(2012) 06 KL CK 0247

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11916 of 2012

Mathew Sam APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 49(3), 52, 53, 54, 83(1)

Citation : (2012) 3 KLJ 27 : (2012) 3 KLT 251

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : T.V. George, for the Appellant; P.A. Raziya, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon

1. The auction cancelled, forfeiting the initial bid amount satisfied by the petitioner for non-satisfaction of the balance amount, invoking the power and jurisdiction under S. 49(3) of the Kerala Revenue Recovery Act, is the issue involved in this Writ Petition. The case of the petitioner is that, on coming across the sale notified by the revenue authorities, the petitioner participated in the auction and bid the concerned property in the auction held on 18.3.2010. In tune with the relevant terms of the notification and the provisions of law, the petitioner deposited 15% of the bid amount and was to satisfy the remaining 2/3rd within thirty days. But, since the mother of the petitioner was hospitalised, he could not effect the balance payment within time. Later, when the petitioner approached the 4th respondent on 22.4.2010 with the balance amount, it was refused to be accepted, saying that there was a delay of ''three'' days. Since the representation preferred by the petitioner, explaining the factual position did not turn to be fruitful, he approached this Court by filing W.P.(C) No. 18495 of 2010.

2. During the pendency of the above proceedings, the factual position as to the subsequent turn of events was brought to the notice of the higher authorities

from the office of the 4th respondent. After considering the report submitted in this regard and the instructions given, the representation preferred by the petitioner was considered and the auction was cancelled, as per Ext. P3 order dated 28.06.2010. Challenging the said proceedings, the petitioner approached this Court by filing W.P. (C) No. 22256 of 2010, which was disposed of, as per Ext. P4 judgment dated 5.08.2010, relegating the petitioner to avail the alternate remedy, under S. 83(1) of the Kerala Revenue Recovery Act. Pursuant to the above verdict, the petitioner preferred Ext. P5 Revision Petition before the second respondent, specifically contending that, before cancelling the sale, the petitioner was never given any notice and as such, the sale ought not to have been cancelled without notice, in view of the law declared by a Division Bench of this Court in Captain v. District Collector (1999 (2) KLT 547). The delay occurred on the part of the petitioner was however conceded therein, in effecting the balance payment within 30 days from the date of auction.

3. After considering the case projected by the petitioner, in the light of admitted facts and also the relevant provisions of law, the second respondent observed that there was absolutely no merit in the contentions and accordingly, the Revision Petition was dismissed as per Ext. P6 order dated 31.8.2011, which was subjected to further challenge by filing Ext. P7 (Second Revision) under S. 83(2) of the Act, by approaching the Government. The Government observed that there was no provision in the Kerala Revenue Recovery Act to condone the delay in making the balance payment and as such, it Was not liable to be entertained. Interference was declined accordingly, as per Ext. P8 dated 3.3.2012, which forms the subject matter of challenge in this Writ Petition.

4. Heard the Learned Counsel for the petitioner as well as the learned Sr. Government Pleader, at length.

5. The Learned Counsel for the petitioner submits that the respondents do not have any case with regard to the genuineness of the claim projected by the petitioner. It is stated that, there was no proper demand by the respondents, asking the petitioner to deposit 2/3rd of the auction price, within the specified time of 30 days. It is further asserted that there was absolutely no irregularity in the sale proceedings and there was no other bidder offering a higher price than the price quoted by the petitioner. Considering the totality of the circumstances, the respondents ought not to have declined the reliefs sought for, submit the Learned Counsel.

6. The learned Sr. Government Pleader, however, submits that the merits of the case mooted by the petitioner can be considered, only if there is an enabling provision to condone the delay. The factual position that there was delay on the part of the petitioner stands conceded. The provision is categoric to the effect that, on coming out to be the successful bidder and on remitting 15% of the auction amount, the balance is liable to be satisfied within ''30'' days. Unlike other statutes, there is no provision in the Kerala Revenue Recovery Act to condone the delay or to grant further extension of time to satisfy the balance

sale price and as such, the impugned orders are not assailable under any circumstance.

7. There is no dispute with regard to the absence of any enabling provision in the Kerala Revenue Recovery Act, for extending the time to satisfy the balance amount, after making the initial deposit of 15% in the auction sale.

