
(2005) 12 KL CK 0085
In the High Court Of Kerala
Case No : W.A. No. 2182 of 2005

P. Gopalakrishnan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 49, 49(2), 49(4), 52, 53

Citation : (2005) 12 KL CK 0085

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Varghese C. Kuriakose and Praveen K. Joy, for the Appellant; V.K. Beeran, A.A.G., P.V. Lonachan, Government Pleader for Respondents Nos. 1, 3 and 4, V.B. Unniraj, for Respondent No. 2, V. Giri, Babu Karukapadath and E.M. Abdul Khader for Respondent No. 7 and S. Ramesh Babu, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Writ Petitioner challenges the legality of the revenue sale conducted at the instance of the Kerala Financial Corporation on 17-12-2004 and the consequential orders passed in pursuance thereto in these proceedings.

2. Petitioner submits that he is the owner of a four storeyed commercial building situated in 23 cents of land in survey number 90/3B and 91/9B of Ottappalam JJ Village in Palakkad district, located at the heart of Ottappalam Town. The building has a built in area of 28,000 sq.ft. State Bank of India, Kerala State Financial Enterprises etc. are occupying the building as tenants. Petitioner had availed of a loan of Rs. 60 lakhs from the Kerala Financial Corporation in March 2000 for renovation of the shopping complex which had to be repaid in 22 equal monthly instalments commencing from 10-6-2000 to 10-3-2002. For availing of the loan he had mortgaged the above-mentioned property and also 4 acres and 10 cents of garden land with residential building in survey number 46/6, 48/1, 2/14 of Vaniyamkulam Village in Ottappalam Taluk. Petitioner submits that he had remitted Rs. 42,81,684 towards loan and interest upto 11-8-2004 and the balance loan amount outstanding as on 11-8-2004 was Rs. 65,35,934 including

interest and penal interest debited in the account. Petitioner was served with a notice by the second Respondent, Kerala Financial Corporation, demanding a sum of Rs. 74,15,544. When coercive proceedings were initiated, Petitioner approached this Court by filing W.P.(C) No. 5529 of 2004 which was disposed by a learned Single Judge of this Court directing the K.F.C. to consider his representation for One Time Settlement. Petitioner submitted several proposals before the K.F.C. for repayment of the balance amount. State Bank of India, the tenant of the Petitioner's building, also submitted a proposal to the K.F.C. to wipe off the loan account. Further rent received from the State Bank of India and Kerala State Financial Enterprises who are the tenants of the Petitioner's building was also credited to the Petitioner's account by the K.F.C. However, hasty steps were taken to some how or other bring the valuable commercial property to sale, with some ulterior motive by the additional 8th Respondent.

3. The first sale notice dated 15-1-2004 was issued by the Deputy Collector (R.R.) u/s 49(2) of the Revenue Recovery Act claiming a total amount of Rs. 58,63,210 with interest. Twenty three cents of land, building and improvements in survey No. 90/3B and 91/9B of Ottappalam "Village and 4 acres and 15 cents of property with building and improvements situated at Vaniyamkulam were included in the sale notice. Date notified for sale was 20-2-2004. Sale did not materialise and yet another sale notice dated 12-7-2004 u/s 49(2) of the Revenue Recovery Act was issued as per which Ottappalam Town property alone was sought to be sold on 17-9-2004. Sale did not materialise since there were no bidders. Later another sale notice dated 27-9-2004 was issued u/s 49(4) of the Act and the sale was scheduled to be held on 8-10-2004. Sale did not materialise on that date also since there was no bidder. Yet another notice dated 15-10-2004 was issued u/s 49(4) for the conduct of sale on 29-10-2004. Notice dated 22-10-2004 was issued u/s 49(4) notifying the sale date as 29-10-2004 which was published in the Mathrubhoomi daily dated 22-10-2004. On 29-10-2004 also no bidders turned up and the sale could not be held. Later another notice dated 15-11-2004 was issued u/s 49(2) stating that sale would be effected on 17-12-2004 and the sale was effected on the said date legality of which is under challenge in these proceedings.

