
(2013) 03 KL CK 0136

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20889 of 2011

Vijayakumar

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 23-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, 144
Kerala Revenue Recovery Act, 1968 — Section 49, 51, 52, 53, 53

Citation : (2013) 2 KHC 402 : (2013) 2 KLJ 416 : (2013) 2 KLT 458

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Murali Purushothaman, Deepu Lal Mohan and S. Leena, for the Appellant; G.S. Raghunath, Sr. Government Pleader (Joseph George), for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—This Writ Petition is filed challenging Ext. P32, the proceedings of the District Collector, confirming a sale conducted in terms of the provisions of the Revenue Recovery Act. Petitioner was a dealer in laboratory glassware and was an assessee under the K.G.S.T. Act. He had defaulted the tax due under the Act and finally, revenue recovery proceedings were initiated and Exts. P1 and P2 demand notices were issued on 16.10.2008 for recovery of Rs. 4.22 crores. This was based on Exts. P3 and P4 assessment orders for the years 1999- 2000 and 2000-01. Petitioner filed appeals before the statutory appellate authority which were rejected by Ext. P5 order. Although the petitioner had filed further appeals before the Tribunal, there was no stay and as a result, the revenue recovery proceedings continued. Finally, 44 cents of land belonging to the petitioner, comprised in Survey No. 380/1-1 in Avanavancherry Village, Chirayinkil Taluk was attached by the recovery authorities on 1.12.2008. In spite of it, payment was not made and finally, on 6.1.2009, notice under S. 49 of the Revenue Recovery Act was issued fixing sale of the property on 10.2.2009. On that day, for want of sufficient bidders, sale was adjourned and thereafter, fresh

notice was issued scheduling the sale on 23.3.2009. On that day, there were 7 bidders and although the upset price fixed was Rs. 8.8 lakhs, the highest bid submitted was for Rs. 11.5 lakhs. That offer made by the 6th respondent, being the highest, was accepted and he deposited 30% of the bid amount.

2. Subsequently, the petitioner's power of attorney holder submitted Ext. P7 application dated 22.4.2009 to the 7th respondent seeking to set aside the sale and that application was rejected by Ext. P8 order. Thereafter, wife of the petitioner made Ext. P9 application dated 25.6.2009 to the Revenue Divisional Officer seeking to set aside the sale. The RDO heard his wife but orders were not passed. In the mean while, the Tribunal, before which the appeals filed against Ext. P5, disposed of the appeals by Ext. P15 order dated 18.10.2010. By this order, the appeals were allowed and the Sales Tax Officer was directed to issue revised assessment orders. Petitioner forwarded this order to the second respondent under cover of Ext. P16 representation. In the mean while, in compliance with Ext. P15 order of the Tribunal, the Sales Tax Officer issued Exts. P18 and P19 revised assessment orders, reducing the tax liability considerably. In pursuance of Exts. P18 and P19 revised assessment orders, the 4th respondent issued Ext. P21 communication under S. 69(6) of the Revenue Recovery Act on 30.10.2010 itself seeking recovery of Rs. 4,52,864/-.

3. Despite the appellate order and the reduction in the tax liability of the petitioner, rejecting Ext. P9 application submitted by the wife of the petitioner, the second respondent confirmed the sale by Ext. P22 order dated 30.9.2010. On service of the order, on 16.11.2010, the petitioner filed W.P. (C). 34582/10 before this Court and in fact, in spite of Ext. P22, on 15.1.2010, W.P. (C). 34428/10 was filed by the 6th respondent seeking early confirmation of the sale in its favour. In W.P. (C). 34582/10, this Court passed order dated 19.11.2010 staying further proceedings pursuant to Ext. P22, confirming sale in favour of the 6th respondent. Subsequently, both the Writ Petitions came up together for final hearing and were disposed of by Ext. P24 judgment, setting aside Ext. P22 and directing the District Collector to pass fresh orders after hearing the parties.

