
(2009) 07 KL CK 0073

In the High Court Of Kerala

Case No : Writ Petition (C) No. 244082 of 2004 (M)

Tahsildar

APPELLANT

Vs

The Canara Bank and Others

RESPONDENT

Date of Decision : 13-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Kerala Agricultural Income Tax Act, 1950 — Section 45, 62
Kerala General Sales Tax Act, 1963 — Section 26(A), 26(B)
Motor Vehicles Taxation Act — Section 149(2), 170, 173

Citation : (2009) 2 KLJ 923

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

Bench : Single Bench

Advocate : Raju Joseph, G.P, for the Appellant; N.N. Sugunapalan, SC, P.B. Suresh Kumar and V.K. Shamsudheen, G.P., for the Respondent

Judgement

P.R. Ramachandra Menon, J.—Sustainability of the sale conducted by the Recovery Officer, DRT, Ernakulam in respect of more than 500 acres of land for a total sale consideration of 1.77 crores, bid in favour of the 3rd respondent is subjected to challenge in W.P.(C). 13744/2007 on many a ground, legal as well as factual. W.P.(C).24482/2004 filed by the State is with a specific prayer to establish the better rights of the State in respect of the dues from the defaulter under various Statutes, contending that the "State dues" will have an overriding effect when compared with the other liabilities of the defaulter including to the Bank from whom loan had been availed by the defaulter, The basic points on which the petitioner in W.P.(C). 13744/07 addressed this Court are as given below:

(a) The sale has been conducted in contravention of the relevant provisions and procedures, without proper publication, causing the property of large extent to be sold for a throw away price; that too, after recording the satisfaction and necessity to have wide publication.

(b) The petitioner undertakes that the entire amount due to the State will be cleared, once the sale is set aside, particularly when the State is also very much desirous to have the sale set aside;

(c) The petitioner undertakes to wipe out the liability towards the EPF;

(d) The petitioner undertakes to clear the entire liability to the Bank, availing the benefit under the "One Time Settlement"; for which negotiations are being made and the Bank has also come forward to have such a course, supporting the case of the petitioner to set aside the sale;

(e) and lastly, the petitioner undertakes that the hardships caused to the third respondent who was the successful bidder in the sale conducted on 30.03.2006 and who deposited the total sale consideration of 1.77 crores will be compensated to a reasonable extent.

2. With regard to the sequence of events, it is to be noted that the petitioner in W.P.(C). 13744/07 is the Managing Director of the Company "Priya Rubber Estate and Plantations (P) Limited", which was a Company constituted by the father of the petitioner, with the younger brother of the father, as another Director. It is brought to light that the mother of the said petitioner is no more and the father also took his last breath during the pendency of the proceedings. As on date, the petitioner is the Managing Director of the said Company and is prosecuting the affairs along with one Mr. Vijayakumar, the other Director.

3. The petitioner's Company had borrowed a sum of Rs. 19 lakhs from the 2nd respondent Bank in the year 1990 and the repayment could not be effected on time, as scheduled. The Bank filed a Civil Suit in the Sub Court, Kottarakkara, within whose jurisdiction, the property is situated. In the mean time, the Debts Recovery Tribunal was constituted; under which circumstances, the Civil Suit pending before the Sub Court got transferred to the DRT, Chennai. It was thereafter, that the DRT, Emakulaxn was constituted, upon which, the case was transferred to the Emakulam Bench of the DRT, where it was pending.

4. In the meanwhile, in furtherance to the steps taken by the Employees Provident Fund for realisation of the due amount from the petitioner's Company, the property was taken in possession of, by the Custody Officer. Taking note of the situation, the Bank filed a petition before the DRT for appointment of a Court Receiver, which was allowed, pursuant to which, the possession was taken over by the Court Receiver. This however was challenged by the Custody Officer by filing a C.R.P. before this Court, where interference was declined after the final hearing and the Receiver appointed by the DRT was permitted to continue.

