IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 29088 of 2013 (I)

PETITIONER(S):
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1. AKKARAPADAM SASI, AGED 66 YEARS,
   S/O.LATE KUNJAN VAVA, THE PRESIDENT
   VAIKOM COIR MATTS AND MATTINGS CO-OPERATIVE SOCIETY LTD. NO.349
   VAIKOM P.O., KOTAYAM DISTRICT, PIN - 686 141.

2. SIJI ANAND, AGED 24 YEARS
   D/O.ANAND, THE SECRETARY
   VAIKOM COIR MATTS AND MATTINGS CO-OPERATIVE SOCIETY LTD. NO.349
   VAIKOM P.O., KOTTAYAM DISTRICT, PIN - 686 141.

   BY ADV. SRI.B.RAJEEV KOYICKAL

RESPONDENT(S):
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1. THE STATE OF KERALA
   REPRESENTED BY THE CHIEF SECRETARY
   GOVERNMENT SECRETARIAT
   THIRUVANANTHAPURAM - 695 001.

2. THE DISTRICT COLLECTOR
   COLLECTORATE, KOTTAYAM - 686 001.

3. THE THAHASILDAR
   TALUK OFFICE, VAIKOM, VAIKOM P.O
   KOTTAYAM DISTRICT 682 315.

Addl.4. K.SIVARAMAN KUTTY
CHANDRODAYAM HOUSE, SANADANAPURAM.P.O., ALAPPUZHA
ALAPPUZHA DISTRICT.
(ADDL. R4 IS IMPLEADED AS PER ORDER DATED 24/03/2014 IN IA 598/2014.)

R1 TO R3 GOVERNMENT PLEADER SRI.RINNY STEPHEN CHENAPARAMBIL
RADDL.4 BY ADV. SRI.JINU JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-02-2015, ALONG WITH WPC. 21963/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 29088 of 2013 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1- THE TRUE COPY OF THE G.O.NO. 85/2010/REVENUE(M.S.) DATED 3-3-2010 THE ORDER SHOWING THE REFIXED ARREARS OF LEASE OF THE PROPERTY IN WHICH THE SOCIETY IS SITUATING.
EXHIBIT P2- THE TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE SOCIETY TO THE CHIEF MINISTER OF THE STATE DATED 17-9-2013.
EXHIBIT P3- THE TRUE COPY OF THE AUCTION NOTICE OF THE LAND ISSUED BY THE TAHSILDAR VAIKOM SHOWING THE PUBLIC AUCTION OF THE PROPERTY ON 22-01-2013.
EXHIBIT P4- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE PRESENT CHIEF MINISTER OF THE STATE DATED 16-12-2012.
EXHIBIT P5- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE PRESENT MINISTER OF THE STATE FOR THE REVENUE AND COIR DATED 15-01-2013.
EXHIBIT P6- TRUE COPY OF THE AUCTION NOTICE TO THE PROPERTY ISSUED BY THE TAHSILDAR VAIKOM DATED 07-09-2013 BY STATING THAT PUBLIC AUCTION WILL (SIC) CONDUCTED ON 18-10-2013.

EXHIBIT P7: COPY OF THE RECEIPT ISSUED BY THE TAHSILDAR VAIKOM SHOWING THE REMITTANCE OF Rs.5,00,000/- BY THE PETITIONER DATED 13.12.2013.

EXHIBIT P8; COPY OF THE 16.5 CENTS OF PROPERTY IN SURVEY NO.189/4 GATHERED BY THE SOCIETY BY VIRTUE OF SALE DEED NO.2243 DTD.10.5.1973 OF SRO VAIKOM.

EXHIBIT P9. PHOTOGRAPH OF THE GODOWN BUILDING IN SURVEY NO.189/4 BY VIRTUE OF SALE DEED NO.2243 DATED 10.5.73 OF SRO VAIKOM.

EXHIBIT P10. PHOTOGRAPH OF THE SOCIETY'S FACTORY.

EXHIBIT P11. PHOTOGRAPH OF SOCIETY'S OFFICE.