Procedure for sale of immovable property Procedure for sale of immovable property is laid down in Section 49 of the Kerala Revenue Recovery Act, 1968. The Section in its entirety is reproduced below for easy reference.

49. Procedure for sale of immovable property.--Immovable property attached under this Act may be sold in accordance with the following provisions, namely:

(1) The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector or the authorised officer having jurisdiction over the village in which the property is situate.

(2) Previous to the sale, the Collector or the authorised officer, as the case may be, shall issue a notice thereof in English and in Malayalam and also in the

language of the locality where such language is not Malayalam, specifying:

- (i) the name of the defaulter;
- (ii) the position and extent of the land and of his buildings and other known improvements thereon;
- (iii) the amount of revenue assessed on the land, or upon its different Sections;
- (iv) the amount for the recovery of which the sale is ordered;
- (v) the proportion of the public revenue due during the remainder of the current financial year; and
- (vi) the time, place and conditions of sale.

The notice shall be duly served and published at least thirty days before the date of sale.

(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.

(4) The officer conducting the sale may, in his discretion, adjourn the sale to a specified day and hour, recording his reasons therefor. If the date to which the sale is so adjourned is within sixty days of the original sale, notice of the adjourned sale shall be published in the taluk and village offices concerned, in the office of the local authority within whose jurisdiction the property is situate and also on some conspicuous part of the immovable property brought to sale. If the date of the adjourned sale is beyond sixty days of the original sale, fresh notice shall be served and published as if it were the original sale.

(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 expenses 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.

(6) All persons bidding at a sale shall be required to state whether they are bidding on their own behalf or as agents, and in the latter case to deposit a written authority signed by their principals. If such requisition be not complied with, their bids shall be rejected.

We have to consider whether the sale effected on 17-12-2004 is in accordance with the above-mentioned statutory procedure. First sale notice dated 15-1-2004 was issued u/s 49(2) of the Act and the sale was scheduled to be held on 12-4-2004. Next sale notice was dated 12-7-2004 issued u/s 49(2) of the Act

and later another notice was issued on 27-9-2004. Both the original sale notices dated 15-1-2004 and 12-7-2004 were u/s 49(2), hence we can reckon the notice dated 12-7-2004 as the original sale notice within the meaning of Section 49(4) read with Section 49(2) of the Act.

4. We are primarily concerned with the question whether sale notice dated 15-11-2004 issued u/s 49(2) of the Act by which sale was conducted on 17-12-2004 is legally valid and is in conformity with the statutory procedure prescribed u/s 49(2) read with Section 75 of the Act. Sale notice dated 15-11-2004 was admittedly issued u/s 49(2) of the Act. Section 49(2) states that previous to the sale, the Collector or the authorised officer, as the case may be, shall issue a notice thereof in English and in Malayalam and also in the language of the locality where such language is not Malayalam giving the details provided in Section 49(2)(i) to (vi). This notice shall be duly served and published at least 30 days before the date of sale. Mode of publication is provided in Section 75 of the Act, which states that notice is required to be published under the Act, the publication shall be made by affixture of a copy of the notice, or where it relates to immovable property on a conspicuous part of the property and by affixture of a copy of the notice on the office of the village to which and on the office of the local authority within whose jurisdiction the attachment or sale takes place. Files made available would show that sale notice was served on the defaulter's niece on 8-12-2004 for and on behalf of the defaulter. Sale notice was published in the Village Office, Ottappalam II and also at the Taluk Office on 16-11-2004. Sale notice was published in the Ottappalam Municipality on 18-11-2004. Files would show that defaulter was not available in the premises and hence notice was affixed on building number 660 to 667 on 26-11-2004. Section 49(2) read with Section 75 of the Act, which specifically provides that notice shall be duly served and published at least thirty days before the date of sale. Notice published at the Ottappalam Municipality on 18-11-2004 and the sale notice affixed on the building of the defaulter on 26-11-2004 do not satisfy the statutory requirement of giving notice thirty days before the date of sale i.e. on 17-12-2004. The sale conducted on 17-12-2004 was therefore illegal due to non-compliance with the procedure laid down in Section 49(2) read with Section 75 of the Act and hence vitiated due to material irregularity.

