
(2010) 07 KL CK 0157
In the High Court Of Kerala
Case No : W.A. No. 1742 of 2009

State of Kerala and Others

APPELLANT

Vs

George Jacob

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 BC 203

Hon'ble Judges : P.S. Gopinathan, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.V. Manoj Kumar, Government Pleader, for the Appellant; M.V. Bose and Vinod Madhavan, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Appeal is filed by the State challenging the judgment of the learned Single Judge directing reconveyance of Respondent's property purchased by the Government in revenue recovery proceedings and retained as bought-in-land based on the settlement of liability by the Respondent under amnesty scheme. We have heard Government Pleader appearing for the Appellant and counsel appearing for the Respondent.

2. The Respondent, an abkari contractor, fell in arrears of abkari dues to the State. 10.56 acres of rubber plantation belonging to the Respondent was attached and sold in revenue recovery proceedings for recovery of a total amount of around Rs. 36 lakhs. Since there was no purchaser for the property in the revenue sale, the recovery authority purchased the property u/s 50 of the Revenue Recovery Act for a consideration of rupee one. The revenue sale made on 2-3-1995 was confirmed on 24-8-1995. Physical possession of the property was taken over by the revenue authorities on 8-12-1995. The mahazar indicates that the property taken over was mature rubber plantation of 8 years yield. Even though substantial income could have been obtained by tapping the rubber, the State could neither do it by themselves or through agencies, nor could the property be leased out to anyone for taking yield. Respondent's effort to get

back possession for taking yield was also not successful. Consequently the property remained unyielding to the State as well as to the Respondent for several years. In between, the revenue authorities valued the property as on 13-11-2001 at Rs. 8,44,800 and the said amount was credited in the loan account but with effect from 24-8-1995 i.e. the date of confirmation of sale. During 1997 the property of the co-licencee was sold in recovery proceedings and an amount of Rs. 5,90,200 was adjusted towards the very same liability. However, this amount well as the notional value of Rs. 8,44,800 for the bought-in-land of the Respondent were credited and set off against interest liability. While so, the Government introduced Ext. P-2 scheme of amnesty providing for settlement of Government dues which includes the abkari liability. Under the scheme, Respondent was entitled to settle liability towards abkari dues by availing waiver of complete interest and by payment of principal amount. On Petitioner's application under Ext. P-2, the Assistant Commissioner of Excise permitted settlement on payment of Rs. 27,61,131 which was the principal amount of liability. However, Petitioner's effort for reconveyance of property held by the Government as bought-in-land was unsuccessful and, therefore, Petitioner approached this Court with the Writ Petition. The learned Single Judge allowed the W.P. directing the Appellants to reconvey the bought-in-land to the Respondent, against which this Writ Appeal is filed.

3. The amnesty scheme admittedly entitles the Respondent for settlement of liability and it was in fact granted to him by waiving accrued interest of around Rs. 58 lakhs and on collection of the principal amount of Rs. 27,61,131. So far as revenue recovery proceedings are concerned, Ext. P-2 amnesty scheme states as follows:

Revenue recovery action initiated if any will be withdrawn in these cases and collection charges shall be waived.

The question to be considered is whether withdrawal of revenue recovery action involves automatic cancellation of revenue sale made in recovery proceedings. Government Pleader submitted that once sale is made u/s 50 of the Act whereunder Government purchased the property for rupee one and when the sale is confirmed, it is like a sale made to a stranger which cannot be interfered through executive orders issued by the Government under amnesty scheme. Counsel for the Respondent contended that the very purpose of settling liability under the amnesty scheme is to regain the lost property and so long as the purchaser is Government, Ext.P-2 scheme entitles the Respondent for reconveyance of the property after settlement of liability under amnesty scheme. We are unable to accept this contention of the Respondent because Ext.P-2 scheme does not provide for cancellation of sale effected under the Revenue Recovery Act. Withdrawal of revenue recovery action contemplated under Ext.P-2 order can only mean that there will be no further revenue recovery proceedings and it does not invalidate revenue recovery proceedings that have culminated in sale and confirmation of sale of property. It is to be noted that for recovery of

