

(2016) 02 KL CK 0098
In the High Court Of Kerala
Case No : W.P.(C) No. 26984 of 2012 (W)

M. Senthil Kalidas

APPELLANT

Vs

The Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 52, Section 52, Section 53, Section 53, Section 54, Section 54

Citation : (2016) 3 ILRKerala 551 : (2016) 2 KerLJ 564 : (2016) 2 KLT 349

Hon'ble Judges : A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : Harisankar V. Menon, Meera V. Menon and Mahesh V. Menon, Advocates, for the Appellant; Sudheesh Kumar, Spl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.K. Jayasankaran Nambiar, J.—1. The petitioner was a successful bidder in an auction conducted by the 4th respondent on 18.07.2009 of properties comprising of 0.2833 hectares in Re-Sy. No. 22/3 and 0.3237 hectares in Re.Sy. No. 24/2 of Muthalamada-II Village in Chittur Taluk. The auction was conducted for the purposes of realisation of an amount of Rs. 1,12,14,099/- which was due from Sri. M. Abdul Wahab towards sales tax dues for the assessment year 2001-2002. It would appear that the properties belonging to the said Sri. Abdul Wahab were put up for sale on 18.07.2009 on which date 7 persons, including the petitioner, participated in the auction sale and the petitioner turned out to be the highest bidder for an amount of Rs. 2,77,000/-. The petitioner subsequently paid the entire bid amount to the revenue account by challans dated 22.07.2009 and 13.08.2009. In the writ petition, the petitioner is aggrieved by the steps taken by the respondents to cancel the sale of the properties in favour of the petitioner. It is his case that, even before the sale in his favour could be confirmed in accordance with Section 54 of the Revenue Recovery Act, the 4th respondent cancelled the sale and this prompted the petitioner to approach this Court

through a W.P(C). No. 21369 of 2010 which was disposed by judgment dated 23.07.2010 setting aside the order of cancellation and directing the respondents to take a fresh decision on merits, after hearing the petitioner. Thereafter, the 4th respondent heard the petitioner and forwarded the files relating to the auction sale to the 1st respondent, who was the authority competent under the Revenue Recovery Act to confirm the auction sale. By Ext. P1 order, the 1st respondent found that the property auctioned in favour of the petitioner was for a sum of Rs. 2,77,000/-, as against the price of Rs. 10,84,520/-, fixed by the Government for the said property based on a report submitted by the Senior Superintendent. The 1st respondent, therefore, cancelled the auction sale conducted in favour of the petitioner and ordered a resale of the property by complying with the formalities under the Revenue Recovery Act. Aggrieved by Ext. P1 order of the 1st respondent, the petitioner preferred a revision before the 2nd respondent. By Ext. P2 order of the 2nd respondent, the revision petition was dismissed, inter alia, observing that the 1st respondent was clearly convinced that the value of the property was far below the market rate and to confirm the sale in favour of the petitioner would result in the petitioner gaining a windfall and the Government suffering substantial losses. A further revision petition preferred by the petitioner before the 3rd respondent also did not meet with any success and by Ext. P4 order of the 3rd respondent, the said revision was dismissed by observing that the sale price fixed in respect of the petitioner was not justifiable since the market value of the property was much higher than the value at which the property was sold to the petitioner. In the writ petition, the petitioner impugns Exts.P1, P2 and P4 orders of the 1st, 2nd and 3rd respondents respectively.

2. A counter affidavit has been filed by the 2nd respondent wherein the orders passed are sought to be justified for the reasons contained therein. It is stated that, the value fixed by the Government for the property was substantially higher than the price at which it was eventually sold in the auction to the petitioner, and therefore, confirming the said sale would result in a great loss to the State Exchequer.

3. I have heard the learned counsel for the petitioner and also the learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, the 1st, 2nd and 3rd respondents have, in Exts.P1, P2 and P4 orders, consistently taken the stand that the auction sale in favour of the petitioner could not be confirmed because the price at which the properties were sold to the petitioner was substantially lower than the market value determined by the Government for the properties in question. No doubt, the learned Government Pleader would vehemently contend that in terms of Section 50 of the Revenue Recovery Act, it was obligatory on the part of the 4th respondent on the first date of sale, on finding that the highest bid was for an amount less than the amount that was recoverable by the Government by

