(2015) 02 KL CK 0104

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19796 of 2013 (Y)

Sarojini and Others — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 50(2), 71

Citation : (2015) 02 KL CK 0104

Hon'ble Judges : A.V. Ramakrishna Pillai, J.

Bench : Single Bench

Advocate : Jamsheed Hafiz, for the Appellant; Sunitha Vinod, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.—Ext. P5 order is under challenge.

2. The petitioners belong to scheduled caste community and they are the residents of Thozhuvanoor Amsom Desom in Tirur Taluk of Malappuram District. The petitioners allege that the first petitioner''s husband in the year 1986 had taken a loan for Rs. 7,000/- from the second respondent bank under IRDP scheme for purchasing a cow. They allege that after taking the loan, the first petitioner''s husband was repaying the same amount without default.

3. However, later he met with an accident and was seriously injured and became paralysed. The petitioners'' property were attached by the Government for default of payment of the loan and were about to be sold. The petitioners further allege that when their family was preparing to decide their fate, they were rescued by the generous and benevolent neighbours and villagers in the locality by extending their helping hand to the petitioners. The villagers in the locality collected the entire arrears of the amount to be paid by the petitioners, from the neighbours and local residents and handed over to the petitioners'' family to be paid to the second respondent. They would further allege that thereafter the

entire arrears were paid to the second respondent on 23.6.1993 as evidenced by Ext. P1.

4. The petitioners allege that they were paying basic tax to the property after effecting Ext. P1 payment to the second respondent. Their grievance is that in spite of discharging the debt as early as in 1993, the respondents now by Ext. P5 order claim that the land belongs to the Government, as the said property of the petitioners, was sold and purchased by the government and that the payment effected by the petitioners is after two years of the prescribed time of limitation. It is with this background, the petitioners have come up before this Court.

5. In the counter affidavit filed by the State, they have contended as follows:

"The petitioners'' land was put in auction for arrears of revenue due on land pursuant to revenue recovery proceedings. The confirmation of action as per the Revenue Recovery Act was done as early as on 25.5.1991. The petitioners have cleared the arrears after two years of the confirmation of sale, i.e., on 1993. The request for return back of bought-in-land was submitted by the petitioners only on 3.5.2008 and there is a delay of 15 years in preferring the application before the Government; it was contended. The request of the petitioners was considered by the Government and the request to return land which was bought on sale was rejected by Ext. P5 order. The government decision was based on G.O(Ms) No. 88/68/RD. dated 9.2.1968 wherein it was declared by the Government on the basis of an order to the effect that the land declared as bought in land could not be reconveyed after 2 years from the date of confirmation. The date of confirmation in this case is on 25.5.1999. The land is liable to be reconveyed on or before 25.5.1993 and that is the reason why the application was rejected. It is on the basis of the above order of the Government, that the present request of the petitioner was rejected. The order of the Government suffers from no illegality or impropriety. The revenue sale was conducted in accordance with the statutory procedures as per the Revenue Recovery Act. The second respondent is an institution notified under Section 71 of Kerala Revenue Recovery Act. As per Section 50(2) of the Revenue Recovery Act, the Government can bid in to its favour any land in revenue sale irrespective of the fact that the arrears in respect of which the sale is conducted is for the Government dues or not. Therefore, the contention of the petitioners that the Government cannot purchase the property as it''s own in a revenue sale cannot be sustained at all. That being so, the sale under the revenue recovery proceedings is in accordance with law and Ext. P5 order is one which is clearly referable to the provisions of the Kerala Revenue Recovery Act. Once the sale of the property is over and it became the part of the property to the Government to the revenue sale, the basic tax cannot be accepted in the name of the petitioners. Therefore, they prayed for dismissal of the writ petition." 6. Arguments have been heard.

7. The petitioners realised that their property was sold and purchased by the Government on 31.3.1990. On 25.3.2011 sale was confirmed by the authorities.

They further allege that they were not given any notice at the time of affecting the sale.

8. Ext. P1 payment by the petitioners is admitted. However, it was contended that the petitioners were not informed by the second respondent at the time of making Ext. P1 payment. The bank authorities without informing the petitioners about the confirmation of sale, received the amount from the petitioners.

9. The Government does not have any right over the property to issue Ext. P5 order. Though the property was purchased by the Government, such purchase can be only on behalf of the second respondent and the interest over such property purchased by the Government belongs to the second respondent only. According to the petitioners, the Government cannot purchase any property under the revenue recovery proceedings on its own. The Government could only purchase it on behalf of the institution concerned on whose application such revenue recovery is initiated. Any purchase of the property by the Government on behalf of the State would vitiate the entire sale proceedings. Therefore, the sale of the property and its purchase by the first respondent on behalf of the State vitiates the entire sale of the property.

10. Even if it is presumed that such sale is conducted and such purchase is made by the Government on behalf of the second respondent, the second respondent has received the entire amount outstanding from the petitioners and have acknowledge the same by Ext. P1. Since the second respondent as per Ext. P1 has received the entire amount outstanding on the petitioners and has no subsisting grievance in the above matter, the first respondent who purchased the property on behalf of the second respondent can also have no further grievances and the property of the petitioners is liable to be excluded and, therefore, the sale is liable to be quashed.

In the result, the writ petition is allowed. Ext. P5 is quashed. Respondents are directed to drop all further proceedings to dispossess the petitioners from the 10 cents of property comprised in R.S. Nos. 139/4 and 139/5 of Kattipparuthi village in Tirur taluk.