4. The operative portion of Ext. P24 reads thus:

5. Heard counsel appearing on both sides as well as learned Government Pleader appearing for the official respondents. On the basis of instructions, learned Government Pleader submitted that, Ext. P9 petition was pending consideration and disposal before the 3rd respondent when Ext. P23 order of confirmation was issued. Under the above circumstances, I am constrained to observe that the order of confirmation was issued without disposing Ext. P9 application filed seeking to set aside the sale. Counsel representing the auction purchaser had raised an objection to the effect that, Ext. P9 was not submitted before the proper authority and that the said petition was filed not within the time stipulated under S. 52 and 53 of the Kerala Revenue Recovery Act. But I take note of the fact that, confirmation of the sale was done behind the back of the petitioner at a time when Ext. P9 petition submitted by him was pending

disposal. It is also pertinent to note that the 3rd respondent has conducted a hearing on Ext. P9 and it is stated that the petitioner had submitted argument notes. Therefore, it is evident that the confirmation of sale was issued in violation of principles of natural justice. Further it is pertinent to note that the revenue recovery requisition on the basis of which the sale was conducted no more survives.

6. Under the above mentioned circumstances, I am of the view that interest of justice will be served if the District Collector, who is the authority concerned under S. 52 and 53 of the Act, is directed to take a fresh decision in the matter as to whether the sale need be confirmed or set aside, after affording a reasonable opportunity to both the parties concerned.

7. In the result, these Writ Petitions are disposed of. Ext. P23 in W.P. (C) No. 34582 of 2010 is hereby quashed. The 3rd respondent in that case (The Revenue Divisional Officer) is directed to forward the entire records pertaining to Ext. P9 petition to the District Collector. The District Collector is directed to take a decision as to whether the sale in question need be confirmed or set aside, considering all aspect of the matter, in exercise of the powers vested under S. 51 to 54 of the Kerala Revenue Recovery Act. Needless to say that the petitioners in both these cases shall be afforded with reasonable opportunity of hearing before finalising the proceedings. The needful in this regard shall be done by the District Collector at the earliest possible, at any rate within a period of three months from the date of receipt of a copy of this judgment.

5. It appears that while the matter was thus pending consideration of the District Collector, the petitioner submitted an application to the Commissioner of Commercial Taxes seeking to settle the liability under the Amnesty Scheme as provided under S. 23B of the K.G.S.T. Act. To that representation, he got Ext. P20 reply, informing that since the revenue sale was not confirmed, the liability can be settled. Subsequently, the 4th respondent issued Ext. P26 order dated 18.2.2011, permitting the petitioner to settle the liability under the Amnesty Scheme on payment of Rs. 1,79,107/- before the end of March, 2011. Taking advantage of Ext. P26, the petitioner remitted the amount on 21.2.2011 itself and this is evident from Exts. P27 and P28. Since the liability was thus settled by the petitioner on 21.2.2011 itself, the 4th respondent issued Ext. P35 communication to the Tahsildar, informing that the liability has been settled and therefore, the revenue Recovery requisition issued on 27.3.2006 should be returned. Ext. P29 is a "no-dues" certificate issued by the 4th respondent on 24.2.2011 certifying that no sales tax dues are outstanding against the petitioner as on that date. This certificate also states that it was issued for producing the same before the District Collector. In pursuance of the directions of this Court in Ext. P24 judgment, the District Collector issued notice calling the petitioner for a hearing. Accordingly, he was heard and finally, the District Collector issued Ext. P32 proceedings dated 20.7.2011, rejecting Ext. P9 and confirming the sale in favour of the 6th respondent. It is in these circumstances, the petitioner has filed

this Writ Petition challenging Ext. P32 order.

6. The main contention raised by the counsel for the petitioner has that since prior to Ext. P32, the petitioner had settled the entire liability and the requisitioning authority had withdrawn the revenue recovery requisition, the District Collector had no jurisdiction to confirm the sale. It is also his case that under the provisions of S. 23B of the KGST Act, once a requisition is withdrawn by the requisitioning authority, the revenue authorities were bound by such communication and for that reason also, the confirmation of sale is illegal.

