
(2014) 11 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 17199 of 2011 (Y)

Mahin Aboobacker

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

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

Citation : (2014) 11 KL CK 0028

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

Bench : Single Bench

Advocate : N. Subramaniam, M.S. Narayanan and P.T. Girijan, Advocate for the Appellant; Sunitha Vinod, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is a person who participated in a public auction conducted under the provisions of the Kerala Revenue Recovery Act.

2. The brief facts necessary for the disposal of the Writ Petition are as follows:

A partnership firm by name M/s. Maharaja Timbers, an assessee under the Kerala General Sales Tax Act, had defaulted in payment of sales tax to the tune of Rs. 99,01,479/-. Proceedings under the Revenue Recovery were therefore initiated against the said firm and those proceedings resulted in an extent of 6.037 cents of property in Survey No. 561/1 of Pullootu Village, Kodungallur Taluk, being brought to auction sale in terms of Kerala Revenue Recovery Act. The valuation done in respect of the property by the Village Officer showed that the mahazar value of the property was Rs. 28,340/- per cent and that the market value was Rs. 36,438/- per cent. Insofar as there was a building also on the said property, the Assistant Executive Engineer, PWD, was called upon to value the building and he arrived at a figure of Rs. 3,39,801/- as representing the value of the building in the property. Thus, taking into account the land value, as well as the value of the building, the total value of the property for sale was taken as Rs. 5,59,777/-. This is evidenced by Ext. P1 valuation report that

was prepared as on 28.02.2007. Thereafter, the respondents notified the property for sale. Ext. P2 is the sale notice issued in that connection. In the sale that followed on 2.3.2007, the petitioner was the highest bidder at Rs. 6,49,588/-. Pursuant to the sale, the petitioner, by Ext. P3 dated 2.3.2007 effected the initial payment that was contemplated under the Revenue Recovery Act and thereafter, by Ext. P4, on 30.03.2007, paid the balance amount that had to be paid. When, despite the payments effected by the petitioner, no steps were forthcoming from the respondents to confirm the sale in his favour, the petitioner approached this Court through Writ Petition No. 13409/2007, which was disposed of by judgment dated 17.4.2007, directing the District Collector to pass orders on the application preferred by the petitioner for confirmation of the sale. It would appear that the District Collector forwarded this application to the Revenue Divisional Officer for passing appropriate orders. By Ext. P5 Order dated 30.06.2007, the Revenue Divisional Officer set aside the sale on the ground that the auction price fetched for the property was less than the market price. Challenging Ext. P5 order of the R.D.O., the petitioner once again approached this Court with Writ Petition No. 29900/2007, which was disposed of by Ext. P6 judgment of this Court directing the District Collector to consider the appeal against Ext. P5 Order of the R.D.O., leaving it open to the District Collector to invoke the powers under section 54 of the Kerala Revenue Recovery Act also, if found necessary. By Ext. P7 Order dated 7.7.2009, the District Collector considered the appeal preferred by the petitioner and passed orders rejecting the appeal and confirming the order of the R.D.O. The petitioner therefore, once again approached this court challenging Ext. P7 order of the District Collector. By Ext. P8 judgment, this Court relegated the petitioner to the revisionary remedy under section 83 of the Kerala Revenue Recovery Act. Pursuant thereto, the matter was considered by the Land Revenue Commissioner, who, after hearing the petitioner, proceeded to reject the Revision Petition and confirm the orders of the lower authorities by Ext. P9 order dated 20.02.2010. Although the petitioner preferred a further revision against Ext. P9 order before the Government, the same did not yield any positive result and the said revision petition was also rejected by the Government by Ext. P10 Order dated 21.03.2011. In the Writ Petition the petitioner impugns Exts. P5, P7, P9 and P10 orders.

3. A counter affidavit has been filed on behalf of the 1st respondent wherein the orders passed by the authorities under the Kerala Revenue Recovery Act are sought to be justified on the contention that the Collector had ample powers, under Section 54 of the Kerala Revenue Recovery Act, to pass orders taking into account the abnormally low value fetched for the property at the auction that was conducted. Reliance is also placed on judgment reported in 1990 (2) KLT 289, in support of the aforesaid contention.