5. In the course of the proceedings, the DRT, Emakulam passed an "ex parte decree", permitting the Bank to recover a sum of Rs. 1,84,53,258/- with interest and cost as specified and a "recovery certificate" was issued in this regard. Pursuant to this, the Recovery Officer published the sale proclamation in different newspapers, but the sale did not take place due to some or reason, including for

want of bidders. Finally, the Recovery Officer published a sale proclamation in the "Hindu" daily, notifying the sale to be conducted on .10.02.2006, showing the debt amount as Rs. 2,66,58,791/- and the upset price of the property as Rs. 1.75,00,000/-. This proclamation was challenged by the petitioner by filing W.P. (C).4927/2006 before this Court, where Ext.P1 interim order of stay was passed on 20.02.2006, directing the petitioner to pay a sum of Rs. 50 Lakhs on or before 09.03.2006, as a condition. In view of the interception of the sale proceedings, the Recovery Officer adjourned the sale scheduled from 10.02.2006 to 29.03.2006. The fact remains that the condition imposed by this Court while granting the interim order on 20.02.2006 was not satisfied by the petitioner; under which circumstances, the interim order was vacated by this Court on 28.03.2006, as per Ext.P2, making it clear that the property could be sold forthwith, if possible on 29.03.2006 itself.

6. It appears from the materials on record that the course of events as above was communicated to the Recovery Officer, by the Officers of the Bank on 28.03.2006 itself; based on which, the Recovery Officer published Ext. P3 notice in the FN on the next day, whereby the sale scheduled on 29.03.2006 was adjourned to 10.4.2006, The reason for adjourning the sale was also stated, as to have wide publicity in time the mandate given the Division Bench of this Court in Writ Appeal No. 2118/2005.

7. The case of the petitioner is that, despite the adjournment of the sale to 10.04.2006 as notified vide Ext.P3, the Recovery Officer issued Ext.PS notice on the same day: whereby, the sale already adjourned to 10.04.2006 was stated as "adjourned" to 30.03.2006 at 4.30 P.M. It was also stated in ExtP5 notice dated 29.03.2006 that the course pursued by the Recovery Officer was "in compliance with" ExtP2 order passed by this Court,

8. Pursuant to the proceedings re-scheduled vide Ext,P5, the sale was conducted on the next day, i.e., on 30.03.2006, where only two persons including the 3rd respondent participated. Considering the bid quoted by the 3rd respondent at Rs. 1.77 crores as the better one, the Recovery Officer effected the sale in favour of the 3rd respondent as per Ext.P6, which in turn was subjected to challenge by the petitioner before the DRT, Ernakulam, on many a ground including the irregularities in the sale. Observing that the sale effected by the Recovery Officer was pursuant to the Ext.P2 order passed by this Court, the DRT declined to interfere; under which circumstance, the petitioner approached this Court by filing W.P.C. 1329/06; where Ext.P7 interim order was passed holding that the confirmation of sale would stand stayed; on condition that the petitioner remitted a sum of Rs. 50 Lakhs on or before 04.07.2006 and yet another sum of Rs. 50 lakhs as specified within one month thereafter. The petitioner deposited the above amounts and the matter was finally heard, leading to Ext.P9 judgment, whereby the DRT was directed to consider and pass final orders on merits. It is also revealed from the records that the Recovery Officer was directed to deposit the sum of Rs. 1,77 crores paid by the third respondent as the bid amount in the

respondent Bank, under a Fixed Deposit, so as to generate interest on the principal amount and this direction is also reportedly complied with.