7. On the other hand, a counter affidavit has been filed by the justifying Ext. P32 order.

8. In so far as the 6th respondent purchaser of the property is concerned, the main contention raised is that he being a bona fide purchaser of the property, irrespective of the outcome of the departmental appeal, the sale in his favour will remain unaffected and that therefore, he was entitled to have the sale confirmed in his name. It is also his case that the settlement of liability in an Amnesty Scheme would not, by itself, invalidate a revenue sale.

9. I have considered the submissions made. The main issue that arises for consideration is regarding the validity of Ext. P32 proceedings of the District Collector. While appreciating the rival contentions, this Court has to bear in mind the undisputed fact that Exts. P1 and P2 demands were issued based on Exts. P3 and P4 assessment orders for the recovery of Rs. 4.22 crores and consequent on Ext. P15 order passed by the Tribunal, the liability was revised and as per the revised assessment orders, the tax liability of the petitioner got reduced to Rs. 4,52,864/-. The reduced liability of the petitioner was settled by taking advantage of the Amnesty Scheme introduced under S. 23B of the K.G.S.T. Act and following Ext. P26 order, the petitioner remitted Rs. 1,79,107/- as per Exts. P27 and P28 and thus the liability was settled in full. Following this, the 4th respondent issued Exts. P35 on 21.2.2011 withdrawing the revenue recovery requisition. A "no dues" certificate Ext. P29 was also issued by the 4th respondent on 24.2.2011 which was produced before the District Collector. It is long thereafter, that the sale was confirmed by Ext. P32 dated 20.7.2011 and that too, in spite of the District Collector being aware of the above developments. The question is whether such a sale confirmation is legally tenable.

10. In my view, once a liability has been settled and the requisition which led to the revenue recovery action has been withdrawn, the District Collector had no jurisdiction to confirm the sale and this view I take is fully supported by the judgment of the Apex Court in Sri Mohan Wahi Vs. Commissioner, Income Tax, Varanasi and Others, . That was a case where the proceedings under the Income Tax Act were initiated by the Tax Recovery Officer against two persons who owned a property along with two other persons. Finally, the property was sold in public auction and the bid was accepted and the purchaser had deposited 1/4th of the auction money. However, in a civil suit, the Income Tax Department was

restrained from confirming the sale. During the pendency of the suit, departmental appeal filed against the assessment order was dismissed, however, the Appellate Tribunal allowed the appeals. As a result, the demands raised by the department stood wiped out and was reduced to nil. Thereafter, the Tax Recovery Officer was requested for cancellation of the recovery certificates. In spite of it, the sale was confirmed by the Tax Recovery Officer.

11. The sale confirmation was the subject matter of proceedings before the departmental authorities which were unsuccessful. The Writ Petition filed against the proceedings of the Tax Recovery Officer was also dismissed by the High Court. In an appeal filed before the Apex Court, the first question framed for answer was whether the Tax Recovery Officer could have confirmed the sale when the demands for the recovery of which tax recovery certificates were issued, had ceased to exist. This question was answered by the Apex Court with reference to the various provisions of the Second Schedule to the Income Tax Act and it was held that since the sale was being held for an assumed demand which is found to be fictitious or held to have not existed at all, in fact or in the eye of the law, is one such event which would oblige the Tax Recovery Officer not to pass an order confirming the sale and rather annul the same. The relevant paragraphs of the judgment reads thus:

7. Taking up first question the first, according to S. 222 where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may issue a certificate specifying the amount of arrears due from assessee and shall proceed to recover from such assessee the amount so specified by one or more of the modes which include attachment and sale of the assessee's immovable properties. The Second Schedule sets out the procedure for recovery of tax. We will refer to some of the rules contained in the Second Schedule and relevant for our purpose. Rules regarding attachment and sale of immovable property are contained in Part III of Second Schedule. R.56 provides that the sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer. Several provisions contained in the rules which follow R.56 are in pari materia with the provisions dealing with attachment and sale of immovable property contained in Order 21 of the C.P.C. dealing with execution of decrees passed by civil Courts. However, in Order 21 of the C.P.C. a provision similar to R.56 of Second Schedule is not to be found. R.60 provides for an application to set aside sale of immovable property being made by defaulter or an interested person on his depositing the specified amount within 30 days from the date of sale. R.61 deals with application to set aside sale of immovable property on the ground of non- service of notice on the defaulter under the Schedule or on the ground of material irregularity in publishing or conducting the sale. Under R.62 a sale may be set aside on an application by the purchaser on the ground that the defaulter had no saleable interest in the property sold. The prescribed time limit within which the application can be made under R. 60, 61 or 62 is 30 days from the date of sale. Where no application is made for setting aside the sale or such an application having been made is

