

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17-07-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.15218 of 2011 and 27847 of 2012

G.Kokila .. Petitioner in
W.P.15218 of 2011

K.Palani ... Petitioner in
W.P.27847 of 2012

versus

The District Collector,
Kancheepuram District,
O/o the District Collector,
Kancheepuram.

The Tahsildar,
Kancheepuram Taluk,
Kancheepuram District.

... Respondents 1 & 2
both Writ Petitions

K.Palani .. Respondent 3 in
W.P.15218 of 2011

Ms.G.Kokila ... Respondent 3 in
W.P.127847 of 2012

Prayer in W.P.No.15218 of 2011: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, Calling for the records of the respondent, ending with the order of the 1st respondent in R.C.20255/2008/u2 dt.19.5.2011 and quash the same and directing the respondents to cancel the entire Auction proceedings initiated in respect of the property of the petitioner in Survey No.221/1 measuring about 4550 sq.feet at Vetteriamman Kovil Village Walajabad Village Kancheepuram District by receiving the entire dues in one lump sum.

For Petitioner : Mr. V.R.Appaswamee

For Respondents : Mrs.P.Rosekalam, AGP
for R1 & R2
Mr.L.Chandrakumar for R3

Prayer in W.P.No.27847 of 2012: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records relating to the first respondent in Na.Ka.No.20255/08/U2 dated 13.12.2011 and quash the same.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mrs.P.Rosekamalam, AGP
for R1 & R2
Mr.V.R.Appaswameefor R3

COMMON ORDER

Since the parties, facts and subject matter of the issue involved in both Writ Petitions are common, they are taken up together and being disposed of vide this common order.

2. For the sake of convenience, the parties will be hereinafter referred to as per their nomenclature given in W.P.No.15218 of 2011.

3. The brief facts in common, necessitated for disposal of the Writ Petitions, can be stated as under:

One Thiru P.Gopal, formerly Office Assistant in Forest Settlement Office, Kancheepuram, who is the husband of the petitioner herein, while working as such, had availed House Building Advance for a sum of Rs.1,75,000/- from the Office and purchased a vacant plot in Survey No.221 of Walajabad village. Thereafter, whereabouts of said P.Gopal were not known since according to the petitioner, he left home on 15.01.2011 and did not turn up. A police complaint was also lodged before the District Crime Branch, Kancheepuram, which, after investigation, closed the case after referring it as 'undetected'. Since the loan amount was not repaid, the District Collector, Kanchipuram, first respondent herein, initiated proceedings under the Revenue Recovery Act for recovery of the due amount. Consequently, the subject property was brought for sale in public auction on 01.03.2010, wherein, the 3rd respondent stood highest bidder having quoted for Rs.3,77,000/-towards sale consideration. The successful bidder remitted the entire amount and after adjusting the arrears of loan of Rs.3,55,886/-, remaining amount of Rs.21,114/- was kept in revenue deposit and a sale deed was executed in favour of the auction purchaser (3rd respondent) vide document No.2592 dated 26.5.2010 at the Office of the Sub-Registrar, Wallajahbad and possession was also handed over to him.

4. Be that as it may, after coming to know about the sale of auction and aggrieved by the confirmation of the same in

favour of the third respondent, the petitioner has approached this Court by way of Writ Petition in W.P.No.11504 of 2010, seeking to quash the proceedings dated 17.7.2008 regarding the auction sale and to direct the respondents therein to enable the petitioner to repay the loan amount. The specific case of the petitioner in the said Writ Petition is that before auctioning the subject property, she was not given any notice or opportunity to her to repay the loan amount availed by her husband.

5. By order, dated 22.11.2010, this Court, after hearing the parties on either side and on going through the entire files that were produced before the Court, has disposed of the above said Writ Petition with the following observation:

"7. A perusal of the note file dated nil September 2001 discloses that originally the petitioner was residing at Door No.6, Thottakara Street, Uthiramerur. The Tahsildar, Uthiramerur had made an enquiry and found that the husband of the petitioner left the said address due to family reasons. The first respondent in view of the default committed by the husband of the petitioner, has also launched Criminal prosecution by filing a complaint in Crime No.6 of 2002 on the file of the District Crime Branch, Kancheepuram. The District Crime Branch vide its final report dated 30.06.2005 found that the efforts made by them to trace the accused, who is the husband of the petitioner herein, has ended in vain and the accused is referred as undetected and if the accused is traced later, appropriate action will be taken against him as per law.