9. After considering the facts and circumstances, the DRT, Ernakulam passed Ext.F11 order, whereby interference was declined; thus confirming the sale conducted by the Recovery Officer on 30.03.2006. Aggrieved by the same, the petitioner challenged the verdict passed by the DRT in W.P.(C), 13744/07, which is now being considered along with the other Writ Petition W.P.(C),24482/04 filed by the State, for establishing the rights of the State in preference to the dues from the petitioner's Company to other institutions including the respondent Bank. The learned Counsel for the petitioner in W.P.(C). 13744/07 submits that the sale conducted by the Recovery Officer is per-se wrong and that the illegality cannot be perpetuated, simply observing that the sale was conducted as per the direction of this Court vide Ext.P2 interim order. The sequence of events, as to the adjournment of the sale to 10.04.2006 by issuing ExtP3 notice on 29.03.2006 FN and the turn of events when ExtP5 notice was issued on the same day "preponing" the sale from 10.04.2006 to 30.03/2006 enabling just 2 persons including the 3rd respondent to participate in the auction proceedings, is stated as a shady transaction, according to the petitioner. Several other incriminating circumstances are also pointed out, asserting that the sale was conducted by the Recovery officer ignoring all the known principles of practice and procedure under the relevant provisions of law and also in total disregard to the binding judicial precedents on the point.

10. After considering the facts and circumstances, Ext. P11 order was stayed by this Court on 24.04.2007; on condition that the petitioner deposited a sum of Rs. 50 Lakhs as specified. However, on bringing to the notice by this Court, that the petitioner had already deposited a sum of Rs. 1 Crore pursuant to Ext P7 order, the petitioner was permitted to enjoy the benefit of interim stay without any further deposit. While so, another person by name G. Raveendran came up before this Court by filing LA. 12920/07 to implead him as an additional respondent stating that he could not participate in the auction stated as held on 30.03.2006, for the reason that the sale was actually conducted behind the curtain and that there was no proper publication of the sale; particularly when the sale scheduled on the previous day was adjourned to 10.04.2006 vide Ext.P3 notice,

11. In the course of the proceedings, this Court passed an interim order on 23.06.2007, whereby the Recovery Officer was directed to conduct "fresh auction sale", after effecting necessary publication, making it clear that the third respondent could also participate in the auction. Accordingly, fresh proclamation was published by the Recovery Officer and in course of further proceedings, the petitioner offered to clear the entire liability towards the Bank, seeking for the benefit under "One Time Settlement" which is stated as agreed by the Bank as well. In the said circumstances, this Court passed another interim order on 23.04.2007, holding that the third respondent who had already parted with his

money of Rs. 1.77 crores, was very much liable to be compensated and accordingly, besides permitting the third respondent to appropriate the interest generated over the said amount already in deposit, the petitioner was directed to pay the differential portion of interest, to the 3rd respondent so as to enable the 3rd respondent to get a total interest of 15% per annum (after giving credit to the interest being given by the Bank on the deposit).

12. Despite the attempt made by this Court to solve the situation, it appears that the above interim orders led to three different Writ Appeals; the First one, filed by the 3rd respondent challenging the interim order dated 27.06.2007 (W.A. 1928/07); the Second one, challenging the interim order dated 23.07.2007 (W.A. 1930/07) and the Third one filed by the petitioner herself, challenging the differential portion of the interest ordered to be satisfied, so as to top up the rate of interest payable to the 3rd respondent as 15% per annum (W.A. 2003/07). After considering all these Writ Appeals, they were disposed of by the Division Bench of this Court observing that the Writ Petition itself was to be heard and decided and accordingly, both the interim orders dated 27.06.2007 and 27.03.2007 were ordered to be kept in abeyance, till the matter was finally adjudicated in the Writ Petition.

13. The very maintainability of the Writ Petition is seriously challenged by the 3rd respondent, contending that it is not maintainable especially in view of the law laid down by the Apex Court in Punjab National Bank Vs. O.C. Krishnan and Others, . Reliance is also placed on the decision rendered by the Supreme Court in Sadhana Lodh v. National Insurance Co. Ltd. 2003 (2) KLT 47 : 200 (3) SCC 524. Merits of the case are also very much under challenge, contending that ExtP6 sale conducted by the Recovery Officer is very much in tune with the statutory requirements and in conformity with the direction given by this Court vide Ext. P2 interim order and hence that ExtF11 order passed by the DRT, Ernakulam is very much in order and not assailable under any circumstances.