disallowed, the Tax Recovery Officer shall make an order confirming the sale and thereupon the sale shall become absolute. On a sale or immovable property becoming absolute, a sale certificate shall be issued under R.65.

8. Under S. 224, an assessee cannot dispute the correctness of any certificate drawn up by the Tax Recovery Officer but it is lawful for the Tax Recovery Officer to cancel the certificate for any reason if he thinks it necessary to do so or to correct any clerical or any arithmetical error therein. Sub-s. (3) of S. 225 provides as under:-

225. Stay of proceedings in pursuance of certificate and amendment or cancellation thereof.

XXX XXX XXX

(3) Where a certificate has been drawn up and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Tax Recovery Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be.

9. The term "reduced" in sub-s. (3) of S. 225 would include a case where the demand consequent upon an appeal or any proceedings under the income tax Act has been reduced to (nil) also. The Tax Recovery Officer is obliged to give effect to such reduction in demand and accordingly amend or cancel the certificate. The scheme of Part III of Second Schedule indicates that the sale proceedings terminate on their becoming absolute where after all that remains to be done is the issuance of sale certificate. However, an order confirming the sale by the Tax Recovery Officer is a must. The efficacy of the sale by public auction in favour of the highest bidder has been made to depend on the order of confirmation by the Tax Recovery Officer by incorporating R.56 in the Schedule. It is true that ordinarily if there is no application filed for setting aside sale under Rules 60, 61 or 62 and 30 days from the date of the sale have expired, the Tax Recovery Officer has to make an order confirming a sale. Nevertheless, an order shall have to be actually made. The combined effect of sub-s. (3) of S. 225 of the Act and R.56 and R.63 of Second Schedule is that if before an order confirming the sale is actually passed by the Tax Recovery officer, the demand of tax consequent upon an order made in appeal or other proceedings under the Act has been reduced to nil, the Tax Recovery Officer is obliged to cancel the certificate and as soon as the certificate is cancelled, he shall have no power to make an order confirming the sale. The sale itself being subject to confirmation by the Tax Recovery Officer would fall to the ground for want of confirmation.

10. In the case at hand the sale was held on 11.1.1980. No application was filed for setting aside the sale either by the assessee or by the auction purchaser or by anyone interested in the property. On expiry of 30 days from the date of the sale the Tax Recovery Officer could have passed an order confirming the sale. However, the Tax Recovery Officer was injuncted by the writ of Civil Court from

confirming the sale. The interim order issued by the civil Court ceased to operate on 12.1.1998 whereafter an order of confirmation was passed on 25.3.1998 by the Tax Recovery Officer ignoring, or unmindful of, the important event which had taken place in between. Before 25.3.1998, the demand against the assessee admittedly stood reduced to nil. This fact was in the notice of income tax Officer as well as the Commissioner of Income Tax. Attention of the Income Tax Officer as also the Tax Recovery Officer was also invited by the firm M/s. UPCC through its communication dated 22.11.1996 (Annexure P-6). On 16.1.1997, the counsel for the assessee had specifically called upon the Income Tax Officer who had raised the demand against the assessee to confirm if all the recovery certificates issued against the assessee firm had stood withdrawn or cancelled. In view of the facts within the knowledge of the department and the communications so made, the Tax Recovery Officer could not have confirmed the sale on 25.3.1998. R.56 in Second Schedule of the income tax Act, 1961 is neither a redundant nor a formal provision. It casts an obligation on the Tax Recovery Officer to pass an order confirming the sale consciously and with due application of mind to the relevant fact relating to sale by public auction which is to be confirmed. Under R.63, confirmation of sale is not automatic. An order confirming the sale is contemplated to make the sale absolute. Ordinarily, in the absence of an application under R. 60, 61 or 62 having been made or having been rejected if made, on expiry of 30 days from the date of sale the Tax Recovery Officer shall pass an order confirming the sale. However, between the date of sale and the actual passing of the order confirming the sale if an event happens or a fact comes to the notice of the Tax Recovery Officer which goes to the root of the matter, the Tax Recovery Officer may refuse to pass an order confirming the sale. The fact that sale was being held for an assumed demand which is found to be fictitious or held to have not existed at all, in fact or in the eye of law, is one such event which would oblige the Tax Recovery Officer not to pass an order confirming the sale and rather annul the same. The High Court in our opinion, clearly fell in error in not allowing relief to the petitioner-appellant by setting aside the sale.

