Rajkumar Vs. the District Collector

Rajkumar Vs. the District Collector

SooperKanoon Citation : sooperkanoon.com/1128415

Court : Kerala

Decided On : Feb-03-2014

Judge : Honourable Mr.Justice P.N.Ravindran

Appellant : Rajkumar

Respondent : The District Collector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN MONDAY,THE3D DAY OF FEBRUARY201414TH MAGHA, 1935 WP(C).No. 3169 of 2014 (U) ------------------------------------- PETITIONER(S): --------------------- RAJKUMAR, AGED52YEARS S/O.NARAYANAN, "ATHIRA NIVAS", RAM NAGAR MAIN STREET P.O.PUNKUNNAM, THRISSUR-02, THRISSUR DISTRICT. BY ADV. SRI.C.R.REKHESH SHARMA RESPONDENT(S): ------------------------ 1. THE DISTRICT COLLECTOR, COLLECTORATE, THRISSUR.

2. STATE OF KERALA, REPRESENTED BY THE SECRETARY DEPARTMENT OF REGISTRATION, GOVT.OF KERALA, SECRETARIAT, THIRAVANANTHAPURAM. BY SENIOR GOVERNMENT PLEADER SMT.ANITA RAVEENDRAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON0302-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ WP(C).No. 3169 of 2014 (U) ------------------------------------ APPENDIX PETITIONER(S)' EXHIBITS ----------------------------------- EXT.P1

TRUE COPY OF THE RELEVANT PAGES OF THE SALE DEED DATED247-2003 EXT.P2 TRUE COPY OF THE STATUTORY APPEAL FILED ON78.2012 & EXT P2(A) IS THE RECEIPT OF THE SAME. EXT.P3 TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER ON148- 2013 AND EXT.P3 (A) IS THE RECEIPT OF THE SAME. EXT.P4 TRUE COPY OF THE TAX RECEIPT OF THE LAND EXT.P5 TRUE COPY OF THE

ORDER
NO.B1-4750/13 DATED318-2013,BY THE COLLECTOR (LR). RESPONDENT(S)' EXHIBITS -------------------------------------- NIL. / TRUE COPY / P.S. TO JUDGE PJ P.N.RAVINDRAN, J.

-------------------------- W.P.(C)No.3169 of 2014 ---------------------------------- Dated this the 3rd day of February, 2014

JUDGMENT
The petitioner who proposes to purchase 6.50 cents of land situate in Sy.No.1728/1 of Thrissur Village, Thrissur Taluk, Thrissur District has filed this writ petition challenging Ext.P5 order dated 31.8.2013 issued by the District Collector, Thrissur rejecting an appeal filed by him under section 28A(4) of the Kerala Stamp Act, 1959 on the ground that the period of limitation prescribed for filing the appeal expired on 31.3.2011.

2. Aggrieved by the fair value fixed by the Revenue Divisional Officer, Thrissur in exercise of the power conferred on him under section 28A of the Kerala Stamp Act, 1959 in respect of lands situate in Sy.No.1728/1 of Thrissur Village, Thrissur Taluk, the owner of the land filed Ext.P2 memorandum of appeal dated 7.8.2013 and petitioner filed Ext.P3 memorandum of appeal dated 14.8.2013 before the District Collector, Thrissur. They contended that as a 11 K.V. High Tension Line runs across the property, the fair value fixed by the Revenue Divisional Officer namely Rs.9,88,000/- per are is exorbitant. The District Collector dismissed the appeal by Ext.P5 order passed on 31.8.2013 on the short ground that the period of limitation prescribed for filing an appeal expired on 31.3.2011. The said order is W.P.(C) No.3169/2014 2 under challenge in this writ petition.

3. I heard Sri.C.R.Rekhesh Sharma, learned counsel appearing for the petitioner and Smt.Anita Ravindran, learned Senior Government Pleader appearing for the respondents. In sub section (4) of section 28A of the Kerala Stamp Act, 1959, as it originally stood, it was stipulated that any person aggrieved by the fixation of fair value under sub section (1) may within thirty days of its publication under sub section (3) appeal to the Collector. The Collector had no power under sub section (4) as it originally stood to admit an appeal filed after the expiry of the said period of 30 days. By Ordinance No.54 of 2010, the Kerala Stamp Act, 1959 was amended and the period of limitation for filing an appeal under section 28A of the Kerala Stamp Act, 1959 was substituted as one year. It was also stipulated that the Collector may admit an appeal preferred after the said period of one year if he is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period. The amendment introduced to section 28(4) of the Kerala Stamp Act was kept alive by successive ordinances, the last of which was Ordinance 5 of 2013. By Act 14 of 2013, the Kerala Stamp Act, 1959 was amended with retrospective effect from 1.4.2010 by substituting the words "one year" in the place of "30 days" in sub section (4) of section 28A of the Act and by incorporating a proviso to the effect that the Collector may W.P.(C) No.3169/2014 3 admit an appeal preferred after the said period of one year if he is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period. As the matters now stand, on and with effect from 1.4.2010, the period of limitation prescribed for filing an appeal against the order fixing fair value is one year and not 30 days. The appellate authority is also empowered to condone the delay in filing the said appeal. The impugned order discloses that the District Collector has proceeded on the bass that the period of limitation prescribed for filing an appeal expired on 31.3.2011 namely one year from 1.4.2010 and that as the appeal was not filed within the said period, the District Collector cannot consider the appeal. The District Collector has not taken note of the proviso to sub section (4) of section 28A of the Kerala Stamp Act which empowers him to condone the delay in filing the appeal, if sufficient cause for the delay is shown. The District Collector ought to have in my opinion pointed out the said fact to the appellants and called upon them to file an application to condone the delay instead of dismissing the appeal on the grounds stated in Ext.P5. I am therefore of the

considered opinion that Ext.P5 order should be set aside and the appellate authority directed to reconsider the appeal in the event of the appellant filing an appropriate application to condone the delay in filing the appeal. The appellate authority is the District Collector. The impugned order is one passed W.P.(C) No.3169/2014 4 by the Deputy Collector, Land Revenue at the instance of the District Collector. For that reason also the impugned order is liable to be set aside. I accordingly allow the writ petition, set aside Ext.P5 order dated 31.8.2013 passed by the Deputy Collector (Land Revenue), restore the appeal to file and direct that in the event of the appellants filing separate applications within 30 days from today praying that the delay in filing the appeals may be condoned, the District Collector shall pass appropriate orders thereon and communicate the same to the appellants. Depending on the outcome of the said petitions, the District Collector shall dispose of the appeals on the merits expeditiously and in any event within an outer limit of two months from the date on which orders are passed on the applications to condone the delay. Needless to say, the appellants shall be heard on both occasions namely at the stage of consideration of the delay petition and in the event of the delay being condoned, at the stage of disposal of the appeal. P.N.RAVINDRAN, (JUDGE) vpv/vps