14. The respondent Bank contends that more than a sum of Rs. 2.66 crores (as in the year 2001) with subsequent interest and cost is due to be paid to the Bank, besides the liability of more than Rs. 2.77 crores to the State and nearly Rs. 50 lakhs to the EPF; under which circumstances, the sale conducted on 30.03.2006 without adequate publicity procuring only a meagre sum of Rs. 1.77 crores in respect of more than 500 acres of land is liable to be set aside and the property is liable to be re-auctioned with proper and wide publicity, to generate more amount to wipe out the entire liability; submits the learned Counsel for the Bank. The learned Government Pleader appearing for the State/Revenue submits that the crucial issue that was being projected from the part of the State right from the year 2004 was for asserting the better rights and interests of the State over others and that the W.P.(C).24482/04 filed by the State was pending before this Court when the sale was conducted by the Recovery Officer on 30.03/2006 pursuant to the "ex parte decree" obtained in favour of the Bank, The learned Government Pleader submits that the rights and interest of the State stand on a

higher pedestal- It is further pointed out that the petitioner's Company was a chronic defaulter, having failed to pay various amounts due to the State towards arrears under the Sales Tax, Agricultural Income Tax, Basic Tax, Plantation Tax, Land Tax, Motor Vehicle Taxation Act, etc. and that a total sum of more than Rs. 3 crores is still due from the said Company. This being the position, the sale, whether it was before or after serving the notice of demand by the Revenue, is not of any significance or consequence; particularly in view of the law declared by the Apex Court in Central Bank of India Vs. State of Kerala and Others, and hence the sale conducted on 30.08.2006 is sought to be interfered, from the part of the State as well.

15. The learned senior counsel appearing on behalf of the EPF submits that the dues to the EPF stands with top priority, having its origin under a welfare legislation, promulgated by the Central Government. According to the senior counsel, the amount already generated because the sale conducted on 30.03.2006 is sufficiently enough to meet the requirements of the EPF and that the EPF is not at all concerned or anxious about the subsequent events, but for seeking to establish their rights and interests to the specified extent.

16. Considering the submissions made by the learned Government Pleader with specific reference to Section 26(A) & (B) of the KGST Act and also to Section 45 and Section 62 of the Agricultural Income Tax Act, the dues thereunder stand to be primarily satisfied before satisfying the dues payable to the respondent Bank, in view of the law declared by the Apex Court in Central Bank of India Vs. State of Kerala and Others, . As it stands so, even if the entire bid amount of Rs. 1.77 crores is appropriated and set off against the liability to the State, it will not wipe out the whole liability even to the State; thus leaving the liability to be discharged to the Bank and others. The position stands more clarified as per the decision in Lucy Vincent v. District Collector 2008 (4) KLT 876 holding that, even a sale conducted by the DRT cannot save the situation, when the State is having a better claim. Equally or more so is the position with regard to the claim put forth from the part of EPR

17. Now coming to the crucial question as to whether the sale conducted by the Recovery Officer on 30.03.2006 was in compliance with the direction given by this Court as per the interim order dated 28.03.2006 (as contended by the Recovery Officer and as accepted by the DRT vide ExtP11 and sought to be supported by the 3rd respondent), it is to be noted that the proclamation of sale by way of paper publication appeared in the "mathrabhumi" daily dated 20-07-2005, The sale was adjourned thereafter on several occasions and later, it was published in the "Hindu" daily, notifying the sale to be conducted on 10.02.2006; which was interdicted by this Court as per Ext.P1 interim order. When the sale stood adjourned to 29.03.2006, there was no further paper publication at all. As per Ext.P2 order passed by this Court, since the petitioner could not and did not satisfy the condition imposed while granting interim stay as per Ext.P1 order, the Recovery Officer was directed to conduct the sale