11. Shri S.K. Jain, learned counsel for the auction- purchaser, respondent No. 3, referred to Janak Raj Vs. Gurdial Singh and Another, and Sardar Govindrao Mahadik and Another Vs. Devi Sahai and Others, wherein it has been held that once a sale has taken place in execution of a decree, the sale has to be confirmed notwithstanding the fact that after the holding of the sale, the decree was set aside. In Janak Raj's case, sale was held in execution of an ex parte decree. The ex parte decree was set aside subsequent to the date of the sale but before an order confirming the sale was passed. This Court held that in the absence of an application for setting aside the sale having been moved on the grounds available under Rules 89 to 91 of Order 21 of C.P.C. the Court could not have refused to confirm the sale. However, in this case itself, this Court has observed (at page 80) that there may be cases in which apart (from the provisions of Rules 89 to 91 the Court may refuse to confirm a sale, as for

instance, where a sale is held without giving notice to the judgment debtor, or where the Court is misled in fixing a reserved price or where there was no decree in existence at the time when the sale was held. In Sardar Govindrao Mahadik's case, Janak Raj's case was referred. The Court has drawn a distinction between a Court auction held in favour of a decree holder and where the auction purchaser is an outsider or a stranger. In former case on the decree ceasing to exist before the sale is confirmed, the sale may be refused to be confirmed but in the latter case, equity in favour of the stranger should be protected and the judgment debtor should be left to suffer for the default on his part for not obtaining stay of the execution of the decree from where it was under challenge. Though the learned counsel for the auction purchaser has relied heavily on these decisions, suffice it to observe that these are the cases of auction sale held under Order 21 of the C.P.C. and, therefore, may not apply to the case of an auction sale held under Second Schedule of the income tax Act in view of R.56 contained therein. Moreover, in these decisions also, the Supreme Court has contemplated situations where in spite of the auction sale having been held and no application for setting aside the sale having been moved, yet in exceptional situation the sale may be refused to be confirmed and may be set aside. Shri S.K. Jain also relied on Padanathil Rugmini Amma Vs. P.K. Abdulla, , wherein this Court has observed that unless the auction purchasers were protected, the properties which are sold in Court auction would not fetch a proper price. It is true that sanctity of sale of property by public auction has to be protected but at the same time a citizen faced with proceedings for recovery of assumed arrears should not be deprived of his property in spite of judicial or quasi judicial pronouncement holding, before the sale was confirmed, that there were no arrears. This observation applies a fortiori under the scheme of income tax Act, the relevant provisions whereof have already been referred to by us.

12. A close perusal of the above paragraphs would show that the Apex Court had mainly placed reliance on Rules 56, 60 and 63 of the Second Schedule to the Income Tax Act which are similar to the provisions contained in Ss. 49, 53, 54, 55 and 56 of the Revenue Recovery Act. Therefore, the principles laid down by the Apex Court in the aforesaid judgment should, in all respects, apply to a sale conducted under the Revenue Recovery Act also.