the very same arrears, the co-licencee's property was sold to a stranger and such stranger has obtained title over the property which is not sought to be unsettled by its owner based on the amnesty benefit availed by the Respondent. So far as sale of property is concerned, it makes no difference whether purchaser is the Government u/s 50 or whether the sale is to a stranger because title in both cases pass on to the purchaser. Therefore, unless the amnesty scheme provides for reconveyance of property retained by the Government as bought in land, the court cannot order reconveyance to the defaulter who has settled the liability under amnesty scheme. Long before Ext.P-2, Government had issued several orders on the subject, two of which are produced as Ext. R-1(a) dated 9-2-1968 and Ext.R-1(b) dated 22-3-1996. In these two Government Orders what is stated is that property purchased by the Government and retained as bought-in-land could be reconveyed only if application is made within two years from such sale and only if defaulter clears arrears with interest or in the alternative, the market value of the land. The latest decision of the Government which is a Cabinet decision produced in court shows that even under amnesty scheme, bought-in-land has to be dealt with by the Revenue Department or at least in consultation with the Revenue Department. Government certainly has the authority to reconvey land purchased by it in revenue sale and retained as bought-in-land on the defaulter satisfying Government Orders in regard to reconveyance. However, in this case we do not find any specific provision in Ext.P-2 amnesty scheme for cancellation of sale of property in recovery proceedings by Government to itself u/s 50 of the Act or a provision for reconveyance of such property to the defaulter on settlement of liability under amnesty scheme. We are, therefore, not in a position to uphold the finding of the learned Single Judge declaring Respondent's entitlement for reconveyance of the bought-in-land under Ext. P-2.

4. Counsel for the Petitioner contended that the Assistant Commissioner of Excise while granting settlement benefit to him has reduced interest amount by crediting the amount of Rs. 8,44,800 adjusted by the recovery authority towards notional value of the Respondent's property which indicates that on settlement of liability, property will be reconveyed to him. He has also referred to Exts.R-1(a) and R-1(b) proceedings wherein the Government decided to reconvey the property to him and only thereafter based on a legal advice from the Advocate General, this belated Writ Appeal is filed. According to counsel for the Respondent, the intention of the Government is clear from the amnesty scheme and the subsequent proceedings, though issued after judgment of this Court. It is also contended that only on the bona fide belief of getting back the property, the Respondent had deposited the massive amount of above Rs. 27 lakhs. Therefore, the contention of the Respondent is that on equitable grounds, the Respondent is entitled to relief, though not strictly based on Ext. P-2 amnesty scheme. It is a settled position that this court in the discretionary jurisdiction under Article 226 of the Constitution of India can certainly mould relief to meet the ends of justice. In this context we notice that after purchase of

the defaulter's property on 2-3-1995 and after taking possession on 8-12-1995 Government has not been able to earn any income from a mature rubber plantation for the last 15 years. It is well-known that rubber is the most profitable crop in the State and if yield was taken in the course of last 15 years, much of the liability would have been set off. The Government has under it's arm even Rubber Plantation Company and if Government really wanted, it could have utilised the service of any of it's agencies for taking yield. Therefore, we feel the callous indifference of the Government officials has led to Government sustaining loss. Amnesty itself is admission of Government's inability to recover arrears from defaulters and when it is granted, we feel defaulters should be allowed to enjoy the full benefit of the same. However, in this case we notice that the Respondent was granted a benefit of Rs. 8,44,800 towards interest liability which is only a notional amount representing the value of the property as on 13-11-2001. At any time in the course of 15 years the Government could have sold the property by private sale or otherwise and recovered the value. It is also to be noted that a co-licencee's property was sold in 1997 and an amount of around Rs. 5.92 lakhs recovered was adjusted towards interest liability. Therefore, we feel Government is entitled to recover at least notional value of the interest credited i.e. Rs. 8,44,800. We, therefore, allow the Writ Appeal in part by modifying the judgment of the learned Single Judge directing reconveyance of the bought-in-land to the Respondent on the Respondent remitting Rs. 8,44,800 without any interest or cost within a period of one month from today.

5. Government Pleader at this point of time pointed out that since this Court is exercising discretionary jurisdiction in favour of the Respondent, he shall not be allowed to continue as a defaulter towards sales tax arrears and Abkari Workers Welfare Fund contribution arrears which are also stated to be due from the Respondent. Counsel for the Respondent is not able to confirm this to this Court. However, we feel benefit of this kind could be granted to the Respondent only if any other dues to the Government or statutory agencies are paid, such as the sales tax arrears and Abkari Workers Welfare Fund contribution arrears. The Revenue, Sales Tax and Abkari Workers Welfare Fund Board authorities are directed to verify the position and intimate the Respondent about balance arrears due for him to settle the same by availing incentives, if any available and on clearing the arrears, the property will be reconveyed to the Respondent without any delay. The Respondent is given one month time from today to remit Rs. 8,44,600 and further two months thereafter to clear all other arrears and reconveyance will be made after clearing all arrears. If all amounts as stated above are not paid, then the Writ Appeal will stand allowed by vacating the judgment of the learned Single Judge and by dismissing the Writ Petition.