**(2009) 06 KL CK 0018**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No. 2706 of 2009

Suresh Kumar APPELLANT

Vs

State of Kerala and Others RESPONDENT

**Date of Decision :** 11-06-2009

**Acts Referred:**

Kerala Revenue Recovery Act, 1968 — Section 464(4), 49(2), 53, 75, 75(2)

**Citation :** (2009) 06 KL CK 0018

**Hon'ble Judges :** P.R. Ramachandra Menon, J

**Bench :** Single Bench

**Advocate :** P.B. Suresh Kumar and K.P. Sujesh Kumar, for the Appellant; Bijoy Chandran, Government Pleader for Respondents 1 to 5, A.A. Abdul Hassan, for Respondent 6 and K. Subash Chandra Bose, for Respondent 8, for the Respondent

## Judgement

P.R. Ramachandra Menon, J.—The challenge in the Writ Petition is against Ext. P-9 order passed by the first Respondent, whereby the sale confirmed in the name of the Petitioner was set aside invoking the power u/s 83(2) of the Kerala Revenue Recovery Act, for infringement of the statutory prescription observing that the mandate u/s 49(2), (4) and u/s 75 was not complied with.

2. With regard to the facts, it is to be noted that the 7th Respondent had availed a loan from the 6th Respondent/Kerala Financial Corporation. Since the loan was not repaid, the 6th Respondent made a requisition to the Revenue authorities for realization of the amount invoking the provisions under the Kerala Revenue Recovery Act. In the course of the proceedings, the property owned by the 7th Respondent, over which equitable mortgage was created in favour of the 6th Respondent, was put to sale and it was effected in favour of the Petitioner on 4-8-1999, for a sum of Rs. 1,26,500, as against the upset price fixed at Rs. 1,20,000.

3. It is the contention of the Petitioner that, there was no objection whatsoever from the part of the 7th Respondent to set aside the sale before the statutory authority-the 4th Respondent invoking the provisions u/s 53 of the Kerala

Revenue Recovery Act. Accordingly the sale was confirmed on 1-9-1999 as borne by Ext. P-9. Subsequently, certificate of sale was issued on 17-12-1999 and thereafter, mutation was effected incorporating entries in the village records on 1-2-2000. The property was being enjoyed by the Petitioner ever since then with absolute ownership, exclusive possession and clear and marketable title, also remitting the basic tax as evident from Ext. P-3 receipt. While so, the Petitioner sold an extent of 14.18 ares (out of the total extent of 24.6 ares) to the additional 8th Respondent, in the year 2000 itself. It is pointed out that, the 7th Respondent filed Ext. P-4 application dated 29-1-2000 before the 4th Respondent for setting aside the Revenue sale u/s 53 of the Kerala Revenue Recovery Act; which however was not acted upon by the said Respondent. This made the 7th Respondent to file various objections before the Ministry for Revenue and such other authorities and finally Ext. P-5 communication was issued by the first Respondent on 17-11-2003, observing that the grievance projected by the 7th Respondent in his petition did not have any merit or bona fides and hence that no interference was called for.

4. It is the case of the Petitioner that, Ext. P-5 was not subjected to challenge by the 7th Respondent at any point of time and that it has become final. However, quite after several years, the 7th Respondent filed yet Anr. application on 2-11-2006 (produced as Ext. R-7(i) along with the counter-affidavit filed by the 7th Respondent) before the first Respondent where, Ext. P-6 order was passed by the Government setting aside the sale, even without any notice to the Petitioner and hence was challenged by filing WP (C) 9386 of 2007. After considering the facts and figures, Ext. P-6 was set aside vide Ext. P-7 judgment and the matter was remitted to have it reconsidered, after giving an opportunity of hearing to the Petitioner, simultaneously making some other observations as well, with regard to the nature of the sale effected and if proved to be clandestine deal, to pursue such course as prescribed against the concerned official. Pursuant to Ext. P-7 verdict, the matter was reconsidered by the 3rd Respondent-Commissioner of Land Revenue and after hearing both the sides, it was held that there was absolutely no irregularity in the sale conducted and hence the petition filed by the 7th Respondent was rejected. Aggrieved by the above order, the 7th Respondent preferred a revision petition before the first Respondent/Government as provided u/s 83(2) of the Act, seeking for immediate interference. The Government considered the grievance of the 7th Respondent and after hearing the Petitioner as well as the 7th Respondent, passed Ext. P-9 order, whereby the sale was set aside observing that, there was clear violation of the statutory prescription, particularly as to Sections 49(2), 49(4) and 75(2) of the Revenue Recovery Act, which in turn is subjected to challenge in the present Writ Petition.

