(2008) 07 KL CK 0035

In the High Court Of Kerala

Case No : Writ Petition (C) No. 35835 of 2004

Varkey T.U. and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Revenue Recovery Act, 1968 — Section 49, 50, 50(1), 50(2), 53

Citation : (2008) 4 ILR (Ker) 621 : (2008) 3 KLJ 779 : (2008) 4 KLT 738

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : T.I. Abdul Salam, for the Appellant; M.R. Gopalakrishnan Nair and Smitha (GP), for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioners are challenging Ext.P13 order issued by the Government pursuant to the directions contained in Ext.P9 judgement in WP(C) No. 36402/03 dated 19/11/2003. The facts leading to the case are the following:- The 5th respondent availed loan from 6th respondent Bank and on account of default, the Bank authorized recovery authorities to recover the arrears by resort to revenue recovery proceedings under the Kerala Revenue Recovery Act. The amount due to the Bank was Rs. 5,57,908/- with interest thereon from the date of recommendation for revenue recovery. The property was notified for sale on 16/01/2002. In the auction 1st petitioner purchased the property for Rs. 1,07,500/-. Since the highest bid amount was far below the debt amount, the recovery authority was bound to defer the sale to another date in terms of Section 50(1) of the RR Act. However, the sale was proceeded with and the Revenue Divisional Officer confirmed the sale in violation of the above provision. It is only after confirmation of the sale, the 6th respondent, which is a public sector Bank, came to know about the proceedings that led to sale of 55 cents of land and a building thereon belonging to the defaulter at Thodupuzha at a ridiculously low price leading to heavy loss to the Bank. It was found that the purchaser of the property in auction in revenue sale, namely 1st petitioner, was none other than the Ex-Branch Manager of the 6th respondent Bank, who took voluntary retirement. The Bank alleged that sale was conducted without proper notice and it was in violation of the mandatory provision of Section 50 of the RR Act, besides collusion between RR authorities and the purchaser. The Bank filed a writ petition felt that the claim of the Bank was quite genuine and apparently sale of the property situated in a relatively well known area of Thodupuzha town at below the market price is illegal, which probably would have been the result of collusion between the purchaser and the RR authorities. Even though the statutory remedy against confirmation of sale by the Revenue Divisional Officer is a revision before the Land Revenue Commissioner as provided u/s 83 of the Act, in order to avoid controversy in future, this Court felt that Government should be directed to issue instructions to Revenue Recovery Authorities to proceed for sale of properties under the RR Act only after issuing notice to the beneficiary organization, whose debt is sought to be recovered in such proceeding. Besides this, since Government is the ultimate authority under the statute, which has the authority even to reverse the order of the Land Revenue Commissioner u/s 83(2) of the Act, this Court directed the Government to consider the objections raised by the Bank against confirmation of sale and the Government was also directed to issue general instructions to the revenue recovery authorities under the Act to proceed with auction sales only after issuing notice to the beneficiary organization for whom revenue recovery is taken. Pursuant to the directions contained in the judgment, the Government has heard the parties and after issuing general instructions to RR authorities in terms of the directions, the Government proceeded to consider the legality and propriety of the sale confirmed in this case. Government after hearing all the parties found that there is clear violation of Section 50 of the RR Act in as much as the sale was not deferred under the mandatory provisions of the said section. As already stated the price at which the property sold is for Rs. 1,07,500/- as against the total liability of Rs. 5,57,908/- due to the Bank as on 14/05/2001. Government farther found that no notice of auction sale of the property was published at the sale of the property. It is clear from Ext.P13 that the Government was convinced about the impropriety, illegality and the apprehension of the Bank endorsed by this Court in Ext.P9 judgment that the sale was at below the market price. Government therefore set aside the sale. It is against this proceedings of the Government issued vide Ext.P13, petitioners have approached this Court After purchasing the property by 1st petitioner in the impugned auction sale, he sold the same in two pieces to petitioners 2 to 4 and that is why those persons are also before this Court challenging Ext.P13 proceedings.

I heard learned counsel appearing for petitioners and learned Government Pleader and learned standing counsel appearing for 6th respondent Bank.

2. The first contention raised by the learned counsel for the petitioners is that the Government has no power to issue Ext.P13 and therefore the order is liable to be vacated However, it is seen that Government is the ultimate authority u/s 83(2) of the RR Act to interfere with proceedings issued under the Act by the

subordinate authority including the revisional order issued by the Land Revenue Commissioner, previously Board of Revenue, u/s 83(1) of the Act The circumstances under which this Court gave directions to the Government to exercise jurisdiction u/s 83(2) of the Act overlooking the revisional power of the Land Revenue Commissioner are already stated above. Even though the first petitioner was a party to Ext.P9 judgment, he has not chosen to challenge the judgment whereunder this Court directed Government to consider the matter. However, he did not participate in the hearing, pursuant to which Ext.P13 is issued. Since Government is the ultimate authority u/s 83(2) of the Act and since Ext.P13 order is issued pursuant to the directions contained in Ext.P9 judgment, which has become final, I do not think the jurisdictional objection raised by the petitioners against Ext.P13 order is tenable. This contention is, therefore, rejected.

