ELIZABETH JACOB

v.

DISTRICT COLLECTOR, IDUKKI & ORS.

(Civil Appeal No.8032 of 2001)

AUGUST 21, 2008

[R. V. RAVEENDRAN AND P. SATHASIVAM, JJ]

Kerala Revenue Recovery Act, 1968:

s. 58 – Delivery of possession of immovable property purchased by a bona fide purchaser in auction sale – Application for – Not decided – Writ petition – Revenue stating to verify if property was a forest land or not – As per orders by Single Judge in writ petition possession of land delivered to auction purchaser – On appeal, Division Bench of High Court dismissing the writ petition with liberty to auction purchaser to approach civil court to establish her title and seek possession of property – HELD: Division Bench of High Court committed jurisdictional error in interfering with judgment of Single Judge – Being a bonafide auction purchaser in a revenue recovery sale, to whom title had been conveyed free from encumbrances by issue of a sale certificate, there was no need for appellant to go to a civil court and establish that the land sold to her was not forest land, that sale by Revenue authorities was valid, and, therefore, she was entitled to possession – She was entitled to seek remedy under section 58 of the Act for securing possession – It was for the State government to take necessary action if the land was forest land – Nothing was produced to show that the land sold to appellant was a forest land – Nor any steps initiated to annul the sale and return the sale consideration to the appellant – In the circumstances, Single Judge was justified in directing delivery of possession – There was no justification for the Division Bench to set aside the order of Single Judge and direct the appellant to approach the civil court to prove the negative and obtain a declaration

A *of title and possession – Order of Division Bench set aside and that of Single Judge restored – State government would be at liberty to take action in accordance with law if it finds that the land is a forest land. [para 6-9 and 17]*

Administrative Law:

B

Public Trust doctrine – Delivery of possession of land purchased by bonafide purchaser in auction sale conducted by Revenue, resisted by Forest Department on the ground that the property might be forest land – HELD: There is nothing C *on record to show that the property is a forest land – Forest Department was aware that Revenue Department was to sell the land by public auction and latter knew that former claimed the property as forest land – Both the departments could have sorted out the issue whether the property was forest land or* D *non-forest government Poramboke (waste land) – Neither of them took any steps to have declared the property as forest land or to annul the auction sale – Because of misunderstanding and non-cooperation between two departments, a bona fide purchaser in a public auction was made to run from piller to post – Inter-departmental co-*E *operation and co-ordination is vital for the smooth and successful functioning of the Government – Unless immediate and serious steps are taken for improving the co-ordination, co-operation and understanding among various departments, offenders will escape, violators will walk away, national* F *resources will be swindled, and public interest will suffer. [para 6,13-15]*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8032 of 2001

G From the final Judgment and Order dated 8.8.2000 of the High Court of Kerala in Writ Appeal No. 270 of 2000

P. Krishnamurthy, M.P. Vinod and Ajay K. Jain for the Appellant.

H P.V. Dinesh for the Respondents.

The Order of the Court was delivered by

R.V.RAVEENDRAN, J. 1. The Revenue Divisional Officer, Devikulam (second respondent herein), the Authorised Officer and delegate of the District Collector under the Kerala Revenue Recovery Act, 1968 (in short 'the Act') attached the immovable property (land bearing Survey No.1131 of Peermade measuring 9.39 acres) belonging to Ansari and others under section 36 of the Act, on 9.1.1992, to recover their abkari dues to the state government. The property was put up for sale by public auction under section 49 of the Act. The appellant was the successful bidder in the auction held on 5.6.1998. The sale was confirmed in her favour on 28.7.1998 under section 54 of the Act. On payment of the entire consideration of Rs.3,65,500/- a sale certificate was issued under section 56 of the Act, on 7.10.1998 (duly registered in the office of jurisdictional Sub-Registrar on 13.10.1998). In pursuance of such sale, the property was mutated in the revenue records in the name of the appellant and she paid the tax due in regard to the said property on 19.11.1998. The sale was not challenged by anyone. It has not been cancelled by any authority, nor set aside by any court.

2. As there was some resistance when she entered the property, the appellant applied under section 58 of the Act for delivery of possession. There was no response from the Collector or the Authorised Officer. On the other hand, there was an evasive reply dated 7.1.1999 from the Tehsildar, Peermade, requesting the appellant to contact the forest authorities. Aggrieved by the inaction on the part of the Collector under section 58 of the Act and the evasive reply, the appellant filed a writ petition before the Kerala High Court in OP No.5297/1999 seeking a direction to the respondents to deliver possession of the property purchased by her. When the matter came up for hearing before a learned Single Judge, the facts alleged by the appellant were neither denied nor disputed. The inaction to perform the statutory duty under section 58 of the Act was sought to be explained by the respondents by submitting that the matter was under verification to find out whether the

