

Padmavathy Vs. State of Kerala

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Court : Kerala

Decided On : Nov-17-2014

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

Appellant : Padmavathy

Respondent : State of Kerala

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, THE 17TH DAY OF NOVEMBER 2014 26TH KARTHIKA, 1936 WA.No. 1665 of 2014 () IN WP(C).2783/2013 ----- AGAINST THE

JUDGMENT

IN WP(C) 2783/2013 of HIGH COURT OF KERALA DATED 23-10-2014 APPELLANT(S)/PETITIONER: ----- PADMAVATHY AGED 70 YEARS W/O.SURESH, THAZHISSERY HOUSE, THANDILAM DESAM VELLATTANJUR VILLAGE, THALAPPILLY TALUK 680601. BY ADVS.SRI.T.A.SHAJI (SR.) SRI.M.A.ASIF RESPONDENT(S)/RESPONDENTS IN THE WPC.: ----- 1. STATE OF KERALA REPRESENTED BY THE REVENUE SECRETARY GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM PIN-695 001.

2. THE DISTRICT COLLECTOR, CIVIL STATION, AYYANTHOLE, THRISSUR 68000.

3. REVENUE DIVISIONAL OFFICER, CIVIL STATION, THRISSUR 68000.

4. TAHSILDAR, THALAPILLY TALUK, VADAKKANCHERRY P.O., THRISSUR PIN-680582.

5. THE SALES TAX OFFICER, VTH CIRCLE, KOZHIKODE, PIN-673001. BY GOVERNMENT PLEADER SRI. P.I. DAVIS THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17-11-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ASHOK BHUSHAN , Ag. CJ, & A.M. SHAFFIQUE, J.

----- W.A.No. 1665 of 2014 ----- Dated
this the 17th day of November, 2014

JUDGMENT

Shaffique, J.

Challenging the judgment dated 23-10-2014 in W.P. (C) No. 2783 of 2013, the petitioner has filed this Writ Appeal. The writ petition is filed seeking to quash Exts. P7 and P8 proceedings of the 3rd respondent. Ext. P7 is the proceedings issued by the Revenue Divisional Officer, Thrissur on 1-8-2001, confirming the sale of property having an extent of 1 Acre 44 = cents situated in Vellattanjur Village and Chiranellur Village of Talappilly Taluk, which was purchased by the Government for an amount of Re.1/-, invoking Section 50 (2)(i) of the Kerala Revenue Recovery Act, 1968 ("the KRR Act" for short). It is stated that the sale was conducted for recovery of Sales Tax dues for Rs.9,78,596/- due from the defaulter and since there were no bidders in the public auction conducted by the Tahsildar, W.A.No. 1665 of 2014 2 Talappilly, on 24-1-2001, the property was auctioned in favour of the Government. By Ext. P8 dated 26-08-2006, the Revenue Divisional Officer has confirmed sale of property having an extent of 78 and 5/8 cents of land in the same village, purchased by the Government for Re.1/- as there were no bidders and directing physical possession of the property to be taken and to effect

changes in the revenue records. The petitioner has sought for a direction to the respondent to release the above properties after setting aside the sale.

2. It is inter alia contended that the Revenue Authorities had no jurisdiction to invoke section 50 of the KRR Act, for recovering the amounts which were due as sales tax arrears. That apart, it was contended that the land value had gone up and even the fair value of the land is much above the amount due to the Government. Therefore, appellant seeks for appropriate orders for setting aside the sale. The appellant has also offered to clear the entire liability as on date.

3. The learned Single Judge, after taking into consideration the entire contentions urged by the petitioner, dismissed the Writ Petition. The learned Single Judge had also relied upon the W.A.No. 1665 of 2014 3 judgments of this Court in State of Kerala v. George Jacob (2010 (3) KLT483 and Ashok Kumar v. State of Kerala (2012 (2) KLT164 .

