(2012) 07 KL CK 0234

In the High Court Of Kerala

Case No : W.A. No. 1340 of 2012 in WPC/11916 of 2012

Mathew Sam APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:
Kerala Revenue Recovery Act, 1968 — Section 49

Citation : (2012) 07 KL CK 0234

Hon'ble Judges : Manjula Chellur, J;A.M. Shaffique, J

Bench : Division Bench

Advocate : T.V. George, for the Appellant; Girija Gopal, for the Respondent

Final Decision : Dismissed

Judgement

Manjula Chellur, Ag. CJ.

1. Heard learned counsel for the appellant. It is not in dispute that the present appellant was the highest bidder in the auction sale conducted by the 4th respondent on 18-3-2010 in accordance with the Kerala Revenue Recovery Act of 1968, ("the Act" for short). According to the appellant, though he was able to deposit 15% of the bid amount on the date of auction, he could not remit the balance amount within 30 days from 18-3-2010 on account of the ailment of his mother who was in hospital. He offered the amount to be remitted on 22-4-2010 i.e. with a delay of three days. As there was delay in depositing the amount in terms of sub Sec. (3) of Sec. 49, the officer refused to receive the money which resulted in the petitioner/appellant approaching this Court. Without any positive direction, the representation of the appellant was directed to be considered on the basis of the direction at Ext.P4. This appellant approached the revisional authority but the same came to be dismissed. The reason for dismissal is want of no provision to extend the time limit prescribed under sub Section (3) of Section 49 of the Act.

2. Aggrieved by the same, he again approached the Revenue Secretary who also

dismissed the revision on the similar lines. According to the petitioner, the said opinion of the authorities concerned both at Exts. P6 and P8 are erroneous. Therefore, he approached the learned Single Judge for a writ of mandamus.

3. The learned Single Judge after referring to various provisions, ultimately opined that the reliance placed on Captain v. District Collector - 1999 (2) KLT 547 is totally incorrect as the facts in the said decision are completely different from the present case. However, the Writ Petition came to be dismissed. Aggrieved by the same, the appellant is before us.

4. The main contention of the appellant is by virtue of sub Section (5) of Section 49 the words "omit to deposit" indicate an opportunity of being heard to be afforded to the purchaser. Therefore, a reading of sub-sections (3) and (5) together would only lead to a conclusion that discretion lies with the officer concerned to extend the time depending upon the circumstances in a particular case. According to the appellant, on account of the ailment of his mother, he was not able to deposit the balance bid amount. Therefore, it is a genuine reason for non-compliance of deposit within 30 days. The further contention of the appellant is that the delay was only three days. Therefore, it has to be condoned by accepting the balance bid amount. Sub Section (3) of Sec. 49 reads as under:-

(3) A sum of money not less than fifteen per cent 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 sale, the money so deposited shall be liable to forfeiture". A reading of sub Section (3) of Sec. 49 would only indicate that it is incumbent upon the purchaser not only to deposit 15% of the bid amount on the date of sale but also to deposit the balance amount within 30 days from the date of sale, otherwise the amount deposited shall be forfeited.

Having regard to the rigour imposed in the said Section i.e. forfeiture of the initial deposit, it would only mean that the purchaser has to compulsorily deposit the balance amount within 30 days and there is no exercise of discretion in extending the time to deposit the money. Sub Section (5) reads as under:

(5) Where the purchaser refuses or omits to deposit the said sum of money or to complete the payment of the remaining purchase money, the property shall be re-sold at the expense and hazard of such purchaser, and the amount of all loss and expense which may attend such refusal or omission shall be recoverable from such purchaser in the same manner as arrears of public revenue due on land. Where the immovable property is sold at the second sale for a higher price than at the first sale, the difference shall be the property of the defaulter.

A reading of sub Section (5) also does not give scope for any other interpretation than the above. There is no discretion left to seek extension of time which could be granted by the officer concerned. The procedure has to be strictly followed as property of the owner would be sold on account of his default. Therefore, the purchaser who purchased the property in auction also must strictly comply with the provisions contemplated under Sec. 49. If the purchaser fails to comply with the procedure and deposit the amount within the time limit, the owner would be entitled to remit the dues and save his property. In that view of the matter, we are of the opinion that the provisions of Sub Section (3) has to be strictly complied with by the purchaser and no discretion is reserved to any authority.

In that view of the matter, we are of the opinion, nothing remains for interference, and accordingly, this appeal is dismissed.