land sold to the appellant was a forest land or not. The learned Single Judge did not find the explanation satisfactory. He therefore allowed the petition by order dated 7.4.1999. He noted that the Revenue authorities had put up the said land to sale by public auction; that the appellants' bid had been accepted, the sale had been confirmed and a sale certificate had been issued to her under the Act; and the property had been mutated to her name in the revenue records and she had paid the land tax also. He was of the view that after putting up the property for sale and having received the full consideration of Rs.365500/-, the State government could not turn round and take a stand that it will not deliver possession merely on the ground that it had some doubt that the land may be a forest land. Therefore, the learned Single Judge directed the respondents to deliver the possession of the land to the appellant within one month. In pursuance of the said order of the learned Single Judge, possession of the land was duly delivered by the respondents to the appellant on 9.6.1999 under a mahazar.

3. Long after such delivery, the respondents challenged the order of the learned Single Judge in Writ Appeal No.270 of 2000. In the memorandum of appeal, the respondents disclosed that the land in question had been assigned by the Revenue department to Kunjumon and three others (in 1981 and 1984) under the Kerala Land Assignment Rules by issuing Pattas; that the said assignees had sold the land to Ansari and others; that as the said Ansari and others had committed default in paying their akbari dues, the land was attached and brought to sale by the revenue authorities. Respondents further pleaded that there was a likelihood that land assigned in favour of Kunjumon and others in 1981 and 1984 was a forest land and that the same being assigned on account of collusion and fraud by revenue authorities. They submitted that if the land was a forest land, the assignments would be void and consequently, all subsequent transfers of the land also would be void. They therefore contended that the learned Single Judge was not justified in allowing the writ petition without giving the state sufficient time to verify whether the land was forest land or not.

4. The Division Bench allowed the appeal by judgment dated 8.8.2000. It was of the view that the question whether the land was forest land as on the date when State Government had assigned the land to Kunjumon and others in 1981 and 1984 had to be decided before the appellant's claim to the land could be considered; that in the absence of any material, it was not possible to hold that the land was forest land or not; that if there was a dispute as to whether a particular land was a forest land or not, the same could not be decided either by the Forest Department or by the High Court in exercise of writ jurisdiction; and that the matter required decision by a civil court. It therefore set aside the order of the learned Single Judge and dismissed the writ petition without prejudice to the rights of the appellant to approach the civil court and establish her title and seek possession of the property on the strength of such title. Feeling aggrieved, the appellant has filed this appeal by special leave.

5. At the outset, it should be noticed that the issue is not whether the land is forest land or not. The right of the state government to take action in accordance with law, if the land is forest land is not disputed by the appellant, subject of course to her right to defend her title and possession. The limited question is whether the Division Bench was justified in directing the appellant to approach the civil court and establish that the land was non-forest land and that she had title thereto and on that basis seek possession. The question is whether the division bench was justified in interfering with the decision of the single Judge.

6. Admittedly the property was put to sale by the Authorised Officer at the instance of the state government. The appellant purchased the property in an auction held by the revenue authorities under the Act. The appellant paid the entire consideration amount to the state government and obtained a sale certificate from the state government. The property was mutated in the name of the appellant. She was entitled in law to seek delivery of possession if there was any obstruction. Section 58 of the Act provides that when any lawful purchaser holding a sale certificate seeks possession, the collector shall

A cause the proper process to be issued for the purpose of putting such purchaser in possession in the same manner as if the immovable property had been decreed to the purchaser by a decision of civil court and that the Collector may exercise all the powers of a civil court under the Code of Civil Procedure, for
B the purposes of the said section. In spite of the said mandatory provision, the Collector failed to take action when appellant claimed delivery of possession. The appellant was therefore constrained to approach the High Court. Before the learned Single Judge, the respondent's explanation for their failure to
C issue process for delivery of possession was unsatisfactory. Nothing was produced to show that the land sold to appellant was a forest land. Nor any steps initiated to annul the sale and return the sale consideration to the appellant. In the circumstances, the learned Single Judge was justified in directing
D delivery of possession.

7. The obligation to cause proper process to be issued for putting the purchaser in possession, when applied for within one year of the confirmation of sale, is a statutory obligation. The duty of the collector under section 58 of Revenue Recovery
E Act is distinct from the obligation and duty of the state to protect forest land. If the state government found on any enquiry or verification that the land was a forest land, it was open to the state government to take such action as required or permissible under law to recover possession. All that the learned Single
F Judge did was to direct that the respondents to perform their statutory duty under the Kerala Revenue Recovery Act. Being a bonafide auction purchaser in a revenue recovery sale, to whom title had been conveyed free from encumbrances by issue of a sale certificate, there was no need for the appellant to go
G to a civil court and establish that the land sold to her was not forest land, that the sale by the revenue authorities was valid, and therefore she was entitled to possession. She was entitled to seek remedy under section 58 of the Act for securing possession. It was for the state government to take necessary action if the land was forest land.
H

