

CASE NO.:
Appeal (civil) 4226 of 2006

PETITIONER:
K.R. George

RESPONDENT:
Industrial Engineering Corporation and Ors.

DATE OF JUDGMENT: 21/09/2006

BENCH:
Dr. AR. Lakshmanan & Tarun Chatterjee

JUDGMENT:
JUDGMENT

Dr. AR. Lakshmanan, J.

Delay condoned.

Leave granted in both the special leave petitions.

Civil Appeal No. 4226 of 2006 (@ S.L.P. (C) No. 3177 of 2005) was filed against the final order dated 12.3.2004 passed by the High Court of Kerala in R.P. No. 359 of 2003. Civil Appeal No. 4227 of 2006 (@ S.L.P. (C) No.3178 of (2005) was filed against the final order dated 9.4.2004 passed by the High Court of Kerala in C.M.A. No.63 of 2000.

We have heard the arguments advanced by Mr. K. Sukumaran, learned Senior counsel for the appellant and the arguments of Mr. T.L.V. Iyer, Mr. M.N. Krishnamani and Mr. L.N. Rao, learned Senior counsel for the respective respondents. We have carefully perused the orders passed in C.M.A. No.63/2000 And also the orders passed in R.P. No. 359/2003 and we have also considered other documents placed on record. A careful perusal of the orders in C.M.A. and the Review Petition, in our opinion, would reveal that both the appeals lack merits and one liable to be dismissed for the reasons recorded in the orders passed in C.M.A. and Review Petition. When the instant matter came up for hearing before us on the last occasion, we passed the order at the request of Mr. K. Sukumaran, learned Senior counsel for the appellant and an opportunity was given to deposit a sum of Rs.2 crores to show the bonafide of the appellant. Accordingly, we passed the following orders on 5.9.2006:

Heard learned Senior Counsel appearing on either side at some length.

During the pendency of the review petition before the High Court, an affidavit was filed by one K.V. Bhaskaran, who is not a party to the proceedings, expressing his willingness to remit the entire sale consideration before the High Court for taking assignment of the property in question in his favour. We, therefore, direct the said K.V. Bhaskaran to deposit a sum of Rs.2 crores with the Registrar General of this Court on or before 12th September, 2006 (upto 5 PM), by way of Demand Draft drawn in the name of the Registrar General, Supreme Court of India. This direction is issued to show his bonafide. We pass this direction without prejudice to the rights and contentions of the other contesting respondents.

Respondents No. 9 & 10 are permitted to file additional affidavit.

Post the matter on 14th September, 2006 as part-heard."

When the matter is listed today for further hearing, the learned Senior Counsel for the appellant submitted that even though time was granted to deposit Rs.2 crores, Mr. K.V. Bhaskaran has not complied with the direction

and has not deposited the sum of Rs.2 crores as ordered by this Court.

Our attention has also been drawn to the additional affidavit filed by the respondent no.9, who is the purchaser of the property involved in the case. By the said affidavit, the serious conduct of the appellant herein by abusing the process and order of this Court has been clearly set out. Subsequent to the order dated 5.9.2006 of this Court, an advertisement was published in the leading newspapers "Malayala Manorama" and "Mathrubhoomi" on 9.9.2006, offering to sell the properties involved in the case. The name of the advertiser is not disclosed in the advertisement. Instead two telephone numbers are given, one is of Shri Thomas, Kanichayi House, Chalakudy, the brother-in-law of the appellant herein. Apparently, the advertisements are at the instance of the appellant Mr. K.R. George and for the purpose of raising Rs.2 crores for deposit before this Court. When contacted over the telephone by the respondent no.9, the advertiser informed that the sale price of Rs.5 crores is negotiable and out of which Rs.2 crores are to be deposited in this Court and that this Court will directly convey title to the purchaser. A true copy of the said advertisements has also been filed here and marked as Annexure 'A' (Colly) along with this affidavit. It is, therefore, clear that the offer made by Mr. K.V. Bhaskaran by way of an affidavit filed in the Review Petition, is not bonafide or genuine and that he has no financial ability to make the deposit. The advertisement at the instance of the appellant herein offering to sell 9th respondent's land is an abuse of this Court dated 5.9.2006 and is an attempt to defraud intending purchasers.

Events subsequent to the sale of properties to the respondent No. 9 are also placed on record. Consequent to the issue of sale certificate on 31.5.2004 by the District Court, title deeds were executed in favour of the respondents and possession of the properties were delivered by the Court to the respondents on 28.6.2004. Eversince the respondents are the registered owners, paying land tax and other dues. Mutation also was effected in their favour. On 12.7.2004, respondents sold by registered sale deed no.4064 of 2001, 0.04047 hectares of land and old buildings no.T.C.43/1392 to 1399 therein in Survey No.570 (which is the part of the land in question) to Shri K.V. Sadanandan. The land in Survey No.556 was also sold to him by registered sale deed. On 22.9.2004, these respondents have also sold part of the land in Survey No.121/1 and 122/1 and building nos.1190 and 1189 in ward No. 9 of Ollukara Panchayat to Shri Samthej s/o Shri K.V. Sadanandan by registered sale deed No. 5461 of 2004 of the Sub-Registrars Office Ollukkara. Thereafter, the purchasers are in possession of the respective land and are paying basic tax on land. Subsequently, the respondent No. 9 submitted an application on 31.12.2004 for the development of the land as a housing colony to the Municipal Corporation of Thrissur. A plan was also submitted along with the application. The proposal was approved by various authorities including the Chief Town Planner by order No. C-2/548/05 dated 28.5.2005. The Municipal Corporation has duly granted permission and approved the plan by order No. OLK-4573/2004 dated 15.2.2006. The said permission order has also been produced and marked here as Annexure 'B' to this affidavit. The respondents have also constructed compound walls around the entire area of land. They have filled up and leveled the land, developed and marked and plotted the land into 80 plots, constructed internal roads, provided drainage facilities, laid pipes and made other facilities. The approved plan is being implemented which provides for a School, Garden, Waling Track, Swimming Pool, Super Market, etc. It is stated that the work is in progress. After the purchase of the land in question, respondents have incurred huge expenditure for the development of the land as per the approved plan. The respondents have also published advertisement for sale of the plots and consequently most of the plots are already allotted to various third parts, agreements were entered into with them and they are making payments of consideration in instalments under the agreements. Sale deeds have already been registered to some of the allottees of plots who have paid the consideration for their plots. True copy of one of the sale deeds dated 26.5.2006 has also been filed and marked as Annexure 'C' to this affidavit. It is registered as No.

2224/I/2006 of the Sub-Registrar's Office, Ollukkara on 26.5.2006.

In view of the events subsequent to the sale of the properties to the respondents, the respondents have taken various steps to obtain the plan approved and also taken steps for construction of the building, etc. The Kerala Municipal Corporation has also received their dues, which were outstanding for a very long time because of long legal battle. For the foregoing reasons, there is absolutely no bonafide on the part of the appellant in approaching this Court and challenging the orders passed in Civil Miscellaneous Appeal (C.M.A. No. 63/2000) and in the Review Petition (R.P. No. 359 of 2003). We see no warrant for interference with the orders passed and in view of the subsequent events, as mentioned above, both the civil appeals stand dismissed with no orders as to costs.

JUDIS