(2010) 11 KL CK 0179

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 28890 of 2009 (S)

T.A. Sukumaran — APPELLANT

Vs

The State of Kerala and Others — RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:
Kerala Revenue Recovery Act, 1968 — Section 83(1)

Citation : (2010) 11 KL CK 0179

Hon'ble Judges : Jasti Chelameswar, C.J;P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : Babu S. Nair, for the Appellant; V.G. Arun, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The issue involved in all these cases is closely interlinked with each other and hence dealt with together.

2. The petitioner in W.P. (C) No. 28890 of 2009 (which is taken as the ''lead case'') is stated as a ''public spirited citizen'', who has approaoched this Court in his venture to expose the alleged rampant corruption among the revenue officials in the matter of collection and recovery of dues to the Government and to bring to light one of such instances; seeking mainly to set aside Ext. P4 sale finalized about ''eight'' years ago and for such other incidental reliefs.

3. The sequence of events as narrated in the Writ Petition reveals that one Mr. V.S. Balan, who was a licensee under the Abkari Act, in Chittur Range of Palakkad District, having bid the right to run the arrack shops in the said Range during the period 1993 -- ''94, committed huge defaults with regard to the satisfaction of ''kist'' amount to the Government to an extent of about Rs. 31 lakhs. Since the demand to satisfy the liability was not acceded to, the Excise authorities sent necessary requisition to the Revenue officials, which led to recovery proceedings under the Kerala Revenue Recovery Act, causing the immovable properties belonging to the defaulter to be sold in public auction. Accordingly, a total extent of about 1.41 Acres of land in different survey

numbers of Porathisserri village in Mukundapuram taluk of Trichur district was put in public auction on 27.3.2000. According to the petitioner, there was actually no public auction, but for a ''stage managed drama'', to make it appear on the records that proper course was pursued and ultimately, the property allegedly worth about Rs. 40 lakhs was caused to be sold in favour of the 9th respondent, for a meagre sum of Rs. 2.92 lakhs; as against the total liability of about Rs. 32 lakhs. Though the sale was conducted about a decade back, the petitioner, the so-called ''public spirited citizen'', sought to focus on the issue by filing Ext. P1 application under the Right to Information Act, 2005 only on 30.09.2009.

4. The petitioner contends that, on obtaining documents pursuant to Ext. P1, it was revealed to him, that the sale conducted by the Tahasildar on 27.3.2000 had been set aside by the then RDO as per Ext. P2 order dated 27.07.2000, finding that the price fetched was abysmally low. Despite setting aside the sale as per Ext. P2 way back in July, 2000, another ''obliging RDO'' (as put forth by the petitioner) who assumed the office subsequently, without even referring to the earlier order (Ext. P2) simply confirmed the sale as per order dated 03.05.2003 (produced by the 9th respondent as Ext. R9(a) along with his counter affidavit). A copy of the relevant proceedings was sought for by the petitioner in the year 2009 and was served to him, as enclosed with Ext. P5 communication dated 21.09.2009. Pursuant to confirmation of sale as above, necessary Sale Certificate was also issued in favour of the 9th respondent (successful bidder) as borne by Ext. P6 dated 24.01.2004.

5. Referring to the turn of events as above, the petitioner submits that there is no rationale for having confirmed the sale vide Ext. P5, followed by issuance of Ext. P6 Sale Certificate; in spite of the fact that sale was actually set aside by the former RDO as per Ext. P2 order passed on 27.07.2000. It is in the said background that ''collusion'' has been alleged and attributed on/among the revenue officials, defaulter and successful bidder, with the connivance of others including the father of the 9th respondent who is stated as a Deputy Superintendent of Police, thus complaining about embezzlement of public money which is sought to be remedied by setting aside the sale; to conduct an enquiry by the vigilance department and also for such other consequential steps/reliefs.

