

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR
FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

WP(C).NO. 24820 OF 2008 (D)

PETITIONER(S) :

THE THRISSUR DISTRICT CO-OP.BANK LTD.
THRISSUR, REPRESENTED BY ITS GENERAL MANAGER.

BY ADVS.SRI.P.C.SASIDHARAN
SRI.C.A.MAJEED

RESPONDENT(S) :

1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY
TO GOVERNMENT, REVENUE (H) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.

2. THE COMMISSIONER FOR LAND REVENUE
LAND REVENUE COMMISSIONERATE, THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR, THRISSUR, CIVIL
STATION, THRISSUR.

4. THE TAHSILDAR, TALUK OFFICE, KODUNGALLUR.

5. BAIJU ASOKAN, .K., KOZHIPARAMBIL HOUSE
PERINJANAM P.O., KODUNGALLUR, THRISSUR.

6. V.M.SUJITH, VANPATRAMBIL HOUSE,
PERINJANAM PO., THRISSUR.

7. N.S.KESAVAN, NJATTUKETTY HOUSE
DO.DO.

8. M.K.SUNIL KUMAR, MULLANGATH HOUSE,
DO.DO.

9. SUMITHRA RAMMOHAN,
VALIYAPARAMBIL HOUSE, DO.DO.

10. LAKSHMI, VILLAN HOUSE
DO.DO.

R5&7-9 BY ADV. SRI.K.P.DANDAPANI (SR.)
R5 & 7-9 BY ADV. SRI.MILLU DANDAPANI
R1 BY ADV. GOVERNMENT PLEADER SMT.LILLY K.T
R10 BY ADV. SRI.V.V.SIDHARTHAN (SR.)
R10 BY ADV. SRI.K.V.PRAKASAN
R10 BY ADV. SRI.D.G.VIPIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: A TRUE COPY OF THE MEMORANDUM OF DEPOSIT OF TITLE DEED EXECUTED BY THE 9TH RESPONDENT IN FAVOUR OF THE BANK

EXT.P2: A TRUE COPY OF THE COMMON AWARD PASSED IN ARC NOS,182, 183 AND 185 OF 1997

EXT.P3:A TRUE COPY OF THE AWARD PASSED IN ARC NO.A84/97

EXT.P4: A TRUE COPY OF THE LAWYER NOTICE ISSUED BY THE COUNSEL FOR THE PETITIONER BANK TO THE RESPONDENTS

EXT.P5: A TRUE COPY OF THE PETITION PREFERRED BY THE BANK BEFORE THE DISTRICT COLLECTOR DATED 18.01.2000

EXT.P6: A TRUE COPY OF THE PETITION DATED 13.03.2000

EXT.P7: A TRUE COPY OF THE JUDGMENT IN O.P.NO.15341 OF 2000

EXT.P8: A TRUE COPY OF THE ORDER DATED 01.05.2003

EXT.P9: A TRUE COPY OF THE JUDGMENT IN WP(C).NO.27225/2003

EXT.P10: A TRUE COPY OF THE REVISION PETITION FILED BY THE BANK BEFORE THE LAND REVENUE COMMISSIONER

EXT.P11: A TRUE COPY OF THE ORDER ISSUED BY THE LAND REVENUE COMMISSIONER

EXT.P12: A TRUE COPY OF THE APPEAL FILED BY THE BANK BEFORE THE GOVERNMENT

EXT.P13: A TRUE COPY OF THE ORDER OF THE GOVERNMENT DATED 9.7.2008

EXT.P14-A TRUE COPY OF THE SOLVENCY CERTIFICATE ISSUED BY THE TAHSILDAR

RESPONDENTS' EXHIBITS:

EXT.R10(A): TRUE COPY OF THE ORDER NO.G3-57303/95 DATED 1.5.2003 ISSUED BY THE DISTRICT COLLECTOR, THRISSUR

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.24820 of 2008

.....
Dated this the 11th day of September, 2015

J U D G M E N T

The petitioner is a Co-operative Bank established under the Co-operative Societies Act. It had granted a cash credit of 10 lakhs each to respondents 5 to 8 on 02.03.1995. The advancement of cash credit was against security taken on 3.36 acres of land in Sy.No.251/2 of Perinjanam village that was owned by the 9th respondent. The said land was mortgaged to the bank by deposit of title deeds. On default of repayment committed by respondents 5 to 8, the bank filed A.R.C.No.182/97 to 185/97 and obtained Exts.P2 and P3 awards in its favour. In the meanwhile, however, the mortgaged land was attached by revenue authorities in connection with sales tax dues of the respondents 5 to 8 who were engaged in abkari business. It is revealed from the facts in the writ petition that, the 9th respondent was also a partner in the said business. By Ext.P4 notice dated 19.04.1997, the respondent bank informed respondents 3 to 10 of the bank's first charge over the property. The Tahsildar, the 4th respondent herein, effected a sale of the property pursuant to the attachment by the revenue authorities and the property was sold in

