

(2009) 03 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7282 of 2009

Lakshmi Devi Tile Works

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 50

Citation : (2009) 1 KLJ 942

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : M.K. Dileep Kumar, for the Appellant; C.K. Govindan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.M. Joseph, J.—Petitioner incurred liability towards KGST and CST. Recovery steps were taken under the Kerala Revenue Recovery Act. The property of the Petitioner was attached and as there were no bidders, it was purchased by the Government in the sale held on 18-10-1995. The sale came to be confirmed on 22-1-1996. Petitioner made application for reconveyance expressing his willingness to remit the entire amount. The application was made on 22-7-1996. The entire amount came to be paid on 29-7-1996. The Revenue Divisional Officer issued Ext. P-1 letter indicating that as the payment has come from the Petitioner within two years, there is no objection to reconvey the land. The Officer in Ext. P-1 referred to G.O. dated 22-3-1996. According to Petitioner, Petitioner continued in possession. Thereafter, Petitioner approached this Court and filed W.P. (C) No. 4668/08 and Ext. P-3 Judgment was delivered therein. The Court directed that if the Petitioner files representation and expresses his willingness to proceed under Ext. P-2 therein, the District Collector will look into the matter and take a decision in accordance with Ext. P-2 Government Order. It is also stated that if there are other amounts to be remitted in terms of the order, it shall be done. Ext. P-4 is the decision of the District Collector. Therein,

the District Collector has ordered that in terms of G.O. dated 22-3-1996, the Petitioner has to pay the market value. Petitioner seeks a declaration that Ext. P-4 is unsustainable and also seeks a writ of certiorari to quash Ext. P-4. A direction is sought to reconvey the Petitioner's property which is covered by Exts. P-1 and P-4 orders within a time.

2. A counter-affidavit is filed. Therein, the facts relating to the dates of the sale, confirmation and filing of the application for reconveyance and payment of the amount on 29-7-1996 are not disputed. However, reliance is placed only on Clause 3(2) of the G.O. dated 22-3-1996. It is stated that for all sales after 1-11-1983 the property owners are liable to pay the market-value.

3. I heard the learned Counsel for the Petitioner and the learned Government Pleader. In order to appreciate the contentions, it is necessary to refer to the history of the conferment of right to reconveyance. u/s 50 of the Kerala Revenue Recovery Act, should there be no bidders on the date to which the sale stands adjourned for lack of bidders, it is open to the State to bid for the property at Re. 1 and the State becomes the absolute owner of the property thereunder. I however, apparently, requests came to be made for reconveyance upon payment of the entire arrears. Government passed orders. Accordingly, Ext. P-5 G.O. dated 30-6-1965 came to be issued. Taking note of the absence of the uniformity in the procedure for taking possession and utilisation of the lands covered by Section 50 and in the matter of the ultimate disposal, it is noted that there is a need for a unified procedure. It is necessary to notice Clause 4(3) along with the Note. It reads as follows:

Clause 4: Disposal of bought-in-lands:

Bought in lands will be disposed of in order of priority given below:

(iii) the land will be reconveyed to the defaulter or his undisputed heir on payment of arrears of public revenue including land tax from the year in which the land was bought in to the year of reconveyance, interest on arrears, cost of process etc. The Collectors will sanction the reconveyance of bought-in-lands to the original owners or their undisputed heirs.

Note.- The reconveyance of bought in land to the original owner will be considered only if applied for within one year from the date of confirmation of the sale. Applications for reconveyance received after the expiry of one year will not be considered either by the District Collector or by the Government.

Still later, the Government issued Ext. P-6 G.O. dated 9-2-1968. As per the same, essentially the time to request for reconveyance was extended from one year to two years. It appears that there was another GO. dated 17-11-1967.

4. Still later, by Ext. P-2 G.O. dated 22-3-1996, the Government has, inter alia, ordered as follows:

2. Now it has come to the notice of Govt. that in spite of the above procedures

for the disposal of bought-in-land, large extents of land remain idle in various parts of the State without proper management. Moreover, Govt. are also receiving requests for reconveyance from the original owners of the said land even after the grace period of two years allowed under the existing orders. All the above aspects necessitates a review of the existing orders for the disposal of bought-in-land.

3. Govt. are, therefore, pleased to order as follows:

(i) The existing order allowing reconveyance of bought-in-land to the original owner or his undisputed heirs if applied within a period of two years from the date of confirmation of sale and after clearing the dues as provided in 4 (iii) of G.O. read as paper (1) above, will continue.