6. The 9th respondent, who was the successful bidder, has filed an affidavit rebutting the averments and allegations in the Writ Petition, pointing out that there is no iota of truth or bonafides in the contentions raised by the petitioner; that the writ petition is never a ''public interest litigation'', but one mooted at the instance of the son of the defaulter, who was the partner of the 9th respondent earlier and who subsequently chose to lock the horns with the said respondent. It is stated in the counter affidavit of the 9th respondent that, being aggrieved of Ext. P2 order setting aside the sale by the RDO, the matter was taken up by the said respondent, by filing a revision petition u/s 83(1) of the Kerala Revenue Recovery Act before the Commissioner for Land Revenue, Thiruvananthapuram; who, after considering the actual facts and figures directed the RDO Trichur, to re-

consider and finalize the matter after hearing, as specified. Pursuant to the said order, the RDO Trichur caused ''re-inspection'' of the property on 24.03.2003 through the Senior Superintendent of the RDO''s office and a report was called for. After analysing the contents of the said report, the RDO found that there was absolutely no rhyme or reason to have the sale set aside and accordingly, Ext. P2 order was cancelled as per Ext. R1(a) order dated 03.05.2003, the sale was confirmed as per Ext. R1(b); followed Ext. R19(c) Sale Certificate issued on 24.01.2004 (same as Ext. P6). It is further stated by the 9th respondent that, ever since then, the 9th respondent is enjoying the property with absolute ownership, exclusive possession and clear and marketable title; remitting the prescribed tax to the authorities concerned. It is also the case of the 9th respondent that, though the land stated as sold to the said respondent was about ''1.41 acres'', the actual extent handed over was only ''1.29 acres'' as borne by Ext. R9(d) Possession Certificate; which made him to point out a shortage of about 11 = cents. In spite of pointing out the same to the concerned authorities, there was no positive action, when the 9th respondent was constrained to approach this Court by filing W.P.(C) 24026 of 2007 for appropriate relief, which is stated as still pending. It is asserted in the said counter affidavit that, a number of litigations are there, between the defaulter/ son of the defaulter/ mother of the defaulter and the 9th respondent before different Civil and Criminal Courts, because of the business rivalry and it is only to wreak vengeance that the present Writ Petition (styled as a ''public interest litigation'') has been caused to file through the petitioner, who is a close ''aid'' of the son of the defaulter.

7. Incidentally it has been pointed out that, an extent of 7.69 cents, from the property purchased by the 9th respondent, was sold to one Kodokki Rudra Mahakalikavu Temple authorities, as per the document No. 3344 of 2007 of the SRO, Irinjalakuda and the remaining extent was sold to one Jose, as per the documents Nos. 8132, 8133 and 8134 of 2009 of the same Sub Registry; that the sale was originally conducted in the year 2000 after due publication and notice; that the value of the property is very much correct and proper; that the sale was never challenged by anybody including the owner/defaulter and no application to set aside the sale had ever been filed before any authority under the Kerala Revenue Recovery Act; but for the malafide attempt now being made at the instance of the son of the defaulter, which hence is sought to be deprecated.

8. The purchaser of 7.5 cents of property from the 9th respondent (the Kodokki Sree Rudramahakali Temple) has filed W.P. (C) 14873 of 2010, challenging the orders/memos issued by the revenue authorities to stop all further constructions or alienation of the property in view of the subsequent turn of events as mentioned hereinbefore; specifically contending that the contentions raised by the petitioner in W.P. (C) 28890 of 2009 are far from the track of truth; that the ''Temple'' is a bonafide purchaser, whose transaction is not liable to be interfered with; that they will be put to irreparable loss and injury in view of the fact that,

after effecting the purchase, they have surrendered a substantial extent for widening of the pathway leading to the Temple and have effected various constructions and hence that they cannot be put back to the same position as before, under any circumstances.

