(2013) 03 KL CK 0038

In the High Court Of Kerala

Case No : W.A. No. 496 of 2013

Simon Mathew — APPELLANT

Vs

District Collector and Others — RESPONDENT

Date of Decision : 27-03-2013

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 2013 Ker 99

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : Sajan Vargheese K. Liju M.P, for the Appellant; Girija Gopal, Special Govt. Pleader and T.V. George, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The appellant was the purchaser of a property in the auction sale conducted by the 3rd respondent for realization of the amounts due to the 2nd respondent. The appellant successfully bid in the sale with his offer of Rs. 73,45,000/- and in terms of auction sale, deposited 15% of the bid amount. However, the appellant failed to pay the balance amount within the time stipulated. The revenue recovery authority having declined to accept the balance amounts after the time stipulated, the appellant was before this Court with a writ petition, in which the prayer to accept the balance amount was declined by Exhibit P4. However, the learned single Judge on the plea made by the appellant therein reserved liberty to approach the appropriate authority for return of the advance amount; if the same is legally permissible. The appellant, on the strength of the liberty reserved, approached the 1st respondent, who declined the prayer, since the period of 30 days for remittance of the balance amount prescribed as per the statute was over and the forfeiture of advance amount paid on failure of payment of balance consideration within the prescribed time was also a statutory mandate. Hence, the application filed by the appellant for return of the advance money was rejected by Exhibit P6. Very curiously, the appellant now challenges the very auction sale in which he was a successful bidder; on the ground that it was irregular. In any event, the auction which he challenges now has not fructified into sale, for reason of the balance sale consideration having not been remitted within the period prescribed under the Revenue Recovery Act. As of today, there is no auction sale which could be successfully challenged by the appellant or even by the owner of the property, which was attempted to be sold in revenue auction. The intention of the appellant is clear, insofar as he attempts to do indirectly what he could not have done directly. His application for refund of advance forfeited on the failure to deposit the balance sale consideration was unsuccessfully agitated before the District Collector. The appellant having no legal ground to challenge the forfeiture, he turns around and challenges the auction sale itself as irregular only to set aside the sale and obtain refund of the advance money forfeited.

2. The fundamental principle is that any challenge under Article 226 is for the enforcement of any of the rights conferred by Part III of the Constitution of India and for any other purpose. Hence, what is necessary to maintain a challenge against an executive action is the prejudice caused by an act or omission in contravention of the statute or in violation of the fundamental rights. The irregularity now alleged, in the auction sale, has not in any manner prejudiced the appellant. On payment of balance sale consideration, the sale would have been confirmed and the prejudice caused could only have been to the owner of the property, which was sold in auction. In the instant case, the sale did not come to its statutory conclusion, by confirmation of the appropriate authority; since balance sale consideration was not paid. Nothing remains as such to be challenged even by the owner of the property. The prejudice caused to the appellant is only that the advance paid has been forfeited, for which the appellant has only himself to blame. Admittedly, the appellant had not paid the balance sale consideration within the prescribed time and his right to get the sale confirmed after the expiry of the time prescribed is settled by Exhibit P4 judgment.

What remains is only the forfeiture, which, we notice, is perfectly justified in view of the statutory provisions, as has been found in Exhibit P6 order. The contentions raised in the writ petition challenging the sale and the direction sought for setting aside the sale cannot at all survive for the reasons stated above. We cannot but deprecate the circuitous method adopted by the appellant to circumvent the mandatory provisions of law; as has been done in the instant case.

The Writ Appeal is dismissed, however, with no costs.

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