way of dues from the defaulter, to postpone the sale to another date, which was not later than 60 days from the date of the first sale. It is his contention that, it was in exercise of this power under Section 50 that the respondents acted while cancelling the sale in favour of the petitioner. He would place reliance on the decision of this Court in *Varkey v. State of Kerala* [2008 (4) KLT 738] to substantiate his contention on merits. Per contra, the learned counsel for the petitioner would submit that none of the orders impugned in the writ petition referred to the provisions of Section 50 as providing the basis for the cancellation of the sale in favour of the petitioner. It is pointed out that, it is the consistent case of the respondents as noted from Exts.P1, P2 and P4 orders that the price realised through the sale in favour of the petitioner was substantially lower than the market value determined by the Government from the said properties and it was on this ground that the sale was set aside and not confirmed in favour of the petitioner. The learned counsel for the petitioner would rely on a Division Bench decision of this Court in *Subaida Sulaiman v. Hamsa* [, 1991 (2) KLT 158] which, inter alia, states that the mere inadequacy of the price fetched at the sale would not by itself be a sufficient ground to set aside the sale in favour of an auction purchaser.

On a consideration of the facts and circumstances of the case and submissions made across the bar, I am of the view that, the writ petition in its challenge against Exts.P1, P2 and P4 orders must necessarily succeed. In none of the orders impugned in the writ petition, do the respondents have a case other than that the value fetched at the sale in favour of the petitioner was less than the market value that was determined by the Government for the properties in question. The decision of the Division Bench of this Court in *Subaida Sulaiman v. Hamsa* [, 1991 (2) KLT 158] is authority for the proposition that, in exercise of a power under Sections 53 and 54 of the Revenue Recovery Act, the sale in favour of a purchaser can be set aside only on the grounds which are specified or can be read into the said Sections. In paragraph 6 of the said judgment, the legal proposition was succinctly stated as under:

"6. According to learned counsel for the appellant, there are three contingencies, where a sale can be set aside. They are: (1) on deposit of the amount under S. 52; (2) on a sale being held to be vitiated by material irregularity, or mistake or fraud in publishing or conducting it, provided, the applicant has sustained substantial injury thereof under S. 53; and, (3) the Collector has reason to think that the sale ought to be set aside under the proviso to S. 54 and in the last case the ingredients contemplated under S. 53, namely, material irregularity, mistake or fraud in publishing or conducting the sale, do not have any relevance. We are afraid we are unable to agree with this sweeping contentions. Ss. 52 to 54 constitute a scheme to enable a sale to be set aside for valid and proper grounds. S. 52 can be invoked where any person owning or claiming an interest in immovable property sold is ready to deposit the amount contemplated therein. S. 53 can be invoked on the ground of material irregularity or mistake or fraud in publishing or conducting the sale, if such an irregularity or mistake or fraud has

been brought to the notice of the Collector by way of an application. Even if a person interested in the property fails to file an application under S. 52 or S. 53 to set aside the sale, it is open to the Collector to set aside the sale, if he has reason to think that the sale ought to be set aside. Even in a case, where application has been filed, but the grounds urged in the application have not been proved, but some other ground emerges from the records, and that ground is sufficient to set aside the sale, it is open to the Collector to set aside the sale by virtue of the proviso to S. 54. The proviso to S. 54 does not indicate for what reasons or on what ground or under what circumstances the Collector can set aside the sale. It cannot be said that the Legislature intended that the Collector can set aside the sale for no reason, or for any irrelevant reason. It is difficult to accept that the Legislature did not intend to prescribe any guidelines in the matter of exercise of power conferred on the Collector under the proviso to S. 54. Reading Ss. 53 & 54 together, and it appears to us that the provision being a part of the scheme in the matter of setting aside the sale, they have to be read together, the picture becomes clear and the Collector can set aside the sale under the proviso to S. 54, only if he has reason to think that the sale ought to be set aside for the reasons mentioned in S. 53. De hors the reasons mentioned in S. 53, the Collector has no jurisdiction either under S. 53 or under the proviso to S. 54. The observations, we have quoted from the decision in Joseph's case, with respect, do not lay down the correct law."

It is apparent, therefore, that the grounds on which the Collector can set aside a sale under Section 54 have to be substantially the same as the grounds available for setting aside the sale under Section 53 of the Kerala Revenue Recovery Act. It is also evident from the said decision that the mere inadequacy of the price fetched at the sale would not by itself be sufficient reason to set aside the sale. Thus, going by the principles laid down in the decision referred above, as also by the reasons stated in the orders impugned in this writ petition, I am of the view that, the said orders cannot be legally sustained, I, therefore, quash Exts.P1, P2 and P4 orders and allow this writ petition with consequential reliefs to the petitioner.