8. Let us next examine whether there was any material before the Division Bench to reverse the decision of the learned Single Judge. No documents were produced by the respondents to show the land was a forest land. Respondents had admitted in the memorandum of appeal that the land in question was assigned by the state government to Kunjumon and others under the Kerala Land Assignment Rules as per Patta Nos. LA 30/81, 31/81, 277/1984 and 278/1984; that the said assignees had sold the land to Ansari and others; and that on account the default committed by Ansari and others to pay their dues to the State government, the land was attached on 9.1.1992. The records also showed that forest department planted some trees in the land in the year 1992 after the property was attached and that on 3.11.1994, Tahsildar, Peermade wrote to the forest department to vacate the land, as it had to be sold by public auction. The forest department did not initiate any action in regard to the land even thereafter. On the other hand, the Revenue authorities asserted their possession and put up the land for sale in 1998 under the provisions of the Act. The appellant purchased the land in the auction sale and obtained a sale certificate, under which the land vested in her free from encumbrances. The Division Bench also noticed that the land had been shown as "government Poramboke" (that is waste land belonging to government) in the revenue records at the relevant time and that the notification under the Forest Act relied upon by the respondents did not show that the land was forest land. The Division Bench did not record any finding that the land was a forest land, but on the other hand, held that that state government had not produced any material to show that the land was forest land or part of reserved forest. It also observed that as the revenue authorities had proceeded on the basis that Ansari and others had right over the land and as the revenue authorities had sold the land to the appellant in a revenue auction, the state government could not in the normal course turn around and say that no rights were acquired by the appellant as purchaser at the revenue auction.

A 9. Having held so, the Division Bench proceeded to allow the appeal on the unsupported surmises and inferences. One surmise was that it was generally known that Revenue authorities used to assign lands by ignoring the provisions of protective enactments and the public trust doctrine. The second surmise B was that the past experience in the state showed a possibility that the land assigned in 1981 and 1984 was a forest land and the revenue authorities colluded with the assignees in assigning the land. The third was that therefore the appellant should approach the civil court and seek a declaration that the land C purchased by her was not *forest land* and establish her title and then obtain possession. Such a direction on surmises alone was unwarranted. A doubt or surmise is not proof of a fact. A claim that land may be forest land is not proof that it is forest land. A suspicion that there might have been collusion and fraud D is not proof of collusion and fraud. At all events, who should establish fraud and collusion? Is it for the state which alleged fraud and collusion by someone in 1981 and 1984, to establish those facts? Or is it for the bonafide purchaser from the state to establish that there was no fraud or collusion in respect of the property put up by the State for sale? The onus is clearly on the E state. We are therefore of the view that the Division Bench committed a jurisdictional error in interfering with the order of the learned Single Judge.

10. The issue before the High Court was whether the F appellant who purchased the land in a public auction, held by the State government in 1998 under the Revenue Recovery Act, was entitled to possession from the state government in the manner set out in section 58 of the Act. Even if the land could be deemed to be a forest land under certain G circumstances, the state should have alleged and proved the existence of those circumstances. It was for the state government to take action in accordance with law to resume the land if the land was a forest land and not for the auction purchaser to approach the civil court.

H 11. Another aspect to be noticed is that the doubts about

fraud and collusion are not against the appellant. There is no allegation of any misrepresentation, fraud, forgery, collusion or any kind of wrongful conduct on the part of the appellant. Appellant was a bonafide purchaser for valuable consideration in a revenue recovery public auction. She did not at the time of purchase know, or had reason to believe that any fraud had been committed.

12. It is of some interest to note that even as on date the state government is still in the process of verification as to whether the land is forest land or not. This Court on 6.2.2008 issued the following direction :

> "In this appeal, the disputed question of fact is involved with regard to the possession and ownership of the property having an extent of 8.39 acres of land in Survey No.1131 of Peermade Village. The disputed question of fact is whether the said land is a part of a reserve forest. It appears that in this appeal the Forest Department has not been impleaded as a party. We, however, feel that this question can be answered by the Forest Department. We direct the Chief Conservator of Forest, Government of Kerala to file a detailed affidavit as to whether the aforesaid land is within the forest reserves or not within six weeks. Two weeks' thereafter is allowed to file reply. List thereafter."