5. Separate counter-affidavits have been filed by the 1st, 6th and 7th Respondents. In the counter-affidavit filed by the 7th Respondent, the action pursued by the Government vide Ext. P-9 has been sought to be sustained, referring to the sequence of events and other materials on records. In the

 

counter-affidavit filed by the first Respondent, Ext. P-9 order passed by the Government setting aside Ext. P-8 order passed by the 3rd Respondent/ Commissioner of Land Revenue and thus setting aside the sale is sought to be sustained, asserting that the sale was conducted in total contravention of the relevant provisions of the Statute.

6. Learned Counsel for the Petitioner submits that, Ext. P-9 order passed by the first Respondent is not in confirmity with the provisions contained in the relevant statute; particularly being contrary to the mandate u/s 83 of the Kerala Revenue Recovery Act. The alleged violation of the rule in conducting sale is also sought to be rebutted. The main point of challenge is with regard to the entertainment of the petition preferred by the Petitioner several years after finalising the sale; which is out side the revisional power of the Government provided u/s 83; submits the learned Counsel. It is also pointed out that the 7th Respondent, since did not choose to challenge Ext. P-5 order, no interference should have been done by the Government and the order to be passed pursuant to Ext. P-7 verdict could only have been an order in conformity with the relevant provisions of law.

7. With regard to the question of delay; particularly when the sale was conducted on 4-8-1999, the confirmation was effected in the year 2000 and the petition filed by the 7th Respondent was only on 2-11-2005, it is to be noted that Section 83(3) specifically stipulates that an application for Revision under Sub-Section 1 and Sub-Section 2 shall be made within 90 days from the date on which, the order in question was communicated to the applicant. Of course the ''proviso'' to the said Sub-section also says that the Board of Revenue, or the Government; as the case may be, may have the delay condoned if sufficient cause is offered to the satisfaction of the said authority. It is the specific case of the Petitioner that absolutely no discussion has been made by the first Respondent/Government as to the satisfaction arrived at, with regard to the ''sufficient cause'' which was to be offered from the part of the 7th Respondent for the inordinate delay involved. Obviously, Ext. P-9 order does not say anything about the delay; when the sale was conducted on 4-8-1999 and the 7th Respondent had moved necessary application only much after the prescribed time. This being the position, it cannot be said that the first Respondent has applied the mind properly, with regard to the question of delay, recording the ''satisfaction'' as contemplated under the aforesaid provision of law, submits the learned Counsel for the Petitioner.

8. Learned Counsel for the Petitioner further submits that the power of the Government u/s 83, which is only a power of ''revision'', cannot exceed the power provided at the original level; i.e., the power of the District Collector as provided u/s 53 of the Act. Section 53 says as follows:

Application to set aside sale on ground of material irregularity, mistake, etc.- (1) At any time within thirty days from the date of the sale of immovable property, 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.

(2) If the application is allowed, the Collector shall set aside the sale and may direct afresh sale.

From the above, it is evident that just because the sale suffers from some irregularities or mistakes, it is not liable to be set aside; unless it is held to the proper satisfaction of the concerned officer (District Collector) that ''substantial injury'' has resulted because of the same. In the instant case, it is pointed out that, no such satisfaction has been recorded by the Government, while passing Ext. P-9 order.

