Rafeek Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/62368

Court : Kerala

Decided On : Aug-03-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Rafeek

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN MONDAY, THE3D DAY OF AUGUST201512TH SRAVANA, 1937 W.P.(C).No.5843 of 2015 (E) --- PETITIONER(S):- ----------------------- RAFEEK.M.A., AGED40YEARS, S/O. ABOOBACKER, MOOTHEDAM HOUSE, KANDANTHARA, ALLAPRA P.O., ERNAKULAM DISTRICT. BY ADVS.SRI.C.A.NAVAS SRI.T.K.SASIKUMAR SRI.P.A.SHAJI SAMAD SRI.C.J.SOLOMAN SMT.E.G.AMBILY. RESPONDENT(S):- -------------------------- 1. STATE OF KERALA, REPRESENTED BY THE SECRETARY,REVENUE DEPARTMENT, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM - 605 001.

2. THE COMMISSIONER OF LAND REVENUE, DEPARTMENT OF LAND REVENUE, GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM - 695 001.

3. THE DISTRICT COLLECTOR, COLLECTORATE, KAKKANAD, ERNAKULAM KOCHI-682 030.

4. THE REVENUE DIVISIONAL OFFICER, MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 683 210.

5. THE THAHSILDAR, KUNNATHUNADU TALUK, TALUK OFFICE, KUNNATHNADU, PERUMBAVOOR, PIN683542. W.P.(C).NO.5843 OF2015E - 2 - 6. THE VILLAGE OFFICER VENGOLA VILLAGE, ERNAKULAM DISTRICT, PIN-683 556. * ADDITIONAL7H RESPONDENT IMPLEADED: -- ADDL.R7. THE SUB REGISTRAR, SUB REGISTRAR'S OFFICE, PERUMBAVOOR. * [ADDITIONAL7H RESPONDENT IS IMPLEADED SUO MOTU, VIDE

JUDGMENT
DATED0308.2015] R1 TO R7 BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0308-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 5843 of 2015 (E) --------------------------- APPENDIX PETITIONER(S)' EXHIBITS:- -------------------------------------- EXHIBIT P1- PHOTOSTAT COPY OF THE ATTACHMENT MAHASAR DATED2711-2006. EXHIBIT P2- PHOTOSTAT COPY OF THE DECLARATION OF LAWFUL SUCCESSION OF PURCHASE OF IMMOVABALE PROPERTY CERTIFICATE NO. A2 6283/2008 DATED0702-2009. EXHIBIT P3- PHOTOSTAT COPY OF THE SALE CERTIFICATE NO.A2 6283/2008 DATED1305-2009. EXHIBIT P4- PHOTOSTAT COPY OF THE STAMP PAPERS FOR A TOTAL SUM OF RS. 19,700/- DATD2506-2012. EXHIBIT P5- PHOTOSTAT COPY OF THE LETTER NO. 6393/09 DATED0307-2012. EXHIBIT P6- PHOTOSTAT COPY OF THE NO. A2-6283/08 DATED1909-2012. EXHIBIT P7- PHOTOSTAT COPY OF THE REPRESENTATION DATED1612-2013. EXHIBIT P8- THE PHOTOSTAT COPY OF THE

JUDGMENT
DATED1209-2012 IN WPC NO.16921/2012 OF THE HONOURABLE HIGH COURT. RESPONDENT(S)' EXHIBITS:- -------------------------------------- NIL. Vku/-

[true copy] K. Vinod Chandran, J -- W.P.(C).No.5843 of 2015-E -- Dated this the 03rd day of August, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the purchase made by the petitioner, in a public auction conducted by the Revenue Recovery authorities, has not fructified into a sale deed.