9. Similarly, the person who has purchased the remaining property from the vendees of the 9th respondent (by way of subsequent transaction) has filed W.P. (C) 24642 of 2010, seeking to intercept Exts. P3 and P4 therein, which are the consequential steps being pursued in furtherance to the interim orders passed by this Court in W.P (C) 28890 of 2009. The said person has also chosen to get impleaded in W.P. (C) 28890 as the additional 10th respondent and has been included in the party array accordingly.

10. When the public interest litigation [W.P.(C) 28890 of 2009] came up for consideration before this Court on 02.03.2010, taking note of the contention of the petitioner that Ext. P2 order cancelling the sale by the RDO was simply ignored by the another RDO who assumed the office later and that the sale was confirmed accordingly, even without referring to Ext. P2 order of cancellation (thereby projecting the allegation of fraud, praying for vigilance enquiry), this Court directed the first respondent, Secretary to the Government, Department of Revenue to conduct an enquiry and to file a report. Pursuant to the said interim order, report dated 24.9.2010 has been filed by the first respondent, wherein it is stated that the sale, when sought to be confirmed was cancelled by the RDO, by Ext. P2 order 27.02.00, on the ground that the sale price fetched was inadequate; that subsequent cancellation of Ext. P2 order and confirmation of sale leading to issuance of Ext. P6 Sales Certificate in favour of the 9th respondent, was pursuant to the fresh consideration of the matter as ordered by the Commissioner for Land Revenue in the revision petition filed by the successful bidder (9th respondent) u/s 83(1) of the Kerala Revenue Recovery Act. It is also stated that the property in question was originally scheduled to be auctioned on 14.03.00, which was adjourned to 27.03.00, as there were no bidders and on 27.03.00, ''five'' persons participated in the auction; that the reserve price originally fixed as Rs. 5 lakhs had to be reduced to Rs. 2.8 lakhs on the same date, for the reason that no intending purchaser was ready to purchase the property for Rs. 5 lakhs and in the course of further steps, the bid was finalized for a sum of Rs. 2.92 lakhs, in favour of the 9th respondent.

11. While pointing out in paragraph 6 of the said report, that the Writ Petitioner in the ''public interest litigation'' has turned up and questioned the sale after the lapse of ''9 years'' from the date of sale, it is also stated in the very same paragraph, that yet another property of the very same defaulter having an extent of 3.19 Acres with road frontage and valued by the concerned village officer at the rate Rs. 5,545/ - per cent, was caused to be sold by the concerned Tahasildar for a meagre sum of Rs. 15,65,000/ - (fixing the value at the rate of Rs. 3,000/ - per cent); whereas the very same Tahasildar had issued solvency certificate valuing the said property for a sum of Rs. 34 lakhs, 7 years back.

Since the amount was inadequate to discharge the liability, the present property was also proceeded against. Observing that, as per the report of the village officer, there was no direct road access to the present property and there was only a foot path to the land in question; the land value was reckoned by the Tahasildar at the rate of Rs. 2,000/ - per cent and conducted the revenue sale, which was set aside as per Ext. P2. This led to the proceedings before the Commissioner for Land Revenue, ordering the matter to be reconsidered; pursuant to which, a re-inspection was conducted; the parties were heard and the sale was confirmed by the RDO in favour of the 9th respondent issuing Ext. P6 Sale Certificate. While stating that fixation of the value by the Tahasildar and conducting the sale of both the above properties was not correct or proper, it is specifically mentioned that more irregularities are with regard to the first auction sale in which ''3.19 Acres'' of land have been sold just for Rs. 15,65,000/. Further steps are stated as being followed, by sending necessary report recommending the Government to take appropriate action to cancel the said revenue sales, invoking ''suo motu'' power to revise the sale and also to take appropriate action against the errant officials of the Revenue Department. It is stated in paragraph 7 of the report that the Additional Chief Secretary to the Government, Revenue Department, on receipt of the report has directed the Commissioner for Land Revenue to fix up responsibilities of the revenue officials and to initiate disciplinary action against the said delinquent officers, who conducted the said revenue sales.