5. While impugning the aforesaid judgment, the learned Sr. Counsel appearing for the appellant relied upon the meaning of "arrear of public revenue due on land" and "public revenue due on land" as defined under the KRR Act. The aforesaid provisions reads as under:

2. a) "arrear of public revenue due on land" means the whole or any portion of any kist or instalment of such revenue not paid on the day on which it falls due according to the kistbandy or any engagement or usage" xxxxxx "(j) "public revenue due on land" means the land revenue charge on the land and includes all other taxes, fees and cesses on land, whether charged on land or not and all cesses or other dues payable to the Government on account of water used for purposes of irrigation". Further reference is made to Sec. 50 to indicate that the power is available only to recover arrears of public revenue due on land W.A.No. 1665 of 2014 4 and cannot be invoked for recovery of arrears of sales tax dues. The learned counsel also refers to Sec. 23(2) of the Kerala General Sales Tax Act, 1963 (hereinafter referred as the KGST Act) which reads as under:- 23 (2): Any tax assessed or any other amount due under this Act from a dealer or other person may, without prejudice to any other mode of recovery, be recovered, (a) as if it were an arrear of land revenue; (b)". On a perusal of the above

provisions, we are not satisfied with the contentions raised by the learned counsel for the appellant. Sec. 2 (a) defines "arrear of public revenue due on land" as any such revenue which was not paid and due to the Government. It refers to any kist or instalment of such revenue. Section 2 (j) gives meaning to "public revenue due on land" as land revenue charged on the land and includes all other taxes, fee and cess on land, whether charged on land or not. Apparently, Sales Tax dues is a charge on the property belonging to the defaulter as provided under section 26B of the KGST Act.

6. Section 23 (2) of the KGST Act indicates that any tax W.A.No. 1665 of 2014 5 assessed or any other amount due as sales tax from a dealer or any other person shall be recovered as if it were an arrear of land revenue. When the statute clearly indicates that the amount can be recovered as arrear of land revenue and meaning of 'public revenue due on land' would also take in revenue charged on the land, and in so far as statutory dues of sales tax is also a charge on the land belonging to the defaulter, we are of the view that the arrears of sales tax also amounts to public revenue due on land which could be recovered by way of sale of property belonging to the defaulter. In such circumstances, the Revenue Authorities were justified in invoking Sec. 50 of the KRR Act.

7. That apart section 68 of the KRR Act has extended the scope of recovery by the revenue authorities under the Act. A Division Bench of this court in District Collector v. Subaida Beevi (2010(1)KLT913 held that going by the provisions of the KRR Act, sections 68 and 71 has expanded the scope of the recovery. S.68(1) and (4) reads as follows :-

"8. Application of the Act for the recovery of certain other dues to Government.--
(1) All sums due to the Government on account of quit rent or revenue other than public revenue due on W.A.No. 1665 of 2014 6 land; all moneys due from any person to the Government which under a written agreement executed by such person are recoverable as arrears of public revenue due on land or land revenue, and all specific pecuniary penalties to which such person renders himself liable under such agreement or contract; all sums declared by any other law for the time being in force to be recoverable as arrear of public revenue due on land or land

revenue; and all fees and other dues payable by any person to the Government, may be recovered under the provisions of this Act." xxxxx

"4. For the removal of doubts, it is hereby declared that the provisions of Sections 44 and 50 shall apply in the case of recovery of any sum under the provisions of this section." Therefore section 68(1) and (4) further clarifies the point that section 50 can be made applicable to recovery of sales tax arrears as well.

8. Learned counsel for the appellant relied upon a Division Bench judgment of this Court in *State of Kerala v. George Jacob* (2010) (3) KLT483. The said judgment has W.A.No. 1665 of 2014 7 been considered by the learned Single Judge as well. In the said case, while forming an opinion that the petitioner has no case on merits, by way of concession this court has extended an opportunity to the defaulter to pay the arrears within a specified period.

9. We do not think that such a concession in the above judgment can be applied to the facts of the present case, for setting aside the sale after a long lapse of time. Certain item of property was purchased on 21.10.2000 and sale confirmed on 1.8.2001. Another item was purchased on 28.12.2005 and sale confirmed on 26.8.2006. No steps had been taken by the petitioner for setting aside the sale, until the Writ Petition was filed. Statute itself contains provisions to enable the defaulter to set aside the sale by way of filing application under Sections 52, 53, 54 and thereafter to invoke the revisional power under Sections 83 of the KRR Act. In so far as, the petitioner has not availed of any such remedy and there is no material to indicate that the sale held was void in any manner, we do think that the petitioner was justified in challenging the sale by filing the Writ Petition in the year 2013. W.A.No. 1665 of 2014 8 In such circumstances, we do not find any good ground to interfere with the judgment of the learned Single Judge. Accordingly this Writ Appeal is dismissed. Dated this the 17th day of November, 2014. ASHOK BHUSHAN , Ag. CHIEF JUSTICE A.M.SHAFFIQUE, JUDGE ani/