EXHIBIT P12. COPY OF THE RECEIPT OF REMITTANCE OF Rs. 6,90,000/- DTD.13.1.2014 ISSUED BY THE TTAHSILDAR, VAIKOM.

RESPONDENT(S)' EXHIBITS

NIL.

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///True copy///

P.S. to Judge

ALEXANDER THOMAS, J.

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W.P.(C).Nos.29088/2013 & 21963/2014

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Dated this the 13th day of February, 2015

J U D G M E N T

W.P.(C).No.29088/2013 has been filed by the President and Secretary of the Vaikom Coir Matts and Mattings Co-operative Society, Ltd. No.349, Vaikom, Kottayam district, with the prayers to challenge Ext.P-6 proceedings dated 7.9.2013 relating to the notice of sale of immovable property, initiated under the Revenue Recovery Act and for direction to set aside the sale of the immovable property of the said society having an area of 6.68 ares of land in survey No.189/4/2 of Vaikom village (Tandaper No.1910) and for declaration that the public auction of 6.68 ares of land in the above said survey No. as null and void and is liable to be set aside, etc. In respect of a piece of land, that was leased to the above said co-operative society by the Government, the society had committed default in paying the lease amounts due to the Government and the total arrears in that account had come to more than Rs. 11 lakhs. In this view of the matter, the Governmental authorities concerned had initiated steps for revenue recovery so as to realise the outstanding lease amounts due to the Government from the petitioner co-operative society. This led to the impugned Ext.P-6 revenue recovery proceedings, whereby the land belonging to the co-operative society having an extent of 6.68 ares (16.43 cents) of land was ordered to be sold in public auction by invoking the powers under the Revenue Recovery Act. This Court, by order dated 27.11.2013, had admitted the above Writ Petition and had further passed an interim order ordering that there will be an interim stay of confirmation of the sale pursuant to the impugned Ext.P-6 notice on condition that the petitioner co-operative society deposits a sum of rupees five lakhs on or before 15.12.2013 and another sum of Rs.6.9 lakhs on or before 15.1.2014. It is submitted by Sri.Rajeev Koickal, learned counsel appearing for the petitioners in W.P.(C). No.29088/2013 that the Secretary of the said co-operative society had deposited an amount of Rs.5 lakhs on 13.12.2013 with the office of the Tahsildar, Vaikom as borne out by Ext.P-7/Ext-P12 and that further an amount of Rs.6.9 lakhs was also deposited by the Secretary of the co-operative society with the office of the Tahsildar, Vaikom on 13.1.2014 as evident from receipt No.AB 0707676 issued by the Tahsildar, Vaikom in that regard, thus totalling to Rs. 11.9 lakhs. It could be seen from the impugned Ext.P-6 sale proceedings that the amount mentioned therein is Rs. 11,89,079/-. In the meanwhile, the impugned sale pursuant to the revenue recovery proceedings as per Ext.P-6 had taken place on 18.10.2013 and additional respondent No.4 in W.P.(C).No.29088/2013 had deposited purchase amount of Rs.2.52 lakhs on 18.10.2013 with the office of the Tahsildar, Vaikom [as per Ext.P-3 in connected W.P.(C).No.21963/2014] and had also deposited the balance purchase amount of Rs.14.28 lakhs on 15.11.2013 with the office of the Tahsildar, Vaikom [as per Ext.P-4 in W.P.(C).No.21963/2014]. However, the confirmation of the sale stood stayed by virtue of the stay order granted by this Court in W.P.(C).No. 29088/2013.