12. As borne by the pleadings on record, the revenue sale in favour of the 9th respondent was originally conducted on 27.3.2000. Though it was initially cancelled by the then RDO as per Ext. P2 order dated 27.07.2000, the cancellation was revoked later, pursuant to the intervention made by the Commissioner for Land Revenue in the statutory revision u/s 83(1) of the R.R. Act and the sale was confirmed as per Ext.R9(a) proceedings dated 03.05.2003, followed by issuance of Ext. P6 sale certificate. A portion of the said property, to an extent of nearly 7 cents, was conveyed by the 9th respondent to the petitioner Temple in W.P. (C) 14873 of 2010, at a time when there was absolutely no challenge with regard to the sale and further when the rights and interests of the 9th respondent over the property stood settled by virtue of the decree passed in favour of the 9th respondent (plaintiff in O.S. 1389 of 2004 filed before the Additional Munsiff''s Court, Irinjalakuda) against the defaulter and his son (V.S. Balan and Vinay Vallath), granting permanent prohibitory injunction; while the suit filed by the wife of the defaulter (contending that after revenue sale in favour of the 9th respondent, the said respondent had executed an agreement for sale in favour of her, which was sought to be enforced by filing the suit for specific performance) was dismissed. It is contended by the 9th respondent that the alleged agreement for sale stated as executed in favour of the wife of the defaulter was a ''forged one'', as revealed from Ext. P9(e) report of the Forensic Expert of the Forensic Science Laboratory, Thiruvananthapuram. It is also stated in the counter affidavit of the 9th respondent that he was having business

association with son of the defaulter earlier, who later chose to cross the sword with the 9th respondent; that the 9th respondent was physically assaulted and threatened by the defaulter and his son; that the offences committed by the accused led to Crime No. 674 of 2004 of Irinjalakuda police station (leading to C.C. No. 152 of 2005) and Crime No. 300 of 2004 of Chittur Police Station (leading to C.C. 95 of 2006); besides several other civil litigations as pointed out in paragraph Nos. 5 and 6 therein. The specific averments contained in the said counter affidavit have not been chosen to be rebutted by the "public interest litigant" by filing any reply affidavit. Similarly, the contents of the report dated 24.09.2010 of the first respondent (filed pursuant to the interim order passed by this Court), have not been rebutted by the said ''public interest litigant'' (in spite of service of a copy of the same to all parties concerned); especially with regard to sale of ''3.19 Acres'' of land of the defaulter for a meagre sum of Rs. 15,65,000/- and also as to the more crucial fact that the ''public interest litigant'' was actually an ''Abkari Contractor'', who had filed W.P. (C) 18576 of 2010 before this Court challenging Ext.P6 therein (revenue recovery proceedings initiated against him).

13. In view of the above vital aspects brought to light, this Court found it fit and proper to call for the ''Judges Papers'' in W.P. (C) 18576 of 2010 and on going through the same, it is revealed that the said Writ Petition was filed by the very same petitioner in W.P. (C) 28890 of 2009 (public interest litigant) and that his contentions therein were that he had auctioned the Toddy shops in Pollachi of Tamil Nadu State earlier, but was forced to close down and surrender the business due to some or other reasons and that the revenue recovery proceedings were being pursued at the instance of the 3rd respondent therein (The Divisional Excise Officer, Pollachi, Tamil Nadu) for recovery of the allegedly due amount quite arbitrarily, which was sought to be intercepted. The said Writ Petition was dismissed by a learned Single Judge of this Court on 15.06.2010 for want of territorial jurisdiction over the 3rd respondent, leaving the right of the petitioner to approach the Madras High Court. The assertion made from the part of the contesting respondents that the ''public interest litigant'' is only a ''name lender'' and that he was a ''close aid'' of the son of the defaulter Balan, who was an Abkari Contractor (in discharge of whose liability, the property in question was sold in public auction) has to be analyzed in the said back ground. It is also incidentally noted that the ''signature'' of the public interest litigant in W.P. (C) 28890 of 2009 as it appears at page 11 and 12 of the said Writ Petition and affidavit respectively and the signature of the same petitioner in W.P. (C) 18576 of 2010 at page Nos. 3 and 4 of the Writ Petition and affidavit respectively, substantially vary with each other, which may require to be considered and dealt with separately.

