, M. Pathrose Mathai Saji Varghese, Peter Tharakan, Antony Dominic and A.M. Shaffique, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Whether Section 29 of the State Financial Corporations Act, 1959 has any precedence over the provisions of Section 26A and B of the Kerala General Sales Tax Act, 1963 is the question that has come up for consideration in this case.

2. We may for the disposal of this case refer to the parties according to their status in the Writ Petition, Kerala State Industrial Development Corporation Ltd., for short the K.S.I.D.C. additional fifth respondent in W.P.(C) No. 23355 of 2003 has filed this appeal aggrieved by the direction of the learned single Judge that it is open to the Government to proceed against K.S.I.D.C. for the recovery of sales tax arrears from the consideration received by the sale of the mortgaged properties by the fourth respondent in the Writ Petition. Fourth respondent, namely, Star Agro and Wheat Roller and Flour Mills (P) Ltd., had availed of a loan of Rs. 88 lakhs from K.S.I.D.C. for which 1 acre 01 cents and 0.985 sq. links of land and the buildings thereon comprised in R.S. No. 497/4, 5 and 6 of

Naduvattom amsom in Tirur Taluk were mortgaged to the Corporation. Fourth respondent committed default in repaying the loan and the mortgaged properties were taken over by K.S.I.D.C. in exercise of the powers conferred u/s 29 of the State Financial Corporations Act, 1959. The properties were brought to sale and were purchased by the writ petitioner, namely, Parisons Milling Co. Pvt. Limited. Sale was confirmed in its name and sale deed was executed on 17.6.2002 for a consideration of Rs. 152 lakhs.

3. The fourth respondent had also availed of a loan from Federal Bank Limited, Broadway Branch and they had created a second charge in favour of the Bank on the properties mortgaged and hypothecated to K.S.I.D.C. Federal Bank filed O.A. No. 370/2000 before the Debt Recovery Tribunal for recovery of the amount due from fourth respondent and the Debt Recovery Tribunal passed an order directing K.S.I.D.C. to deposit the balance amount of sale consideration after adjusting the amount due to it. After adjusting the expenses and charges incurred by K.S.I.D.C. towards security wages, advertisement and other expenses, the amount due to K.S.I.D.C. was adjusted and the balance amount of Rs. 38,84,017/- was deposited by K.S.I.D.C. in O.A. No. 370/2000 before the Debt Recovery Tribunal. Federal Bank then filed an application before the Debt Recovery Tribunal to release the amount deposited by K.S.I.D.C. Application was allowed by the Tribunal and the amount was released to the Bank subject to the condition that they should redeposit the same if ordered.

4. The first respondent later came to know that the properties over which State has got statutory charge have been sold by K.S.I.D.C. and were purchased by the petitioner. Petitioner was therefore served with Ext.P3 notice stating that the fourth respondent had defaulted payment of Rs. 34,86,120/- towards sales tax arrears. Petitioner was informed that it has purchased properties over which State has got statutory first charge and those transactions are invalid u/s 44(1) and (2) of the Kerala Revenue Recovery Act. Petitioner has challenged that proceedings in the present Writ Petition.

4. Learned single Judge of this Court while disposing of the Writ Petition stated that if the tax claim of the Government has priority over the debt due to the mortgagee, K.S.I.D.C. it is a matter of claiming tax arrears by the Government from it. It was also ordered that it is open to the Government to verify whether defaulter has any other assets and if so to proceed against such other assets of the defaulter. The present appeal has been filed by K.S.I.D.C. aggrieved by the finding of the learned single Judge that the State has got priority over the debt due to the mortgagee, that is K.S.I.D.C. and that it can proceed against K.S.I.D.C. for recovery of arrears of sales tax from out of the sale consideration received by it.

6. Sri. V.B. Unniraj, counsel appearing for the K.S.I.D.C. submitted that the provisions of Sections 26A and 26B of the Kerala General Sales Tax Act, 1963 (for short "the K.G.S.T. Act") would not prevail over the provisions of Section 29 of the State Financial Corporations Act which is enacted to safeguard the interest

of the State Financial Corporation. Further it was also stated that Sections 26A and 26B are ultra vires and unconstitutional by virtue of Article 265 of the Constitution. Further it is also pointed out that fourth respondent had mortgaged the property on 25.4.1990 and K.S.I.D.C. had taken over the property in exercise of the powers conferred u/s 29 of the State Financial Corporations Act which could not be nullified by any of the provisions of the Kerala Revenue Recovery Act.

