(1999) 03 KL CK 0020

In the High Court Of Kerala

Case No : W.A. No.592 of 1999

S. Sarojini Amma APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 05-03-1999

Acts Referred:
Kerala Revenue Recovery Act, 1968 — Section 50, 50(1), 50(2)

Citation : (1999) 03 KL CK 0020

Hon'ble Judges : Om Prakash, C.J;J.B. Koshy, J

Bench : Division Bench

Advocate : Jose Joseph, for the Appellant; V.V. Asoken, Special Government Pleader for Taxes, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, C.J.—This appeal preferred against the impugned judgment dated February 12, 1999 raises a short question for consideration whether the property of the appellant put up for sale on February 23, 1998 can be said to have been acquired by the State Government in view of the provisions of Section 50 of the Kerala Revenue Recovery Act, 1968 (briefly, "the Act").

2. The learned Judge, by judgment dated February 12, 1999, held as under :

"4. ....In order to conduct an auction sale, sale notice in form 16 was issued on September 17, 1996 by fixing the sale on October 27, 1996. Petitioner moved the Government and obtained an interim order on condition and accordingly the sale was adjourned. Petitioner did not comply with the conditions. Hence the property was again re-notified for sale on January 25, 1997. Since there were no bidders, the sale did not materialise and was adjourned. Thus there was a proper and sufficient notice for sale for January 25, 1997 and the same was adjourned because there were no bidders. For subsequent sales, notices were served on the petitioner on December 19, 1996, August 1, 1997, November 3, 1997 and January 23, 1998. For all these sales, the sales did not take place because of the stay orders obtained by the petitioner based on which the sales were adjourned. Finally the sale was posted to February 23, 1998 for which petitioner received notice on February 14, 1998. On February 23, 1998, since there were no bidders in compliance with Sub-section (2) of Section 50, the property was purchased on behalf of the Government. Thus there were no bidders on January 25, 1997 and February 23, 1998 and therefore the Government is entitled to bid. There was no sale subsequent to January 25, 1997 excepting the one on February 23, 1998, though in-between January 25, 1997 and February 23, 1998, there were several sale adjournments and therefore Sub-section (2) has been strictly complied with......"

3. Sub-section (1) of Section 50 states that when an immovable property is put up for sale pursuant to the notice u/s 49(2) for the recovery of arrears of public revenue and if there be no bid or if the highest bid be insufficient to cover the said arrears together with the arrears accruing up to the date of sale, including interest and cost of the process, the officer conducting the sale shall postpone the sale to another date--not later than 60 days from the date of the first sale. Section 50(2)(i) further provides that if there be no bid on the date to which the sale was postponed, the officer conducting the sale may purchase the property on behalf of the Government for an amount of rupee one (substituted for paise ten). Section 50(2)(ii) further states that if the highest bid be insufficient to cover the arrears, such officer may bid on behalf of the Government for an amount higher than such bid by rupee one and in either case, the Government shall acquire the property subject to the provisions of this Act.

4. From the provisions of Section 50, it is manifest that the postponed date for sale u/s 50(2) should be consecutively fixed not later than 60 days. So the period between the dates of sale fixed u/s 50(1) and u/s 50(2) should not exceed 60 days. It will be seen from the impugned judgment that the sale on the postponed date was made on February 23, 1998. The question is whether earlier date of sale, as envisaged by Section 50(1), was fixed within 60 days from February 23, 1998. First date of sale u/s 50(1) and the postponed date of sale as envisaged by Section 50(2) should be consecutively fixed and the gap between the two should not exceed 60 days. Period of 60 days prior to February 23, 1998 would commence from somewhere December 23, 1997. It, therefore, follows that sale prior to February 23, 1998 should have been conducted on or after December 23, 1997. Chronology of dates, as given in the impugned judgment, shows that prior to the second stay order, January 23, 1998 was notified as the date of sale, but no sale was conducted on that date due to the stay order. A combined reading of Section 50 clearly indicates that sale, in fact, must be conducted on two consecutive dates within a period of 60 days. It was not so done in this case. In the beginning, October 27, 1996 was notified as the date of sale. The appellant obtained the stay order and no sale could be made on that day. Thereafter, January 25, 1997 was fixed for sale and the same was adjourned because there were no bidders. Then several notices were served u/s 49(2) consecutively fixing dates for sale one after another. But no sale could be made

on account of the stay orders. The sale was eventually made on February 23, 1998.

5. From these facts, it is clearly established that no sale preceded within 60 days from February 23, 1998. The sale dated February 23, 1998 therefore cannot entitle the Government to acquire the property of the appellant. The property of the appellant sold on February 23, 1998 could be said to have been acquired by the Government u/s 50(2) only if there were first sale within the meaning of Section 50(1) within (he period of 60 days before February 23, 1998. As no sale was held within 60 days prior to February 23, 1998, sale dated February 23, 1998 would not divest the appellant of her rights in the properly.

6. The learned Judge, in our opinion, erroneously proceeded to hold that sale dated February 23, 1998 is valid and conforming to the provisions of Section 50, inasmuch as there was a valid notice for sale dated January 25, 1997. There may be a valid notice for sale dated January 25, 1997. But the fact remains that there was no sale within the period of 60 days prior to February 23, 1998 and, therefore, sale dated February 23, 1998 could not have divested the appellant of her rights in the property and that cannot be said to have stood acquired by the Government.

In the result, the appeal succeeds and is allowed. The impugned judgment dated February 12, 1999 and exhibit P3 and consequential orders are set aside. The respondents arc free to put up the property again for sale if the appellant does not pay the outstanding amount. The appellant, however, will not alienate the property, until the outstanding amount is paid to the respondents.