

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 37790 of 2008 (W)

PETITIONER(S):

KANNUR DISTRICT CO-OPERATIVE AYURVEDIC
RESEARCH HOSPITAL SOCIETY LIMITED, NO.C 1571
NEAR MAHATHMA MANDIRAM, KANNUR - 670 002
REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.NAGARAJ NARAYANAN
SRI.RAJAN VELLOTH
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.BENOJ C AUGUSTIN

RESPONDENT(S):

1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY
DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM.
2. REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF THE REGISTRAR OF CO-OPERATIVE, SOCIETIES
STATUE, THIRUVANANTHAPURAM.
3. JOINT REGISTRAR (GENERAL) OF
CO-OPERATIVE SOCIETIES, CIVIL STATION, KANNUR.2
4. ASSISTANT REGISTRAR (GENERAL) OF
CO-OPERATIVE SOCIETIES, CIVIL STATION, KANNUR-2.
5. AHAM & RESORTS LTD,
*ROOM NO.116,
KANNUR - 670 002,
REPRESENTED BY ITS MANAGING DIRECTOR
5. AHAM AND RESORTS LIMITED,
ROOM NO. 116,
AROGYA HOSPITAL BUILDING,
KANNUR - 670 002
REPRESENTED BY ITS MANAGING DIRECTOR

CORRECTED VIDE ORDER DATED 13.02.2009. IN I.A.819 OF 2009.

R,R5 BY ADV. SRI.GEORGE POONTHOTTAM
R,R1-4 BY ADV. GOVERNMENT PLEADER ABHIJETT LESSLI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-02-2015,
ALONG WITH WPC. 16952/2009, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED TO THE PETITIONER DATED 05.09.2003
- EXHIBIT P2 : TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED TO THE PETITIONER DATED 20.04.2004
- EXHIBIT P3: TRUE COPY OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING OF THE PETITIONER SOCIETY HELD ON 12.09.2007
- EXHIBIT P4: TRUE COPY OF THE INUTES OF THE GENERAL BODY MEETING DATED 16.09.2007
- EXHIBIT P5: TRUE COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT.
- EXHIBIT P6: TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED 16.09.2008
- EXHIBIT P7: TRUE COPY OF NOTICE DATED 20.09.2008
- EXHIBIT P8: TRUE COPY OF THE NOTICE PUBLISHED IN VEEKSHANAM DAILY DATED 01.10.2008
- EXHIBIT P9: TRUE COPY OF THE MINUTES OF THE MEETING DATED 20.09.2008 AFFIXED IN THE PETITIONER'S OFFICE AND IN THE OFFICE OF THE 3RD RESPONDENT
- EXHIBIT P10: TRUE COPY OF THE AUCTION PROCEEDINGS DATED 07.10.2008
- EXHIBIT P11: TRUE COPY OF THE LETTER SUBMITTED BY K.PRAMOD TO THE PETITIONER DATED 06.10.2008
- EXHIBIT P12: TRUE COPY OF THE RECEIPT OF THE CAUTION DEPOSIT
- EXHIBIT P13: TRUE COPY OF THE RECEIPT DATED 09.10.2008
- EXHIBIT P14: TRUE COPY OF THE MINUTES EXECUTIVE COMMITTEE DATED 07.10.2008
- EXHIBIT P15: TRUE COPY OF THE SAID PROCEEDINGS OF THE 3RD RESPONDENT DATED 07.10.2008
- EXHIBIT P16: TRUE COPY OF THE REPRESENTATIO OF THE PETITIONER DATED 18.10.2008
- EXHIBIT P17: TRUE COPY OF THE MANIPULATED RECORDS OF THE AUCTION PROCEEDINGS
- EXHIBIT P18: TRUE COPY OF THE LETTER ISSUED BY THE THIRD RESPONDENT DATED 29.10.2008
- EXHIBIT P19: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE THIRD RESPONDENT DATED 20.11.2008
- EXHIBIT P20: TRUE COPY OF THE LAWYER NOTICE DATED 27.11.2008
- EXHIBIT P21: TRUE COPY OF THE LETTER OF THE 3RD RESPONDENT DATED 09.12.2008

RESPONDENTS' EXHIBITS

**EXHIBIT R3(A): A TRUE COPY OF THE TELEPHONE BILL OF THE TELEPHONE
NO.2765610 DATED 05.03.2009**

**EXHIBIT R3(B) A TRUE COPY OF THE TELEPHONE BILL OF THE TELEPHONE
NO.2765611 DATED 05.03.2009**

// TRUE COPY //

PA TO JUDGE

K.SURENDRA MOHAN, J.