2. The petitioners' co-operative society was all throughout pursuing with the State Government with their request that the Government should write off the entire liability owed by the society to the Government on account of its difficult financial position and also taking into account the fact that the society was offering

employment directly to about 15 persons and indirectly to more than 60 persons. It was also contended by the petitioner co-operative society that the aforementioned land, which was the subject matter of the revenue recovery sale, is near to the heart of the Vaikom town and that the purchase money offered by the aforementioned additional respondent No.4 is too meagre compared to the present market value of the property. There arose certain disputes relating to the identity of the property and this Court, by order dated 23.5.2011 in W.P.(C).No.29088/2013, had also appointed an Advocate Commissioner to submit a report on such issues. While things stood so, the State Government issued G.O (Ms).No.30/2014/RD dated 15.1.2014 [produced as Ext.P-7 in W.P.(C).No. 21963/2014], whereby the Government ordered that the entire arrears owed by the co-operative society to the Government shall stand written off. It is also ordered in the above said G.O. dated 15.1.2014 that this is so ordered considering financial difficulties faced by the co-operative society and that such adverse action that may be taken against the society would detrimentally affect the livelihood of the workers, who are depending on the co-operative society. It is in this background the liability owed by the co-operative society to the Government has been written off. It is further ordered in the Government order dated 15.1.2014 that the District Collector, Kottayam, shall take necessary steps for renewal of the lease to the petitioners' co-operative society by submitting necessary proposal in that regard to the Land Revenue Commissioner. Therefore, in view of the issuance of G.O.(Ms) No.30/2014/RD dated 15.1.2014, the grievance of the petitioners in W.P.(C).No. 29088/2013 has been fully redressed by the Government and the impugned sale proceedings are thus liable to be set aside. What remains is only the consequential directions relating to certain aspects of the matter.

3. The additional respondent No.4 in W.P.(C).No.29088/ 2013 has filed Writ Petition (Civil), W.P.(C).No.21963/2014 challenging the aforementioned G.O.(Ms.)No.30/2014/RD dated 15.1.2014 [produced as Ext.P-7 in W.P.(C).No.21963/2014] and also with the prayer for mandamus to direct the District Collector, Kottayam district to confirm the sale dated 18.10.2013 conducted pursuant to Ext.P-2 therein [auction notice] in favour of the

petitioner therein and alternatively with the prayer that if the sale pursuant to Ext.P-2 is not confirmed, then the respondents may be directed to pay compensation amount of Rs.10 lakhs to the petitioner, apart from the refund of the purchase money of Rs. 16.8 lakhs together with 5% of the purchase money, etc.

4. Apart from the averment that the petitioner in W.P.(C). No. 21963/2014 had participated in the impugned sale and had deposited the purchase amount as stated above, no cogent grounds for invoking the remedy of judicial review to challenge the above said G.O., have been made out in that Writ Petition.

5. The learned Government Pleader appearing for the official respondents resisted the pleas and contentions raised in W.P.(C).No.21963/2014 and submitted that the Government considered all relevant aspects of the matter and had issued the impugned Ext.P-7 G.O.(Ms.) No.30/2014/RD dated 15.1.2014, whereby it was ordered to write off the entire liabilities of the above said co-operative society. This, the learned Government Pleader would submit that, was done after taking into account the fact that the co-operative society was in dire financial condition and that any

adverse action against the co-operative society would seriously and detrimentally affect the livelihood of lot of workers, who are directly and indirectly depending on the above said co-operative society. The learned Government Pleader would further submit that the liabilities are owed by the co-operative society to the Government and it is for the Government to exercise its discretion in a just, reasonable and equitable manner and it is not in any way the concern of the petitioner in W.P.(C).No.21963/2014 to challenge the correctness or legality of the said Government order merely because he had participated in the impugned revenue recovery sale proceedings. Moreover, the Government Pleader would submit that the confirmation and finalisation of the impugned revenue recovery sale proceedings has been stayed by this Court in W.P.(C).No. 29088/2013. The learned Government Pleader would also submit that the petitioner in W.P.(C).No. 21963/2014 has not made out any legal grounds to press the prayer for payment of compensation of Rs.10 lakhs to the petitioner, etc.

6. Heard Sri.Rajeev Koickal, learned counsel appearing for the petitioners in W.P.(C).No.29088/2013, Sri.Alias.M.Cherian,

learned counsel appearing for the petitioner in W.P.(C).No. 21968/ 2014 and the learned Government Pleader appearing for the official respondents in these cases.

