IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No. 21850 of 2015 (E)

PETITIONER:

SIJU JOHN AGED 39 YEARS
S/O.JOHNY, PADAYATTIL HOUSE, KALADY
ERNAKULAM DISTRICT
PIN 683574. REPRESENTED BY FATHER AS WELL
AS POWER OF ATTORNEY HOLDER SRI.JOHNY.P.E.
AGED 65 YEARS S/O.ENASU, PADAYATTIL HOUSE, KALADY
ERNAKULAM DISTRICT, PIN 683574.

BY ADVS.SRI.PAUL K.VARGHESE
SMT.A.A.GEETHA

RESPONDENTS:

----

1. STATE OF KERALA
   REPRESENTED BY ITS SECRETARY
   REPRESENTED BY THE SECRETARY (TAXES DEPARTMENT)
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. THE DISTRICT COLLECTOR
   CIVIL STATION, KAKKANAD, COCHIN-682030.

3. THE THAHASILDAR
   KUNNATHUNADU TALUK, PERUMBAVOOR, ERNAKULAM-683542.

4. THE SALE TAX OFFICER
   SALE TAX OFFICE, PERUMBAVOOR, ERNAKULAM-683542.

5. NAVAS, AGED 37 YEARS
   S/O.KUNJUMUHAMMED, PUTHUKKADAN H.NO.4/92, OKKAL P.O.
   ERNAKULAM, PIN 683550.

BY ADVS. SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN
BY GOVERNMENT PLEADER SMT.LILLY K.T.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21850 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT-P1: A TRUE COPY OF SALE DEED NO.6171/11 OF PERUMBAVOOR SRO EXECUTED IN FAVOUR OF THE PETITIONER DATED 21/11/11.

EXHIBIT-P2: A TRUE COPY OF ENCUMBRANCE CERTIFICATE OF THE PROPERTY PURCHASED BY THE PETITIONER FOR THE PERIOD 1/1/11 TO 21/1/2014 DATED 22/1/14.

EXHIBIT-P3: A TRUE COPY OF THE TAX RECEIPT RECEIVED BY CHELAMATTOM VILLAGE, KUNNATHUNADU TALUK FROM THE PETITIONER DATED 7/4/2012.

EXHIBIT-P4: A TRUE COPY OF THE POSSESSION AND NON ATTACHMENT CERTIFICATE ISSUED BY THE VILLAGE OFFICER CHELAMATTOM VILLAGE DATED 16/3/2014.

EXHIBIT-P5: A TRUE COPY OF THE NOTICE NO.D4/8736/12 ISSUED BY THE TAHSILDAR TO THE PETITIONER DATED 13/3/12.

EXHIBIT-P6: A TRUE COPY OF THE ORDER NO.D4-8736/2012 ISSUED BY THE TAHSILDAR KUNNATHUNADU TO THE PETITIONER DATED 7/3/14.

EXHIBIT-P7: A TRUE COPY OF THE ORDER NO.D4-8736/12 DATED 14/7/14.

EXHIBIT-P8: A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE THE TAHSILDAR DATED 30/4/2013.

EXHIBIT-P9: A TRUE COPY OF THE LAWYER NOTICE ISSUED BY THE PETITIONER'S COUNSEL TO THE TAHSILDAR DATED 24/5/2014.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A.TO JUDGE

sm

A.K.JAYASANKARAN NAMBIAR, J.

- -

W.P.(C) No. 21850 of 2015

- -

Dated this the 29th day of October 2015

JUDGMENT

The petitioner is aggrieved by the revenue recovery proceedings that is initiated against his property in terms of Section 44 of the Revenue Recovery Act. Ext.P5 is the notice issued to the petitioner under the Revenue Recovery Act and Ext.P6 is the order passed by the Tahasildar declaring that the transfer of the property made in favour of the petitioner is null and void. Ext.P7 is the auction notice in respect of the property, putting the property up in auction, for realisation of the amount due to the Government by way of KVAT arrears of the erstwhile owner, from whom the petitioner had purchased the property. In the writ petition, the main contention of the petitioner, against the action of the respondents in bringing the property owned by him to sale, is that the petitioner had purchased the property by Ext.P1 sale deed on 21.11.2011, and at the time of purchase of the property, the petitioner was not aware of any proceedings against the property by the revenue authority. It is his contention that he is a bona fide purchaser for value without notice and therefore, the revenue recovery steps against the property cannot be maintained after he became the owner of the property.

2. I have heard the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that the writ petition, in its challenge against Ext.P5 to P7 orders must necessarily fail. It is not in dispute that the property earlier belonged to the 5th respondent, who was in arrears of KVAT dues to the 1st respondent for the assessment year 2010-2011. Inasmuch as the 5th respondent was in arrears of tax dues to the Government, by virtue of Section 38 of the Kerala Value Added Tax Act read with Section 44 of the Kerala Revenue Recovery Act, the transfer of the property, effected by the 5th respondent in favour of the petitioner, would be void as against the State Government. This legal position has already been recognised by a Division Bench of this Court in **Noushad Abbas & Anr. v. The Commissioner of Commercial Taxes & Ors. [2013 (3) KLJ 773]**. Under the said circumstances, I am of the view that the reliefs prayed for in this writ petition cannot be granted.

Resultantly, the writ petition fails and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/