immediately and if possible, on 29.03.2006 itself. It was thereafter, that Ext.PS notice was issued by the Recovery Officer adjourning the sale to 10.04.2006, reportedly on the basis of the instructions given by the officers of the Bank over phone, on 28.03.2006. But on obtaining a copy of the Ext.P2 interim order, the Recovery Officer presumably realized the mistake and issued Ext.PS notice stating that he was "adjourning" the sale already adjourned to 10.04.2006, to 30.03,2006, to be in tune with the direction given by this Court vide ExtP2 interim order.

18. The reasoning given by the Recovery Officer appears to be rather strange and unpalatable. The very same reasoning, which lacks any logic, stands swallowed by the DRT as well while passing Ext PI 1 order, holding that no intervention is possible with regard to the sale conducted on 30,03,2006. Obviously, the fact that the sale scheduled on 29.03,2006 was adjourned by the Recovery Officer to 10.04.2006 by publishing ExtP3 notice, stands admitted. This being the position chance for any prospective bidder to have come to the office of the Recovery Officer with intention to participate in the sale in the F.N- on 29,03.2006 and having retreated on coming across ExtP3 notice adjourning the sale to 10.04.2006, cannot be ruled out. More so, in view of such a case put forth by the petitioner in L.A. 12920/07 (while seeking to be impleaded as an additional respondent), stating that the sale conducted on 30.03.2006 was without any publicity and that much loss and prejudice have been caused to him, for having lost the opportunity to participate in the auction.

19. Another important aspect to be noted in this case is that the sale scheduled on 29,03/2006 was adjourned by the Recovery Officer to 10,04.2006, to have vide publicity, in tune with the mandate given by a Division Bench of this Court in Writ Appeal 211/2007, intending to have it published in three newspapers. Within no time, the Recovery Officer took a SUS turn on the very same day, spreponing the sale already adjourned to 10,04.2006 and refixing the same to be conducted at 4.30 P.M. on the next day; that too, after letting known all concerned vide Ext.P3 published in the F.N. on the same day, that the sale was already adjourned to 10,04.2006, In other words, there is a chance for the prospective bidders to have turned back, intending to participate in the bid adjourned to 10.04.2006, because of the course pursued by the Recovery Officer; who just preponed the sale to 30.03.2006 and finalized the deal, after considering the two bids submitted by me only two persons available on the spot: leading to acceptance of the higher bid submitted by the 3rd respondent. Even by the farthest stretch of imagination of any reasonable and prudent man, it can never be stated that the course pursued by the Recovery Officer, is "in compliance with" the direction given by this Court vide Ext.P2 interim order. As per Ext.P2 interim order dated 28.03.2006, this Court only intended to conduct the sale without any delay, since the petitioner failed to honour the commitment in remitting the necessary . deposit imposed as a condition for availing the benefit of interim stay and it was taking note of the situation that the sale was already posted on 29,03,2006, that it was mentioned by the Court on 28.03.2006 that

the sale could be conducted immediately, if possible on 29.03.2006 itself. This did never mean that the sale already adjourned by the Recovery Officer to 10.04.2006 by publishing Ext P3 notice had to be preponed and the sale was to be conducted on 30.03.2006 without any publicity. The idea and understanding of the Recovery Officer, as well as that of the DRT, to the contrary, is quite wrong and misconceived and is liable to be deprecated.