8. Section 49(3) of the Kerala Revenue Recovery Act reads as follows:

A sum of money not less than fifteen percent of the bid amount of the immovable property shall be deposited by the person declared to be the purchaser with the officer conducting the sale immediately after such declaration and where the remainder of the purchase money is not paid within thirty days of the date of the sale, the money so deposited shall be liable to forfeiture."

It is clearly stipulated in the above provision, that if the balance is not deposited within 30 days, the amount already deposited by the bidder shall be liable to forfeiture by the Government. Non-satisfaction of the balance amount itself gives a substantive right to the State to have the amount in deposit to be forfeited and this vested right is not under challenge in this Writ Petition; nor is there any challenge against the ''vires'' of the said provision, contending that the prescription under S. 49(3) is arbitrary or unconstitutional in any manner.

9. With regard to the alleged non-service of the demand or notice for the balance amount, there is a specific case for the respondents that such a demand/notice was issued to the petitioner on 22.03.2010, as referred to in Ext. P3. That apart, a ''revenue sale'' is to be conducted in accordance with the procedure prescribed under the Kerala Revenue Recovery Act. The statute itself says about the modalities to be pursued, on coming out to be the successful bidder. The liability to satisfy 15% of the bid amount on the date of sale is by virtue of the enabling provision in the statute itself and not on the basis of any demand. Same is the position with regard to the liability to satisfy the balance amount, which is also taken care of by the very same Statute itself and never based on any demand. This being the position, the idea and understanding of the petitioner that the proceedings are bad for not raising proper demand by the respondents, asking the petitioner to deposit the balance 2/3rd of the auction price within 30 days, is thoroughly wrong and misconceived.

10. With regard to the issue as to the non-service of notice before cancellation of the auction, true, there is a decision rendered by a Division Bench of this Court in Captain v. District Collector (1999 (2) KLT 547) holding that the sale shall not be cancelled, unless a proper notice is issued to the auction purchaser. The facts and circumstances of the said case are entirely different from the issue projected in the present Writ Petition. To put it more clear, the decision rendered by this Court in the above case was in respect of a sale conducted with reference to a cause of action relating to S. 52 / 53 of the Kerala Revenue Recovery Act. S. 52 deals with a situation, where the sale can be sought to be set aside by any person owning or claiming an interest in the immovable property sold under the

Act (need not be a defaulter himself), if the amount as specified is deposited within 30 days of sale. Coming to S. 53, this is a provision for setting aside the sale on the ground of material irregularities/mistakes/fraud, in the sale. The vital distinction between Ss. 52 and 53 is that setting aside the sale under S. 53 is on the basis of irregularities/mistakes/fraud in the sale, whereas setting aside the sale under S. 52 need not necessarily involve any irregularity at all. Proviso to S. 54 speaks about the power of the Collector to set aside a sale in yet another circumstance, stipulating that he can do so, if he has reason to think that the sale ought to be set aside notwithstanding that no application was made under S. 52 or 53, or on grounds other than those alleged in any application which has been made and rejected, after recording his reasons in writing. The present case is not coming in any of the above provisions, but deals with a situation separately covered under S. 49(3).

11. As mentioned herein before, S. 49(3) deals with a situation, where the contingency as contemplated therein (non-deposit of the balance bid amount within thirty days), is taken care of by the provision itself. The necessity to deposit 15% of the bid amount then and there, on turning out to be the successful bidder, the necessity to deposit the balance amount within 30 days thereafter and the vested right of the State to have the initial deposit forfeited, if the balance amount is not deposited within the time stipulated are clearly provided under the statutory provision itself. This provision stands entirely on a different pedestal and is not related to the course and procedure under Ss. 52 or 53 of the Act. The proceedings under S. 49(3) do not contemplate issuance of any notice at all. It is declared accordingly. Going by the materials on record, it is seen that the factual and legal position have been meticulously analysed by the concerned authorities at three different levels, initially by the Tahsildar who conducted the sale; then by the second respondent invoking the power under S. 83(1) of the Act and thereafter by the Government under S. 83(2). this Court finds that Exts. P3, P6 and P8 are perfectly within the four walls of law, which do not call for any interference.

The Writ Petition is devoid of any merit. It is dismissed accordingly.