2. The property purchased by the petitioner is indicated in Exhibit P1 mahazar. The petitioner having been the successful tenderer, was issued with Exhibit P2, being the declaration of lawful succession of purchase, and a sale certificate at Exhibit P3. Pursuant to Exhibit P5, by which the petitioner was directed to produce stamp papers, the petitioner is said to have produced the stamp papers, as indicated in Exhibit P4. However, the sale deed was not executed, since, as per Exhibit P6, there is an enquiry initiated into the various sales conducted, pursuant to the direction of this Court in W.P. (C).No.17480 of 2008. The petitioner, however, relies on Exhibit P8 judgment in almost similar conditions. WP(C).No.5843 of 2015 - 2 - 3. This Court has called for the Judges Papers of W.P. (C).No.17480 of 2008 and has perused the same. Two writ petitions were considered by the Court; wherein one was filed by the purchaser in a public auction from the Revenue authorities seeking mutation and acceptance of land tax and the other was a writ petition filed by a Nationalised Bank alleging that the sale had been fraudulently conducted and that there was a prior charge in favour of the Nationalised Bank. Therein, the files were called for and having found some discrepancies, the Land Revenue Commissioner was directed to consider the matter afresh and the parties, being the purchaser and the Bank which had prior charge, were relegated to the Land Revenue Commissioner. However, there is absolutely no direction in the writ petitions with respect to any other sale conducted by the Revenue authorities.

4. The learned Government Pleader, however, relies on paragraph 5 of the counter affidavit, which states so: "... the petitioner submitted stamp papers amounting to Rs.19,700/-. But on verification of the file, it is noticed that in

accordance with the interim order dated 29.06.2009 in WP(C) No.17480/2008 this Hon'ble Court directed the District Collector, Ernakulam to submit the list of files in which auction of land was conducted without realising the entire due amount, for the period from 01.01.2005 to 30.06.2009. As per this order the list of such auctioned files in the above period was submitted by the District Collector, Ernakulam before this Hon'ble Court. The Hon'ble Court WP(C).No.5843 of 2015 - 3 - also asked the Government to conduct an enquiry and submit report within 45 days after the enquiry done as per the list. Subsequently, as per the GO(Rt) No.3345/09/RD dated 19.09.2009 the Government directed the Land Revenue Commissioner to depute an enquiry team to inspect the files involved in the above list. As per this order the Land Revenue Commissioner appointed an enquiry team for the inspection of the files and the enquiry was conducted. However no order has so far been received from the Land Revenue Commissioner". In any event, eventually the Court has not taken cognizance of any other matters and had merely considered the issue with respect to the subject sale, which was the bone of contention of the purchaser and the Bank which had prior charge; in those writ petitions.

5. It is to be noticed that the directions, if at all, were issued way back in 2010 and there can be no interdiction insofar as the sale being not materialised for reason of the matter pending before the Land Revenue Commissioner, for so long. Further, it is to be noticed from the mahazar, Exhibit P1, that the upset price fixed was Rs.3,000/- per Are, coming to a total amount of Rs.33,000/-. The petitioner had quoted an amount of Rs.2,81,000/- and had also paid the entire amounts as per the auction sale. In such circumstance, there is no reason why the execution of the sale deed be kept pending. WP(C).No.5843 of 2015 - 4 - 6. In that view of the matter, it is directed that the petitioner shall be issued with a sale deed in the stamp papers already produced, provided the same now conforms with the duty of conveyance as per the Kerala Stamp Act, 1959. If any enhancement of duty is notified, then the additional stamp papers shall be called for. The registration also shall be made de hors Section 23 of the Registration Act, 1908, if the sale deed is produced within four months from the date of receipt of the certified copy of this judgment. The 4th respondent shall execute the sale deed and carry out the registration within one month from the date of certified copy of the judgment. "The

Sub Registrar, Sub Registrar's Office, Perumbavoor" is suo motu impleaded as the additional 7th respondent, for whom the learned Government Pleader is directed to take notice. The writ petition would stand allowed. Parties are directed to bear their respective costs. Sd/- K.Vinod Chandran Judge. vku/- [true copy]