5. The sale conducted on 17-12-2004 is also vitiated due to non-compliance of Section 49(4) of the Act. Section 49(4) enables the officer to adjourn the sale to a specified date and hour recording his reasons therefor. If the date to which the sale is so adjourned is within sixty days of the original sale, notice of the adjourned sale shall be published in the taluk and village offices concerned, in the office of the local authority within whose jurisdiction the property is situate and also on some conspicuous part of the immovable property brought to sale. If the date of the adjourned sale is beyond sixty days of the original sale, fresh notice shall be served and published as if it were the original sale. Evidently, first limb of Section 49(4) would not apply because the adjourned date of sale i.e. 17-12-2004 is beyond sixty days of the original sale, i.e. 17-9-2004. Then we

have to examine whether the procedural requirements laid down in Section 49(4) have been satisfied in this case. We notice that the adjourned sale date was 17-12-2004 and that is, beyond sixty days of the original sale dated 17-9-2004 and therefore first limb of Section 49(4) would not apply, then necessarily we have to examine whether the procedural formalities prescribed under the second limb of Section 49(4) have been satisfied or not. Fresh notice u/s 49(2) read with Section 75 had to be issued so far as sale notice dated 15-11 -2004 also since the adjourned sale date i.e. 17-12-2004 was beyond sixty days of the original sale i.e. 17-9-2004. We have found the procedures laid down in Section 49(2) read with Section 75 have not been complied with by the revenue authorities. Sale notice dated 15-11-2004 did not satisfy the mandatory requirement of publication of sale notice within thirty days of the sale and also the procedure laid down u/s 75(1) of the Revenue Recovery Act. Affixture of notice of sale on 26-11 -2004 and the publication of the sale notice at Ottappalam Municipal Office on 18-11 -2004 did not satisfy the mandatory requirement of publication of sale notice as per Section 49(2) of the Act. Sale conducted in violation of those procedures is therefore vitiated and liable to be set aside.

6. A learned Single Judge of this Court in *Asha v. District Collector* 1990 (2) KLT 289 while dealing with the scope of Section 49(4) of the Act took the view that once the sale is adjourned to a date beyond sixty days of the original sale, the sale will not be a valid one unless it be that it was preceded by a fresh notice contemplated under the last sentence in sub-Section (4) of Section 49, a view with which we fully concur. We reiterate once adjourned sale is beyond sixty days of the original sale, fresh notice shall be served and published as if it were the original sale. This is a mandatory requirement. Failure to comply with the requirement would render the sale invalid.

Mode of publication of notices, etc. u/s 75 of the Revenue Recovery Act.

(1) Where any notice, order or list is required to be published under this Act, the publication shall unless it is expressly provided otherwise, be made as follows:

(i) by affixture of a copy of the notice, order or list:

(a) where it relates to immovable property, on a conspicuous part of the property; or

(b) where it relates to movable property, on a conspicuous part of the premises from where the property was attached; and

(ii) by affixture of a copy of the notice, order or list on the office of the village in which, and on the office of the local authority within whose jurisdiction, the attachment or sale takes place.

(2) The Collector or the authorised officer may, in his discretion, publish any notice, order or list in the Gazette or in one or two newspapers having circulation in the area in which the attachment or sale takes place or in both.

