

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(C).No. 34764 of 2014 (U)

PETITIONER(S):

**JOSE KANJAMALA, S/O.JOSEPH,
KARUVANCHAL P.O., KANNUR DISTRICT.**

**BY SRI.GRASHIOUS KURIAKOSE, SENIOR ADVOCATE.
ADVS.SRI.J.S.AJITHKUMAR,
SRI.SEBASTIAN JOSEPH (KURISUMMOOTTIL),**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR, KANNUR -670 002.**
- 2. THE REVENUE DIVISIONAL OFFICER,
THALASSERY, KANNUR DISTRICT -670 301.**
- 3. THE DEPUTY TAHSILDAR (RR),
KERALA FINANCIAL CORPORATION,
CHANDROTH COMPLEX, NETHAJI ROAD, KANNUR- 670 002.**
- 4. THE BRANCH MANAGER,
KERALA FINANCIAL CORPORATION LTD.,
CHANDRO COMPLEX, NETHAJI ROAD, KANNUR- 670 002.**
- 5. C.K.ASHRAF, ASHRAF MANZIL,
SREEKANDAPURAM P.O., KANNUR DISTRICT-670 631.**
- 6. ABOOBACKER. C.P., PALLIPATH HOUSE,
KOTTOORVAYAL, SREEKANDAPURAM P.O.,
KANNUR DISTRICT, PIN- 670 631.**

R1 & R2 BY GOVT. PLEADER SRI.GIKKU JACOB.

**R3 & R4 BY ADVS. SRI.MOLLY JACOB, SC,
SRI.T.V.GEORGE, SC.**

R5 BY ADV. SRI.V.A.SATHEESH.

**R6 BY ADVS. SRI.JOHN K.GEORGE,
SRI.K.S.ARUN KUMAR.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-08-2015, ALONG WITH WP(C).NO.2096 OF 2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 COY OF THE NO.224210/252/08 DATED 18/03/2008 OF THE 4TH RESPONDENT.
- EXHIBIT P2 COPY OF THE SALE DEED NO.2227/2000 DATED 06/07/2000 OF SRO, SREEKANDAPURAM.
- EXHIBIT P3 COPY OF THE ENCUMBRANCE CERTIFICATE DATED 10/02/2010 ISSUED BY THE SUB REGISTRAR.
- EXHIBIT P4 COPY OF THE LAND TAX RECEIPT DATED 01/12/2014 ISSUED BY THE VILLAGE OFFICER, SREEKANDAPURAM.
- EXHIBIT P5 COPY OF THE POSSESSION CERTIFICATE ISSUED ON 03/03/2010 FOR PRODUCING THE SAME BEFORE THE CITY UNION BANK.
- EXHIBIT P6 COPY OF THE POSSESSION CERTIFICATE ISSUED ON 01/12/2014.
- EXHIBIT P7 COPY OF THE SALE NOTICES DATED 26/09/2014 ISSUED UNDER SEC. 49(2) OF THE R.R. ACT.
- EXHIBIT P8 COPY OF THE OBJECTION FILED BEFORE THE 2ND RESPONDENT ON 12/12/2014.
- EXHIBIT P9 COPY OF THE NOTICE PUBLISHED IN MALAYALA MANORAMA DAILY DATED 21/10/2014.

RESPONDENT'S EXHIBITS:-

- EXT.R4A COPY OF THE LETTER DATED 23/12/1999 OF THE 4TH RESPONDENT ADDRESSED TO THE TALUK OFFICE, THALIPARAMBA.
- EXT.R4B COPY OF THE LETTER ALONG WITH THE REQUISITION MADE TO THE DISTRICT COLLECTOR DATED 04/03/2004 BY THE 4TH RESPONDENT IN RESPECT OF LOAN ACCOUNT NO.020230510.
- EXT.R4C COPY OF THE LETTER ALONG WITH THE REQUISITION MADE TO THE DISTRICT COLLECTOR DATED 05/07/2006 BY THE 4TH RESPONDENT IN RESPECT OF LOAN ACCOUNT NO.020224310.
- EXT.R4D COPY OF THE LETTER ALONG WITH THE REQUISITION MADE TO THE DISTRICT COLLECTOR DATED 16/02/2005 BY THE 4TH RESPONDENT IN RESPECT OF LOAN ACCOUNT NO.020226910.

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EXT.R4E COPY OF THE SALE NOTICE IN MALAYALAM PUBLISHED IN FORM 16.

**EXT.R4F COPY OF THE REQUEST OF THE BORROWERS DATED 31/01/2002
ADDRESSED TO THE MANAGER, KFC.**

**EXT.R4G COPY OF THE LETTER ISSUED BY THE 4TH RESPONDENT
DATED 14/02/2002 ADDRESSED TO SRI.KAMALKUTTY.**

//TRUE COPY//

P.A. TO JUDGE

rs.

A. MUHAMED MUSTAQUE, J.

W.P.(C) Nos.34764 of 2014

&

W.P.(C) No. 2096 of 2015

Dated this the 17th day of August, 2015

J U D G M E N T

These writ petitions are filed by the persons aggrieved by the auction sale.

2. W.P.(C) No.2096/2015 is filed by one of the legal heir of Sri.K.V.KamalKutty Haji. W.P.(C) No.34764/2015 is filed by one of the assignee of Kamalkutty Haji in respect of the property, which is the subject matter of auction sale.

3. Admittedly, Revenue recovery proceedings are initiated to recover the loan amount due to the Kerala Financial Corporation (KFC). The main challenge in this writ petition is regarding irregularities of sale. It is contended by the learned Counsel for the petitioner that there were no proper notices preceded by sale. It is also contended that amount demanded is less than Rs.30 lakhs and property has now sold for Rs.1,67,00,000/-.

4. The learned Standing Counsel for the KFC disputed the above contention of the petitioner and submits

that there is no irregularity with sale and they have adhere to all the procedures before conducting sale. It is further contended that based on the requisition made in the year 2004, the sale was conducted.

5. This Court is of the view that the petitioner has an alternate remedy under the Kerala Revenue Recovery Act, 1968 (hereinafter referred to as 'Act' for short). Section 53 of the Act affords an opportunity to any person who is aggrieved to file an application to set aside the sale on ground of material irregularity, mistake etc.

6. In fact the petitioner in W.P.(C) No.2096/2015 has approached the Revenue Divisional Officer to set aside the sale.

7. Considering the facts and circumstances, the petitioners will have to approach the District Collector in terms of Section 53 of the Act by filing an application to set aside the sale. In view of the fact that the petitioners have approached this Court within the time during which the

application could have been made, the delay involved shall be condoned, if such application is filed within a period of ten days from the date of receipt of a copy of this judgment. Thereafter, the District Collector shall dispose the application to be filed by the petitioners within a further period of one month after notice to the petitioners, KFC and the auction purchaser. Confirmation of sale is only after the consideration of the objection raised by the petitioners.

The writ petition is disposed of as above.

Sd/

**A. MUHAMED MUSTAQUE,
JUDGE**

jm/