

(2003) 10 KL CK 0035

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28047 of 2003 and O.P. No. 13289 of 2003

P.J. Cleetus

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 46, 52, 53, 54, 83

Citation : (2004) 3 BC 349

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : T.A. Unnikrishnan, for the Appellant; A. Lalitha Nair, Govt. Pleader, for the Respondent

Judgement

G. Sivarajan, J.—The matter arises under the Kerala Revenue Recovery Act (for short "the Act").

2. Both these writ petitions relate to the title and possession in respect of a property which was sold by the Tahsildar, Thodupuzha pursuant to a sale notice (Ext. P4) in O.P. No. 13289/03 for realisation of the arrears of Abkari dues of the 5th respondent. According to the petitioner in O.P. No. 13289/03 properties belonging to her were wrongly included in Ext. P4 sale notice on the purported view that the said property is part of the property belonging to the 5th respondent. The petitioner therefore filed a claim petition (Ext. P5) before the District Collector, Idukki, the first respondent seeking for dropping the proceedings against the property. The second respondent by order dated 31.3.2003 (Ext. P6) rejected the petitioner's claim and also confirmed the sale of the property in favour of the 4th respondent auction purchaser. The petitioner has challenged the said order in this writ petition.

3. W.P. (C) No. 28047/03 is filed by the 4th respondent in the other O.P. who is the auction purchaser of the property sold in revenue recovery proceedings. He had deposited the price amount of Rs. 4,87,500/- on 10.1.2003. By an interim order dated 3.9.2003 in the above two cases this Court issued an interim

direction to the petitioner in the first O.P. to deposit a sum of Rs. 50,000/- within one month failing which the revenue recovery authorities will take delivery of the property sold in favour of the petitioner in the latter writ petition. Pursuant to the aforesaid direction the petitioner in O.P, No. 28047/03 had deposited a sum of Rs. 50,000/- with the Tahsildar, Thodupuzha. Since the sale pursuant to the auction was confirmed in favour of the auction purchaser he wants delivery and possession of the property so purchased and to put him in possession of the said property.

4. The auction purchaser has filed a counter-affidavit in O.P. No. 13289/03. In the said counter-affidavit, it is stated that the property was put to auction on 12.2.2002, that he was the highest bidder, that his bid was accepted by the authorities, that he paid an amount of Rs. 71,800/- on that day and the remaining amount of Rs. 4,06,700/- was deposited on 10.1.2003, that the contention that the trespassed into the property of the petitioner is not correct, that his possession is legal and that the petitioner is using muscle power with the support of her people. It is also stated that the petitioner herself had approached the civil Court seeking substantially the same relief. This is substantially the averment in his writ petition also.

5.1 have heard Sri. Mathew John, learned Counsel for the petitioner in O.P. No. 13289/ 03, Mr. T.A. Unnikrishnan, learned Counsel for the petitioner in the other writ petition and the learned Government Pleader appearing for the Government. Though the 5th respondent, who is the defaulter had received notice there is no appearance for him.

6. The case of the petitioner in O.P. No. 13289/03 is that the properties belonging to her has been wrongly included in the sale notice Ext. P4 on the assumption that it is part of the property belonging to the 5th respondent. It must be noted that the 5th respondent is none other than the son-in-law of the petitioner that she got title and possession of the property as per Ext. P1 sale deed of 1999 pursuant to a decree passed in O.S. No. 62 of 1994 of the Sub-Court, Thodupuzha and that a perusal of the Ext. P2 documents of title of the 5th respondent would reveal that he has properties only in Sy. No. 511/2A. The Counsel further submitted that respondents 1 to 3 can proceed only against the properties covered by Ext. P2 document. The Counsel further submitted that Ext. P4 sale notice would show that respondents 1 to 3 have attached and sold the portion of the property which are in other Sy. Nos. viz. 511/3/8, 511/2A/5, 510/1B/1, 1,510/1A/1 and 509/3 which according to the petitioner absolutely belongs to her. The petitioner had filed a claim petition before the second respondent who considered the matter and passed Ext. P6 order. It is stated therein that considering the claim made by the petitioner the first respondent issued a direction to the 2nd respondent to consider the petitioner's claim also while taking steps for confirmation of the sale and that it is pursuant to the said direction the matter was considered. It is further stated therein that while fixing the property gifted to the 5th respondent as per Ext. P2 it was noted that the

boundaries of the petitioner's property and the property of the 5th respondent were not fixed and that the Village Officer had attached the property belonging to the 5th respondent after demarcation. The second respondent had also noted the properties mentioned in Ext. P2 document and the properties mentioned in Ext. P1 sale deed executed by the District Judge, Thodupuzha in execution of the decree in O.S. No. 62 of 1994 and had observed that on inquiry conducted by the 3rd respondent it was found that the complaint of the petitioner is baseless. It was further observed in Ext. P6 order that the complaint is the result of a collusion between the petitioner and the 5th respondent to protract the proceedings of the revenue authorities for realisation of the Abkari dues of the 5th respondent. It was further noted that as per order dated 5.3.2001 in O.S. No. 92/2001 no recovery steps were taken against the properties specified in document No. 1676/99 (Ext. P1) and building K.P. No. 10/179/178 situated in the said property. The buildings and the land in which the said buildings are situated were exempted from attachment. It was further observed that the properties belonging to the 5th respondent were measured and fixed and the properties were thereafter attached by the Tahsildar. Accordingly the petitioner's claim was rejected and the sale in favour of the auction purchaser was confirmed.

