# Sooraj Kumar Vs. the Tahsildar (Rr)

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**SooperKanoon Citation** : sooperkanoon.com/2941

**Court** : Kerala

**Decided On :** Nov-17-2014

**Judge** : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

**Appellant** : Sooraj Kumar

**Respondent** : The Tahsildar (Rr)

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE MONDAY,THE17H DAY OF NOVEMBER201426TH KARTHIKA, 1936 WA.No. 702 of 2008 ------------------------------------------- AGAINST

JUDGMENT
DATED1511-2007 IN WP(C) 26262/2004 .......... APPELLANT(S)/PETITIONER: --------------------------------------- SOORAJ KUMAR, LAKSHMI NIVAS, NADUVILE VILLAGE, VAIKOM TALUK, DISTRICT KOTTAYAM, REPRESENTED BY THE POWER OF ATTORNEY HOLDER, K.G. MANIKANTAN NAIR. BY ADV. SRI.K.REGHU KOTTAPPURAM RESPONDENT(S)/RESPONDENTS: ----------------------------------------------- 1. THE TAHSILDAR (R.R.), VAIKOM TALUK, VAIKOM, DISTRICT KOTTAYAM.

2. THE REVENUE DIVISIONAL OFFICER (RDO), PALA, DISTRICT KOTTAYAM. * 3. LUKA, S/O. KURIAKOSE, PAZHAMADOM HOUSE, VALLAKOM, VAIKOM, DISTRICT KOTTAYAM. [DELETED] * 4. JOHN ABRAHAM, ELAMKULATHU VEEDU, PERUMBAIKKADU KARA, PERUMBAIKKADU VILLAGE, KOTTAYAM. [DELETED] * 5. T.D. MOHANDAS, THACHAMPARAMBIL, PANAVALLY VILLAGE, CHERTHALA TALUK, DISTRICT ALAPPUZHA. [DELETED] RESPONDENTS3TO5ARE DELETED FROM THE PARTY ARRAY AS PER

ORDER
DATED2710.2014 IN IA99314 R1 & R2 BY SPECIAL GOVERNMENT PLEADER SMT.GIRIJA GOPAL R3 BY ADV. SRI.MATHEW PHILIP EDAPPALLIL R BY SRI.C.C.THOMAS THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON1711-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: msv/ WP(C).No. 32359 of 2014 (T) ------------------------------------- APPENDIX PETITIONER(S)' ANNEXURES: ANNEXURE I: TRUE COPY OF NOTICE NO.G1-3415/94 DATED292.2008. RESPONDENT(S)' ANNEXURES: NIL //TRUE COPY// P.S.TO JUDGE. Msv/ Ashok Bhushan, Ag. C.J & A.M. Shaffique, J.

=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-=-= W.A. No. 702 of 2008 =-=-=-=-=-=-=-=-=-- =-=-=-=-=-=-=-=-=-= Dated this, the 17th day of November, 2014.

## JUDGMENT

**Shaffique, J.**

This appeal is filed by the writ petitioner challenging the judgment dated 15.11.2007 in W.P(C) No. 26262/2004.

2. The writ petition is filed seeking to set aside the sale conducted by the revenue authorities in respect of the property belonging to the petitioner having an extent of 24.125 cents and 28 cents in Naduvile Village.

3. Revenue authorities had proceeded to effect sale of the said property and the property was purchased by the Government for Re. 1/- invoking Section 50(2)(i) of

the Kerala Revenue Recovery Act, 1968 (hereinafter referred as the Act). The sale of property was for recovering Abkari dues to the Government.

4. According to the petitioner, though he had filed Ext. P3 dated 21.7.2004, an application to set aside the sale, still the Government proceeded to confirm the sale and therefore he has approached this Court. It was inter alia contended that the sale held was irregular as proper publication was not made. Further, it is contended that the action of the Government in purchasing the property for one rupee amounts to unlawful enrichment. There were sufficient bidders for purchasing the property and W.A. No. 702 of 2008 -:

2. :- overlooking the same, sale was held.

5. The learned Single Judge, without going into the merits of the contentions, granted the petitioner time to pay the amount of Abkari dues on or before 15.2.2008, observing that the sale was not confirmed and the property was in the possession of the petitioner. On such payment the sale made in favour of the State was to be cancelled and the property reverted back to the petitioner.

6. This appeal is filed with a petition to condone delay. Delay has been condoned and the matter has come up for admission now.

7. Even at the admission stage, we heard the learned counsel for the appellant as well as the learned Government Pleader. It is contended by the learned Government Pleader that the sale was confirmed on 1.8.2006, even during the pendency of the writ petition. However no payment was made by the petitioner as directed.

8. The main contention urged by the petitioner is that the sale was held without proper publication and without considering Ext.P3, which is an application filed by the petitioner's father to set aside the sale. According to learned counsel, publication ought to have been made in news papers and mere publication W.A. No. 702 of 2008 -:

3. :- in the Village Office or Taluk Office was not sufficient. It was also argued that the property would have fetched a very high price if there was proper publication

and that the present value of the property will be several crores.

9. On the other hand, the learned Government Pleader submits that sale was confirmed on 1.8.2006. It is further argued that though the sale was confirmed on 1.8.2006, no steps were taken to avail of the alternate remedy under section 72 or 83 of the Act, to challenge the confirmation of sale.

