(2014) 09 KL CK 0033

In the High Court Of Kerala

Case No : W.P.(C). No. 21635 of 2014 (D)

Spice Valley Condiments (P) Ltd. APPELLANT

Vs

District Collector, Thiruvananthapuram RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Revenue Recovery Act, 1968 — Section 30, 49, 49(2), 71

Citation : (2014) 09 KL CK 0033

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Meena. A., Advocate for the Appellant; P.V. Lonachan, Senior Government Pleader and Sunil K.R., Standing Counsel, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner was aggrieved with the notice issued at Exhibit P9, which posted the sale of certain properties on 20.08.2014. The sale notice, Exhibit P9 was dated 30.07.2014. Hence, this Court had granted an interim stay of the sale at the admission stage, on the short ground that it does not comply with Section 49 of the Kerala Revenue Recovery Act, 1968 [for brevity "RR Act"], i.e., thirty days time between publication and sale.

2. The 3rd respondent, who was the requisitioning authority, had immediately thereafter filed a counter affidavit, pointing out various aspects which, according to the said respondent, reveals the guile employed by the petitioner to thwart recovery. The petitioner is also guilty of suppression, urges learned counsel, and hence would be disentitled from invoking the extra-ordinary remedy. As has been pointed out by the 3rd respondent in the counter affidavit filed, the recovery proceedings were originally initiated in the year 2010 and the petitioner, simultaneously, had been before two different forums, seeking interdiction of such recovery proceedings.

3. Initially on 01.01.2011, the petitioner obtained a stay of the revenue recovery

proceedings from the Government on condition of payment of 10% of the due amount before 01.02.2011 and the balance in 40 instalments. That order was not complied with. An extension was sought for on 08.02.2011, which was also granted by the Government, which order again was not complied with by the petitioner. Subsequently, on 04.03.2013 and 04.04.2013, the exercise was repeated. The various stay orders and extension obtained have been produced at Exhibits R3(f) to R3(i). Admittedly none of the conditions in the said orders have been complied with.

4. On the petitioner''s consistent default, the revenue recovery proceedings were proceeded with and a notice issued under Section 49(2) of the RR Act, at Exhibit P6. This was perfectly in compliance with sub-section (2) of Section 49, since the notice was dated 15.03.2014 and the sale posted on 23.04.2014 was after 30 days stipulated in sub-section (2). The petitioner was before this Court, challenging the same and Exhibit P7 order, dated 22.04.2014, was passed, wherein this Court had directed that the sale would go on as scheduled; but, however, the same shall not be confirmed till 30.06.2014. On the very same day, when the petitioner moved a writ petition before this Court, the petitioner also moved an application before the Government, the order in which is seen produced at Exhibit P8. The Government, without being aware of the interim order passed at Exhibit P7, granted a stay of the recovery proceedings on condition of payment of 30% before 22.05.2014. Again default was committed. A further extension was sought for. In the meanwhile, the sale notified as per Exhibit P6; though directed to be continued by this Court in Exhibit P7, was adjourned for reason only of the stay order having been passed at Exhibit P8, by the State Government.

5. The adjourned sale was notified again as per Exhibit R3(j), which sale notice was on 23.05.2014 and the date of sale notified was 25.06.2014. Though an adjourned sale, this notice too complied with the thirty days stipulation in sub-section (2) of Section 49. Again, on 24.06.2014, the previous day of the sale, the petitioner approached the Government for extension of the earlier order, which extension is produced at Exhibit R3(k). While the earlier stay order was on condition of deposit of 30% on or before 22.05.2014 and the payment of balance in 10 instalments, the extension, again issued from the office of the Revenue Minister directed payment of 25% before 24.07.2014 and settlement of balance in 25 instalments. The extension was, hence, more liberal than the original order. The 3rd respondent, a Corporation under the Government, could only blame the willing officers of the Government in interdicting recovery, against consistent defaulters; without any deliberation on the consequences.

6. The RR Act contemplates speedy recovery of public debts and the executive Government, by a notification under Section 71 of the Act, has brought in the amounts due to the 3rd respondent as eligible to be recovered with expedience under the statute. The stay of recovery granted frequently and the extensions allowed liberally, even when the earlier orders were not even attempted to be

complied; has to be viewed in that context.

