

(2022) 05 KL CK 0156

In the High Court Of Kerala

Case No : Writ Petition (C) No. 39765 Of 2017

Leena Mohandas,W/o Mohandas

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 26-05-2022

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 83(2)

Citation : (2022) 05 KL CK 0156

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : P.Jayaram

Final Decision : Allowed

Judgement

Sathish Ninan, J

1. The petitioner is a defaulter in respect of Abkari dues for the year 2000-2001. In the year 2013, the Government brought in an Amnesty Scheme for payment of abkari arrears. The petitioner claimed the benefit of the same which was originally granted as per Ext P1. Subsequently, the same was cancelled as per Ext P2 since recovery steps as against the petitioner were already over as on 22.09.2004. Ext P2 order declining the benefit of Amnesty Scheme is under challenge in this Writ Petition.

2. Heard Sri.P Jayaram, learned counsel for the petitioner and Smt.Resmi K.M, learned senior Government Pleader for the respondents.

3. As noticed first above, amounts were due from the petitioner towards Abkari dues for the period 2000-2001. For recovery of the dues, revenue recovery proceedings were initiated against 1.89 acres of property belonging to the petitioner, situated at Kulukkallur Village. Though the property was put in auction in the said proceedings on various occasions, there were no bidders. Finally, in terms of the provisions of the Revenue Recovery Act, the Government purchased the property as bought-in-land on 26.03.2003. The sale was confirmed by the

Sub Collector, Ottapalam on 22.09.2004. The Amnesty Scheme relating to the Abkari dues for the period 2000-2005, on which the petitioner claims benefit, was brought in only in the year 2013. According to the respondents, since the liability did not subsist after the property was purchased as a bought-in-land on 26.03.2003 and confirmed on 22.09.2004, the petitioner cannot raise any further claim for Amnesty Scheme. As on the date on which the petitioner sought the benefit of the Amnesty scheme, the liability did not subsist, is the contention.

4. It is to be noticed that, challenging the sale held in respect of the property the petitioner had filed a Revision Petition before the Government in terms of Section 83(2) of the Revenue Recovery Act. The petitioner had challenged the sale alleging material irregularities in the conduct of the sale. On the Revision Petition, the Government passed Ext P3 order dated 04.02.2008 directing the District Collector to re-auction the property. Though Ext P3 order does not, in so many words say that the sale held on 26.03.2003 was set aside, when the challenge against the sale is on the ground of material irregularity and an order is passed directing re-auction, it necessarily implies that the sale in question was set aside and a fresh sale is ordered. Therefore, the effect of Ext P3 order is that, the sale held on 26.03.2003 is set aside and the Abkari dues from the petitioner remains uncleared. It being so, declining the benefit of Amnesty to the petitioner on the ground that, the debt has already been satisfied by sale of the property on 26.03.2003 cannot be sustained. Whether the petitioner satisfies the other eligibilities, if any, for the benefit of Amnesty Scheme is a matter to be looked into by the authorities.

5. Relying upon Ext R3(e) Government Order, the learned senior Government Pleader would contend that the benefit of Amnesty and re-conveyance of the bought-in-land cannot be claimed in cases where five years have elapsed from the date of confirmation of sale. Evidently the said Government order does not apply to the case at hand since, as noticed above, the sale in respect of the petitioner's property was set aside as early as in the year 2008.

In the result, the Writ Petition is allowed. Ext P2 order of rejection of the petitioner's claim for Amnesty is quashed. The claim of the petitioner for the benefit of Amnesty Scheme shall be reconsidered by the authorities and fresh orders passed in terms of the Scheme.