Revenue authorities never thought of giving any publicity for the sale exercising the discretion u/s 75(2) of the Act which says that the Collector or the authorised officer shall issue notice of sale, order or list in the gazette or in one or two newspapers having circulation in the area in which the attachment or sale takes place or in both. Sale though notified to be held on 20-2-2004 did not materialise. Another sale notice was issued on 12-7-2004 notifying the date as 17-9-2004, but there were no bidders. Sale notice dated 27-9-2004 u/s 49(4) of the Act was later issued indicating the date of sale as 8-10-2004 and on that day also there were no bidders. Another sale notice was issued on 15-10-2004 notifying the date of sale as 29-10-2004 and on that date also there were no bidders. Further we have already indicated that, on 15-11-2004 another notice was issued stating that sale would be held on 17-12-2004. Lack of response may be due to lack of publicity. In a case where sale could not be effected in spite of repeated notices the Revenue should have ascertained the reasons for the same and should have given wide publicity.

7. Revenue sale is conducted not only to wipe off the revenue dues but also to see that maximum price is fetched to the defaulter since in a revenue sale the interests of the intending purchaser, the defaulter and the mortgagee have to be safeguarded. Duty is cast on the officials to safeguard not only the interests of the Revenue but also the defaulter so as to fetch the maximum amount. Discretion conferred u/s 75(2) has to be exercised by the authorities depending upon the facts of each case and the case has to be dealt with in a just and equitable manner. Revenue authorities should know that the defaulter is in distress, and between devil and deep sea. Defaulter in a given case would not be in a position to repay the amount due to various reasons; such as labour unrest, lack of raw materials, unfavourable market conditions and host of other reasons. Defaulter in all situations may not be a cheat or swindler. Since revenue authorities are dealing with the properties of somebody else it is highly necessary that an attempt should be made by them to get maximum price for the property.

8. Legislature has enacted Section 75(2) with that object in view. Failure to exercise the discretion by the Collector or other officers u/s 75(2) in a given case may vitiate the sale. It is trite that when discretionary power is conferred on an authority, such authority must exercise that power, applying his mind in a just and equitable manner depending upon the facts and circumstances of the case. Failure to exercise the discretion in a given set of facts may vitiate the proceedings. Discretionary power has been conferred on an authority so as to exercise the same when occasion warrants. A number of statutes confer power on the administrative authority and officers to exercise their discretion. Lack of response to the sale notice may be due to lack of publicity. In such a situation, duty is cast on the authorities to carry out publication through newspaper having wide circulation therefore maximum price could be fetched, which is good for the defaulter and the mortgagee. Reference may also be made to the decision of this Court in *Mahadevan Pillai v. Kerala Financial Corporation* 1997 (2) KLT 46.

9. We are also unhappy in the manner in which sale was conducted in this case on 17-12-2004. Files would indicate that eight persons had participated and Rs. 3 lakhs each was deposited by the bidders. Procedure adopted in the auction sale was that the bid on behalf of the Government was made for Rs. 2 crores and the amount was reduced by Rs. 2 lakhs each consistently upto Rs. 1-50 crores. Thereafter the amount was consistently reduced by Rs. one lakh each and when it reached at Rs. 1,25,00,000 the participants actively participated in the auction. Till the bid amount was reduced to Rs. 1-25 crores. None of the participants in the auction offered to take. Later participants offered higher amounts. One Salim offered Rs. 1-36 crores, M.V. Mohammed offered Rs. 1,35,75,000 and the seventh Respondent offered Rs. 1,36,25,000. Petitioner is aggrieved by the manner in which the sale was conducted by the revenue authorities.

10. Petitioner then preferred appeal before the Land Revenue Commissioner u/s 72 of the Kerala Revenue Recovery Act on 10-11-2004. Petitioner also preferred Ext. P-10 petition u/s 53 of the Kerala Revenue Recovery Act before the District Collector, Palakkad to set aside sale on the ground of material irregularity. On a petition filed by the Petitioner before the Government, Government passed an order dated 10-1-2005 directing the District Collector to keep in abeyance the proceedings till his petition is disposed of and directed the District Collector, Palakkad to file a report. Petitioner also filed an application on 7-1-2005 before the sixth Respondent alleging irregularities in the conduct of sale and to set aside the sale effected on 17-12-2004, which was received in the office of the 6th Respondent on 7-1-2005. No order was passed either on Ext. P-10 or on Ext. P-16 to set aside the sale. Petitioner was constrained to approach this Court by filing W.P.C. No. 7056 of 2005 on 28-2-2005. Learned Single Judge of this Court on 4-3-2005 passed the following order:

In view of the undertaking by the Petitioner to clear the entire liability due to KFC within a reasonable time there will be direction to third and sixth Respondents to withhold further proceedings pursuant to sale of property to 7th Respondent, for one week. Post on 9-3-2005 in the admission list.

