
(2009) 10 KL CK 0011
In the High Court Of Kerala
Case No : W.A. No. 1860 of 2009

Venu	Vs	APPELLANT
Excise Commissioner		RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Abkari Act, 1077 — Section 28
Kerala Abkari Shops (Disposal in Auction) Rules, 1974 — Rule 5(11)
Kerala Abkari Shops Disposal Rules, 2002 — Rule 5(22)
Kerala Revenue Recovery Act, 1968 — Section 3, 5, 53, 54, 74

Citation : (2009) 4 KLT 505

Hon'ble Judges : P. Bhavadasan, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : M.K. Pradeepkumar, for the Appellant; Noble Mathew, Government Pleader, N.N. Sugunapalan Devan Ramachandran, K.M. Aneesh, V.K. Peer Mohammed Khan, S. Sujin, G.P. Shinod, G. Ram Mohan, K.P. Satheesan, K.K. Gopinathan Nair, M.R. Jayaprasad, P. Mohandas (EKM), Mathew Sunny, M.G. Karthikeyan and Nireesh Mathew, for the Respondent

Final Decision : Allowed

Judgement

K. Balakrishnan Nair, J.—The appellant herein was the 14th respondent in the Writ Petition. The respondents 1 to 13 respectively were the respondents 1 to 13 on the original side and respondents 15 and 16 were the writ petitioners. The main point that arises for decision in this appeal is whether the State can proceed against the properties of Abkari defaulters, which are not covered by solvency certificates furnished by them while entering into agreement with the Government, when properties covered by such solvency certificates are available for sale. The brief facts of the case are the following:

The writ petitioners were the legal heirs of late T.D. Thampi, who was a co-licensee along with five others of Arrack Shop Nos. 58 to 72 of the Cherthala Excise Range during the year 1993-1994. The licensees defaulted to pay the kist

amount and proceedings were initiated against them to recover the amount due to the State by taking recourse to revenue recovery proceedings. The properties other than those covered by the solvency certificates furnished by the licensees were also proceeded against. Mr. T.D. Thampi owned other items of property also, which were not covered by the solvency certificate furnished at the time of executing agreement with the Government for grant of licence. One of such properties having an extent of 50 cents was put to sale on 13.8.2007. The sale was preceded by several rounds of litigations before this Court and proceedings before various authorities. It is unnecessary to refer to those details in this case. Immediately after the said sale, on 14.8.2007, respondent No. 15, who is one of the legal heirs of late T.D. Thampi, filed Ext.P9 petition before the District Collector u/s 53 of the Kerala Revenue Recovery Act, (for short, "the Act") requesting to set aside the sale. The District Collector, by Annexure A1(5) order dated 1.11.2007 rejected the said petition. But, according to the 15th respondent, a copy of the said order was not served on him and he was also not heard before that order was passed. So, he proceeded on the footing that the said application was pending before the District Collector. While so, the Revenue Divisional Officer by Ext.P10 order, confirmed the sale of the aforementioned 50 cents of land u/s 54 of the Act, on 31.1.2008. Feeling aggrieved by the said confirmation order, respondents 15 and 16, two of the legal heirs of late T.D. Thampi, filed Ext.P12 revision before the Government. In the revision petition also, as was done in Ext.P9, the main contention taken was that, the sale of properties of late T.D. Thampi not covered by the solvency certificate was illegal and unjust, when properties covered by solvency certificates of co-licensees were available. Though the sale was made above the upset price, a contention was raised in Ext.P12 to the effect that sale was made for a price which was much lower when compared to the actual price. But, no materials were furnished in Ext.P12 in support of that contention, like actual market price prevailing in the locality and the deficiency in the price obtained. The Land Revenue Commissioner, after hearing both sides, dismissed Ext.P12 revision by Ext.P15 order. In fact, the Writ Petition was filed, during the pendency of Ex.P12, challenging the revenue recovery notices as also Ext.P1 order of confirmation passed by the Revenue Divisional Officer. Later, the Writ Petition was amended, incorporating the challenge against Ext.P15 also.

2. The appellant herein is the person, who purchased the property of T.D. Thampi in the sale conducted on 13.8.2007 for a consideration of Rs. 21,80,000/-. He paid 15% of the amount immediately and the balance amount within the stipulated time limit of one month.