**W.P.(C) Nos.37790 of 2008 &
16952 of 2009**

Dated this the 27th day of February, 2015

J U D G M E N T

The petitioner a co-operative society registered under the Kerala Co-operative Societies Act, 1969 and the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as 'the Act' and 'the Rules' for short) has filed this writ petition, challenging Exhibits P15, P18 and P21 proceedings issued by the third respondent.

2. The petitioner is a society that is engaged in the field of Ayurveda, conducting an Ayurvedic Hospital in Kannur Town, which is also involved in the production of Ayurvedic medicines. With the object of starting an Ayurvedic Medical College, the society had acquired a total extent of 31 acres 81¾ cents of property. The property was purchased by paying ₹14,32,000/-only. Since the society was not possessed of sufficient funds, the amount was raised by borrowing from its members at the rate of ₹1 lakh

each. However, the society was not granted permissions to start the Ayurvedic Medical College. The shareholders thereupon started demanding the return of their money. For the purpose of repaying the amount that was borrowed, the Executive Committee decided to sell the property after obtaining sanction from the General Body and the Government.

2. Accordingly by Exhibit P4 dated 16.09.2007, the General Body granted permission to the petitioner to sell an extent of 11 acres 81¾ cents of land. The petitioner thereafter sought permission from the third respondent. By Exhibit P6 dated 16.09.2008, permission was granted for sale of the property. However, it is stipulated in Exhibit P6 that, the property shall be sold only in public auction. Therefore, the Executive Committee of the petitioner proposed to conduct an auction on 07.10.2008. The auction notice was published in the Veekshanam Daily dated 01.10.2008. Thereafter the auction was conducted.

3. According to the petitioner, ten persons had participated in the auction. But only three persons submitted their bids. The society had fixed ₹2500/- per cent as the upset price. The property was bid at the auction for an amount of ₹2550/- by the 5th respondent. The same day itself, the Executive Committee decided to confirm the auction. 10% of the bid amount was remitted by the 5th respondent in cheque, and the sale was confirmed. On the same day, the petitioner was issued with a letter by the 3rd respondent, declining approval to the auction. The letter was received by the petitioner only on 10.10.2008. The same is Exhibit P15.

4. Aggrieved by Exhibit P15, the petitioner preferred Exhibit P16 representation to the third respondent. However, the same was rejected by Exhibit P18 dated 29.10.2008. Thereafter, the petitioner again represented the matter by submitting Exhibit P19 to the third respondent. Thereupon, the petitioner has been issued with

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Exhibit P21 directing the conduct of a fresh auction in compliance with all the formalities. The petitioner has filed this writ petition challenging the action of the third respondent.

5. According to Advocate Nagaraj Narayanan who appears for the petitioner, Rule 54(2) of the Rules stipulate only two conditions for the purpose of selling a property owned by a society. They are, obtaining of prior sanction of the General Body as well as the prior sanction of the Registrar. As per Exhibit P4, the General Body has granted prior sanction for sale of the property. By Exhibit P6, prior sanction to sell the property has been granted by the third respondent. Therefore, the third respondent has no power thereafter to set aside the auction and to issue Exhibits P15 and P18 orders. The counsel also points out that, though it had taken one year for the third respondent to grant permission for sale of the property, the auction conducted was cancelled on the same day itself. The auction was

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conducted in the presence of the Assistant Registrar himself, who had not raised any objections to the proceedings. It is contended that, after the auction was conducted, interpolations have been made by the 4th respondent to the effect that, the formalities were not observed. Exhibit P17 is relied upon to support the above contention. According to the learned counsel, all the above factors point to the irresistible conclusion that, the impugned proceedings are politically motivated and vitiated by malafides. It is also contended that, no reason has been stated for cancellation of the auction that was conducted. W.P.(C) No.16952 of 2009 has been filed by the auction purchaser challenging the very same order that has been produced as Exhibit P21 in the other writ petition. The contention of the auction purchaser is that, he had participated in the auction that was conducted strictly in accordance with the Rules. The action of the third respondent in setting aside the auction has prejudicially

affected the rights of the auction purchaser. Since the action has been taken without affording an opportunity of being heard to them, it is contended that the said order is liable to be set aside. The counsel for the petitioner also reiterates the contentions of the petitioners in the other writ petition.