20. The learned Counsel for the 3rd respondent submits that "mere irregularity" in the sale cannot be of any consequences and the sale can be set aside only if "substantial prejudice" has been caused to the party concerned. The learned Counsel also placed reliance on the decision of the Apex Court in *Shri Radhey Shyam Vs. Shyam Behari Singh*, . In the instant case, the prejudice resulted because of the manner of sale conducted by the Recovery Officer is very much obvious; particularly in view of the undisputed fact that the sale price to the tune of Rs. 1.77 crores will not enable the petitioner's Company to wipe out the entire liability to the Bank; leaving open the liability to the State/Revenue and other Departments (Sales Tax, Agricultural Income Tax, Basic Tax, Plantation Tax, Land Tax, arrears under the Motor Vehicle Taxation Act, etc.), and also to the EPF. In the said circumstances, the prejudice is liable to be presumed to the circumstances involved herein and as such, the sale is to be conducted only after adequate publicity, so as to meet the rights and interests of all concerned; particularly in view of the large extent of public money involved.

21. Reliance placed by the learned Counsel for the 3rd respondent on the decision rendered by the Apex Court in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, also does not hold any water at all. This is for the reason that, the finding therein that the remedy under Article 226/227 cannot be availed, when the statute clearly provides an alternate remedy, is not at all applicable to the case in hand. The above decision stands entirely on a different footing. It was a claim involving a road traffic accident, under the MVT Act. The Insurance Company wanted to challenge the compensation on many a ground, notwithstanding the fact that the Insurer is not entitled to prefer an appeal u/s 173 of the Act "as a matter of right", but for the restricted extent as specified on the grounds available u/s 149(2); unless permission of the Tribunal is obtained to have wider defence by filing a separate petition u/s 170 of the MV Act or by virtue of availability of "reservation clause" in the Policy. So far as the Insurer in the above case was concerned, since no such permission had been obtained u/s 170 of the MV Act and since there was no case for the Insurer that there was any "reservation Clause 1 in the Policy, the defence of the Insurer rather stood confined to the statutory grounds u/s 149(2); which in no manner could have been widened by filing any Writ Petition, when the Appeal on such wider grounds was not maintainable u/s 173 and this is the dictum in *Sadhana Lodh v. National Insurance Co. Ltd.* The situation in the instance case is entirely different and no reliance can be placed on the said decision in support of the case of the 3rd respondent,

22. With regard to the availability of the alternate remedy and the challenge raised against the maintainability of the present Writ Petition, the question of alternate remedy is relevant only at the stage of exercising the discretion of this Court as to whether the Writ Petition is to be admitted or not, as made clear by two Division Benches of this Court as reported in *Thressiamma v. Union of India* 1999 (2) KLT 683 and *Agricultural Income Tax and Sales Tax Officer v. Tata Tea Ltd.* 2002 (2) KLT 433. The position of the law also stands clarified in *Mar Athanasius College v. Director of Collegiate Education* 2008 (1) KLT 769 as well. This being the position the Writ Petition (W.P.(C). 13744/07) admitted on 24-04-2007, also granting interim stay is not liable to be declared as not maintainable in view of the existence of other alternate remedy. More so, when the 3rd respondent has put up a case before this Court that the appeal filed by the petitioner before the DRT is not maintainable as observed by the DRT in Ext P11 order.

23. The learned Counsel for the 3rd respondent has also referred to the course of events that was being pursued before the Recovery Officer; whereby the sale had to be adjourned by about "23 times", for want of bidders; till the 3rd respondent turned up with a concrete offer. It is also stated that the reasoning given by the DRT while declining interference as per ExtP11 (holding that the appeal is not maintainable) is very much correct and proper. This however does not appear to be correct or sustainable; particularly in view of the fact that there was no challenge at any point of time ever before, that the appeal before the DRT was not maintainable. That apart, the specific direction given by this Court as per ExLP9 judgment has also admittedly not been challenged. In the said circumstance, the sale stated as conducted on 30.08.2006 and the consequences resulted cannot be sustained any further and hence the sale has to go; which is ordered accordingly.

