IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 7361 of 2014 (U)

PETITIONER(S) :

STATE BANK OF TRAVANCORE,
REPRESENTED BY ITS CHIEF MANAGER, KONNI BRANCH,
PATHANAMTHITTA DISTRICT, KERALA STATE.
REPRESENTED BY IS MANAGER

BY ADVS.SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENT(S) :
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1. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM - 695 001.

2. THE COMMERCIAL TAX OFFICER-1,
O/O.THE COMMERCIAL TAX OFFICER, PATHANAMTHITTA - 689 645.

3. THE ADDITIONAL TAHSILDAR,
TALUK OFFICE, KOZHENCHERRY - 689 646.

4. THE VILLAGE OFFICER,
KONNI VILLAGE OFFICE, KONNI, PATHANAMTHITTA - 689 645.

5. MR.DANIEL.V.GEORGE
VALUTHUNDIL HOUSE, KONNI PO,
PATHANAMTHITTA DISTRICT - 689 645.

6. MRS.ROSAMMA DANIEL
W/O.DANIUEL V.GEORGE, VALUTHUNDIL HOUSE, KONNI P.O.,
PATHANAMTHITTA DISTRICT - 689 645.

R1 TO R4 BY SMT.LILLY K.T., GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMV

WP(C).No. 7361 of 2014 (U)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1 : COPY OF THE COMMON JUDGMENT DATED 19/3/2012 IN W.P.(C) No. 5513 AND 5514 OF /2012 OF THIS HONOURABLE COURT.

EXHIBIT P2 : COPY OF THE COMMON JUDGMENT DATED 14/8/2013 IN W.A.NO.1262/2012 AND 1263/2012.

EXHIBIT P3 : COPY OF THE APPLICATION DATED 23/12/2013 SUBMITTED BY THE PETITIONER IN RESPECT OF THE 5TH RESPONDENT TO THE 2ND RESPONDENT.

EXHIBIT P4 : COPY OF THE APPLICATION DATED 23/12/2013 SUBMITED BY THE PETITIONER IN RESPECT OF THE 6TH RESPONDENT TO THE 2ND RESPONDENT.

EXHIBIT P5 : COPY OF THE LETTER DATED 4/1/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT P6 : COPY OF THE OBJECTION DATED 15/1/2014 SUBMITTED BY THE PETITIONER TO EXHIBIT P5 LETTER.

EXHIBIT P7 : COPY OF THE ORDER NO.14163471/04-05 DATED 15/1/2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P8 : COPY OF THE COMMUNICATION DATED 29/1/2014 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

A.K.JAYASANKARAN NAMBIAR, J.
...
W.P.(C) No.7361 of 2014 (U)
...
Dated this the 12th day of January, 2015

JUDGMENT

The writ petition is filed by a public sector Bank, which had proceeded against the 5th and 6th respondents, who are husband and wife, who had mortgaged two items of property to the petitioner Bank in 2004, while availing two business loans from the Bank. When the 5th and 6th respondents defaulted in re-payment of the loan amount to the Bank, the petitioner Bank took steps under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', and brought the properties to sale.

2. The facts would disclose that the sale was eventually conducted and later confirmed in favour of one Noushad. While so, the petitioner Bank was served with a notice, from the Commercial Tax Department, indicating that the said department had a prior charge, over the two items of properties, for unpaid sales tax dues of the 5th and 6th respondents. Although, the petitioner Bank impugned the said notices issued by the Commercial Tax Department before this Court in W.P.(C) Nos.5513 & 5514 of 2012, the said writ petitions were dismissed by Ext.P1 judgment. A further appeal also did not yield any positive result and the

writ appeal came to be dismissed by Ext.P2 judgment. Left with no other alternative, therefore, the petitioner Bank approached the 1st and 2nd respondents, with Exts.P3 and P4 applications, seeking the benefit of the Amnesty Scheme under the Kerala General Sales Tax Act, 1963, (for short, the 'KGST Act') in respect of the dues that were fastened initially on the 5th and 6th respondents. The applications submitted by the petitioner Bank were not considered favourably by the 1st and 2nd respondents and by Ext.P5 notice, the said respondents proposed to reject the application filed by the petitioner Bank, on the ground that it was an application that was preferred by a person other than a dealer under the KGST Act and, therefore, not maintainable under the KGST Act. Although, the petitioner Bank filed Ext.P6 objection to the said proposal of the 1st and 2nd respondents, the same came to be rejected, and the proposal confirmed by Ext.P7 order of the second respondent, who found that the application filed by the petitioner Bank could not be entertained insofar as it was an application, for the benefit of an Amnesty scheme, that was filed by a person other than the assessee or the dealer under the KGST Act.

3. In the present writ petition, Ext.P7 order of the 2nd respondent is impugned, inter alia, on the ground that, as a mortgagee of properties that were owned by the 5th & 6th respondents, the

petitioner Bank had secured interests over the said property, which enabled it to sell the property in proceedings under the SARFAESI Act. This specific ground was taken by the petitioner Bank even in Ext.P6 objection, that was filed when it was served with Ext.P5 proposal by the 2nd respondent.

4. I have heard Sri.Sathish Ninan, learned counsel appearing for the petitioner and learned Government Pleader on behalf of respondent Nos.1 to 4.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that this is a case where the properties that were mortgaged in favour of the petitioner Bank by the 5th and 6th respondents, were already brought to sale, by the Bank in proceedings under the SARFAESI Act. It is not in dispute that the said sale has also been confirmed in favour of the purchaser. The issue in this case, however, is with regard to the prior charge that existed in favour of the 1st and 2nd respondents, pursuant to the sales tax dues that were owing from the 5th and 6th respondents to the Commecial Tax Department. As per the provisions of the KGST Act, the 1st and 2nd respondents had a superior charge over the properties for realisation of the sales tax dues, and hence, the right to proceed against the two items of property, that were sold by the

petitioner Bank, accrued firstly to the 1st and 2nd respondents. This position in law has also been settled by a series of decisions of this Court as well as the Supreme Court. It was faced with the situation where the writ petitions preferred by the petitioner Bank came to be dismissed by this Court, and further appeals there from were also dismissed by this Court, that the petitioner Bank resorted to preferring an application for the benefit of the Amnesty Scheme, under the KGST Act. While preferring the applications for the benefit of Amnesty scheme, the petitioner Bank was, in my view, acting on behalf of the 5th and 6th respondents over whose property the petitioner Bank had obtained a limited interest as a mortgagee. In that sense, therefore, the petitioner Bank can be viewed as a representative of the 5th & 6th respondents in the application filed for the benefit of Amnesty Scheme under the KGST Act. I am of the view that the 1st and 2nd respondents ought to have considered the application preferred by the petitioner Bank on merits to determine whether the petitioner Bank, as a representative of the 5th and 6th respondent, was entitled to any benefit under the Amnesty scheme that was in vogue during the relevant period. Inasmuch as Ext.P7 order indicates that there was no determination on merits, as to the extent of benefit, if any, that the assessee would get in terms of the Amnesty scheme that was in vogue during the relevant period, I set aside Ext.P7 order of the 2nd respondent and direct him to consider Exts.P3 and P4 applications preferred by the Bank, on behalf of the 5th and 6th respondents, for the benefit of Amnesty scheme, on merits and pass a reasoned order thereon, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner Bank.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/13/01/

/TRUE COPY/

PA TO JUDGE