Learned Single Judge of this Court passed the following order on 9-3-2005.

Learned Government Pleader takes notice for R-1, R-3, R-4, R-5 and R-6. Standing Counsel Sri Unniraj takes notice for R-2. Adv. Sri Babu Karukapadath takes notice for R-7. Interim order dated 4-3-2005 shall stand extended by three months. Post on 29-3-2005. Counter-affidavit, if any, in the meanwhile.

Later interim order was extended till 4-4-2005 by order dated 29-3-2005. On 6-4-2005 learned Single Judge passed the following order:

In view of Ext. P-17 the interim order will continue for two months. The Deputy Collector, Revenue Recovery, Kerala Financial Corporation will file an affidavit as to the context in which Ext.P-17 was issued. Such affidavit shall be placed on record within the said period of two months.

We notice though this Court had passed an order on 4-3-2005 directing the Deputy Collector (R.R.), Kerala Financial Corporation, Thrissur as well as Deputy Collector (R.R.), Kerala Financial Corporation, Trivandrum to withhold further proceedings pursuant to sale of property to 7th Respondent and the interim order was extended, by this Court periodically, the then Deputy Collector, Kerala Financial Corporation, who was impleaded as additional eighth Respondent, passed an order dated 31-3-2005 dismissing the Petitioner's application for setting aside the sale showing scant respect to the interim order passed by this Court.

11. We notice when the stay order issued by the Government was also in force, the Deputy Collector (R.R.) hurriedly passed an order of confirmation u/s 54 of the Revenue Recovery Act on 21-2-2005. The Deputy Collector was aware of the fact that there was an order of stay passed by the Government and also the fact that the application preferred by the Petitioner u/s 53 for setting aside the sale was pending consideration. This is evident from the face of the order issued by him on 21-2-2005, operative portion of which reads as follows:

The application as provided under Sections 52 and 53 of the RR Act filed by Shri P. Gopalakrishnan, for setting aside the above sale has not been considered by the District Collector, Palakkad. Accordingly the above said sale is hereby confirmed.

Further we also notice the Deputy Collector (R.R.), Kerala Financial Corporation, Thrissur has sent a letter on 28-1-2005 to the Deputy Collector (R.R.), Kerala Financial Corporation, Thiruvananthapuram wherein it is stated that on 22-1-2005 he had received an application dated 11-1-2005 filed by the Petitioner before the District Collector to set aside the sale. Further we notice from the files produced before court that in the letter dated 29-1-2005 sent by the Deputy Collector (R.R.), Kerala Financial Corporation to the Principal Secretary to Government it was mentioned that the writ Petitioner had filed a petition to set aside sale and that the petition was not disposed of by the District Collector till that date. It is also stated therein because of the pendency of that petition Deputy Collector did not take any decision on the proposal for confirmation of sale. That letter would unmistakably show that Deputy Collector was fully aware of the pendency of the petition to set aside the sale. We are of the view, when these petitions are pending consideration and such a fact was well known to the Deputy Collector, R.R. he should not have confirmed the sale u/s 54 of the Act as per order dated 21-2-2005, that too in violation of the order of stay granted by the Government. Deputy Collector, R.R. has shown scant respect not only to the order of the Government but also with respect to the orders passed by this Court.