6. The Government Pleader represents the respondents. A counter affidavit has been filed, on behalf of respondents 3 and 4. According to the counter affidavit, the entire proceedings of auction was only a drama that was conducted to make it appear that the property was sold in public auction. It is also pointed out that, the society had earlier requested for permission to sell the property to the 5th respondent. The real object in selling the property is for the members of the Managing Committee to conduct Real Estate business. The request for permission to sell the property submitted by the petitioner, produced as Exhibit P5, is referred to, to point out that out of the two telephone

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numbers printed on the letter head, one telephone number belongs to the 5th respondent as evident from Exhibit R3(b) telephone bill. Exhibit R3(a) is the telephone bill of the other telephone that is used by the petitioner.

7. Though permission was granted to conduct auction after publishing the date thereof in Newspapers having wide circulation in the area, publication was effected only in the Veekshanam Daily, which has no circulation. It is clear from Exhibit P8 that the terms of the auction were not published. There was no mention regarding the auction deposit. Therefore, it is contended that, the auction was conducted without observing the necessary formalities. It is also a specific case pleaded in the counter affidavit that, the 5th respondent is a trust in which members of the Managing Committee of the petitioner society are members. No reply affidavit has been filed in answer to the statements made in the counter affidavit.

8. Heard. It is true that, the General Body of the

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petitioner society had decided as per Exhibit P4(2) to sell an extent of 11 acres 81¾ cents of land. However, a perusal of Exhibit P4 itself shows that, even at that time, there was an intention to sell the property to the 5th respondent. The price stipulated in the said resolution was ₹2500/- cent. As per Exhibit P5, permission was sought for by the petitioner, to sell the property to the 5th respondent at the rate of ₹2500/- per cent. However, such permission was not granted. As per Exhibit P6, permission has been granted to sell an extent of 10 acres and 6 cents of property subject to two conditions namely that, the property shall be sold only in public auction after publication in Newspapers having wide circulation in the area and secondly, in the presence of the 4th respondent after observing all the formalities of a public auction in order to ensure transparency in the proceedings. However, the above conditions have not been complied with.

9. In the first place, the publication Exhibit P8 has

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been effected only in the Veekshanam Daily which according to the respondents, is not a newspaper having wide circulation in the area of operation of the society. Apart from the above, a more serious allegation is raised that, though 10 persons had appeared on the date of auction, only three had actually participated. The allegation is that, the said persons were all arranged. It is true as contended by the counsel for the petitioner that, there is no evidence to support the above allegation. However, the fact remains that, of the two telephone numbers seen in the letter head Exhibit P5, one appears to be that of the 5th respondent. Exhibit R3(a) is the telephone bill in respect of telephone number 2765610. The name of the consumer of the telephone is shown as Kannur District Co-operative Ayurvedic Research Hospital Society Ltd. However, in the case of telephone number 2765611, the name of the consumer is shown as Arogya Holistic Ayurvedic Medicare and Resorts Ltd, Room No.116, Arogya Hospital which is

the address of the 5th respondent given in the writ petition also. Though the counter affidavit is seen to have been filed on 01.06.2009, no reply affidavit has been filed. Therefore, there is sufficient material to indicate that, there is more than what meets the eye in the manner in which the proceedings have been conducted.

10. Since the jurisdiction of the third respondent in issuing the impugned proceedings is challenged, it has also to be observed that, such jurisdiction is inherent in the power to grant permission itself. Rule 54(2) stipulates that, the property of a society cannot be sold without the prior permission of the General Body and the Registrar. The power to grant permission implies power to grant permission either with or without conditions. When conditions are stipulated while granting permission, the authority has also the power to enforce the conditions that are stipulated. In the present case, Exhibit P6 permission has been granted subject to the conditions stipulated

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therein. The third respondent certainly has the power to set aside the proceedings when it is found that, the auction has not been conducted in compliance with the conditions stipulated. Therefore, it is held that Exhibits P15 and P18 are justified in the circumstances. As rightly pointed out by the Government Pleader, the haste in which the proceedings have been approved by the Executive Committee also adds to the suspicion that is generated.

In the above circumstances, I do not find any grounds to interfere with the impugned proceedings or to grant any of the reliefs sought. The auction purchaser also has no right to question the impugned proceedings. For the above reasons, these writ petitions are dismissed.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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