(2022) 08 KL CK 0087

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10055 Of 2022

Mohanachandran Nair Balakrishna Pillai APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 6
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 26E

Citation : (2022) 08 KL CK 0087

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : K.B.Pradeep, Harisankar R, Muhammed Rafeeque, George Thomas, Amal George

Final Decision : Allowed

Judgement

T.R. Ravi, J.

1. For the realisation of amounts due from M/s.St.Antony's Motors India Ltd. and St.Antony's Bi-wheelers Pvt. Ltd., the additional 3rd respondent invoked the provisions of the Security Interest (Enforcement) Rules, 2002 and brought to sale two properties in Vijayapuram Village situated in several survey numbers. The petitioner purchased the properties that were brought to sale and the sale certificates dated 4.1.2022 regarding 28.98 Ares of land and 44.606 Ares of land respectively are produced and marked as Exts.P1 and P2. The encumbrance certificates with respect to the properties noted an attachment over the property by the Additional District Judge, effected on 30.1.2017 on an application made by M/s Sundaram Finance Ltd. as entry No.13, and a revenue recovery request by the Tahsildar, Kottayam on 25.8.2017. Ext.P3 is the encumbrance certificate dated 20.1.2022. The sale deeds pertaining to Exts.P1 and P2 sale certificates were executed and true copies of the same are produced as Exts.P4 and P5. When presented for registration, the 2nd respondent issued a notice on

16.3.2022 declining registration on the ground that there are encumbrances that need to be set right prior to registration of the sale deeds. Ext.P6 is the letter refusing registration.

2. According to the petitioner, the properties covered by Ext.P4 sale deed were mortgaged to the additional 3rd respondent on 11.9.2010 and the properties covered by Ext.P5 sale deed were mortgaged to the Bank on 22.7.2004. The above facts are evidenced by Ext.P8 certificate dated 5.4.2022 issued by the additional 3rd respondent. The counsel for the petitioner submits that the adverse entries in Ext.P3 are made much after the mortgage was created in favour of the additional 3rd respondent and the assessment order based on which the revenue recovery proceedings were initiated was dated 23.1.2012, much after the mortgage. It is contended that the revenue recovery proceedings which were initiated in 2017 cannot in any way affect the mortgage rights held by the additional 3rd respondent, which has been sold in an auction conducted as per the provisions of the Statute.

3. The Special Government Pleader (Taxes) appearing for respondents 1, 2, and 4 submits that the date of the assessment orders is immaterial and that going by Section 6 of the Kerala Value Added Tax Act, the charge to tax comes to the fore when the sale takes place. It is submitted that once the return is filed, the amount has become due. Reliance is placed on the decision in Hamsa v. Assistant Commissioner [2008 (3) KLT 180] and Cochin Condiments Pvt. Ltd. v. District Collector & Ors [2008 SCC Online Kerala 219]. It is further submitted that under Section 21, what is required is the self-assessment and hence no contention of a better charge can be raised, merely because an assessment order was issued much after the period for which the tax is charged. The judgment in Medineutrina Pvt.Ltd. (Company) v. District Industries Centre (DIC) & Ors. [AIR 2021 Bombay 135] is relied on to state the effect of Section 26E of the Securitisation Act. In reply, the counsel for the petitioner submits that the contention of the State that there were amounts in arrears towards tax cannot in any way affect the registration of the property, particularly when the demand for such arrears by the State is like a covenant which runs with the land and the registration will not in any way affect the rights of the State. It is submitted that as far as Ext.P5 sale deed is concerned, the properties involved therein were mortgaged on 22.7.2004, and hence arrears of tax for the period 2005-2006 based on the assessment order dated 23.1.2012 cannot in any way affect the said document or create a charge better than the mortgage. Regarding Ext.P4 document, the petitioner submits that since the mortgage was created on 11.9.2010, after the tax became due, he may be permitted to move the Government for payment of the arrears of tax and thereafter move for registration of the document.

4. Having heard the counsel on either side, I find that the submission made by the counsel for the petitioner is justified. As far as Ext.P5 document is concerned, the State cannot have a claim that the sale should be subject to their rights since

the mortgage was prior to the date on which the tax became due. As such, the petitioner is entitled to the reliefs claimed insofar as the said document is concerned. Regarding the sale deed Ext.P4 in which the mortgage was on 11.9.2010, the respondents cannot have any objection to the petitioner approaching the Government for payment of the dues and claiming registration thereafter.

5. In the above circumstances, the writ petition is allowed in part. Ext.P6 is set aside. There will be a direction to the 2nd respondent to accept Ext.P5 sale deed as and when presented and to register the same without any entries in the sale deeds regarding the attachments and encumbrances mentioned in Ext.P6 or otherwise. As far as Ext.P4 sale deed is concerned, the petitioner is directed to approach the 1st respondent for settling the claims of the additional 4th respondent against the erstwhile owners of the property and to approach the 2nd respondent thereafter for registration of the document. The petitioner shall approach the 1st respondent within one week from the date of receipt of a copy of this judgment and the 1st respondent shall pass necessary orders within one month of the receipt of the request from the petitioner. Once Ext.P4 document is presented before the 2nd respondent after settling the dues, the same shall also be registered by the 2nd respondent without any entries in the sale deed regarding the attachments and encumbrances mentioned in Ext.P6.