(2007) 09 KL CK 0104

In the High Court Of Kerala

Case No : W.A. No. 31 of 2003

Subair Haji, K.P. — APPELLANT

Vs

Krishnan, T.V. and Others — RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Revenue Recovery Act, 1968 — Section 53, 83(2)

Citation : (2007) 2 KLJ 865 : (2009) 20 VST 622

Hon'ble Judges : H.L. Dattu, C.J;K.T. Sankaran, J

Bench : Division Bench

Advocate : K.B. Muhamed Kutty and K.M Firoz, for the Appellant; Mohammed Rafiq, Govt. Pleader and O.V. Maniprasad, for the Respondent

Judgement

H.L. Dattu, C.J.—The parties in these Appeals and Original Petition are common and since the issues involved are interconnected and related, these Appeals and the Original Petition are clubbed, heard and disposed of by this common order.

2. One Shri K.P. Subair Haji, the Appellant in the appeals and the Petitioner in the Original Petition, is the partner of a firm. The firm is a dealer and it is registered under the provisions of the Kerala General Sales Tax Act. It was engaged in the business of hill produces.

3. For the assessment years 1983-1984 to 1988-1989, the firm was assessed to sales tax. The appeals filed by the firm before the first appellate authority questioning the correctness or otherwise of the orders of assessment came to be dismissed by the first appellate authority by its order dated 11-7-1994. Aggrieved by the said order, the firm had preferred appeals before the Sales Tax Tribunal. The Tribunal has allowed the appeal by its order dated 2-4-1996 and thereby has set aside the orders of assessment passed by the assessing authority for the assessment years 1983-1984 to 1988-1989 and had remanded the matter to the assessing authority to redo the assessment in accordance with law and in the light of certain observations made in the course of the order.

4. While the first appeal was pending before the first appellate authority, the sales tax authorities had initiated recovery proceedings, to recover the sales tax due for the assessment years 1983-1984 to 1988-1989,by resorting to revenue recovery proceedings. In aid of the said recovery proceedings the authorities had attached 5 cents of land in Survey No. 59/12 of Taliparamba desom. In the said land there existed a building.

5. After the said attachment, the revenue recovery authorities have brought the attached property for sale by way of public auction. In the said public auction, the fourth Respondent in O.P. No. 32506 of 2000 and first Respondent in W.A. No. 977 of 2006 has purchased the property for a sum of Rs. 3,40,000. The revenue recovery authorities have confirmed the sale made in favour of the contesting Respondent in spite of there being an order of stay by the Sales Tax Appellate Tribunal.

6. On an application made by Shri Subair Haji, the State Government had issued a direction to the revenue recovery authorities and also the fourth Respondent to return the property to Shri Subair Haji. In spite of such a direction, the property is not returned to him. The fourth Respondent continues to be in possession and enjoyment of the property in question.

7. Aggrieved by the action of the revenue authorities in bringing to auction the property attached for realisation of sales tax due under the Act, Shri Subair Haji had filed a petition u/s 53 of the Revenue Recovery Act before the District Collector, inter alia requesting him to set aside the same. The District Collector, vide his order dated 5-8-1995, has dismissed the petition so filed by Shri Subair Haji. That order passed by the District Collector is questioned by Shri Subair Haji in a revision petition before the Board of Revenue on 22-9-1995. The Board of Revenue, while entertaining the revision petition, had granted an interim order of stay staying the order passed by the District Collector in exercise of his powers u/s 53 of the Act. The Revenue Divisional Officer, Thalassery, by his order dated 4-10-1995, had confirmed the same even before the Board Revenue had passed the order of stay.

8. The Board of Revenue by its order dated 27-10-1995 has dismissed the revision petition filed by Shri Subair Haji.

9. Aggrieved by the aforesaid order passed by the Board of Revenue, Shri Subair Haji has filed a revision petition before the State Government u/s 83(2) of Kerala Revenue Recovery Act, 1968. The State Government by its order dated 24-10-2000 has dismissed the revision petition. Aggrieved by the said order, Shri Subair Haji has preferred the Original Petition under Article 226 of the Constitution before this Court.

10. The auction purchaser, Shri T.V. Krishnan has filed O.P. No. 12000 of 2001, inter alia seeking a writ of mandamus to the Respondents for grant of sale certificate and also for registering the property in his name pursuant to confirmation of sale made by the revenue authorities. This Court, by order dated

3-7-2002, has allowed the petition and has issued certain directions to the revenue authorities to grant the sale certificate and also to deliver possession of the property to the auction purchaser. Aggrieved by the said order passed by the learned Single Judge, the Petitioner in O.P. No. 32506 of 2000 has filed W.A. No. 977 of 2006.

11. O.P. No. 37731 of 2002 was filed by Shri Subair Haji to set aside the sale certificate issued to the auction purchaser. The said Original Petition was dismissed by the learned Single Judge on the ground that O.P. No. 12000 of 2001 was allowed earlier. In the said decision it was also held that the remedy of Shri Subair Haji is to file a review petition in O.P.No. 12000 of 2001 if he so desires or in the alternative to prefer an appeal against the said judgment. The said order passed by the learned Single Judge is the subject-matter of W.A. No. 31 of 2003.