12. We may also point out that this Court as per the interim order dated 6-4-2005 directed the Deputy Collector to file affidavit as to the context in which Ext. P-17 was issued. Ext. P-17 was a letter dated 26-3-2005 directing the Petitioner to appear before the Deputy Collector on 30-3-2005 to consider the application to set aside the sale. Ext. P-17 was issued at a time when this Court

had granted stay of proceedings in pursuance of the sale conducted on 17-12-2004. Though Deputy Collector had filed counter-affidavit on 4-7-2005 on the basis of the direction given by this Court and he had not produced the order dated on 31-3-2005 dismissing the petition submitted by the Petitioner for setting aside the sale. Order dated 31-3-2005 was passed by the incumbent who is the additional 8th Respondent herein on the date of his retirement showing scant respect to the orders passed by the Government as well as the orders passed by this Court. The order of confirmation passed by the sixth Respondent on 21-2-2005 is not only in violation of the government order of stay but also issued at a time when application for setting aside the sale was pending consideration before the District Collector.

13. We will examine whether the confirmation order dated 21-2-2005 would stand in the eye of law when the application for setting aside the sale on the ground of material irregularity preferred u/s 53 of the Revenue Recovery Act is pending consideration. Section 53 of the Act enables to make application to the District Collector to set aside the sale within thirty days from the date of sale of the immovable property on the ground of some material irregularity, mistake or fraud in publishing or conducting the sale. No sale shall be set aside on the ground of such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof. Petitioner, in our view, has sustained substantial injury in the manner in which sale was conducted and the action taken pursuant thereto. We have already found that the sale was conducted in violation of Section 49(2) and (4) of the Act read with Section 75 of the Act and that the Deputy Collector has not exercised his discretion in effecting proper publicity for sale.

14. The order of confirmation cannot be passed if any application for setting aside the sale is pending consideration. Section 54 is extracted below for easy reference.

54. Order confirming or setting aside.--On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made u/s 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.

The above-mentioned provision would indicate that order of confirmation cannot be passed when an application to set aside the sale u/s 53 which was filed within thirty days is pending consideration. Sale could be confirmed u/s 54 only in a case where no application was preferred u/s 53 for setting aside the sale and if preferred within thirty days the same has been rejected by the District Collector. Further even after the expiry of 30 days from the date of sale, sale would not be

confirmed automatically. Even in a case where no application was preferred within thirty days from the date of sale, as held by the decision of this Court in Captain, E.N. Vs. District Collector and Others, confirmation of sale is not automatic Sixth Respondent was well aware of the pendency of the application preferred u/s 53 of the Act. Further there was stay from the Government. In such circumstances, we have no hesitation to say that the order of confirmation dated 21-2-2005 issued by the sixth Respondent is non est in law and it is so declared. We therefore set aside the order of confirmation dated 21 -2-2005.

15. The Deputy Collector, in our view, has committed gross illegality in passing orders rejecting the application preferred by the Petitioner to set aside the sale, in violation of the interim order passed by this Court on 4-3-2005. Undue haste was shown by the additional 8th Respondent who was the then Deputy Collector to pass the order of confirmation of sale and to dismiss the application for setting aside the sale on the eve of his retirement from service. On the verge of retirement his conduct was unbecoming of a government servant Eighth Respondent was under the mistaken belief that he can get away with an order passed on the eve of his retirement. Sri M.C. Sen, Senior Counsel appearing for the 7th Respondent submitted that even if some irregularity has been committed by the Deputy Collector (R.R.), Kerala Financial Corporation, Thiruvananthapuram, that would not vitiate the sale and that this Court can direct the Deputy Collector to reconsider the application submitted for setting aside the sale. We are convinced that even the sale was conducted in gross violation of Section 49(2) and 49(4) read with Section 75 of the Act and also the subsequent steps taken by the sixth Respondent and others not only in the matter of confirmation of sale but also in rejecting the application for setting aside the sale are contrary to law. Ext. P-13 declaration is also set aside.