7. The present writ petition was filed challenging Exhibit P9, wherein the notice was dated 30.07.2014 and the sale was notified on 20.08.2014. The petitioner''s contention urged before this Court is that, the sale notice is under Section 49(2) and 30 days time is not granted. The petitioner relies on Exhibit P6 to contend that if the sale notified therein, on 23.04.2014, is taken as the first notification; then the sale notified by Exhibit P9, on 20.08.2014 is after sixty days from the first sale and hence has to be in accordance with sub-section (2) of Section 49. The learned counsel for the 3rd respondent, however, contends that the said notice issued at Exhibit P9 is an adjourned sale; consequent to Exhibit R3(j). The earlier sale as per Exhibit R3(j) was notified on 25.06.2014 and the instant sale on 20.08.2014, being within sixty days; Exhibit P9 would be in essential compliance of sub-section (4) of Section 49, is the compelling argument.

8. What assumes significance, in consideration of the conflicting claims, is the procedure contemplated under Section 49. Section 49 prescribes the procedure for sale of immovable property and what is relevant for consideration of the aforesaid case, is the time stipulated for notice, when such sale is notified. As per sub-section (2), the first notice required to be served, has to be served and published with the necessary details as spoken of in sub-section (2); i.e., at least thirty days before the date of sale. Any adjournment of such sale notified, is at the discretion of the revenue recovery officer, for which, reasons have to be recorded. It is also specifically stipulated by sub-section (4) that if the adjourned sale is posted within sixty days of the original sale, notice of the adjourned sale, needs to be published only in the Taluk and Village offices concerned. No separate notice under Section 49(2) is then contemplated. Only when the sale is beyond sixty days, fresh notice would have to be served.

9. The contention of the 3rd respondent is that, since the earlier sale notified at Exhibit R3(j) and the sale notified in Exhibit P9 is within sixty days, Exhibit P9 would have to be examined under sub-section (4) and not under sub-section (2) of Section 49. The words used in Section 49, both under sub-section (2) and sub-section (4), is "original sale". The "original sale" in the present case definitely is by Exhibit P6, which notified it on 23.04.2014. The adjourned sale at Exhibit R3(j) is on 24.06.2014, which was beyond the sixty days contemplated under sub-section (4). The sale, which was adjourned on 23.04.2014, being beyond sixty days, the said notice at Exhibit R3(j) would have to be taken, as in an original sale, i.e., with the sale being notified after thirty days from the date of publication. Exhibit R3(j), the adjourned sale, was notified as an "original sale" with thirty days time as stipulated in sub-section (2) of Section 49.

10. Exhibit R3(j) dated 23.05.2014, notifying the sale on 25.06.2014, is outside sixty days from the sale notified at Exhibit P6. But the sale notified in Exhibit R3(j) should be considered as the "original sale" as per sub-sections (2) and (4) of Section 49. Then Exhibit R3(j) has to comply with sub-section (2) of section 49. Exhibit R3(j) was published on 23.05.2014 with the sale notified after thirty

days, i.e., on 25.06.2014. Exhibit R3(j), hence, is the "original sale" notified under sub-section (2) of Section 49 If that be so, the adjourned sale as notified in Exhibit P9 cannot be said to be unsustainable, since sub-section (4) of Section 49 permits it, if the adjourned sale is within sixty days of the original sale. Exhibit R3(j) notified the sale under sub-section (2) of Section 49, which ''original sale'' was on 25.06.2014 and the sale notified at Exhibit P9, on 20.08.2014 was within sixty days of the ''original sale''. In such circumstance, the writ petition is found to be devoid of merit.

11. Looking at the facts which come to fore in the above writ petition, it is to be noticed that the petitioner had suppressed material facts in the aforesaid writ petition. As has been pointed out in the counter affidavit of the 3rd respondent, none of the proceedings taken prior to Exhibit P1 judgment was placed before this Court. The counter affidavit specifically points out the various attempts made by the petitioner to interdict the recovery proceedings and the stay orders obtained from the Government, produced at Exhibits R3(f) to R3(i). It is an admitted fact that none of the stay orders have been complied with and no payments, as per the said stay orders, were made to the loan account.