12. In O.P. No. 32506 of 2000, as we have already stated, the Petitioner is primarily questioning the orders passed by the State Government in the revision petition filed by the Petitioner u/s 83(2) of the Kerala Revenue Recovery Act, 1968. It is the contention of the Petitioner that one N. Sudhakaran, who was the Additional Secretary to the Government, Revenue Department, had heard the Petitioner''s advocate and the order is passed by one Smt. K.R. Anandavally Amma, Joint Secretary to Government. It is asserted that since the petition filed by the Petitioner is a statutory revision, the said revision requires to be heard and decided by the very officer and it cannot be heard by one officer and orders passed by yet another officer. Therefore, it is asserted in the petition that the orders passed by the State Government dated 24-10-2000 is in violation of one of the facets of the principles of natural justice.

13. Shri Mohammed Firoz, learned Counsel appearing for the Petitioner, while reiterating the contentions canvassed by the Petitioner in the Writ Petition, brings to our notice the order passed by the State Government u/s 83(2) of the Act and then submits that even in the order it is disclosed that one N. Sudhakaran, the then Additional Secretary to Government, Revenue Department had heard the matter and his successor Smt. K. Anandavally Amma, Joint Secretary to Government has passed the impugned order. In support of that assertion, learned Counsel places reliance on the third paragraph of the order passed by the State Government. The said paragraph reads as under:

As per the Section 83(2) of the Kerala Revenue Recovery Act, 1968 the affected parties were afforded personal hearing by Government. Sri N. Sudhakaran, the then Additional Secretary to Government, Revenue Department heard Sri E.V. Mohanan, Advocate who appeared for Sri T.V. Krishnan, the auction purchaser and Sri Sugathan, Advocate who appeared for Sri Zubair Haji, the Revision Petitioner. In the judgment read as fourth paper above, the Honourable High Court has directed Govt. to dispose the Revision Petition within a period of three months which was extended three times on the request of Govt. The time-limit fixed is to expire on 30th October 2000. Govt. examined the matter in detail in consultation with the Taxes Department, the Law Department and the Additional Advocate General, Ernakulam.

14. A perusal of the aforesaid paragraph would clearly demonstrate that the revision petition that was filed by the Petitioner was heard by Shri N. Sudhakaran, who was then Additional Secretary to Government, Revenue Department, but the order came to be subsequently passed by one Smt. K. Anandavally Amma, Joint Secretary to Government. This only means that the revision petition was heard by one officer and the order is passed on the revision petition by yet another officer. This, in our opinion, is in total violation of one of the facets of the principles of natural justice. However, learned Counsel appearing for the additional fourth Respondent, Shri Maniprasad would submit that under certain circumstances such an order can be passed by an officer who did not hear the matter, but by making use of the notes and points made by his predecessor. In support of that contention, learned Counsel has brought to our notice the observations made by the Apex Court.

15. The decision on which reliance was placed by learned Counsel would not support him in any manner whatsoever. That was a case where an executive order came to be passed by delegated authority and such an order was upheld by the Court on the ground that the same would not violate any one of the principles of natural justice.

16. In the present case, the revision petition filed by the Petitioner was a statutory revision and the authority while exercising the statutory power is passing a judicial order. The judicial function entrusted to one officer cannot be delegated to any other officer.

17. The principle of judicial system is that, a case should be decided by the authority hearing the arguments and that a successor cannot decide a case, without hearing the arguments afresh, on the ground that the arguments have already been advanced before his predecessor who left the case undecided. The settled legal principle is that if one person hears and another decides, then personal hearing becomes an empty formality and mere farce and hearing by a predecessor authority cannot possibly be of any advantage to a successor in deciding the case. Executive functions can be delegated and not the judicial functions. The decisions on this aspect of the matter are innumerable and in those decisions it is held that the authority who has heard the matter is the one who has to decide the case by himself and not by any other authority.

18. In the instant case, as we have already observed that the statutory revision filed by the Petitioner was heard by one officer, but for various reasons he could not pronounce his decision and his successor, without hearing the parties to the lis, has passed the impugned order. The order so passed, in our opinion, is not only arbitrary but also illegal and in total violation of one of the facets of the principles of natural justice. Therefore, the said order cannot be sustained by us. Accordingly, the Writ Petition deserves to be allowed and it is allowed.

19. In view of the findings and conclusions reached by us, for the present, we need not have to consider the merits or demerits of the case pleaded by the Appellant in the Writ Appeals. The result of those appeals would now depend on the orders that may be passed by the State Government in the revision petition filed by the Petitioner u/s 83(2) of the Revenue Recovery Act against the order passed by the Board of Revenue.

20. In the result, the following:

ORDER

(i) O.P. No. 32506 of 2000 is allowed. The impugned order passed by the State Government dated 24-10-2000 is set aside. The matter is remitted back to the State Government to restore the revision petition filed by the Petitioner on its file and consider the same in accordance with law after affording a reasonable opportunity of hearing to the Petitioner and the contesting Respondent. It is made clear that the Petitioner shall implead the contesting fourth Respondent in the proceedings before the State Government.

(ii) The result of the order passed by the State Government pursuant to the directions issued by us will take care of the rights and interests of the parties in W.A. Nos. 31 of 2003 and 977 of 2006.

(iii) With these observations and directions the Writ Petition and Writ Appeals are disposed of.

(iv) In the facts and circumstances of the case, parties are directed to bear their own costs.

Consequently, all the pending interlocutory applications are dismissed.

Ordered accordingly.