13. However, the contention of the counsel for the 6th respondent was that the sale in favour of a bona fide purchaser in pursuance of a decree will remain in effected even if the decree is set aside in an appeal. This contention was sought to be substantiated by the learned counsel by relying on the judgment of the Apex Court in Janatha Textiles and Others Vs. Tax Recovery Officer and Another, . In that judgment, the rights of a bona fide purchaser came up for consideration and in paragraphs 17, 18 and 26 of the judgment it was held thus:

17. There is another very significant aspect of this case, which pertains to the rights of the bona fide purchaser for value. It was asserted that respondent No. 2 is a bona fide purchaser of the property for value. It was further stated that he

had purchased the said property in a valid auction and he cannot be disturbed according to the settled legal position.

18. It is an established principle of law that in a third party auction purchaser's interest in the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise. This principle has been stated and re-affirmed in a number of judicial pronouncements by the Privy Council and this court. Reliance has been placed on the following decisions.

.....

26. Law makes a clear distinction between a stranger who is a bona fide purchaser of the property at an auction sale and a decree holder purchaser at a court auction. The strangers to the decree are afforded protection by the court because they are not connected with the decree. Unless the protection is extended to them the court sales would not fetch market value or fair price of the property.

14. A reading of the other paragraphs of the judgment shows that to arrive at the aforesaid conclusion, the Apex Court placed reliance on the judgments in (1887) L.R. 15 I.A. 12 (Privy Council) , Janak Raj Vs. Gurdial Singh and Another, , Gurjoginder Singh Vs. Jaswant Kaur (Smt) and Another, , Padanathil Rugmini Amma Vs. P.K. Abdulla, and Ashwin S. Mehta and Another Vs. Custodian and Others, .

15. Although the learned counsel is perfectly justified in the aforesaid contention, in my view, the said principles laid down by the Apex Court in its judgment in Janatha Textiles (supra) cannot be applied to the facts of this case because a reading of the judgment in Mohan Wahi (supra) shows that in that judgment also, the Apex Court has made reference to the judgments in Janak Raj Vs. Gurdial Singh and Another, , Sardar Govindrao Mahadik and Another Vs. Devi Sahai and Others, and Padanathil Rugmini Amma Vs. P.K. Abdulla, . After making reference to these judgments, the Apex Court in Mohan Wahi held that "suffice it to observe that these are the cases of auction sale held under O.21 of the C.P.C. and, therefore, may not apply to the case of an auction sale held under Second Schedule of the income tax Act in view of R.56 contained therein. Moreover, in these decisions also, the Supreme Court has contemplated situations where in spite of the auction sale having been held and no application for setting aside the sale having been moved, yet in exceptional situation the sale may be refused to be confirmed and may be set aside." Thereafter, the Apex Court has also held that while the sanctity of sale of property by public auction has to be protected, at the same time, a citizen faced with proceedings for recovery of assumed arrears should not be deprived of his property in spite of judicial or quasi judicial pronouncement holding, before the sale was confirmed, that there was no arrears. In view of the aforesaid authoritative pronouncement of the Apex Court, I am unable to accept the contention of the learned counsel for the 6th respondent and reject the Writ Petition on that basis.

16. In fact, this contention of the counsel for the 6th respondent was contradicted by the learned counsel appearing for the petitioner by pointing out that the 6th respondent cannot be termed as a bona fide purchaser to claim the benefit of the principles laid down in the judgment in Janatha Textiles (supra). According to him, the 6th respondent purchased the property fully knowing about the pendency of the appeals and therefore, is bound to restore the property by way of restitution.