7. Learned Government Pleader Sri Roy Chacko submitted that State has got priority under Sections 26A and 26B of the K.G.S.T. Act. Learned single Judge has rightly held that State can proceed against the sale consideration received by K.S.I.D.C. and the petitioner.

8. Constitutional validity of Section 26A of the K.G.S.T. Act was considered by this Court in *Jaya Vs. State of Kerala*, and this Court held that State Legislature is competent to enact such a provision in exercise of its legislative power under Entry 54 of List II of 7th Schedule read with Article 246 of the Constitution of India. This Court in *State of Kerala Vs. Rajmohan Cashew (P) Ltd.*, held that the statutory first charge will prevail over any charge or right created in favour of a mortgagee/secured creditors and gets precedence over an existing mortgage right. This legal position is well settled by a catena of decisions of the Apex Court in *State Bank of Bikaner & Jaipur v. National Iron and Steel Rolling Corporation and Ors.* 1995 96 STC 612 *Delhi Auto and General Finance Pvt. Ltd. v. Tax Recovery Officer* 1999 114 STC 273 and *State of Madhya Pradesh and Another Vs. State Bank of Indore and Others*, .

9. Section 29 of the State Financial Corporations Act enables the Financial Corporation to take over management or possession as well as to lease, sell or mortgage the property and realise the amount. That provision will not as such create any charge over the property. Section 29 of the Financial Corporations Act is only an enabling provision to take over the property mortgaged and to lease, mortgage or sell it. Section 26A of the K.G.S.T. Act makes certain transfers effected during the pendency of any proceeding under the K.G.S.T. Act. Section 56B states that tax payable shall be first charge over the property. We are of the view Section 29 of the State Financial Corporations Act will not prevail over Sections 26A and 26B of the K.G.S.T. Act since State has got a statutory prior charge.

10. Sales tax arrears accrued from the fourth respondent for the years 1998-1999 and 1999-2000 and as per Section 5 of the charging provision of the K.G.S.T. Act every dealer other than a casual trader or agent of a non resident dealer whose total turnover for a year is not less than two lakh rupees shall pay tax on his taxable turnover for that year. Fourth respondent had defaulted payment of sales tax arrears for the years 1998-1999 and 1999-2000. Consequently there would be charge over the immovable property for the debt due on the land as a result of non remittance of sales tax arrears. Taking over the property of the fourth respondent by K.S.I.D.C. and execution of sale deed

on 17.6.2002 in favour of the petitioner took place only after the creation of charge for the sales tax arrears due for the years 1998-1999 and 1999-2000. Fourth respondent had defaulted sales tax due to the Government for the aforesaid years which would come to Rs. 34,64,410/- and a sum of Rs. 21,710/- as penalty imposed by the sales tax authorities for the year 1998-1999. Third respondent assessing authority made a request to the revenue recovery authorities and on the basis of that Ext.P3 notice under Sections 44(1) and (2) of the Kerala Revenue Recovery Act was issued by the Tahsildar. Ext.P3 was issued to the petitioner and also to the fourth respondent. By virtue of Section 44(1) of the Kerala Revenue Recovery Act, Ext.P1 sale deed executed in favour of the petitioner is invalid and not binding on the Government. Applying the principle of priority of State Government debt for the tax arrears, the dominant right of the State to realise the tax arrears from the property of the fourth respondent is clearly established. By virtue of Section 44(1) and (2) of the Revenue Recovery Act read with Section 26A of the Kerala General Sales Tax Act the sale executed in favour of the petitioner is void and is not binding on the Government, which has got statutory first charge.

11. The statement filed by the Assistant Commissioner (Law) on 12.11.2004 would show that an amount of Rs. 56,76,884.00 is due to the State towards sales tax arrears. Counsel for the K.S.I.D.C. submitted that after realising the amount due to K.S.I.D.C. amount of Rs. 38,84,017/- was deposited before the Debt Recovery Tribunal in O.A. No. 370 of 2000 and the Federal Bank has received the said amount with a condition that they will redeposit the same if the Tribunal orders the same. Counsel submitted that the Government should approach the D.R.T. and get the amount released from the Federal Bank Limited. We are of the view, it is open to the State Government to proceed not only against K.S.I.D.C. but also against the Federal Bank since both K.S.I.D.C. as well as the Federal Bank do not have any superior rights over the State and also since State has got first charge over the properties in question. We therefore hold that Section 29 of the S.F.C. Act has no precedence over the provisions of Sections 26A and 26B of the K.G.S.T. Act. Writ Appeal therefore lacks merits and the same would stand dismissed.