3. The official respondents and the appellant resisted the prayers in the Writ Petition, by filing detailed counter affidavits. The fact that Ext.P9 was already disposed of by the District Collector was not brought to the notice of the learned Single Judge by both sides. Therefore, the Writ Petition was allowed, quashing Ext.P10 for the reason that confirmation of the sale cannot be made during the pendency of a petition u/s 53 of the Act. The learned Single Judge also gave

consequential directions to the statutory authorities. Feeling aggrieved by the said judgment, the Writ Appeal is preferred.

4. The appellant got certain documents from the Revenue Department, by moving under the Right to Information Act and he has produced Annexure A1(5) Order, which would show that the representation, Ext.P9, filed u/s 53 of the Act, seeking to set aside the sale of the property made on 13.8.2007, was dismissed by the District Collector on 1.11.2007. The learned Counsel for the appellant also handed over a certified copy of the relevant pages of the Despatch Register of the Collectorate obtained under the Right to Information Act, which would show that copy of Annexure A1(5) has been despatched to the 15th respondent herein.

5. In view of the above facts disclosed, the appellant submitted that the very foundation of the judgment under appeal no longer survives and the same is liable to be reversed. In answer, the learned Counsel for respondents 15 and 16 submitted that Annexure A1(5) was never served on the 15th respondent. Even assuming Ext.P9 has been disposed of, the same was done without affording an opportunity of being heard to the affected parties. The learned Counsel also submitted that Ext.P10 Order u/s 54 was passed by the Revenue Divisional Officer without affording an opportunity of being heard to the affected parties. In support of his claim for hearing, the learned Counsel relied on the decision of this Court in Mandoor Ali v. R.D.O. 2007 (3) KLT 780. In that case, this Court held that before passing an order u/s 54 confirming the sale, the affected person should be given an opportunity of being heard. The learned Counsel also pointed out that the stipulations in Section 74 regarding the method of service of notice have been violated. Thus, the learned Counsel for the writ petitioners/contesting respondents supported the judgment under appeal.

6. We considered the rival submissions made at the Bar. Going by the materials now available before this Court, including the files produced by the Government Pleader, we find that the District Collector has considered Ext.P9 and rejected the same by Annexure A1(5) Order. We also find that copy of the said order has been despatched from the Collectorate to the 15th respondent. So, there is no reason to think that the order was not served on him. The contention that it should have been served through one of the methods provided in Section 74 does not impress us, in the absence of prejudice being shown. The said section is designed to ensure service of notice on the affected party. Therefore, as rightly pointed out by the learned Counsel for the appellant, the very foundation of the judgment under appeal is shaken.

7. Now we will consider the contentions of the learned Counsel for respondents 15 and 16 regarding the merits of their case. In every case of violation of natural justice, it is not necessary to remit the matter unless prejudice is shown. This is all the more so, in cases where third party rights are involved. A third party who has no control over the actions of the administrator will be seriously prejudiced, if the order in his favour is set aside on the technical contention of violation of principles of natural justice. So, in this case, we are inclined to go into the

contentions raised against Annexure A1(5) Order and Ext.P10. Going by Ext.P9, we find that the only contention taken therein is that only after proceeding against the properties covered by solvency certificates of all the licensees, action could be taken against other properties. We find that, this is a contention usually urged before this Court for stalling revenue recovery proceedings repeatedly. The very credibility of revenue sale has been considerably eroded by the frequent intervention of this Court on raising such pleas. A stage has come where no man in his senses would come forward and purchase properties in a sale under the Revenue Recovery Act because after shelling out his hard earned money, he is not going to get the property. For that he has to successfully overcome a barrage of litigations. As a result, in revenue sales the properties do not fetch proper price. We find that the above contention raised in Ext.P9 by the respondent No. 15 has no legal backing. The State is entitled to proceed against any of the properties of the defaulter. It is for the State to decide whether it is expedient to proceed against the property covered by the solvency certificate or other properties. In a case, it may be very difficult to sell the property covered by the solvency certificate, but it is easy to find a buyer for other properties not covered by solvency certificate. As per the relevant rules, the State can proceed against all the properties of the defaulters. The legal position was like that, even in 1993-1994. Rule 5(11) of the Kerala Abkari Shops (Disposal in Auction) Rules, 1974, which was in force at the relevant time, reads as follows.