In response to the said order, the Chief Conservator of Forests filed his affidavit dated 2.5.2008 wherein he has given the following status report :

> "It is submitted that the Divisional Forest Officer, Kottayam made attempts to verify the status of the land in question through the Forest Mini Survey, Thiruvananthapuram. The Superintendent of Survey, Forest Survey, Thiruvananthapuram, as per his Letter No.223/95 dated 12.4.1996 informed the Divisional Forest Officer, Kottayam that 473 acres and 24 cents of land in Sy No.1131 is Government Poramboke as per village records and that 9 acres, 49 cents of this Poramboke were assigned as per LA No.9/81, 30/81, 27/1984, 277/1984. The Superintendent of Survey also reported that according to

A the 4" map of Peermade Village, land in Sy No. 1131 is known as "Government Reserve". He had opined that in order to confirm whether the land in Sy No.1131 is a Reserve Forest and whether the same land has been assigned, perusal of files relating to the land assignment is necessary. However, the Superintendent of Survey was not able to procure the land B assignment files from the Village Office, Peermade, Taluk Office, Peermade and office of the Sub Collector, Devikulam.

It is submitted that Chief Conservator of Forests (Protection) as per his letter No.L-32181/96 dated 25.9.1996 requested the Tahsildar Peermade to make available the Land C Assignment Files to the Superintendent of Survey, to solve the issue. However, these files were not made available."

The said affidavit also avers that the forest department planted some trees in 1992. But that is not decisive. What is D relevant is whether the land, when it was assigned by the revenue department in 1981 and 1984, was forest land. Further as the land had already been attached in January, 1992 by the Revenue department for recovery of dues, any subsequent planting of trees by forest department will not prove that the land was forest E land. In fact the Tahsildar, Peermade by letter dated 3.11.1994 referred to the planting of trees and called upon the forest department to vacate the land so that it could be sold by public auction. The forest department was aware that the Revenue department was to sell the land by public auction as long back as 1994 (See Pr. 8 of the Affidavit dated 2.5.2008 of the Chief F Conservator). But it did not take any action.

13. This case demonstrates, though in a very limited manner, the lack of co-operation and co-ordination between government departments. All departments should function in G the interest of the public and for public good. Merely because a particular department or an authority functions under a particular statute, it does not follow that they should or could ignore the provisions of other statutes. Inter-departmental co-operation and co-ordination is vital for the smooth and successful H functioning of the Government. But unfortunately there is thriving

inter-departmental rivalries and a mutual non-caring attitude towards the functioning of other departments and enforcement of other statutes. Non-cooperation between Revenue department and Forest department, Revenue department and Mines & Minerals department, Forest department and Mines & Mineral department, are too well known. Unless immediate and serious steps are taken for improving the co-ordination, co-operation and understanding among various departments, offenders will escape, violators will walk away, national resources will be swindled, and public interest will suffer. Be that as it may.

14. This is a simple case where the revenue department and the forest department could have sorted out the issue as to whether the land was forest land or non-forest government Poramboke. They had all the time between 1992 and 1998. The revenue records showed the land as Government Poramboke that is non-forest land. The forest department's claim that it is forest land is not supported any acceptable evidence. We fail to understand why the forest department cannot examine the revenue registers from time to time and take action when they came across any forest land being shown otherwise. Similarly the revenue department and forest department can sort out and demarcate what is forest land and what is non forest government land. As noticed above the forest department for the first time attempted to plant some trees in the land only in 1992 even though it knew that it was shown as government Poramboke land in the revenue records and not as forest land. Similarly, even though the revenue department knew that the forest department was attempting to plant trees in 1992 and claim that it was forest land, it chose to put up the land for auction sale in 1998, without sorting out whether the land was forest land or not, and sold the land and recovered Rs.365500 from an innocent citizen. Because of the misunderstanding and non-cooperation between the two departments, a citizen who bonafide participated in a public auction and parted with a large amount of money is made to run from pillar to post. To add

A to her woes, she has been unnecessarily directed to approach the civil court and prove the negative.

15. As noticed above to this day neither forest department nor the revenue department have taken any steps or issued any notice to have the land declared as a forest land or to annul the B sale in favour of the appellant. Though one of the grievances of the respondents in respect of the order of the learned Single Judge was that he did not give sufficient time in 1999 to verify whether the land is a forest land or not, the affidavit filed by the forest department in May 2008 in this case shows that the C issue still remains under the process of verification.

16. One last aspect. It was pointed out that in the normal course, while allowing such a writ petition, the learned Single Judge ought to have directed the Collector to initiate action D under section 58 of the Act, instead of straightaway directing possession. But there were special circumstances. Firstly, the obstruction to possession was not by a private party. Secondly the land was attached and sold by public auction, at the instance of the state government. Thirdly, without any proof, the state government contended that it wanted to verify whether land was E forest land, without explaining why then it was sold by public action.

17. We are clear that there was no justification for the Division Bench to set aside the order of the learned Single F Judge and direct the appellant to approach the civil court to prove the negative and obtain a declaration of title and possession. We, therefore, allow this appeal, set aside the order of the Division Bench, and restore the order of the learned Single Judge. Liberty, of course, is reserved to the state G government to take action in accordance in law if it finds that the land is a forest land.

R.P. Appeal allowed.