4. I have heard Sri. N. Subramaniam, learned counsel appearing for the petitioner and the learned Government Pleader appearing on behalf of the respondents.

5. On a consideration of the facts and circumstances of the case, as also the submissions made across the Bar, I note that the challenge in the Writ Petition against Exts. P5, P7, P9 and P10 orders is essentially as regards the powers available to the District collector, while passing orders by invoking section 54 of the Kerala Revenue Recovery Act. For a better understanding of the scope of the powers available to the District Collector under section 54 of the Kerala Revenue Recovery Act, it would be apposite to notice the provisions of sections 53 and 54 of the Kerala Revenue Recovery Act. The said provisions read as follows:

"53. Application to set aside sale on ground of material irregularity, mistake, etc.

- (1) At any time within thirty days from the date of the sale of immovable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake fraud in publishing or conducting it; but, except as otherwise hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

(2) If the application is allowed. The Collector shall set aside the sale and may direct a fresh sale.

54. Order confirming or setting aside sale - On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made under Section 52 or Section 53 or if any such application has been made and rejected, the Collector shall make an order confirming the sale: Provided that if the Collector has reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale."

6. It will be seen from a conjoint reading of sections 53 and 54 that under section 53, it is open to a person to prefer an application before the Collector to set aside the sale on the ground of some material irregularity or mistake or fraud in publishing or conducting the sale. On the application being so filed, the Collector is to consider the said application and either allow the application or reject it. Section 53 also mandates that no sale shall be set aside on the ground of any irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof. As against the provisions of Section 53, Section 54 empowers the Collector to act in a situation where either there is no application filed to set aside the sale under Sections 52 or 53, or if any such application that has been made has been rejected by the lower authorities. In either of these events, the Collector is obliged to pass orders confirming the sale. By a proviso to section 54, however, the Collector is vested with the power to set aside a sale notwithstanding that no application has been filed for setting aside the sale, or on grounds not contained in the application filed for setting aside the sale. In those events the Collector may, after recording his reasons in writing, set aside the sale if he has reason to

think that the sale ought to be set aside. The scope of the Collector's power to act in terms of the proviso to section 54 has come up for consideration before a Division Bench of this Court in Smt. Subaida Sulaiman Vs. Hamza and Others, . After analysing the provisions of sections 53 and 54, the Division Bench held as follows at paragraph 6 of the judgment:

"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 and 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."

7. It is seen therefore, that as per the judgment of the Division Bench noted above, the Collector, in exercise of his powers under the proviso to section 54, and acting in a situation where there has been no application filed to set aside a sale, can still set aside the sale only on the grounds that are expressly

mentioned in section 53 of the Act. Thus, other than pursuant to a finding regarding existence of any material irregularity or mistake or fraud in publishing or conducting the sale, it is not open to the Collector to act on other grounds or reasons for setting aside the sale.

8. In the instant case, I note that all the authorities have proceeded to set aside the sale on the ground that the sale price fetched at the auction was less than the market value of the property in question. Going by the judgment of the Division Bench, noted above, this obviously cannot be a reason for setting aside the sale, invoking the provision of section 54 of the proviso thereof.

9. It might also be relevant to note, in the instant case, that the price quoted by the petitioner for the property in 2007 was Rs. 6,49,588/-, which was much above the value of Rs. 5,59,577 that had been fixed for the property. Under these circumstances, even if the authorities under the Kerala Revenue Recovery Act were to feel that the price offered by the petitioner was substantially lower than the market value of the property, they ought to have acted only on valid material, considering that the burden of proof in such a situation was on them. In the orders impugned in the Writ Petition, I do not find such an exercise have been done by the authorities under the Kerala Revenue Recovery Act prior to taking a decision to set aside the sale in favour of the petitioner.

10. Thus, in any view of the matter, the impugned orders cannot be legally sustained. Accordingly, I quash Exts. P5, P7, P9 and P10 orders and direct the 3rd respondent District Collector to take immediate steps to confirm the sale conducted on 02.03.2007 in favour of the petitioner, at any rate within a period of one month from the date of receipt of the copy of this judgment.