
(1980) 08 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 2996 of 1979-P

P.V. Joseph

APPELLANT

Vs

Tahsildar and Another

RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 65
Kerala Revenue Recovery Act, 1968 — Section 52, 53, 54

Citation : (1980) 08 KL CK 0002

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : K.S. Sebastian, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Bhaskaran, J.—The facts in short are these: Immovable property, 6.85 acres in extent, comprised in R.S. Nos. 629/1A1 and 628 of Thariode Village, which belonged to the late N.D. Thommen, was attached for recovery of abkari arrears due from him, on 21st March 1974 and was sold in public auction on 14th July 1978 to the Petitioner, who happened to be the highest bidder, for a sum of Rs. 8,500. On 23rd August 1979 the Village Officer, Thariode served on the Petitioner an order, dated 27th July 1979, a copy of which is Ext. P-3, from the 1st Respondent, the Tahsildar, South Wynad Taluk; therein it was stated inter alia that the 2nd Respondent, the District Collector, Kozhikode, in his proceedings No. K. Dis. 18511/79, dated 17th March 1979 had ordered to set aside the sale dated 14th July 1978 on the ground that the amount of sale was not reasonable; there was also therein a direction that the amount of Rs. 8,500 deposited by the Petitioner as sale price of the property as per the two chalans, dated 22nd July 1978 and 7th August 1979 was to be refunded to him. According to the averment in paragraph 3 of the writ petition, the original of Ext. P-4, objections, dated 13th August 1979 to the resale proposed, was filed by the Petitioner before the 2nd Respondent, the District Collector, Kozhikode. It is also averred in that paragraph

that no reply thereto had been received. In paragraph 4 of the counter-affidavit filed on behalf of the Respondents it is stated that the original of Ext. P-4 did not appear to have been received by the 2nd Respondent.

2. The prayer in the writ petition is for the quashing of Ext. P-3 order and also for the issue of a writ of mandamus directing the Respondents not to set aside the sale in favour of the Petitioner. The submission made by Sri K.S. Sebastian, the Counsel for the Petitioner, is that, in not having confirmed the sale in favour of the Petitioner, and having ordered resale of the property, the 2nd Respondent has acted in violation of the provisions of Section 54 of the Kerala Revenue Recovery Act, 1968, (Act 15 of 1968), for short the Act. In paragraph 2 of the counter-affidavit filed on behalf of the Respondents the events leading to the auction sale in favour of the Petitioner have been stated. In paragraph 3 it is averred that on the 2nd Respondent examining the sale papers submitted to him by the 1st Respondent, for confirmation, it was found that the amount fetched at the auction sale, namely, Rs. 8,500, for 6.85 acres of land was far below the market price for similar lands in the area and there were also certain irregularities in the conduct of sale. He had, therefore, recommended the setting aside of the sale to the 2nd Respondent who accordingly set aside the sale and ordered resale of the land. The Petitioner was duly informed about it, and was also asked to receive the refund. As for the delay of one year odd occurred in this case, it was stated that it was due to time taken for correspondence between Respondents 1 and 2 regarding the procedure followed in the sale and reasonableness of the price fetched at the auction sale; the delay was not intentional, but due to exigencies of administration.

Section 54 of the Act reads as follows:

54. Order confirming or setting aside sale.--On the expiration of thirty days from the date of the sale, if no application to have the sale get 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.

3. The argument of Sri Sebastian is that the Collector has no jurisdiction to pass an order for setting aside a sale after the expiration of thirty days from the date of the sale. According to him, it was the bounden duty of the Collector to confirm the sale in terms of the enacting part of the section, if no application to have the sale set aside was made u/s 52 or Section 53 of the Act, or if any such application had been made it was rejected. His contention is that if, for filing an application for setting aside the sale in terms of the enacting part of the section, the time allowed was only a period of 30 days, it could not be conceived that it was the intention of the legislature to give a larger time to the Collector to pass

an order for setting aside the sale. It is well settled that where the use of a proviso creates an ambiguity, "it is the duty of the court to ascertain the legislative intention through resort to the usual rules of constitution applicable to statutes generally, and give it effect even though the statute is thereby enlarged, or the proviso made to assume the force of independent enactment, and although a proviso as such has no existence apart from the provision which it is designed to limit or qualify. It should also be construed in harmony with the rest of the statute". (Crawford on Constitution of Statutes--Chapter XXVI, Page 605).