8. In the final report also the address of the accused/the address of the petitioner is given as "Door No.6, Thottakara Street, Uthiramerur". The collector of Kancheepuram has also obtained legal opinion as to how the amount due and payable by the husband of the petitioner in respect of the purchase of the above said land is to be recovered and Mr.T.Anbhu, Pleader doing government works has given his opinion dated 19.05.2008 stating that the entire amount can be recovered under the Revenue Recovery Act and further legal action may be taken against the legal heirs of the said Gopal.

9. Accordingly, the first respondent vide proceedings dated 14.06.2008, has directed the

jurisdictional Tahsildar to initiate action under the Revenue Recovery Act and ordered recovery of the amount due from the legal heirs of Gopal. However, the fact remains that the notice through affixture was effected by affixing on the land in question and the legal heirs of Gopal were not put on notice.

10. The learned counsel appearing for the petitioner has also drawn the attention of this Court to various representations sent by her to the first respondent with regard to the compassionate ground appointment and also for settlement of terminal benefits. The proceedings dated 17.03.2003 sent by the Tahsildar, Uthiramarur Taluk to the Tahsildar, Land Acquisition, SIPCOT would disclose that a copy of the said communication was also addressed to the petitioner at her address at No.6, Thottakars Street, Uthiramerur. With regard to the request made by the petitioner seeking compassionate ground appointment, the office of the District Collector vide memo dated 19.08.2006 made in Na.Ka.No.34177/2006/A4 has sent a communication to the petitioner to Door No.6, Thottakara Street, Uthiramerur, Kancheepuram District. The request made by the petitioner seeking compassionate ground appointment for her daughter was also rejected by the office of the first respondent vide memo dated 23.09.2008 and admittedly the said communication was also addressed to the above said address. And so also the communication dated 14.10.2009 sent by the first respondent to the petitioner.

11. Therefore, the fact remains that the petitioner is all along residing at Door No.6, Thottakara Street, Uthiramerur, Kancheepuram and communication were regularly sent by her from that address only, which was received by the first respondent, who in turn, also sent reply to the same address.

12. A perusal of the files would also indicate that the office of the respondents were aware of the residence of the petitioner in the above said address. However, curiously the notice through affixture has been effected on the land, which was the subject matter of the auction, in which the third respondent was the successful bidder. Thereafter, this court after taking into consideration the materials available

on record in the form of typed set of papers and the files is of the view that the legal heirs of Gopal, who availed loan, were not put on notice before auctioning the property under the Tamil Nadu Revenue Recovery Act.

13. As already stated above, the office of the first respondent was very well aware of the address of the petitioner and in fact based on the opinion given by the Pleader, the first respondent has directed the jurisdictional Tahsildar to proceed against the legal heirs of Gopal under the Tamil Nadu Revenue Recovery Act to recovery the loan availed by him.

14. However, the learned counsel appearing for the third respondent would vehemently contend that the petitioner was all along aware of the proceedings initiated under Revenue Recovery Act and even as per her own representation, she often used to visit the land in question and therefore, it is not open for her to contend that she was not at all aware of the affixure of notice under the Revenue Recovery Act. But the files produced by the office of the first respondent would disclose that the respondents were aware of the address of the petitioner as given in the writ petition and the auction conducted by them without putting the petitioner on notice, in the considered opinion of the court, is wholly unsustainable.

15. In the result, the writ petition is disposed of and the respondents are directed to give notice as per the Tamil Nadu Revenue Recovery Act and hear the objection of the petitioner and pass orders as expeditiously as possible within a period of eight weeks from the date of receipt of a copy of this order. It is made clear, that this court has not set aside the sale effected in favour of the third respondent, which is the subject to the outcome of the enquiry to be conducted by the respondents, pursuant to the orders passed in this writ petition. Till such time, the respondents complete the enquiry, the third respondent is restrained from alienating or encumbering the property in question. No costs. Consequently, connected miscellaneous petitions are closed."

6. Pursuant to the above, it appears that an enquiry was conducted by the first respondent, wherein, the petitioner had also participated. However, according to the respondents, the

petitioner was given opportunity to repay the due amount on or before 30.6.2011, but despite ample opportunity, the petitioner again sought for grace time to enable her to pay the amount in two instalments, which could not be entertained. But this version was denied by the petitioner, stating that she is always ready and willing to pay the entire due amount in one lump sum, however, one of the employees of the first respondent wrote a representation on behalf of the petitioner as though she was ready and willing to pay the dues in two instalments. Thereafter, the first respondent passed the impugned order dated 19.5.2011 in and by which, the sale auction already confirmed in favour of the 3rd respondent came to be reconfirmed.

