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Court : Kerala

Decided On : Jan-24-2012

Judge : Antony Dominic

Appeal No. : W.P. (C). No.25573 of 2010

Appellant : Ashok Kumar

Respondent : State of Kerala

Judgement :

1. Petitioner's father was a dealer under the KGST Act. Exts.P1 and P2 are the assessment orders pertaining to the years 1993-94 and 1994-95. Similarly assessments were also completed in respect of the years 1992-93, 1995-96 and 1996-97. It appears that for recovery of the tax due, revenue recovery proceedings were initiated and according to the Government, property having an extent of 6.2 Acres situated in R.S.No.286/14 in Block No.23 of Kottarakkara Village was attached by the respondents in 2000 and the property was brought to sale on 14.3.2005. There were no bidders and the property was treated as bought in land. The sale was also confirmed by Ext.P5 order dated 2.2.2006.

2. In the meanwhile, on 11.3.2005, the petitioner filed appeals against the assessment orders pertaining to the years 1992-93, 1995-96 and 1996-97. Although it is contended that the appellate authority had granted stay of recovery, there is nothing on record to substantiate the same. Be that as it may, by Ext.P3

order dated 21.3.2006, the appellate authority allowed the appeal and annulled the assessment orders.

3. In so far as Exts.P1 and P2 assessment orders are concerned, that liability was no discharged. Subsequently, on 11.6.2008, petitioner applied for the settlement of the liability under these orders under an amnesty scheme announced by the respondent. This request of the petitioner was allowed and by Ext.P8 order dated 30.6.2008, he was allowed to pay the amounts in four monthly installments. Referring to Ext.P15, petitioner says that these installments have been paid.

4. In this Writ Petition, petitioner says that on 11.4.2005, he made application to the Tahsildar to set aside the sale. It is stated that this was followed by Ext.P6 dated 20.9.2006 and further applications made on 16.5.2008 and 23.9.2008. The contention raised is that since by Ext.P3, the assessment orders pertaining to 1992-93, 1995-96 and 1996-97 have been annulled and by Exts.P8 and P15, the liability under Exts.P1 and P2 for the years 1993-94 and 1994-95 having been discharged, the sale ought to have been set aside and the property ought to have been reconveyed.

5. However, the learned Government Pleader contended that there was no valid application to set aside the sale. He also contends that, an application for return of the bought in land could have been entertained only if it was made within two years from the date of confirmation of sale. It is stated that such an application was not made by the petitioner. He also contended that the fact that liability has been settled under the Amnesty Scheme does not mean that a bought in land should be returned to the defaulter. In support of this contention, learned Government Pleader relied on the judgment of this court in *State of Kerala and Ors. V. George Jacob* (2010 (3) KLT 483 = 2010 (3) KHC 381).

6. I had considered the submissions made.

7. Obviously, the recovery proceedings were initiated for realization of the sales tax arrears. It also cannot be a matter of dispute that the assessments for the years 1992-93, 1995-96 and 1996-97 were annulled by Ext.P3 appellate order passed in the appeals filed by the petitioner. Therefore if the revenue recovery

proceedings were only for realization of the tax due under the orders which were annulled in Ext.P3, there would not have been any difficulty in ordering that the land should be reconveyed to the petitioner. However, along with the tax due for the aforesaid assessment years, tax was also the from the petitioner's father under Exts.P1 and P2 assessment orders pertaining to 1993-94 and 1994-95. It was for recovery of this tax also that the property was attached in 2000, sold, brought for sale on 14.3.2005 and the sale was confirmed by Ext.P5 on 2.2.2006. It was subsequently that by Ext.P7 dated 30.6.2008, the petitioner applied for amnesty, which was allowed by order dated 30.6.2008. Thus, the liability itself was discharged by the petitioner under an amnesty scheme much after two years on confirmation of the sale. Undisputedly, the Government order permits reconveyance of bought in lands only if an application is made within two years of confirmation of the sale and that such an application was not made.

8. Further, the fact that a liability has been settled under Amnesty Scheme does not entitled the defaulter for reconveyance of the bought in land is the law laid down by the Division Bench of this Court in the judgment in State of Kerala and Ors. V George Jacob noted supra. Therefore, the petitioner cannot claim that the bought in land should be restored to him.

9. In so far as the applications alleged to have been made by the petitioner for setting aside the sale is concerned, such application can be entertained only if it is made under S.52 of the Revenue Recovery Act. This requires remittance of the amounts specified in S.52(1). Petitioner has no case that such conditions were satisfied by him. If that be so, the only conclusion that is possible is that there was no valid application made under S.52 for setting aside the sale. Therefore, the sale could not have been set aside on the applications made by the petitioner also.

In such circumstances, the plea of the petitioner that the respondent ought to have considered his application for setting aside the sale and that in view of the settlement of his liability in an amnesty scheme, he is entitled to return of the bought in land in question are liable to be rejected and the Writ Petition consequently fails and is dismissed.