9. The learned Counsel for the 7th Respondent submits that, the very fact that the property was sold only for a sum of Rs. 1,26,000, whereas the amount due to the KFC itself was more than Rs. 8,00,000 shows the ''substantial injury'' caused to the 7th Respondent. This is rather supported by the Government Pleader as well, stating that, the ''substantial injury'' can be presumed in view of the sequence of events and the consequences resulted. Reference is also made to the observation of this Court in Ext. P-7 judgment, as to the course to be pursued, if the deal turns to be clandestine one. In view of the specific statutory prescription and also going by the scheme of the statute, it cannot be simply said that the authorities can presume the cause for the inordinate delay, even when it is not sought to be explained, also presuming the ''substantial injury'' stated as caused to the party concerned. This is more so, in view of the decisions rendered by the Apex Court in Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others, and also in Saheb Khan Vs. Mohd. Yusufuddin and Others, . It has been held by the Apex Court that mere violation of the provision will not vitiate the sale and the injury caused to the party concerned has to be specifically proved, particularly when third parties'' rights are involved because of the transfer of property by way of sale; submits the learned Counsel for the Petitioner.

10. Obviously, in the instant case, the sale has been set aside after ten years. Ext. R-7(i) petition itself was filed petition before the Government seeking to set aside the sale after six years. The Petitioner is a total stranger, who turned to be the successful bidder in the auction and he was enjoying the said properties to the exclusion of all Ors. and it was in course of such enjoyment, that a portion of the same was sold to the additional 8th Respondent for valid sale consideration.

11. With regard to the question of delay, the learned Counsel for the Petitioner submits that, even though there is a provision (Sub-Section 3 of Section 83) to condone the same, necessary application had to be filed within 90 days as prescribed. Power is of course vested with the Land Revenue Commissioner or the Government, as the case may be, if is satisfied that the Petitioner was

 

prevented by sufficient cause from making the application within that period and to have the matter dealt with on merits. But in the instant case, what was the reason for the delay of ''six years'' for submitting Ext. R-7(i) application to set aside the sale is not discernible from Ext. P-9 order passed by the first Respondent. This being the position, the observation of the first Respondent in Ext. P-9 order that the sale is liable to be set aside in view of the alleged violation in publication of the notice and for non-compliance with the procedure as contemplated u/s 49(2)(4) r/w Section 75 cannot be sustained; for having exercised the jurisdiction without recording satisfaction on the question of delay and without arriving at a finding on the ''substantial injury'' allegedly caused to the 7th Respondent.

12. It is pointed out that the ''proper application'' to set aside the sale was Ext. R-7(i) dated 2-11-2005, based on which Ext. P-6 order was passed setting aside the sale. Pursuant to Ext. P-7 judgment to have the matter reconsidered, when Ext. P-8 order was passed by the first Respondent, the application referred to therein is of ''25-9-2000''. It is the original application which led to the rejection of the claim as stated in Ext. P-5 issued by the Government on 17-11-2003. It is pointed out from the part of the first Respondent, as well as the 7th Respondent, that when the matter was directed to be reconsidered by this Court vide Ext. P-7 judgment, the Government had to consider the whole issue. It was in the said circumstances that, the above petition was considered as to whether the sale was to be set aside or not. More so when, both the above petitions (original petition dated 25-9-2000, as well as the subsequent petition dated 2-11-2005) have been specifically referred to at serial Nos. ''4 and 12'' in Ext. P-6 order passed earlier; which however was set aside as per Ext. P-7 judgment passed by this Court, directing to have the matter reconsidered.

13. In the above circumstances, Ext. P-9 is set aside and the first Respondent is directed to consider the entire issue with specific reference to the alleged violation of the relevant provisions of the law in connection with the sale and also on the aspects of the ''delay'' as well as the ''substantial injury'' stated as caused to the 7th Respondent. Final orders shall be passed as above, after giving an opportunity of hearing to all the interested parties including the Petitioner and Respondents 6 to 8. This shall be done as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of as above.

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