10. Having regard the aforesaid submission, the first question to be considered is whether the Government is entitled to purchase the property, if there were no bidders. Section 50 of the Kerala Revenue Recovery Act, 1968 reads as under:

"0. 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. (2) When the property is put up for sale on the date to which it was postponed under sub-section W.A. No. 702 of 2008 -:

4. :- (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 of ten paise; (ii) if the highest bid be insufficient to cover the arrears referred to in sub-section (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. (3) The provisions of clause (3) of Section 49 and Section 84 shall not apply to cases where immovable property is purchased on behalf of the Government under this section. (4) Notwithstanding anything contained in this Act, after the confirmation of the sale, all the right, title and interest of the defaulter, purchased on behalf of the Government, shall be deemed to have vested in the Government from the date of purchase and if the defaulter is in actual possession

of the property or if he is entitled to possession, the Collector or the authorised officer shall, immediately after the confirmation of the sale, take possession of the property. If the Collector or the authorised officer is opposed or impeded in taking possession, he shall, if a Magistrate, enforce the surrender of the land to himself and, if not a Magistrate, he shall apply to a Magistrate, and such Magistrate shall enforce the surrender of the land to the Collector or the authorised officer, as the case may be." From the aforesaid provision it is clear that the statute itself enables the Government to purchase the property W.A. No. 702 of 2008 -:

5. :- if there are no bidders ready to purchase the property. The said statutory provision is not under challenge, hence the purchase by the Government for Re.1/- is justified.

11. Once the sale is conducted, any person owning or claiming an interest in immovable property sold is entitled to file an application to set aside the sale on deposit as per section 52 or on grounds of material irregularity or fraud in the conduct of sale under section 53 of the aforesaid Act, which reads as under: "Section 52. Application to set aside sale of immovable property on deposit:- (1) Any person owning or claiming an interest in immovable property sold under this Act may, at any time within thirty days from the date of the sale, deposit in the treasury of the taluk in which the immovable property is situate or if there be no treasury in the taluk, in the nearest treasury-- (a) a sum equal to five per cent of the purchase money; and (b) a sum equal to the arrears of public revenue due on land for which the immovable property was sold together with interest thereon and cost of process; and may apply to the Collector to set aside the sale. (2) if such deposit and application are made within thirty days from the date of the sale, the Collector shall pass a order setting aside the sale, and shall repay to the purchaser the purchase money so far as it has been deposited, together with the five W.A. No. 702 of 2008 -:

6. :- per cent deposited by the applicant: Provided that if more persons than one have made deposit and application under this section, the application of the first depositor shall be accepted. 3) If a person applies under Section 53 to set aside the sale of immovable property, he shall not, unless he withdraws such

application, be entitled to make an application under this section.

53. Application to set aside sale on ground of material irregularity, mistake, etc.--(1) At any time within thirty days from the date of the sale of immovable property application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake fraud in publishing or conducting it; but, except as otherwise hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof. (2) If the application is allowed, the Collector shall set aside the sale and may direct a fresh sale." 12. Admittedly, the petitioner did not avail of the opportunity under Section 52 or 53. As far as Section 53 is concerned, the application to set aside sale on the ground of material irregularity, mistake, fraud etc., in conducting sale has to be filed within thirty days. Though the petitioner submits that he had submitted Ext. P3, the same is submitted by his father. That apart, when the sale is confirmed on 1.8.2006, it indicates disposal of the said application. Even thereafter, further, opportunity was available under W.A. No. 702 of 2008 -:

7. :- Section 54, which reads as under:

"4. Order confirming or setting aside sale: On the expiration of thirty days from the date of the sale, if no application to have the sale set aside is made under Section 52 or Section 53 or if any such application has been made and rejected, the Collector shall make an order confirming the sale: Provided that if the Collector has reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale." Proviso to Section 54 can be invoked by any person before confirmation of sale. The petitioner did not avail of any such opportunity, as well.

13. The next argument is with refernce to lack of proper publication. Section 74 of the Act relates to service of notice and Section 75 indicates the mode of publication of notice. Section 75 reads as under:

"5. Mode of publication of notice, etc.-- (1) Where any notice, order or list is required to be published under the Act, the publication shall, unless it is expressly provided otherwise, be made as follows:- (i) by affixture of a copy of the notice, order or list-- (a) where it relates to immovable property, on a conspicuous part of the property; or (b) where it relates to movable property, on a W.A. No. 702 of 2008 -:

8. :- conspicuous part of the premises from where the property was attached; and (ii) by affixture of a copy of the notice, order or list on the office of the village in which, and on the office of the local authority within whose jurisdiction, the attachment or sale takes place. (2) The Collector or the authorised officer may, in his discretion, publish any notice, order or list in the Gazette or in one or two newspapers having circulation in the area in which the attachment or sale takes place or in both." Mode of publication prescribed under Section 75 is by affixture of a copy of the notice in the property, village office and in the office of the local authority on whose jurisdiction the sale takes place. Further publication is necessary only if the Collector or authorised officer in his discretion, decides to make publication in the Gazette or in one or two newspapers having circulation in the area in which the attachment or sale takes place or in both. The petitioner cannot complain that absence of publication in newspaper had amounted to a material irregularity in the conduct of sale. Sub section (2) of section 75 is not mandatory. This is an instance in which though bidders were present, they could not offer even the minimum price fixed for the property. Under such circumstances, we do not think that the contention regarding absence of proper publication is available to the petitioner. W.A. No. 702 of 2008 -:

9. :- 14. As far as the petitioner is concerned, option was given by the learned Single Judge permitting him to pay the arrears within a specified time. The petitioner did not avail of the said opportunity. In the above circumstances, at this point of time, it will not be possible for this Court to set aside the sale. Since no grounds are made out in the appeal, for interference, the writ appeal is dismissed. Sd/- Ashok Bhushan, Ag. Chief Justice Sd/- A.M. Shaffique, Judge. Tds/ (True copy) P.S to Judge.