7. Challenging the same, the petitioner has come forward with present Writ Petition in W.P.No.15218 of 2011.

8. While admitting the above said Writ Petition on 29.6.2011, this Court has passed the following interim order in M.P.No.1 of 2011:

"There will be an order of interim stay of reconfirmation order passed by the Collector, subject to the condition that the petitioner deposits an amount of Rs.3,70,000/- (Rupees Three lakhs and Seventy thousand only) with the first respondent-District Collector, within one week from the date of receipt of a copy of this order. Failing which, the interim stay granted today shall stand automatically vacated, without any further reference to this Court."

9. Pursuant to the above, the petitioner remitted the entire amount by way of Demand Draft dated 2.7.2011 to the first respondent. On compliance of the condition by the petitioner, the first respondent, vide proceedings dated 13.12.2011 cancelled the auction proceedings and reconveyed the subject property in favour of the petitioner.

10. While so, after ten months, the third respondent has come forward with the present Writ Petition in W.P.No.27847 of 2012, challenging the proceedings dated 13.12.2011 of the first respondent.

11. Mr.V.R.Appaswamee, learned counsel appearing for the petitioner would contend that since whereabouts of the petitioner's husband were not known and that they were not served with notice regarding the proceedings initiated by the first respondent under the Revenue Recovery Act, the petitioner was unable to repay the loan availed by the petitioner's husband in time. The learned counsel pointed out that in the earlier

Writ Petition filed by the petitioner, challenging the auction sale vis-a-vis confirmation of the same in favour of the third respondent, was entertained by this Court having held that the legal heirs of the original borrower, viz., the petitioner and his children were not put on notice before auctioning the property and thereby, directed the respondents to conduct enquiry by giving a notice to the petitioner. The learned counsel would submit that thereafter, during the enquiry, though the petitioner was ready and willing to repay the due amount in one lump sum, however, the first respondent without properly enquiring the matter, by impugned proceedings, dated 19.5.2011, reconfirmed the sale auction on the ground that no grace time for payment of loan amount by way of instalments, would be extended to the petitioner. The learned counsel would point out that if at all the first respondent was not inclined to entertain the same, he could have informed the petitioner or insisted for single payment without resorting to reconfirming the sale auction. The learned counsel would also contend that while entertaining the present Writ Petition, by order dated 29.8.2011, this Court granted interim stay of reconfirmation of sale auction, subject to condition that the petitioner deposits a sum of Rs.3,70,000/-, which was duly complied with by the petitioner. Therefore, taking note of the same and since the petitioner has paid entire due amount, the first respondent, by proceedings dated 13.12.2011 reconveyed the subject property in favour of the petitioner, which cannot be faulted with.

12. Upon notice, Mrs.P.Rosekamalam, learned Addl.Govt.Pleader entered appearance for respondents 1 and 2 and Mr.L.Chandrakumar, learned counsel entered appearance for respondent No.3.

13. A detailed counter affidavit has been filed on behalf of the respondents 1 and 2. The sum and substance of the counter affidavit, according to the learned Addl.Government Pleader, is that pursuant to the direction of this Court in earlier writ petition, the first respondent conducted the enquiry and after coming to know that the petitioner was not ready and willing to repay the loan amount and as the sale has already been confirmed, the first respondent reconfirmed the sale in favour of the third respondent. The learned Addl.Government Pleader would point out that while disposing of the earlier writ petition, this Court has not set aside the auction sale, but only directed the respondents to conduct the enquiry. It is further contended by the learned Addl.Government Pleader, however, subsequently, pursuant to the interim stay, though the petitioner has paid the entire loan amount, the first respondent ought not to have cancelled the auction sale since the matter has been pending before this Court.

14. Mr.L.Chandrakumar, learned counsel appearing for the third respondent/auction purchaser would contend that already auction sale was confirmed and a sale deed was also registered in favour of the auction purchaser in respect of the subject property, however, at the intervention of this Court in the earlier Writ Petition in W.P.11504 of 2010, the matter was remitted to the first respondent for conducting an enquiry by affording an opportunity to the petitioner and that it was made clear therein that this Court has not set aside the sale. He would also contend that subsequently, after serving the notice on the petitioner and taking into consideration the unwillingness of the petitioner to repay the due amount, the first respondent by proceedings dated 19.5.2011 has rightly reconfirmed the sale in favour of the third respondent. The learned counsel would further contend that only in order to find out bona fide of the petitioner, this Court granted interim stay in respect of reconfirmation of sale, subject to the petitioner depositing the due amount within the stipulated time, however, on compliance of the same by the petitioner, the first respondent ought not to have passed the impugned order dated 13.12.2011 reconveying the property in favour of the petitioner, which, according to the learned counsel, is nothing but pre-empting and pre-judging the issue which is actually seized of by this Court and no finality reached thereon. Therefore, he would contend that if at all the petitioner complied with the condition, the first respondent ought to have brought to the notice of this Court for its decision. Therefore, when the matter is sub judice, the action of the first respondent in reconveying the property in favour of the petitioner, is arbitrary exercise of power and therefore, the same cannot be sustained.

