

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 193720

RP.No. 381 of 2015 ()

WP(C) 21963/2014 of THIS HONOURABLE COURT

PETITIONER/PETITIONER :

**K. SIVARAMAN KUTTY, AGED 68 YEARS,
S/O KOCHU KUTTY, CHANDRODAYAM HOUSE,
VAIKOM P.O., KOTTAYAM DISTRICT.**

BY ADV. SRI.ALIAS M.CHERIAN

RESPONDENTS/RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 2. THE DISTRICT COLLECTOR
KOTTAYAM DISTRICT, COLLECTORATE, KOTTAYAM-686001.**
- 3. THE TAHASILDAR
TALUK OFFICE, VAIKOM, VAIKOM P.O.
KOTTAYAM DISTRICT-686141.**
- 4. VAIKOM COIR MATTS AMD MATTINGS CO-OPERATING SOCIETY LIMITED,
NO.349, VAIKOM P.O., KOTTAYAM DISTRICT-686141
REPRESENTED BY ITS SECRETARY.**
- 5. AKKARAPADAM SASI, AGED 66 YEARS
S/O LATE KUNJAN VAVA, THE PRESIDENT
VAIKOM COIR MATTS AMD MATTINGS CO-OPERATIVE SOCIETY LIMITED
NO.349, VAIKOM P.O., KOTTAYAM DISTRICT-686141.**
- 6. SIJI ANAND, AGED 24 YEARS
D/O ANAND, THE SECRFETARY VAIKOM COIR
MATTS AMD MATTINGS CO-OPERATIVE SOCIETY LIMITED.,
NO.349, VAIKOM P.O., KOTTAYAM DISTRICT-686141.**

**R1 TO R3 BY GOVERNMENT PLEADER SMT. SAREENA GEORGE
R4 TO R6 BY SRI.B.RAJEEV KOYICKAL**

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION
ON 26-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

RP.No. 381 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURS :

ANNEXURE A1: COPY OF JUDGMENT DT 13/2/2015 IN WPC NO.21963/2014.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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R.P.No. 381/2015 in W.P.(C).No. 21963/2014

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Dated this the 26th day of May, 2015

ORDER

The above captioned Writ Petition, which has led to the present Review Petition, was disposed of as per the impugned judgment dated 13.2.2015 with the following directions:

- “(1) In view of the issuance of G.O(Ms).No.30/2014/RD dated 15.1.2014, the impugned sale proceedings as per Ext.P-6 produced in W.P.(C).No. 29088/2013 and all further proceedings taken in pursuance of the said impugned proceedings are set aside.
- (2) The purchase amount of Rs. 16.8 lakhs deposited by the petitioner in W.P.(C).No.21963/2014 shall be forthwith refunded by the District Collector, Kottayam and the Tahsildar, Vaikom to the petitioner in W.P.(C).No. 21963/2014.
- (3) 5% of the amount of Rs.11.9 lakhs deposited by the petitioners in W.P.(C).No. 29088/2013 (viz., Rs.59,500/-) shall be deducted from the above said amount of Rs. 11.9 lakhs and the District Collector, Kottayam and the Tahsildar, Vaikom shall pay the said 5% amount coming to Rs. 59,500/- to the petitioner in W.P.(C).No. 21963/2014.
- (4) The balance amount of Rs.11,30,500/- out of the amount deposited by the petitioners in W.P.(C).No. 29088/2013, shall be refunded by the District Collector, Kottayam and the Tahsildar, Vaikom, to the petitioners in W.P.(C).No. 29088/2013.
- (5) The District Collector, Kottayam and the Tahsildar, Vaikom shall comply with the aforementioned directions within a period of one month from the date of production of a certified copy of this judgment.”