24. Now, considering the submissions made by the learned Counsel for and on behalf of the petitioner, pointing out the loss and the prejudice caused to the petitioner's Company, it is true that the Writ Petition has not been filed by the Company, but by the petitioner who is the Managing Director of the said Company. The petitioner has already undertaken before this Court (through the learned Counsel) that the petitioner is ready and willing to clear the entire liability to the State; to the Bank and also to the EPR. It is also declared and undertaken in the open Court that she is ready and willing to pay reasonable compensation to the 3rd respondent as well, because of the turn of events so far; considering the fact that the 3rd respondent has already deposited Rs. 1.77 crores pursuant to the sale conducted on 30.09.2006. The learned Counsel for the petitioner submits that, as per the interim order dated 23.06.2007, this Court has directed to see that the 3rd respondent gets 15% interest per annum in respect of the deposit of Rs. 1.77 Crores by paying differential interest and that the said order still stands, though ordered to be kept in abeyance by virtue of the common judgment passed by the Division Bench in the Writ Appeals. Notwithstanding this, it is brought to the notice of this Court that the petitioner is

offering a sum of Rs. 1 crore as lump sum compensation to be paid to the 3rd respondent.

25. It is stated as agreed between the parties that 50% of the amount to be paid by the petitioner to the 3rd respondent as undertaken, will be paid within 1 month and that the balance 50% will be cleared by way of 2 equal monthly instalments; in satisfaction of which, 3 post-dated cheques would be handed over to the learned Counsel for the 3rd respondent within a week. The learned Counsel appearing for the petitioner submits that, the condition pointed out from the part of the 3rd respondent, to have "charge" over the property of the petitioner's Company is also very much acceptable to the petitioner. It is to be noted that the Company, though not a party to the present proceedings, has not challenged the sale and the attempt being made by the petitioner is obviously to save the entire properties of Company and hence the liability as above will of course remain as a charge over the properties; till it is cleared. The submission made by the learned Counsel for the petitioner appears to be very much reasonable and this Court considers it fit, proper and adequate enough to compensate the loss stated as sustained by the 3rd respondent who had to part with Rs. 1.77 Crores three years back.

26. In the above facts and circumstances, Ext.P6 sale conducted by the Recovery Officer and Ext.P11 order passed by the DRT are set aside; making it clear that sale, if necessitated shall be conducted in accordance with, with wide publicity and with notice to all concerned, including the State and the EPF authorities. The petitioner is also to pay the lump sum compensation of Rs. 1 Crore to the 3rd respondent as offered and agreed. The petitioner is at liberty to pursue the steps stated as already taken for availing the benefit of "One Time Settlement", also in view of the contents of the affidavit dated 03-07-2009 filed by the Bank asserting that they are very much desirous and ready to extend the benefit of "One Time Settlement" as agreed and to see that the loan transaction is closed once and for ever, It is further made clear that, the amount already deposited by the petitioner with the Bank in furtherance to the steps for "O.T.S" and now lying in deposit of the Bank can be appropriated by the Bank, subject to the terms of the "One Time Settlement" that is being extended to the petitioner; the final figures of which as originally proposed, subject to further expenses if any, shall be intimated to the petitioner within 1 month after receipt of a copy of the judgment. Since the sale is set aside, the amount of Rs. 1.77 crores already deposited by the 3rd respondent shall be caused to be returned by the Recovery Officer, along with the interest accrued thereon, pursuant to the deposit effected in the respondent Bank as per the interim order passed by this Court, This shall be done as expeditiously as possible, at any rate within two weeks from the date of receipt of a copy of this judgment. It is also made clear that this will be without prejudice to the rights and interests of the State/Revenue and the HPF authorities for realization of the amount due to them in accordance with law.

27. The learned Counsel for the petitioner further submits that, once the amount

due to the Bank under the OTS is cleared, there might be a direction to the Bank, to return the title deeds. The learned Counsel for the Bank submits that, there is absolutely no objection in this regard and once the entire amount as per OTS is cleared, the title deeds will be handed over to the petitioner. In the said circumstances, the Bank is directed to return the title deeds and such other records to the petitioner, once the liability to the Bank is cleared as specified herein before.

The Writ Petition is disposed of as above.