5. xxxxx xxxxx xxxx

(11). Auction purchasers in whose names the sales of shops are declared by the auctioning officer at the time of auction shall not be permitted to transfer or encumber any of their assets to the detriment of the amount that may become due under the contract including the deposit due from them and such transactions, if any, noticed shall be deemed void to the extent of the sum due under such contract.

Rule 5(22) of the Kerala Abkari Shops Disposal Rules, 2002, which is the Rule now in force, reads as follows:

5. xxxxx xxxxx xxxxx

(22). The purchaser on whose name the privilege is granted and licence is issued shall not be permitted to transfer or encumber any of his assets to the detriment of any amount due towards the group, including the wages and other contributions due for the employees of the group and such transactions if any noticed shall be deemed void to the extent of the sum so falls due.

Section 28 of the Kerala Abkari Act says that arrears of Abkari dues shall be treated as arrears of Land Revenue and recovered accordingly. The said section reads as follows:

28. Recovery of duties: All duties, taxes, fines and fees payable to the Government direct under any of the foregoing provisions of this Act or of any

license or permit issued under it, and all amounts due to the Government by the grantee of a privilege or by any farmer under this Act or by any person on account of any contract relating to the Abkari Revenue may be recovered from the person primarily liable to pay the same or from his surety (if any) as if they were arrears of Land Revenue, and, in case of default made by a grantee of a privilege or by a farmer, the Commissioner may take grant or farm under management at the risk of the defaulter or may declare the grant or farm forfeited, and resell it at the risk and loss of the defaulter. When a grant or farm is under management under the section, the Commissioner may recover any moneys due to the defaulter by any lessee or assignee as if they were arrears of Land Revenue.

As per the provisions of Section 3 of the Kerala Revenue Recovery Act, public revenue due on land will be a first charge on the defaulter's property. As per Section 5 thereof, public revenue due on land could be recovered, inter alia, by attachment and sale of the immovable properties of the defaulter. The above statutory provisions do not make any distinction between properties covered by solvency certificates and those not covered by such certificates. All the properties of the defaulter are liable to attachment and sale. Solvency certificates are demanded, while granting licences, to ensure that the grantee has sufficient properties to meet the dues to the Government. Such certificates do not denude the power of the Government under the statutes to proceed against other properties of the defaulter. So, any of the properties of the licensee can be sold in public auction to recover the amount due. When a group of persons auctioned the right to vend liquor in a group of shops, if there is default, we find that Writ Petitions after Writ Petitions are being filed raising a contention, inter alia, that before proceeding against the other man's property, the petitioner's property is sought to be sold in public auction. We think, such contentions do not have any backing in law. There is nothing illegal or no lack of jurisdiction, if the State proceeds against the properties of only one of the licensees. The licensee, who has suffered, can definitely maintain a civil suit against other licensees to recover the loss suffered by him because he has been made to pay in excess of his due, having regard to the terms of the contract between the licensees.

8. In view of the above legal position, we find that none of the contentions raised in Ext.P9 is sustainable in law. Therefore, it is not just or proper for us to remit Ext.P9 on the ground that Annexure A1(5) order was passed in violation of the principles of natural justice. It will be a futile exercise. Same is the case against Ext.P10 also. We have perused Ext.P12 and we find no sustainable grounds raised against Ext.P10 in Ext.P12 revision. So, even assuming that Ext.P10 was passed in violation of principles of natural justice, it is unnecessary for this Court to interfere with the same, invoking its discretionary jurisdiction under Article 226 of the Constitution of India. Further, we notice that the Government heard all parties while considering Ext.P12, the revision filed against Ext.P10 and dismissed the same by Ext. P15. So, any prejudice caused by not hearing the parties while passing Ext.P10 is cured by the hearing given at the time of

disposing Ext.P12. Having regard to the above facts of the case, we find that there is no merit in the contention raised on behalf of respondents 15 and 16. No ground was made out to interfere with the order rejecting Ext.P9 or Ext.P10 order confirming the sale or Ext.P15 order dismissing Ext.P12 revision.

In the result, the Writ Appeal is allowed. The judgment under appeal is reversed and the Writ Petition is dismissed. If the respondents 15 and 16 feel that they have paid more than what they should have paid or the Government recovered more amounts from them than that was due from them having regard to their contract with other co-licensees, their remedy, if any, is to proceed against other co-licensees.