17. I have considered this contention. It is true that the courts have always made distinction between a decree holder who purchased the property in execution of that decree which is modified or reversed afterwards and an auction purchaser, who is not a party to the decree. It has also been held that the decree holder who purchased the property is bound to restore the property to the judgment debtor by way of restitution whereas the third party auction purchaser who is a bona fide purchaser of the property is entitled to retain the property irrespective of whether the decree is modified or reversed thereafter. Yet another principle that has been held is that a third party who purchased the property with the knowledge of the pending appeals against the decree cannot be termed as a bona fide purchaser to avoid restoration of the property by way of restitution. These principles have been discussed by the Apex Court in Chinnamal and others Vs. P. Arumugham and another, . In that judgment, after referring to the judgments in Janak Raj Vs. Gurdial Singh and Another, and Sardar Govindrao Mahadik and Another Vs. Devi Sahai and Others, and disapproving the judgments of the Patna High Court in Chota Nagpur Banking Association Vs. C.T.M. Smith and Another, and Madras High Court in R. Raghavachari Vs. M.A. Pakkiri Mahomed Rowther and Others, , the Apex Court held thus:

10. There is thus a distinction maintained between the decree holder who purchases the property in execution of his own decree which is afterwards modified or reversed, and an auction purchaser who is not party to the decree. Where the purchaser is the decree holder, he is bound to restore the property to the judgment debtor by way of restitution but not a stranger auction purchaser. The latter remains unaffected and does not lose title to the property by subsequent reversal or modification of the decree. The Courts have held that he could retain the property since he is a bona fide purchaser. This principle is also based on the premise that he is not bound to enquire into correctness of the judgment or decree sought to be executed. He is thus distinguished from an eo nomine party to the litigation.

11. There cannot be any dispute on this proposition and it is indeed based on a fair and proper classification. The innocent purchaser whether in voluntary transfer or judicial sale by or in execution of a decree or order would not be penalised. The property bona fide purchased ignorant of the litigation should be protected. The judicial sales in particular would not be robbed of all their sanctity. It is a sound rule based on legal and equitable considerations. But it is difficult to appreciate why such protection should be extended to a purchaser

who knows about the pending litigation relating to the decree. If a person ventures to purchase the property, being fully aware of the controversy between the decree holder and judgment debtor, it is difficult to regard him as a bona fide purchaser. The true question in each case, therefore, is whether the stranger auction purchaser had knowledge of the pending litigation about the decree under execution. If the evidence indicates that he had no such knowledge he would be entitled to retain the property purchased being a bona fide purchaser and his title to the property remains unaffected by subsequent reversal of the decree. The Court by all means should protect his purchase. But if it is shown by evidence that he was aware of the pending appeal against the decree when he purchased the property, it would be inappropriate to term him as a bona fide purchaser. In such a case the Court also cannot assume that he was a bona fide or innocent purchaser for giving him protection against restitution. No assumption could be made contrary to the facts and circumstances of the case and any such assumption would be wrong and uncalled for.

12. The Patna High Court in *Chota Nagpur Banking Association Vs. C.T.M. Smith and Another*, expressed a similar view. Fazl Ali, C.J., as he then was, said (at 327) that where there is clear and cogent evidence that a stranger purchaser was fully aware of the merits of the controversy in regard to the property purchased by him and was also aware that the validity of the decree was under challenge, there is no room for presumption that he was a bona fide purchaser. Reference may also be made to the decision of the Sind Judicial Commissioners Court in *Jamnolal Gurdinomal v. Gopaldas* (AIR 1924 Sind 101) where similar comment was made.

13. The Madras High Court in *R. Raghavachari Vs. M.A. Pakkiri Mahomed Rowther and Others*, has, however, taken a contrary view. It was held that restitution under S. 144 C.P.C. cannot be demanded as against a bona fide purchaser who was not a party to the decree. The High Court also remarked that the reversal of the decree by the Appellate Court or the knowledge of the purchaser about the pendency of the appeal makes no material difference to the operation of that rule.

14. This proposition, we are, however, unable to accept. In our opinion, the person who purchases the property in court auction with Acknowledge of the pending appeal against the decree cannot resist restitution. His knowledge about the pending litigation would make all the difference in the case. He may be a stranger to the suit, but he must be held to have taken calculated risk in purchasing the property. Indeed, he is evidently a speculative purchaser and in that respect he is in no better position than the decree holder purchaser. The need to protect him against restitution, therefore, seems to be unjustified. Similarly the auction purchaser who was a name lender to the decree holder or who has colluded with the decree holder to purchase the property could not also be protected to retain the property if the decree is subsequently reversed.