2. The Review Petition is filed in the impugned common judgment in W.P.(C).Nos.29088/2013 and 21963/2014. The present Review Petition has been filed by the petitioner in W.P.(C).No. 21963/2014 [who is the additional respondent No.7 in W.P.(C).No. 29088/2013] contending that a conjoint reading of Sec.52(1)(a) and Sec.52(2) of the Kerala Revenue Recovery Act, 1968, would make it clear that in order to set aside the sale, the defaulter should deposit 5% of the purchase money and the aforesaid 5% of the purchase money deposited by the defaulter under Sec.52(1)(a) has to be paid to the purchaser. That in this case, as per direction No.3 in the operative portion of the impugned judgment, this Court has directed to deduct 5% of the amount (Rs.11.9 lakhs) deposited by the defaulter [R-4 Co-operative society in W.P.(C).No. 21963/2014] and to pay the amount to the writ petitioner herein, who is the auction purchaser and that the said amount is not the purchase money. Therefore, it is contended that consequently impugned directions (3) & (4) of the judgment are liable to be reviewed and modified on this basis and other, consequential necessary directions may also be issued.

3. Heard Sri.Alias.M.Chcrian, learned counsel for the Review

Petitioner, Sri.Rajeev Koyikkal, learned counsel appearing for the 4th respondent Co-operative society and R-6, and the learned State Govt. Pleader appearing for the official respondents.

4. Sec.52 of the Revenue Recovery Act reads as follows:

“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 the 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 an 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 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.”

From the aforestated provisions, it is clear that in order to set aside a sale, the defaulter concerned should deposit 5% of the purchase money. True that the aforementioned situation covered by Sec.52

may not be directly applicable to the fact situation in this case, as already held in the impugned judgment. But the principles discernible from that provision are certainly invocable in order to ensure that equity is done by this Court as between the defaulter and the auction purchaser so that the interests of both parties are adequately protected and so that the purchaser does not suffer from undeserving prejudice. In the instant case, the purchase money is admittedly Rs.16.8 lakhs and the amount of Rs.11.9 lakhs is the amount deposited by the defaulter co-operative society before the Collector in pursuance of the interim order passed by this Court in the Writ Petition. In the circumstances, this Court is of the considered opinion that 5% amount envisaged in the impugned direction No.3 should be with reference to 5% of the purchase money of Rs.16.8 lakhs. Accordingly, the impugned condition Nos.3 and 4 of the judgment in W.P.(C). are reviewed as hereunder:

- “(3) 5% of the amount of Rs.16.8 lakhs deposited by the petitioners in W.P.(C). No.21963/2014 (viz. Rs.84,000/-) shall be deducted from the above said amount of Rs.11.9 lakhs deposited on behalf of the respondent co-operative society and the District Collector, Kottayam and the Tahsildar Vaikom, Kollam, shall pay the said 5% amount coming to Rs. 84,000/- to the petitioner in W.P.(C).No. 21963/2014.
- (4) The balance amount of Rs. 11.06 lakhs (viz. Rs.11.90 lakhs – Rs. 84,000= Rs.11.06 lakhs) deposited by the petitioners in W.P.(C).No. 29088/2013 shall be refunded by the District Collector, Kottayam and the Tahsildar Vaikom to the petitioners in W.P.(C).No. 29088/2013, who are representing the interest of the aforementioned 4th respondent co-operative society.”

5. It is submitted by both sides that in pursuance of the earlier directions issued in the judgment dated 13.2.2015 in W.P.(C). No.21963/2014, the amount of Rs.59,500/- has been retained by the District Collector from out of the amount of Rs.11.9 lakhs paid on behalf of the 4th respondent co-operative society. In order to ensure proper compliance of the directions issued in this Review Petition, it is ordered that the 4th respondent co-operative society/ petitioner in W.P.(C).No.29088/2013 as the case may be, shall pay an additional amount of Rs. 24,500/- (viz., Rs.84,000-Rs. 59,500 =Rs. 24,500/-) to the petitioner in W.P.(C).No.21963/2014 within a period of two weeks from the date of production of certified copy of the order in this Review Petition. It is also clarified that the District Collector, Kottayam will also release the aforestated retained amount of Rs.59,500/- to the petitioner in W.P.(C).No. 21963/2014, forthwith, in case the same has not been disbursed to that party, so far.

With these observations and directions, the Review Petition stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

r.p.381/15

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