(ii) In cases wherein the date of sale confirmation of bought-in-land is on or after 1-11-1983, the requests for reconveyance from the original owner or his undisputed heirs, will be allowed provided the current market-value of the land is also remitted. Six months time from the date of issue of this order will be allowed for submitting applications for the purpose and after that date, no such applications will be entertained under any circumstances.

(iii) Requests of reconveyance of bought-in-land, the date of confirmation of sale of which is prior to 1-11 -1983 will not be considered under any circumstances.

(iv) District Collectors will forward applications received under (ii) above through Board of Revenue with a detailed report indicating the current market value of the land to Govt. for final orders.

5. The question, therefore, that falls for consideration and decision is what is the effect of Ext. P-2 G.O.? Does it take away the right of the owner to seek reconveyance upon clearing the dues as provided for in paragraph 4 of Ext. P-5 G.O. as amended by Ext. P-4? Is it necessary that he should remit the market-value, even if he applies within two years of confirmation of sale?

6. The admitted facts are that the sale was conducted on 18-10-1995. It stood confirmed on 22-1 -1996. If that be so, under Ext. P-5 G.O. as amended by Ext. P-6, the Petitioner had a legal right to apply for reconveyance within a period of two years. This is for the reason that though the Note to Sub-paragraph (iii) of Paragraph (4) of Ext. P-5 G.O. provided only for a period of one year, but it stood extended to two years by Ext. P-6 G.O. Clause 3(1) of Ext. P-2 G.O. clearly entitles persons covered therein to apply within two years of date of confirmation of sale and get reconveyance on payment of dues as provided in Clause 4(iii) of Ext. P-5 G.O. Admittedly, the Petitioner has filed the application for reconveyance on 22-7-1996. What is more, he has paid the entire amount on 29-7-1996. Therefore, if it is the terms of Sub-paragraph (3) of Paragraph 4 of Ext. P-5 which govern the issue, clearly the Petitioner had made out a case for reconveyance of land and it is precisely for this reason that Ext. P-1 was issued by the Revenue Divisional Officer. The question that then arises is as to what is

the effect of Ext. P-2 G.O. Clause 3(i) of Ext. P-2 G.O. categorically ordered that the prevalent right flowing from Ext. P-5 G.O. read with Ext. P-6, for reconveyance of the land after clearing the dues as provided in Clause 4(iii), will continue. Under this clause, it is indisputable that the application for reconveyance of the Petitioner upon clearing the dues as provided in Clause 4(iii) is only to be allowed. The area of controversy is introduced by virtue of the provisions contained in Clause 2. After perusing the Clause which I have already extracted, I am of the firm view that the interpretation of the same by the Respondent Collector is unsustainable. Apparently, what is intended by Ext. P-2 is to continue to give the right to the owners of lands to apply for reconveyance upon payment of the dues within the meaning of Clause 4(3) of Ext. P-5 G.O., if they make applications within two years from the date of confirmation of the sale. But, the Government has also intended to confer a right upon the original owners or their undisputed heirs to apply for reconveyance, even though they have not made applications within the period of two years from the date of confirmation of the sale. There are three conditions imposed by Clause 3(ii) for deriving this right. Firstly, the confirmation of the sale has to be after 1-11-1983. Secondly, the application must be made within six months from the date of issue of Ext. P-2 G.O. Thirdly, such owner must have remitted the current market-value of the land. This view gains reinforcement from the provisions of Clause 3(iii). It prohibits entertainment of request for reconveyance if the date of sale is prior to 1-11-1983. In other words, the provisions contained in Clause 3(ii) is not intended to cover a case where a person makes an application for reconveyance even after the issuance of Ext. P-2 G.O., which is within a period of two years from the date of confirmation of the sale. However, a substantial right is created apparently in view of the reasons which I have indicated, upon persons who had failed to make applications within the period of two years provided in Ext. P-5 G.O. On such an interpretation of Exts. P-2, P-5 and P-6 G.Os., I am of the view that the Petitioner had made out a case for reconveyance upon remitting the amount on 29-7-1996 after having applied within a period of two years. Accordingly, the Writ Petition is only to be allowed and it is allowed and Ext. P-4 is quashed. The land will be reconveyed to the Petitioner within a period of two months from the date of receipt of a copy of this Judgment.