14. The next question is whether the challenge raised by the ''public interest litigant'' in respect of the sale effected, about 8 years ago, should be entertained on the basis of the grounds raised in the said Writ Petition and also in the light of the ''report'' filed by the first respondent as mentioned hereinbefore.

15. Admittedly, the sale conducted was cancelled for inadequacy of sale consideration as per Ext. P2 order dated 27.07.00, pursuant to the orders passed by the Commissioner for Land Revenue, Thiruvananthapuram in the in revision petition filed u/s 83(1) of the Kerala Revenue Recovery Act by the 9th respondent/successful bidder, Ext. P2 was ordered to be reconsidered. A detailed re- inspection was conducted; report was obtained; parties were heard and taking note of the law declared by the Division Bench of this Court in Subaida Sulaiman v. Hamsa 1991 (2) KLT 158, the RDO observed that, there was no reason to set aside the sale. Accordingly, Ext. P2 was cancelled as per Ext.R9(a) order dated 03.5.2003 and the sale was confirmed in favour of the 9th respondent, leading to issuance of Ext. P6 Sale Certificate. Ever since then, the said property was being enjoyed by the 9th respondent with absolute title, exclusive possession, clear and marketable title and the property was in turn conveyed to different vendees for valuable sale consideration and they are now enjoying the same. There is no case that the sale was subjected to challenge from any corner, at any point of time. Similarly, the averments made by the 9th respondent in paragraph 4 of the counter affidavit, that the land value fixed by the Porathisserry Panchayath for the properties in the area even as on 19.11.2008 is only Rs. 4000/- per cent and as such, the land value fixed at Rs. 2000/ per cent in the year 2000 is not a ground to have the sale set aside for inadequacy of the sale value; particularly in the light of the law declared by a Division Bench of this Court in Subaida Sulaiman v. Hamsa 1991 (2) KLT 158; that the said property has no direct road frontage but for a pathway with such other disadvantages etc. have not been controverted from the part of the ''public interest litigant'' or anybody else. As such, the challenge in the said Writ Petition styled as a ''public interest litigation'' does not deserve to be entertained by this Court, as no such ''public interest'' is established. Further, when the petitioner describes himself as a ''public interest litigant'', who is stated as much aggrieved of the loss of revenue to the State has described himself as a business man (who was conducting toddy shops earlier in the neighbouring State) and filed W.P.(C) 18576 of 2010 challenging the revenue recovery proceedings against him. Above all, it is prima facie seen that such petitioner is a person having ''dual identity'' with ''separate signature'' in the above two different Writ Petitions; who does not inspire any confidence.

16. The remaining question to be considered is whether the so called ''public interest litigant'' has approached this Court with the ''clean hands''.

17. Nowhere in the Writ Petition has the petitioner revealed that Ext. P2 order cancelling the sale was varied pursuant to any proceedings taken or issued by the higher authorities under the relevant provisions of law. On the other hand, it has been stated that, Ext. P2 order passed by the then RDO setting aside the sale, was simply varied by another "obliging RDO" who confirmed the sale as per order dated 03.05.03 without referring to Ext. P2 order passed earlier (paragraphs 4 and 7). Eventhough, it is stated in paragraph 7 that a copy of the order dated 3.5.2003 of the RDO along with the covering letter dated 21.09.2009

has been produced as Ext. P5, the full text of the said order obviously does not form part of Ext. P5; which on the other hand has been produced by the 9th respondent as Ext. R9(a). The reason appears to be obvious that, the said order [Ext. R9(a)] refers to the relevant proceedings; such as filing of the revision petition u/s 83(1) by the 9th respondent before the Commissioner for Land Revenue and the orders passed by the Commissioner leading to issuance of Ext. R9(a) by the RDO cancelling Ext. P2 and confirming the sale.