7. The contentions of the petitioner in W.P.(C).No.21963/ 2014 that Ext.P-7 order was passed on a malafide and arbitrary basis and that there is no reason or necessity to pass the impugned Ext.P-7 order, etc. are not tenable. The Government has clearly stated the reasons in Ext.P-7 as to the basis for taking the action so ordered therein and it cannot be said that the impugned Ext.P-7 is in any way vitiated by arbitrariness or malafides, etc. However, the petitioner in W.P.(C).No. 21963/2014 has not made out any serious averments or produced any material to show that the said impugned order is vitiated by malafides or favouritism. The argument of the petitioner that Ext.P-7 is passed on high political pressure exerted by the co-operative society, etc. is also bereft of any merit. Except making such a bald averment the petitioner has not made out any serious ground in that regard. The further argument that Ext.P-7 order has caused huge loss on the revenue on the State exchequer is only to be refuted because the Government had considered the

dire financial condition of the society and the right of livelihood of the workers of the society in arriving at the decision referred to in Ext.P-7, based on the report of the District Collector. Hence, the Government has taken into consideration relevant aspects and based on materials before it. Therefore, the contentions raised by the petitioner in W.P.(C).No. 21963/2014 are not tenable and this Court is not convinced that the petitioner therein has made out any ground to interfere the remedy of judicial review to challenge the legality of Ext.P-7.

8. Equally, the petitioner in W.P.(C).No.21963/2014 has not made out any grounds to claim a compensation amount of Rs.10 lakhs, in the event of the non-confirmation of the impugned sale proceedings. The confirmation of the sale proceedings was stayed by this Court as stated above. Therefore, this Court is not inclined to grant the above said relief sought by the petitioner therein in W.P.(C).No.21963/2014. In view of the issuance of G.O(Ms) 30/2014/RD dated 15.1.2014, the impugned sale proceedings as per Ext.P-6 produced in W.P.(C).No. 29088/2013 are liable to be set aside and all consequential steps taken thereon are also liable to be

set aside. However, it is to be noted that Sec.52(2) of the Kerala Revenue Recovery Act envisages that where the sale is set aside, the auction purchaser is entitled for re-payment of the purchase money as far as it has been deposited, together with 5% of the amount deposited by the person who seeks to set aside the sale. In the instant case, the co-operative society [the petitioners in W.P.(C). No.29088/2013] has deposited amount of Rs.11.90 lakhs with the office of the Tahsildar, Vaikom Taluk in compliance with the interim stay order dated 27.11.2013 granted by this Court in that W.P.(C). The said amount was directed to be deposited by this Court as per the interim order dated 27.11.2013 as the amount mentioned in the impugned Ext.P-6 sale proceedings comes to Rs.11,89,079/-, etc. Though the provisions in Sec.52(2) of the Revenue Recovery Act do not directly come into play in the facts of this case, the principles of equity flowing from the provisions in Sec.52 (2) can be imported to the facts and circumstances of this case, in order to render justice and equity to both sides. Ordinarily, when the sale is effectuated, collection charges @ 5% of the arrears to be collected from the defaulter may have been payable by the defaulter, when the arrears does not exceed Rs. 5 lakhs and @ 7.5% of the arrears, if the defaulted amount exceeds Rs.5 lakhs, etc., as envisaged in Rule 5(1) of the Kerala Revenue Recovery Rules. The learned counsel for the petitioners in W.P.(C).No.29088/2013 submitted that the provisions in Rule 5(1) are applicable only to institutions as those referred to in Rule 5(1) of the Rules, as is clear from the provisions in sub-rules (1) & (2) of Rule 5. There is no necessity to enter into the resolution of this controversy, because this Court is even otherwise of the considered opinion that as the State Government themselves are convinced that the entire liabilities owed by the co-operative society to the Government should be written off, there is no necessity to make any such deduction of collection charges from the co-operative society, in the facts and circumstances of this case. Moreover, the impugned sale proceedings are liable to be set aside.

Accordingly, the Writ Petitions are finally disposed 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.

The parties shall bear their respective costs.

Sd/-

sdk+ ALEXANDER THOMAS, JUDGE

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P.S. to Judge