12. Then again, after Exhibit P1, the One Time Settlement [OTS] scheme directed to be considered was found to be unacceptable by the 3rd respondent. The same was communicated to the petitioner. The petitioner having not paid up the amounts in the loan, the 3rd respondent had absolutely no other remedy than to again pursue the revenue recovery proceedings, as has been indicated in Exhibit P6. In Exhibit P6, the sale notified was on 23.04.2014. The petitioner on 22.04.2014, approached this Court with a writ petition and simultaneously approached the Government with an application for stay. I have gone through the judges papers in W.P.(C). No. 11164 of 2014, the averments in which does not disclose the petitioner''s simultaneous representation before the Government. The petitioner did not, in the earlier writ petition, disclose the petitioner having approached the Government; nor was the Government apprised of the writ petition filed. Both the writ petition and the stay applications [before this Court and before the Government] were considered and while confirmation was stayed by this Court under Exhibit P7, the Government chose to grant a stay of sale on condition. The 3rd respondent, being a Corporation under the Government, complied with the stay order and requested the revenue recovery authorities to adjourn the sale, which adjournment was granted. On non-compliance of the conditional stay order passed by the Government, again a notice was issued, produced at Exhibit R3 (j); as a notice contemplated under sub-section (2) of Section 49. The earlier writ petition, at that point of time, was pending before this Court. The petitioner chose to approach the Government with an extension application and the Government granted it on condition of payment of 25% before 24.07.2014 and the balance in instalments. The sale again stood adjourned. The petitioner challenged the rejection of OTS in W.P.(C). No. 11164 of 2014, but chose to withdraw the same. Such withdrawal was made only on the revenue recovery sale being effectively frustrated by the orders issued at

Exhibits P8 and R3(k). The revenue recovery authorities then notified the sale within sixty days, to 20.08.2014. The said adjourned sale, which was notified by Exhibit P9 dated 30.07.2014, was after the date for payment of 25%; i.e., after 24.07.2014.

13. The petitioner though has produced a copy of the stay order in Exhibit P8, has not brought to the notice of this Court that a sale was notified, subsequent to the failure of the petitioner to comply with Exhibit P8 order. The interdiction of such sale proceedings, by approaching the Government, has been casually referred to in the writ petition. Suppressing the sale notice issued at Exhibit R3(j), the petitioner approached this Court with the present writ petition, challenging Exhibit P9 as a notice issued for "original sale" as contemplated under sub-section (2) of Section 49. That again is a clear abuse of process of this Court.

14. The petitioner having obtained an interim order in a writ petition filed, invoking Article 226 of the Constitution of India, wherein this Court directed the sale to be carried out, also chose to approach the Government simultaneously and obtained complete stay of the recovery proceedings on conditions, which later was not complied with. It is to be noticed that, this Court had, in the writ petition stayed only the confirmation of sale. The deliberate actions of the petitioner in initiating simultaneous proceedings, resulted in conflicting orders being passed by this Court and the Government. Having approached the Government and having obtained an interim order and extension thereof, and without complying with such orders, the petitioner sought withdrawal of the writ petition; in which there was an order that the sale would be continued. This again amounts to abuse of process of Court and clearly reveals the deliberate attempt of the petitioner to thwart recovery.

15. Taking all the aforesaid circumstances into account and also the averments in the counter affidavit of the 3rd respondent with respect to the various proceedings initiated by the petitioner to interdict recovery by approaching the Government, the petitioner has clearly abused the process of law and attempted to divert the course of justice by invoking an equitable remedy and interdicting a valid recovery, proceeded with by the 3rd respondent. The petitioner, hence, shall be mulcted with exemplary cost of Rs. 25,000/- [Rupees twenty five thousand only], which the 2nd respondent shall recover under the RR Act in the recovery proceedings; over and above the dues to the 3rd respondent and the same shall be deposited to the Kerala Mediation and Conciliation Centre, Ernakulam. The Registry shall forward a copy of this judgment to the Director, Kerala Mediation and Conciliation Centre.

16. This Court cannot but express dismay at the cavalier manner in which the revenue recovery proceedings were interdicted, in the instant case, evidenced at Exhibits R3(f) to R3(i), Exhibit P8 and Exhibit R3(k). The RR Act has been enacted by the legislature to expedite recovery of public funds and the 3rd respondent has been notified under Section 71 of the Act. The executive, by the

aforesaid orders, has thwarted the recovery, that too repeatedly without any money coming to the 3rd respondent. Such inappropriate measures bringing in uncertainty to the recovery was thought fit; when this Court itself had not interfered with the proceedings under Article 226 of the Constitution of India. True, the authority was not aware of the writ proceedings. But, one cannot but examine and enquire as to the source of power which enables such orders to be passed. The source of such power can only be traced to the hierarchal discipline, wherein the lower minions are forced to do the bidding of their higher officials'' even if the same is against legislative dictate. This shall not be; for executive fiat cannot and should not override legislative command. The Registry is directed to forward a copy of this judgment to the Principal Secretary, Revenue Department, Government of Kerala to be placed before the appropriate authorities. The recovery proceedings challenged in the writ petition shall be continued in accordance with law and if required, by publishing a fresh notification under sub-section (2) of Section 49.

The writ petition is dismissed, with costs as above.