16. Writ Petitioner is also aggrieved by some of the directions of the learned Single Judge and the steps taken by the officials to give effect to the judgment. Hence he filed W.A. No. 2128 of 2005. Sri Varghese Kuriakose, counsel appearing for the writ Petitioner submitted that on the basis of the direction of the learned Single Judge an amount of Rs. 75,43,754 has been credited to the account of K.F.C. from the sale proceeds deposited by the 7th Respondent. The third Respondent also filed a statement, demanding an amount of Rs. 1,94,419.35 from the Petitioner towards interest from 17-12-2004 to 30-9-2005 on Rs. 20,50,000 (i.e. first instalment of the sale consideration remitted on 17-12-2004 by the 7th Respondent). An amount of Rs. 9,93,209.67 was also claimed towards interest from 14-1-2005 to 30-9-2005 on Rs. 1,15,75,000 that is the second and final instalment of sale consideration remitted on 14-1-2005. Rs. 4,08,750 was claimed as the stamp duty incurred by the 7th Respondent on 28-7-2005. An amount of Rs. 28,612.50 was claimed as interest from 1-3-2005 to 30-9-2005, Rs. 2,72,507.00 was claimed as the registration fee incurred by the 7th Respondent on 5-3-2005, Rs. 18,723.87 was claimed as interest on the registration charges, Rs. 60,000 was claimed towards advocate's fee of two advocates on 8-3-2005 and interest on advocate's fee was claimed as Rs.

4,064.51. A sum of Rs. 50,000 was also claimed by the 7th Respondent for engaging another advocate. An amount of Rs. 483.33 was also claimed as interest on advocate fee. Therefore an amount of Rs. 95,74,524.23 was claimed from the Petitioner towards total amount due.

17. Counsel for the writ Petitioner submitted that the K.F.C. has claimed Rs. 75,43,754 when what actually K.F.C. has credited in the account after sale was Rs. 67,43,391. Counsel submitted that K.F.C. had retained an amount of Rs. 1,36,25,000 by which K.F.C. is getting an unjust enrichment of Rs. 8,00,363. Further counsel also submitted an amount of Rs. 4,79,242 is also to be deducted being the rent received by the K.F.C. Counsel submitted that K.F.C. has retained a total amount of Rs. 12,79,605 in excess, hence sought refund of the same.

18. We have already found that the sale conducted on 17-12-2004 is non est in law and hence all the proceedings initiated pursuant thereto including the order of confirmation and other related orders would stand set aside. Petitioner has also furnished Demand Draft for Rs. 96,00,000 (DD No. 006857 dated 13-10-2005) and another Demand Draft for Rs. 46,605 (DD No. 325452 dated 13-10-2005) drawn on State Bank of India, Ottappalam branch in favour of the Deputy Tahsildar. Petitioner has already satisfied the entire claim of the Financial Corporation and admittedly no amount is due to the Kerala Financial Corporation from the Petitioner. Going by the contention of the counsel for the Petitioner, Petitioner is entitled to get refund from the Financial Corporation, a matter that can be worked out by the Petitioner and the Kerala Financial Corporation, the sixth Respondent. Since we have already set aside the sale amount deposited by the 7th Respondent towards sale proceeds, should be returned to him forthwith. He is also entitled to get refund of Rs. 4,08,750 incurred by him towards stamp duty from the Petitioner. However, he is not entitled to recover Rs 1,10,000 from the Petitioner which has been paid to lawyers to conduct the 7th Respondent's case. Sale deed was executed on 5-3-2005 after the interim order was passed by this Court, on 4-3-2005 and therefore Petitioner cannot be directed to bear the registration charges.

19. Dispute between the Financial Corporation and the writ Petitioner with regard to interest and other amounts would be settled between them. Petitioner is free to make proper application before the Financial Corporation so that if any excess amount has been paid by the Petitioner the same would be refunded by the Financial Corporation. So far as 7th Respondent is concerned, we make it clear he is entitled to get refund of the entire amount towards sale price and stamp duty with 12% interest from the date of deposit till repayment which the Petitioner has to bear. K.F.C./Revenue Officer are directed to release that amount to the 7th Respondent within a period of one month from the date of this Judgment. In the facts and circumstances of the case, we direct, the parties to bear their respective costs. Both the appeals are disposed of as above.