7. Admittedly the 5th respondent is the son-in-law of the petitioner and the properties of the petitioner and the 5th respondent were lying contiguous without any boundaries. The properties of the 5th respondent according to the 2nd respondent were measured and attached by the 3rd respondent as per a Mahazar and the attachment notice was also issued on the 5th respondent. The petitioner did not file any objection to the attachment order in spite of the fact that there is a provision for challenging the said attachment order u/s 46 of the Act. The 3rd respondent had put to auction as per Ext. P4 sale notice only that property which has already been ascertained and attached. In such circumstances, when the property was attached the only course open to the petitioner is to file a petition u/s 46 of the Kerala Revenue Recovery Act for release of the attachment. In the instant case the petitioner did not prefer any such claim u/s 46. It cannot be said that the petitioner was not aware of the attachment of the property, for, the attachment will be intimated to the defaulter.

8. In the instant case the defaulter is none other than the son-in-law of the petitioner and therefore it cannot be said that the petitioner was not aware of the attachment of the properties. Further, the remedy available to the petitioner, when a sale of the property is effected, is to file a petition u/s 52 of the Act to set aside the sale of immovable property on deposit of the amount. In this case the petitioner did not deposit the amount as contemplated u/s 52. However, it is seen from Ext. P6 that the District Collector directed the R.D.O., Idukki to consider the claim petition while considering the confirmation of the sale of the property sold in auction. As already noted, the petitioner's claim was considered and rejected by the R.D.O.

9. The contention of the petitioner is that the application is filed u/s 53 of the Act

alleging material irregularity, mistake and fraud in publishing or conducting sale. It is unnecessary to consider the sustainability of the said contention in this case, for, as already noted, the petitioner's claim was considered by the R.D.O. pursuant to the direction issued by the District Collector while passing Ext. P6 order. The R.D.O. has passed the order u/s 54 of the Act confirming the sale in favour of the auction purchaser. In such circumstances, if the petitioner is still aggrieved the remedy available to her is to file further revision before the Board of Revenue u/s 83 of the Act. The petitioner, if aggrieved by the order to be passed by the Board of Revenue in the revision has got a further revision before the Government u/s 83(2) of the Act. The petitioner has filed this writ petition without availing the said two remedies.

10. Since the sale in favour of the auction purchaser who is the petitioner in the other writ petition is confirmed by the R.D.O. as per Ext. P6 order, but for the grant of an order of stay from this Court, the auction purchaser is entitled to get his name registered and to obtain a certificate as provided u/s 56 of the Act. Section 57 of the Act provides for the procedure to be followed. Thereafter, the authorities have to publish the name of the purchaser, the date of purchase together with a declaration of the lawful succession of such purchaser to all the rights of the former landholder in the said immovable property. Section 58 provides for delivery of possession also. Section 60 provides that the sale to be free of all encumbrances.

11. In the absence of any material to show that respondents 1 to 3 have acted in violation of the statutory provisions contained in the aforesaid Act, on the face of the provisions of the Act in regard to the revisional remedies, no relief can be granted to the petitioner in this writ petition. The petitioner has necessarily to avail the revisional remedies provided u/s 83 of the Act.

12. As already noted, pursuant to the direction issued by this Court the petitioner in O.P. 13289 of 2003 had remitted a sum of Rs. 50,000/- which is now in the possession of the 3rd respondent. The said amount will be returned to the petitioner within a period of one month from the date of receipt of a copy of this judgment. In the meantime if the petitioner files any revision against Ext.P6 order before the Board of Revenue--at present the Commissioner, Land Revenue, Thiruvananthapuram the same will be duly considered by the said authority. The petitioner is also free to move the said authority for stay of further proceedings. However, any order either interim or final can be passed only after hearing the auction purchaser also.

13. Here, I note that the petitioner has filed a civil suit against the auction purchaser and the said civil suit is also pending. As the matter now stands the auction purchaser, the petitioner in W.P. (C) No. 28047 of 2003 is entitled to the reliefs sought for in the writ petition. However, all further proceedings pursuant to Ext. P6 for delivery of possession of the property sold in auction will be deferred for a period of six weeks. This is to enable the petitioner in O.P. No. 13289 of 2003 to file revision against Ext. P6 order and to get appropriate

orders, if she is so advised. It is made clear that I have not considered the sustainability or otherwise of the civil suit filed by the petitioner in the first O.P. in these cases.

Writ Petitions are disposed of as above.