

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 30713 of 2005 (F)

PETITIONER :

**SUDANA MOHANAN
SUKUMARAN, KOUKKAD, EDAKKARA AMSOM DESOM,
NILABUR TALUK, MALAPPURAM DISTRICT.**

BY ADV. SRI.P.SAMSUDIN

RESPONDENTS :

- 1. STATE OF KERALA REPRESENTED BY THE
DISTRICT COLLECTOR, COLLECTORATE, MALAPPURAM.**
- 2. THE TAHSILDAR, NILAMBUR TALUK OFFICE,
NILAMBUR.**
- 3. MANALIKUDIYIL KARTHIAYANI,
D/O.KESAVAN, NILAMBUR TALUK, KURUMBALANGODE
AMSOM, ERUMAMUNDA, PERUMBATHOOR
MALAPPURAM.**
- 4. ANILKUMAR, S/O.CHARUVILAPUTHANVEETIL
BHASKARAN, MURUKANHIRAM, KURUMBALANGODE AMSOM
DESOM, NILAMBUR TALUK, MALAPPURAM.**
- 5. RAMAKRISHNAN, S/O.RAMAKRISHNAN,
PERUMPATHOOR, CHALIYAR PANCHAYATH, KURUMBALANGODE,
AMSOM DESOM, NILAMBUR TALUK, MALAPPURAM.**

**R1 & R2 BY GOVERNMENT PLEADER SRI. LILLY K.T.
R3 BY ADV. SRI.K.SHIBILI NAHA
R5 BY ADV. SRI.RAJESH NAMBIAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE ASSIGNMENT DEED NO. 2934/2002 OF EDAKKARA SUB REGISTRAR'S OFFICE DT 5/9/2002.
- P2: COPY OF THE LAND TAX RECEIPT DT 16/5/2003.
- P3: COPY OF THE ORDER DT 01/04/2004 IN IA NO. 1567/03 IN OP NO. 296/2003 FAMILY COURT MANJERI.
- P4: COPY OF THE SALE NOTICE ISSUED BY THE R2 TO THE R4.
- P5: COPY OF REPRESENTATION OF THE PETITIONER TO THE R1 DT 25/10/2005.

RESPONDENT'S EXHIBITS :

- EXT.R5(a): COPY OF THE RECEIPT EVIDENCING PAYMENT OF RS 6225/-
- EXT.R5(b): COPY OF THE RECEIPT EVIDENCING PAYMENT OF RS 35275/-

//TRUE COPY//

P.A. TO JDUGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No.30713 of 2005 (F)

.....
Dated this the 4th day of March, 2015

JUDGMENT

The petitioner in the writ petition purchased property comprising of 25.5 cents of land in Kurumbalangode amsom desom of Nilambur Taluk, from the 4th respondent on 05.09.2002 under cover of Ext.P1 sale deed. In the writ petition, the petitioner is aggrieved by the sale of the said property, effected in favour of the 5th respondent, pursuant to proceedings initiated under the Kerala Revenue Recovery Act, 1968 [for short, 'KRR Act'].

2. The facts in the writ petition would disclose that, the 3rd respondent, who is the wife of the 4th respondent, had filed O.P.No.296 of 2003 before the Family Court, Manjeri on 21.07.2003, for realisation of value of gold ornaments and other money from the 4th respondent. It would appear that, proceedings under Section 125 of the Code of Criminal Procedure had also been initiated at the instance of the 3rd respondent, against the 4th respondent, by way of M.C.No.252 of 1996 before the Family Court, Malappuram, and in the said proceedings various orders were passed against the 4th respondent, in respect of some of which, warrants had also been issued from the Family Court. By an order dated 11.08.2002 in C.M.P.No.1845 of 2002, the Family Court, Manjeri had

forwarded a warrant under Section 125 of the Code of Criminal Procedure, to the 1st respondent District Collector, for realisation of an amount of Rs.18,000/- towards monthly maintenance awarded by the Family Court to the 3rd respondent for the period from 30.06.2001 to 30.06.2002. The said warrant issued by the Family Court, was the basis for the initiation of Revenue Recovery proceedings against the property of the 4th respondent, that was subsequently transferred to the petitioner by Ext.P1 sale deed dated 05.09.2002.

3. The learned counsel for the petitioner would point out that, an interim attachment of the same property had been ordered by the Family Court on 02.08.2003, in the proceedings under O.P.No.296 of 2003, and the said attachment was subsequently lifted by Ext.P3 order dated 01.04.2004. It is the contention of the petitioner that, on account of the lifting of the attachment by Ext.P3 order, the property was free of any charge and hence, could not have been the subject matter of an attachment under the KRR Act. It is on the basis of the said contention, and the further averment that, before proceeding with the auction sale of the property on 30.08.2005, the petitioner, who was a bonafide purchaser of the property from the 4th respondent, was not put on notice, that the sale of the property in favour of the 5th respondent is assailed in the writ petition.

4. In the counter affidavit filed on behalf of the 1st respondent, it is clearly stated that the revenue recovery proceedings initiated against the property in question was based on the requisition obtained from the Family Court, Manjeri in terms of the order in C.M.P.No.1845 of 2002 dated 11.08.2002. It is apparent, therefore, that the revenue recovery proceedings were not based on any order passed by the Family Court in O.P.No.296 of 2003 as contended by the petitioner.
5. In the counter affidavit filed by the 5th respondent, it is contended that, the stand of the petitioner that he had purchased the property on 05.09.2002 and therefore, the property could not be brought to sale in terms of the provisions of the KRR Act, is flawed since, the sale of the property to the petitioner itself was hit by the provisions of Section 44 of the KRR Act.
6. I have heard Sri.P.Shamsudin, the learned counsel for the petitioner, Sri.K.Shibili Naha, learned counsel for the 3rd respondent, Sri.Rajesh Nambiar, learned counsel for the 5th respondent and Smt.Lilly K.T., learned Government Pleader for the 1st and 2nd respondents.
7. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I note that,

although it is the case of the petitioner that, he is a bonafide purchaser of the property from the 4th respondent by virtue of Ext.P1 sale deed dated 05.09.2002, it is evident from the facts on record that the sale on 05.09.2002 was effected when there was a warrant issued from the Family Court, Manjeri for attachment of the said property, for realisation of amounts due from the 4th respondent to the 3rd respondent. This warrant was dated 11.08.2002 and was very much in force when the petitioner purchased the property from the 4th respondent. Although, it is the case of the petitioner that, he had paid the amount covered by the warrant, to the 4th respondent, and he, in turn, paid the amount to the 3rd respondent, the fact remains that there is nothing on record to suggest that the warrant issued by the Family Court, Manjeri had been recalled. This would mean that, the requisition that led to the revenue recovery proceedings against the property in question was based on a warrant, which was in force during the relevant time, and hence, the subsequent sale, as evidenced by Ext.P1 sale deed, would not be binding on the Government by virtue of Section 44 of the KRR Act. In that view of the matter, I find that it is not open to the petitioner, at this stage, to contend that the proceedings under the KRR Act, which culminated in the sale of the property to the 5th respondent, are vitiated for any reason. I, therefore, find no reason to interfere with the sale effected in favour of the 5th

respondent under the KRR Act. Resultantly, the writ petition, in its challenge to the said proceedings, fails and is accordingly dismissed.

8. It is brought to my notice that, by virtue of an interim order passed in this writ petition, the confirmation of the sale has been pending for almost ten years now. Considering the said situation, while dismissing the writ petition, I make it clear that the respondents shall take immediate steps, so as to confirm the sale in favour of the 5th respondent within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/05/03/