15. Heard the learned counsel appearing for the parties and perused the pleadings and materials placed on record.

16. At the outset, it is pertinent to note that the third respondent was not aggrieved over the earlier order that was passed in W.P.No.11504 of 2010 by this Court, upholding that the legal heirs of the original borrower, were not put on notice before bringing the subject property for sale in public auction under the provisions of the Revenue Recovery Act. Further, as against this order, no appeal was also preferred by the third respondent and therefore, it has become final. Since no notice was issued before conducting the public auction for the sale of the subject property, pursuant to the direction of this Court, the first respondent conducted the enquiry, wherein, according to the first respondent, the petitioner had sought for grace time for payment of the due amount to the highest bidder by way of two instalments. The first respondent, vide impugned proceedings dated 19.5.2011, rejected the request made by the

petitioner and re-confirmed the sale. This was objected by the petitioner, stating that she never sought for any grace time and that she is always ready and willing to repay the entire due amount. It is pertinent to note that if at all the first respondent was not inclined to extend the time for payment to the petitioner, he ought to have made it clear with no uncertain terms, by giving a final date as deadline, on or before which, the petitioner should make payment, failing which, sale would be reconfirmed. However, by the impugned proceedings, dated 19.5.2011, the first respondent, while declining to grant grace time to the petitioner, straight away reconfirmed the sale. Taking note of this prima facie aspect, in order to know the bona fide on the part of the petitioner as to whether she was really ready and willing to pay the entire due amount, this Court granted interim stay of the impugned proceedings in the Writ Petition (WP 15218 of 2011) filed by the petitioner, challenging the impugned proceedings, however, subject to the condition that the petitioner should deposit entire due amount of Rs.3,70,000/- with the first respondent within one week from the date of receipt of the copy of the interim order. It is not in dispute that the petitioner has complied with the condition having deposited the entire due amount with the first respondent within the stipulated time. Once the entire due amount has been paid by the petitioner in compliance of the direction of this Court, virtually, nothing survives in the matter. Taking note of this, the first respondent, namely, the then District Collector by proceedings dated 13.12.2011 cancelled the entire auction sale proceedings and re-conveyed the property in favour of the petitioner by directing the third respondent to hand over the possession to the petitioner. It is pertinent to note that all along the third respondent has not raised any objection nor protested the grant of interim stay either by filing a vacate stay petition nor any appeal despite having been served with notice and order copy of interim stay. However, after a lapse of ten months, the third respondent has come forward with the present Writ Petition, challenging the impugned proceedings dated 13.12.2011, on technical grounds that though the petitioner has complied with the conditional order, the first respondent ought not to have cancelled the auction sale, but he ought to have brought to the notice of the Court for its decision. In fact, the impugned proceedings dated 13.12.2011 passed by the then District Collector was itself objected by the present District Collector in the counter affidavit stating that it is not valid in law. Though the contention raised by the respondents that while the matter has been sub judice before this Court, on compliance of the interim order, the District Collector ought not to have cancelled the auction and reconveyed the subject property in favour of the petitioner appears to be reasonable, however, taking peculiar facts and circumstances, this Court, is unable to find any irregularity or illegality in

the impugned order dated 13.12.2011 in view of the fact that the petitioner has paid the due amount in one lump sum in pursuant to the direction of this Court. Therefore, once the entire amount was paid and accepted by the authority, there is nothing survives in the matter to probe into as already, in the earlier Writ Petition, this Court has categorically held that no notice was issued to the petitioner before conducting the public auction for the sale of the subject property in terms of the provisions of the Revenue Recovery Act.

17. In view of the above discussion, this Court does not find any merit in the Writ Petition in W.P.No.27847 of 2012 to entertain the same. Accordingly, the same is dismissed as devoid of merits. Consequently, the Writ Petition in W.P.No.15218 of 2011 is allowed and the impugned order dated 19.5.2011 passed by the first respondent in R.C.2055/2008/u2 is hereby set aside. No costs. Connected MP is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

suk
To

1. The District Collector,
Kancheepuram District,
O/o the District Collector,
Kancheepuram.

2. The Tahsildar,
Kancheepuram Taluk,
Kancheepuram District.

+3cc to Mr.V.R.Appaswamee, Advocate SR.No.47212,47213

+2cc to Mr.L.Chandrakumar, Advocate SR.No.47373

+2cc to Government Pleader SR.No.47579,4577

W.P.No.15218 of 2011 & 27847 of 2012

VD (CO)

GMV (26/10/2018)