3. The next ground raised is that sale can be set aside only u/s 53 of the Act and since the Bank has not filed any application to set aside the sale, there is no justification for the Government to interfere with the sale u/s 83(2) of the Act. There can be no dispute that the Bank could have filed application for setting aside the sale u/s 53 of the Act and for the very same reasons stated in Ext.P13, probably the Collector would have set aside the sale. However, ignoring this alternate remedy, this Court entertained the writ petition filed by the Bank under Article 226 of the Constitution of India challenging sale, which led to Ext.P9 judgment directing the Government to consider legality and propriety of the sale. Therefore, in view of Ext.P9 judgment, it was not possible for the Bank to pursue statutory remedy u/s 53, though it was also available to the Bank. In view of the relief granted vide Ext.P9 judgment pursuant to the writ petition filed by the Bank, the Bank cannot be blamed for not pursuing statutory remedy u/s 53 of the Act. I, therefore, reject this objection also raised by the petitioners. The next contention raised is that there is no collusion between 1st petitioner and revenue authorities. According to the petitioners, there is no malafide or irregularity or impropriety or collusion in the matter. I do not think this contention can be accepted on fact value. The first petitioner, who is none other than the previous manager of 6th respondent Bank, had no interest in the property that is evident from the fact that shortly after the purchase of the property in auction, he sold the same to petitioners 2 to 4. He did the property in auction obviously to resell it and make profit. Being the previous manager of 6th respondent Bank, he would have been aware of the potential in purchasing the property at low price for sale at higher price to make profit. Even though 1st petitioner''s loyalty to 6th respondent Bank may not be there after his voluntary retirement, I am sure that he purchased the property by virtue of his information as an insider in the Bank about the default of 5th respondent, the value of his property and it''s sale in recovery proceedings irrespective of whether there is collusion or malafides or not. I find the sale was rightly interfered with for the simple reason that the highest bid amount offered by 1st petitioner, at which the property sold, is Rs. 1,07,500/- as against the loan arrears of Rs. 5,57,908/-. In other words, the sale

price is not even 20% of the debt amount and so much so, the recovery authority was bound to defer the sale to another date for the Government to exercise option for purchase in terms of Section 50(2) of the Act. In order to appreciate the scope of the provisions, I extract hereunder Section 50(1) & (2) of the Kerala Revenue Recovery Act.

Section 50: Bidding on behalf of Government - (1) When an immovable property is put up for sale at the time and place specified in the notice under clause (2) of Section 49 for the recovery of arrears of public revenue due on land, if there be no bid or if the highest bid be insufficient to cover the said arrears and those subsequently accruing due upto the date of sale, together with interest and cost of process, the officer conducting the sale shall postpone the sale to another date which shall not be later than sixty days from the date of the first sale and give notice of the subsequent sale as required under clause (4) of Section 49.

Section 50(2): When the property is put up for sale on the date to which it was postponed under sub-section (1), at the time and place specified in the notice,-

i) If there be no bid, the officer conducting the sale may purchase the property on behalf of the Government for an amount often paise; and may apply to the Collector to set aside the sale;

ii) If the highest bid be insufficient to cover the arrears referred to in subsection (1) and those subsequently accruing due upto the date of the sale and interest and cost of process, such officer may bid on behalf of the Government for an amount higher than such bid by ten paise,

and in either case the Government shall acquire the property subject to the provisions of this Act.

The scheme of the above provision, which is mandatory in nature, is that on the first sale, property should not be sold at below the debt amount for which recovery proceedings were initiated. Sub Section (1) makes it mandatory to the recovery authorities to postpone the sale to another date if there is no bidder in the first attempt or if the highest bid amount is insufficient to cover the arrear amount including the accruals of interest up to the date of sale. Since Sub Section (1) is mandatory in nature, the sale of defaulter''s property by the RR authorities to 1st petitioner at below 20% of the debt amount on the first date notified for sale i.e. on 16/01/2002 is illegal and rightly interfered with by the Government under Ext.P13. It is worth referring to the scope of Sub section (2), which authorises the Government to purchase the property if there is no bidder in the second time of sale, when the sale was postponed u/s 50(1) of the Act. Similarly, if the highest bid amount in the second attempt of sale is insufficient to cover the arrears then again Government has right to purchase the property at 10 paise (presently stated as rupee one) above the highest bid amount. The purpose of Sub Section (2) is to protect the interest of the State in as much as the State is free to acquire at least the property of the defaulter if recovery of full debt amount is not possible. The provision u/s 50(2) giving right to the

Government to purchase property pre-supposes that the liability for which recovery is taken is arrears of public revenue due on land. In other words, statute generally visualizes revenue recovery proceedings by the RR authorities for recovery of arrears due to the State. However, by virtue of notification issued u/s 71 of the Act, revenue recovery proceedings under the Act are authorised for recovery of arrears due to financial institutions, Government Agencies, statutory Authorities etc. In fact, the recovery involved in this case is for the 6th respondent, which is a public sector Bank, and in whose favour admittedly there is notification u/s 71 of the Act. When recovery is initiated for any agency or financial institution other than the Government, the right of Government to purchase defaulters property under Sub Section (2) is available to such institutions also. Therefore, it is up to the institution to decide whether they should purchase defaulters property above the highest bid amount to protect their interest. This opportunity can be made available to them Only if notice of sale is issued to the requisitioning authority i.e., the Bank or any other statutory body. It is in this context, this Court in Ext.P9 judgment issued general direction to the Government to issue instructions to the RR authorities to issue notice of sale in recovery proceedings to financial institution or agency for whom recovery is taken. In fact, it is stated in Ext.P13 that Government has complied with the directions by instructing the RR authorities to issue notice of sale to creditors for whom sale is made. I hold that the financial institution or statutory body for whom recovery is initiated has a right to participate in revenue sale and purchase the property at above the highest bid amount if the same will protect their interest. In view of the above findings, I uphold Ext.P13. Since 1st petitioner has not got title of the property, the sale affected by him to petitioners 2 to 4 are also declared invalid. The sale deed executed will be cancelled by the Registering Authority as and when copy of the judgment is produced by the 6th respondent. If 5th respondent does not come forward for settlement of liability to the satisfaction of 6th respondent, there will be direction to the 4th respondent to proceed for sale of property afresh after due publication and after notice to the Bank.

The writ petition is disposed of as above.