It may be said in general that every part of the Act must be given effect where it is possible so to do, and that a proviso should in general be construed as a limitation or qualification upon the otherwise general application of the statute. Whether in a given case the proviso does in fact limit or qualify, and if so, to what extent, depends primarily on the proviso itself. *Foster v. United States* 47 Fed. (2) 892.

In the background of these principles, we have to analyse the section, bearing in mind the scheme of the Act also. The enacting part of the section requires that the Collector shall make an order confirming the sale if, on the expiration of thirty days from the date of the sale, no application to have the sale set aside was made u/s 52 or Section 53 of the Act or if any such application had been made and was rejected. The legislative intent of the proviso certainly is to qualify the enacting part of the section. Its purpose is to clothe the Collector with power to pass an order for setting aside the sale notwithstanding that no application u/s 52 or Section 53 of the Act had been made, or on grounds, other than those alleged in an application, which had been made and was rejected, if he considers that the sale ought to be set aside, after recording his reasons in writing for doing so. In practice it is only when the question of confirmation is taken up by the Collector, that the occasion for him to scrutinise the relevant records concerned with the proceedings arises; and if, in that process, the Collector finds reason for setting aside the sale, he has both the right and the duty to do so after recording his reasons in writing. Gross inadequacy of the price fetched at the auction, compared to the market price for similar lands in the locality during the material time, can certainly be a valid ground for setting aside the sale. So also, if there were irregularities in the procedure adopted for conducting the sale, that also would afford a reasonable ground for setting aside the sale. The 2nd Respondent has chosen to set aside the sale for the above reasons. As for the delay, it has been stated in the counter-affidavit that it was due to the time taken in the process of correspondence between Respondents 1 and 2 on the question of adequacy of the sale price and the details of the procedure adopted in conducting the sale that the. delay of a little over one year took place. This, I find, is an acceptable explanation; and there is no material to hold that there was undue delay on the part of the Collector in setting aside the sale.

4. Sri Sebastian contended that the sale takes effect from the date of the sale, not from the date of the confirmation and, therefore, the Collector has no

jurisdiction to interfere with the sale, and the period of thirty days expires from the date of the sale. In support of this contention he relied on the ruling of the Full Bench of this Court in Thankam and Ors. v. Damodaran and Ors. 1976 R.L.T. 526 (F.B.) to which decision I myself was a party. I have carefully gone through that decision, and find that nothing said therein has any impact on the issue raised in the writ petition. The decision, while construing the provisions of Section 39(4) of the Travancore-Cochin Revenue Recovery Act, laid down that that sale takes effect from the date of sale, not from the date of confirmation drawing the distinction between the provisions contained in the Revenue Recovery Act on the one hand, and those of Section 65 of the CPC on the other. It has, however, to be borne in mind that decision did not lay down a proposition that on the expiry of the period of thirty days from the date of sale, the sale would become confirmed automatically in case there was no application for setting aside the sale, as contended by the Petitioners. To hold that the Collector has no jurisdiction to set aside a sale after a period of thirty days from the date of sale expired would virtually destroy the very purpose of the proviso to Section 54 of the Act in as much, ordinarily, it is only after the expiry of that period the Collector has to apply his mind as to the legality of the procedure adopted and the reasonableness of the price fetched at the auction.

5. Lastly Sri Sebastian submitted that the impugned order is bad inasmuch as it was without notice to the Petitioner and without affording an opportunity of being heard that the sale was set aside. The Government Pleader, on the other hand, contended that there is no provision for giving notice or for affording opportunity of being heard to the purchaser before an order for setting aside a sale is passed. True it is so; even when the principles of natural justice being a cannon of general application it must be presumed to have been engrafted in the provisions of the Revenue Recovery Act when there is no contrary intention therein particularly in case the order under challenge visits the Petitioners with civil consequences.

I would therefore quash Ext. P-3 order of the 1st Respondent, the Tahsildar, South Wynad, and proceedings No. K. Dis. 18511/79, dated 17th March 1979 of the 2nd Respondent the Collector of Kozhikode, referred to therein, without prejudice to the right of the Respondents to pursue the matter according to law after the 2nd Respondent giving the Petitioner notice and an opportunity of being heard. The writ petition is allowed to the above extent. There will be no order as to costs.