15. There is one other aspect which is more important than what we have

discussed hitherto. It was emphasized by Lord Cairns in *Rodger v. The Comptoir D'Escompte De Paris*, (1969-71) LR 3 PC 465 at p. 475): ".....that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression "the act of the Court", is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court."

16. This is also the principle underlying S. 144 of the Code of Civil Procedure. It is the duty of all the Courts as observed by the Privy Council "as aggregate of those tribunals" to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court. The above passage was quoted in the majority judgment of this Court in *A.R. Antulay Vs. R.S. Nayak and Another*, . Mukherjee, J., as he then was, after referring to the said observation of Lord Cairns, said (at p. 672 of SCC: at 1561 of AIR): "No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied."

17. It is well to remember that the CPC is a body of procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishments and penalties. The laws of procedure should be so construed as to render justice wherever reasonably possible. It is, in our opinion, not unreasonable to demand restitution from a person who has purchased the property in court auction being aware of the pending appeal against the decree.

18. Although the legal position as laid down by the Apex Court in the judgment in *Chinnammal* (supra) is not open to doubt, as clarified by the Apex Court itself, the question to be considered is whether the petitioner has proved with dependable evidence that the 6th respondent purchased the property with the knowledge that the appeals filed by the petitioner were pending. None of the documents produced by the petitioner throw any light on this aspect and therefore, there is total dearth of materials on this point. In such a situation, this Court cannot accept the case of the petitioner that the 6th respondent purchased the property with the knowledge that the appeals filed by him were pending and that therefore, he cannot be termed as a bona fide purchaser.

19. Therefore, the petitioner is perfectly justified that in view of the statutory provisions of the Revenue Recovery Act and also the law as laid down by the Apex Court in *Mohan Wahi* (supra), the District Collector could not have confirmed the sale even after issuance of Ext. P35, recalling the requisition made by the requisitioning authority.

20. The second contention raised by the counsel for the petitioner is relying on S. 23B of the K.G.S.T. Act. S. 23B in so far as it is relevant reads thus:

23B. Reduction of arrears in certain cases:

.....

(2) notwithstanding anything contained in the Kerala Revenue Recovery Act, 1968, reduction of arrears under sub-section (1) shall be applicable to those cases in which revenue recovery proceedings have been initiated and the assessing authorities shall have the power to collect such amounts on settlement under sub-section (1) and where the amount is settled under sub-section (1) the assessing authorities shall withdraw the revenue recovery proceedings against such dealers which will then be binding on the revenue authorities and such dealers shall not be liable for payment of any collection charges.

21. A reading of this provision shows that it starts with a non obstante clause and giving it an overriding effect over the provisions of the Revenue Recovery Act and it also provides that where the amount is settled under the Amnesty Scheme as provided in S. 23B the assessing authority shall withdraw the revenue recovery proceedings which will then be binding on the revenue authorities. When this provision is in force, the revenue recovery authorities should not have ignored Ext. P35 and this also renders the subsequent order Ext. P32 of the District Collector, confirming the sale, without the aforesaid grounds, the petitioner is entitled to succeed. Now what remains is the claim of the 6th respondent for interest on the amount deposited by him. This claim has to be decided in the light of the provisions of the Revenue Recovery Act and the relevant portion of the Act is S. 55. A reading of the above section makes it clear that when a sale is not confirmed or a confirmation is set aside, the person who deposited the sale consideration is entitled only to refund of the amount deposited and the section does not provide for any interest. Even otherwise, the facts of this case also do not justify award of interest on equitable considerations also for the reason that the petitioner cannot be faulted for the acts committed by the official respondents in confirming the sale which resulted in the amount getting blocked with the respondents.

In such circumstances, I decline the prayer made by the 6th respondent for interest also. Resultantly, this Writ Petition will stand allowed. Ext. P32 order will stand set aside. The 44 cents of property comprised in Survey No. 380/1-1 in Avanavancherry Village, Chirayinkil Taluk will be restored to the petitioner forthwith. The 6th respondent will be refunded the amount remitted by him.