two plots. The plot comprising of 54.495 cents was sold for an amount of Rs.5,45,000/- and the plot comprising of 2.078 acres was sold for a some of Rs.23,55,000/-. It is not in dispute that, the sales were confirmed on 21.02.2000 and 23.03.2000 respectively. Immediately after the sale, and before confirmation thereof, the petitioner preferred Ext.P5 objection dated 18.01.2000, in terms of Section 53 of the Revenue Recovery Act, before the 3rd respondent District Collector. The prayer in the said objection was to set aside the sale of 54.495 cents of land. Ext.P6 is a similar application in respect of the other plot of land measuring 2.61 acres of land. When no action was forthcoming from the District Collector, the petitioner approached this Court through O.P.No.15341 of 2000 which was disposed by Ext.P7 judgment directing the District Collector to consider the objection preferred by the petitioner. Pursuant to the said judgment, the District Collector by Ext.P8 order dated 01.05.2003, rejected the objections of the petitioner. Thereafter, the petitioner filed a revision before the 2nd respondent. By Ext.P11 order, the 2nd respondent dismissed the revision petition. A further revision filed by the petitioner before the 1st respondent also did not yield any success. By Ext.P13 order dated 09.07.2008, the said revision was also dismissed on the ground that, the petitioner had sufficient notice and time to

represent against the sale before it was confirmed, and the Government was of the view that there was no reason to interfere with the order of the 2nd respondent. In the writ petition, Exts.P11 and P13 are impugned, inter alia, on the ground that, the property sold was for a considerably lower value than what it could fetch in a proper auction. It is also the case of the petitioner that the person who purchased the property, at the auction conducted at the instance of the revenue authority, was a close relative of the defaulter. It is further contended that, the procedure under Section 49 of the Revenue Recovery Act was not followed in that 30 days notice was not afforded prior to the sale. There is also a contention that the sales tax demand against the defaulter was raised only in 1996 whereas the petitioner's charge over the property came into force in 1995 itself. It is the contention that, Section 26B of the Kerala General Sales Tax Act (hereinafter referred to as 'the KGST Act') which was introduced with effect from 27.07.1999 would not have any retrospective operation to overcome the prior charge of the petitioner over the property in question.

2. A counter affidavit has been filed by the 1st respondent wherein it is stated that the property in question was attached on

25.09.1996 and, as there were no buyers for the property as a whole, the property was decided into five plots and out of this plot 'C' measuring 54.495 cents were sold for Rs.5,45,000/- on 24.12.1999 and plots 'B' 'D' and 'E' measuring 2.07 acres was sold for Rs.23,55,000/- on 14.02.2000. It is clarified that, the sales tax arrears fell due in 1995 and it was thereupon that the property stood attached on 25.09.1996. In response to the contention of the petitioner in the writ petition, it is pointed out that there was no material irregularity that vitiated the sale for the purposes of invocation of the provisions of Sections 53 and 54 of the Revenue Recovery Act. The counter affidavits filed by respondents 5 to 8 are all in support of the petitioner and they reiterate the contentions of the petitioner in the writ petition. A counter affidavit has also been filed by the 10th respondent purchaser denying the various averments in the writ petition and supporting Exts.P11 and P13 orders that are impugned in the writ petition.

3. I have heard the learned counsel for the petitioner, the learned Government Pleader for respondents 1 to 4, learned Senior counsel for the respondents 5, 7, 8 and 9 and learned Senior counsel for the 10th respondent.

4. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, the contention of the petitioner with regard to the prior charge of the petitioner over the property not being overridden on account of Section 26B of the KGST Act cannot survive in the light of the decisions of this Court in **South Indian Bank Ltd. v. State of Kerala [2006 (1) KLT 65]** and **Sundaran Finance Ltd. v. Tahsildar, Kollam [2009 (1) KLT SN 33 (C.No.35)]** that recognised the priority of a statutory first charge on the property that is created by Section 26B of the KGST Act. The said charge would override even a prior charge that the petitioner claims to have over the property in question. As regards the main contention of the petitioner with regard to the material irregularity that allegedly vitiated the sale conducted by the revenue authority and resulted in the property vesting in the 10th respondent, I find that, in Ext.P11 order of the 2nd respondent, the 2nd respondent clearly notes, based on a report of the District Collector, that for the sale of the plot measuring 54.495 cents, a sale notice dated 18.09.1999 was published for the sale that was initially posted on 29.10.1999. Thereafter a sale notice dated 18.11.1999 was published for the sale that took place on 24.12.1999. Similarly, for the sale of

