

(1991) 07 KL CK 0060
In the High Court Of Kerala
Case No : W.A. No. 843 of 1987

Smt. Subaida Sulaiman

APPELLANT

Vs

Hamza and Others

RESPONDENT

Date of Decision : 05-07-1991

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 50, 50(1), 50(2), 52, 53

Citation : (1991) 2 KLJ 425

Hon'ble Judges : U.L. Bhat, Acting C.J.; T.S. Krishnamoorthy Iyer, J

Bench : Division Bench

Advocate : K.S. Rajamony and K.K. Gopinathan Nair, for the Appellant; P.V. Ayyappan, for 1st Respondent and V. Bhaskara Menon, Government Pleader for 2nd Respondent, for the Respondent

Judgement

1. Second Respondent in O.P. No. 5415 of 1983 has filed this appeal.
2. Second Respondent's husband obtained a loan from the Kerala Fisheries Corporation, and second Respondent stood guarantee for the loan offering her landed property as security. The property was brought to sale invoking the provisions of the Kerala Revenue Recovery Act, 1968, the provisions of the Act having been made applicable to such loans by virtue of notification dated 8th November 1970 u/s 71 of the Act. The said sale stood posted to 21st August 1976. It was adjourned subsequently and ultimately to 20th December 1976 on which date the third Respondent purchased the property for Rs. 12,750. The second Respondent filed an application before the appropriate officer u/s 53(1) of the Act to set aside the sale. No specific order was passed thereon, but it was treated as dismissed. The sale was confirmed on 22nd March 1978 under Ext. R-2(a) order which states that he has already dismissed the application. The second Respondent filed an application before the Hon'ble Minister, as seen from Ext. R-2(b), and that was rejected under Ext. R-2(d), and he there upon filed O.P. No. 2206 of 1979 in this Court which was disposed of by judgment, Ext. R-2(c). This Court held that an application to the Hon'ble Minister was not a

statutory application, and a revision would lie to the Board of Revenue. This Court directed the second Respondent to file revision petition before the Board of Revenue, and if it was filed within one month, the Board of Revenue would treat the revision petition as having been filed in time and deal with it on merits. Second Respondent filed a revision petition before the Board of Revenue, and the Board of Revenue by Ext. P-2 order held that the price fetched at the sale was inadequate and insufficient, and on that ground set aside the sale. The writ Petitioner who took assignment of the property from the auction purchaser, being aggrieved by the order of the Board of Revenue, filed O.P. No. 5415 of 1983. Several contentions were urged before the learned Single Judge, who set aside Ext. P-2 order on the short ground that the sale was not liable to be set aside merely on account of inadequacy of the price fetched at the sale. This judgment is now challenged.

3. Learned Counsel for the Appellant would contend that the learned Single Judge was in error in holding that mere inadequacy of the price fetched at the sale would not be a ground to set aside the sale. Learned Counsel relied on the observation of a learned Single Judge Of this Court in Joseph v. Tahsildar, South Wynad 1979 K.U.C. 270. In paragraph 3 of the judgment, it is observed, after referring to Sections 52 and 53 of the Act;

...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 the 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....

4. Section 52 of the Act enables the Collector to set aside the sale on deposit of correct amount as contemplated therein. Section 53 states, inter alia, that "application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake or fraud in publishing or conducting it, but, except as otherwise hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof". A plain reading of the provision would indicate that a sale can be set aside only on satisfaction of the Collector that there are some material irregularity or mistake or fraud in publishing or conducting the sale...and on account of such material irregularity, or mistake or fraud, the applicant has sustained substantial injury. Going by Section 53 of the Act, it would not be correct to say that in mere inadequacy of the price fetched at the sale would, by itself, be a sufficient ground to set aside the sale.

5. Section 54 states:

On the expiration of thirty days from the date of the sale, if no application to have the sale set 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.

The proviso to Section 54 states:

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 this reasons in writing, set aside the sale.

6. According to learned Counsel for the Appellant, there are three contingencies, where a Sale can be set aside. They are: (1) on deposit of the amount u/s 52; (2) on a sale being held to be vitiated by material irregularity, or mistake or fraud in publishing or conducting it, provided, the applicant has sustained substantial injury thereof u/s 53; and, (3) the Collector has reason to think that the sale ought to be set aside under the proviso to Section 54 and in the last case the ingredients contemplated u/s 53, namely, material irregularity, mistake or fraud in publishing or conducting the sale, do not have any relevance. We are afraid we are unable to agree with this sweeping contentions. Sections 52 to 54 constitute a scheme to enable a sale to be set aside for valid and proper grounds. Section 52 can be invoked where any person owning or claiming an interest in immovable property sold is ready to deposit the amount contemplated therein. Section 53 can be invoked on the ground of material irregularity or mistake or fraud in publishing or conducting the sale, if such an irregularity or mistake or fraud has been brought to the notice of the Collector by way of an application. Even if a person interested in the property fails to file an application u/s 52 or Section 53 to set aside the sale, it is open to the Collector to set aside the sale, if he has reason to think that the sale ought to be set aside. Even in a case where application has been filed, but the grounds urged in the application have not been proved, but some other ground emerges, from the records, and that ground is sufficient to set aside the sale, it is open to the Collector to set aside the sale by virtue of the proviso to Section 54. The proviso to Section 54 does, not indicate for what reasons or on what ground or under what circumstances the Collector can set aside the sale. It cannot be said that the Legislature, intended that the Collector can set aside the sale for no reason, or for any irrelevant reason. It is difficult to accept that the Legislature did not intend to prescribe any guidelines in the matter of exercise of power conferred on the Collector under the proviso to Section 54. Reading Section 53 and 54 together, and it appears to us that the provision being a part of the scheme in the matter of setting aside the sale, they have to be read together, the picture becomes clear and the Collector can set aside the sale under the proviso to Section 54, only if he has reason to think that the sale ought to be set aside for the reasons mentioned in Section 53. De hors the reasons mentioned in Section 53, the Collector has no jurisdiction either u/s 53 or under the proviso to Section

54. The observations, we have quoted from the decision in Joseph's case 1979 K.U.C. 270, with respect, do not lay down the correct law.

7. There is no contention before us that apart from the mere inadequacy of the price fetched at the sale, the second Respondent had established before the Board of Revenue that there was any material irregularity, or mistake or fraud in publishing or conducting the sale. Therefore the second Respondent cannot successfully invoke the provisions of Section 53 and the proviso to Section 54 of the Act.

8. Learned Counsel for the Appellant invites our attention to Section 50 of the Act and submits that the sale officer did not follow the procedure prescribed therein, and therefore the sale is illegal. Section 50 deals with a case where there is no bid at the sale or the highest bid is insufficient to cover the arrears, and those amounts subsequently accruing due upto the date of sale, together with interest and cost of process. In such a case the officer conducting the sale shall postpone the sale to another date. Sub-section (2) indicates that in the postponed sale, if there be no bid, the officer conducting the sale may purchase the property on behalf of the Government for an amount of ten paise; and if the highest bid be insufficient to cover the arrears referred to in Sub-section (1) and those subsequently accruing due upto the date of the sale and interest and cost of process, he may bid on behalf of the Government for an amount higher than such amount by ten paise. The learned Single Judge took the view that Section 50 is inapplicable because the sale is not for arrear of public revenue due on land. That view is based on the Division Bench decision of this Court in Tahsildar v. Thomas 1969 K.L.R. 559. That is a decision arising u/s 36A of the Travancore-Cochin Revenue Recovery Act, 1951. It is submitted before us that there is considerable difference in the language of that provision and the corresponding provision in the Kerala Revenue Recovery Act. We do not propose to go into this question, since the plea based on Section 50 of the Act has not been raised either in the application to set aside the sale filed before the statutory authority or in the revision petition filed before the Board of Revenue.

9. We therefore decline to interfere, and dismiss the appeal, but without costs.