18. It is relevant to note, by stating that Ext. P2 order passed by the RDO setting aside the sale was simply cancelled later by another ''obliging RDO'' as per order dated 03.05.2003 and praying for a vigilance enquiry as to the sale conducted by the revenue officials; the petitioner turned to be successful at least to the extent of causing this Court to pass an interim order on 02.03.2010 directing the first respondent to file a report, which led to the report dated 24.09.2010. Nothing has been mentioned in the Writ Petition as to the proceedings before the Commissioner for Land Revenue filed by the 9th respondent/successful bidder u/s 83(1) of the Act and the orders passed by the Commissioner directing the RDO to re-examine the matter, which led to Ext. P6. The point to be considered is whether the ''public interest litigant'' was aware of such proceedings at the time of filing the Writ Petition.

19. Ext. P1 is an application dated 30.09.2009 filed by the petitioner (public interest litigant) before the Public Information Officer of RDO''s Office, Trichur wherein the petitioner has referred to the revision petition filed by the 9th respondent against Ext. P2 cancelling the sale and also as to the interim stay granted by the Commissioner for Land Revenue; however stating that final outcome was not known to him; which hence was sought to be furnished along with such other information in the following terms:

1. Whether hearings were conducted on 15.10.2001 at the office of the Commissioner (Land Revenue) Thiruvananthapuram and

on 28.10.2002 at the Revenue Divisional Officer, Thrissur, following filing of the Revision Petition on 18.10.2000.

If hearings were conducted on 15.10.2001 and 28.10.2002, copies of the minutes of the hearing may be supplied to me.

2i. Following the filing of revision petition, whether any letter/direction has been received from the Commissioner (Land Revenue) and/or Secretary to Government, Revenue Department which led to the order of confirmation of sale. If received, copies of the same may kindly be made available.

3. The circumstances under which an order of serious importance was issued without any reference to the filing of revision petition and the follow-up on it, may be furnished. The note portion of the file leading to the issue of confirmation of order of sale may be furnished.

This clearly shows that the ''public interest litigant'' was very much aware of the proceedings before the Commissioner for Land Revenue. As such, it was very much obligatory on his part to have enquired about the further course and events and to have stated the same in the Writ Petition. On the other hand, the petitioner has conveniently pleaded ignorance, contending that Ext. P2 order cancelling the sale was simply set aside by ''an obliging RDO'' who assumed the office later, without any reference to Ext. P2, which primarily is with an intent to prejudice the mind of this Court and to poison the stream of justice, which cannot be tolerated in any manner. In the above circumstances, this Court holds that there is absolutely no merit in W.P. (C) 28890 of 2009, which is styled as a ''public interest litigation'' and no interference is called for. Deprecating the casual approach and deplorable conduct of the petitioner, W.P. (c) 288900 of 2009 is dismissed with a cost of Rs. 25,000/ -.

20. Coming to the other two Writ Petitions, both of them have been caused to be filed because of the consequences resulted on entertaining W.P. (C) 288890 of 2009 and the interim orders passed thereon. Since W.P. (C) No. 28890 of 2009 has been dismissed, no further orders are called for in W.P (C) 14873 of 2010, but for making it clear that Ext. P8 therein referring to W.P. (C) 28890 of 2009, shall be of no consequence. Similarly, no interference on merits needs to be made with regard to the prayers in W.P. (C) 24642 of 2010 except to the extent that Ext. P3 therein issued by the first respondent with reference to the interim orders passed by this Court on 02.03.2010 in W.P. (C) 28890 of 2009 shall be of no effect. Other issues are left open in both the Writ Petitions.

With regard to the steps being pursued by the first respondent as stated in paragraph 7 of the ''report'' dated 24.09.10, we do not express anything on merits and the rights and liberties of both the sides are left open.