the plots measuring 2.07 acres, the sale notice dated 24.12.1999 was published for the sale that was scheduled on 28.01.2000 and another notice dated 29.01.2000 was published for the sale which took place on 14.02.2000. It is clear therefore that the sale notices within the time contemplated under the Revenue Recovery Act were published and it was only thereafter that the sale itself was conducted. It is also evident from Ext.P11 order that while publicity was given for the sales in question, and the amounts fetched in both the sales were above the mahazar value that was fixed for the properties in question. The report of the District Collector also indicates that a copy of the sale notice was also given to the petitioner and the petitioner had not raised any claim for the property at that stage. Thus, I find that on the aspect of material irregularity there has been an elaborate consideration of the issue by the 1st, 2nd and 3rd respondents and it is on the finding that there was no material irregularity that vitiated the sale, and further, that the price fetched at the sale was more than the mahazar value that was fixed for the properties in question that the sale in favour of the 10th respondent was confirmed by the said authorities. The only other contention raised by the petitioner is that there was ample evidence to suggest that the price fetched at the auction sale was considerably lower than what a sale of the property

would have fetched in the openmarket. The answer to this contention must necessarily lie in the decision of a Division Bench of this Court in **Subaida Sulaiman v. Hamsa [1991 (2) KLT 158]** where it has been held that the mere inadequacy of a price fetched in the sale would not by itself be a sufficient ground to set aside the sale. The relevant portion of the said judgment is to be found in paragraphs 4 , 6 and 7 which read as follows:

“4. S.52 of the Act enables the Collector to set aside the sale on deposit of correct amount as contemplated therein. S.53 states, inter alia, that “application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake or fraud in publishing or conducting it, but, except as otherwise hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof. A plain reading of the provision would indicate that a sale can be set aside only on satisfaction of the Collector that there are some material irregularity or mistake or fraud in publishing or conducting the sale, and on

account of such material irregularity, or mistake or fraud, the applicant has sustained substantial injury. Going by S.53 of the Act, it would not be correct to say that in mere inadequacy of the price fetched at the sale would, by itself, be a sufficient ground to set aside the sale.”

“6. According to learned counsel for the appellant, there are three contingencies, where a sale can be set aside. They are: (1) on deposit of the amount under S.52; (2) on a sale being held to be vitiated by material irregularity, or mistake or fraud in publishing or conducting it, provided, the applicant has sustained substantial injury thereof under S.53; and, (3) the Collector has reason to think that the sale ought to be set aside under the proviso to S.54 and in the last case the ingredients contemplated under S.53, namely, material irregularity, mistake or fraud in publishing or conducting the sale, do not have any relevance. We are afraid we are unable to agree with this sweeping contentions. Ss. 52 to 54 constitute a scheme to enable a sale to be set aside for valid and proper grounds. S.52 can be invoked where any person owning or claiming an interest in immovable property

sold is ready to deposit the amount contemplated therein. S.53 can be invoked on the ground of material irregularity or mistake or fraud in publishing or conducting the sale, if such an irregularity or mistake or fraud has been brought to the notice of the Collector by way of an application. Even if a person interested in the property fails to file an application under S.52 or S.53 to set aside the sale, it is open to the Collector to set aside the sale, if he has reason to think that the sale ought to be set aside. Even in a case, where application has been filed, but the grounds urged in the application have not been proved, but some other ground emerges from the records, and that ground is sufficient to set aside the sale, it is open to the Collector to set aside the sale by virtue of the proviso to S.54. The proviso to S.54 does not indicate for what reasons or on what ground or under what circumstances the Collector can set aside the sale. It cannot be said that the Legislature intended that the Collector .can set aside the sale for no reason, or for any irrelevant reason. It is difficult to accept that the Legislature did not intend to prescribe any guidelines in the matter of exercise of power conferred on the Collector under the proviso to S.54. Reading

Ss. 53 & “54 together, and it appears to us that the provision being a part of the scheme in the matter of setting aside the sale, they have to be read together, the picture becomes clear and the Collector can set aside the sale under the proviso to S.54, only if he has reason to think that the sale ought to be set aside for the reasons mentioned in S.53. De hors the reasons mentioned in S.53, the Collector has no jurisdiction either under S.53 or under the proviso to S.54. The observations, we have quoted from the decision in Joseph’s case, with respect, do not lay down the correct law.”

“7. There is no contention before us that apart from the mere inadequacy of the price fetched at the sale, the second respondent had established before the Board of Revenue that there was any material irregularity, or mistake or fraud in publishing or conducting the sale. Therefore the second respondent cannot successfully invoke the provisions of S.53 and the proviso to S.54 of the Act.”

Thus in any view of the matter, I do not see any scope to interfere with Ext.P11 and Ext.P13 orders in these proceedings under

Article 226 of the Constitution of India. The writ petition in its challenge against the said orders fails and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns