(2024) 12 KL CK 0029

In the High Court Of Kerala

Case No : Writ Appeal No. 1964 Of 2024

A O Thomas — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision : 06-12-2024

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 44, 44(3)

Citation : (2024) 12 KL CK 0029

Hon'ble Judges : Nitin Jamdar, CJ;S. Manu, J

Bench : Division Bench

Advocate : P.J.Joe Paul, K P Harish, B Pramod

Final Decision : Disposed Of

Judgement

Nitin Jamdar, CJ

1. Heard Mr. P. J. Joe Paul, learned counsel for the Appellant, Mr. B. Premod, learned Standing Counsel for the Kerala State Electricity Board and Mr. K. P. Harish, learned Senior Government Pleader.

2. The Original Petitioner / Appellant has approached the learned Single Judge at the stage when a notice is issued under Section 44 of the Kerala Revenue Recovery Act, 1968 (the Act of 1968). Ext. P2 notice (translation from Malayalam supplied by learned counsel for the Appellant), the subject matter of challenge before the learned Single Judge, reads thus:-

""Administrative Language – Mother Tongue"

File No : TLKCKY/3561/2024 – D5

Taluk Office, Chalakudy

Date: 07 – 10 – 2024

E – Mail : thlrckdy.ker@nic.in

Phone No : 0484 2705800

Notice

As per R. R. C. No. 2022/5622/08, Rs. 3,71,070 with interest is due to KSEB from Smt. Nancy Joseph, Aarambilli House, Melur Village, Chalakudy Taluk, Thrissur District. Proceedings under the Revenue Recovery Act have been initiated in the name of Smt. Nancy Joseph as she has defaulted in the payment of the aforesaid amount. While the aforesaid amount was due, 8.09 Ares in Sy. No. 814/1 – 28 in Melur Village standing in the joint name of Smt. Nancy Joseph was transferred vide deed no. 1924/1/2020 dated 08.11.2020 of Chalakudy S. R. O. to Thomas in Melur Village in Chalakudy Taluk in Thrissur District.

Section 44 of the Kerala Revenue Recovery Act, 1968 states that a property which was transferred while arrears stood unpaid could be attached and sold for realizing the arrears as if such sale had not transpired. Hence, the aforesaid transfer is legally unsustainable. In such circumstances, you may be present before Tahsildar, Chalakudy at 10.30 a.m. on 14.10.2024 with requisite documents for showing cause, if any, for not cancelling the proceedings by which the property was transferred. If not, further legal proceedings will be taken in your absence.

Tahsildar

Signed by Jacob K. A.

Date: 08 – 10 – 2024 16:40:49

Addressed to

1) Joseph, s/o Thomas, Aarambilli House, Melur Village

2) Nancy, w/o Joseph, Aarambilli House, Melur Village

3) Thomas, s/o Ouseph alias Ouseppunni, Aarambilli House, Melur Village

Copy to : Village Officer, Melur (For time bound service of notice to the parties and for returning endorsed copy)”

3. The main grievance of the Appellant is that the Tahsildar has contemplated under this notice that the transaction itself should be cancelled if sufficient cause is not shown. The contention of the Appellant is that under Section 44 of the Act of 1968, cancellation of a document is not contemplated but an attachment of the property.

4. Section 44(3) of the Act of 1968 reads thus:-

“(3) Where a defaulter transfers immovable property to a near relative or for grossly inadequate consideration after public revenue due on any land from him has fallen in arrear, it shall be presumed until the contrary is proved, that such transfer is made with intent to defeat or delay the recovery of such arrear, and the Collector or the authorised officer may, subject to the order of a competent court, proceed to recover such arrear of public revenue by attachment and sale of the property so transferred, as if such transfer had not taken place:

Provided that, before proceeding to attach such property, the Collector or the authorised officer shall-

(i) give the defaulter an opportunity of being heard;

and

(ii) record his reasons therefor in writing."

5. Therefore, according to us, the appropriate course of action would be to construe Ext. P2 notice as a notice issued under Section 44(3). In view of this clarification given, no further orders are necessary. It is open to the parties to show the cause to the Tahsildar who will take necessary decision as per law. The Appellant will appear before the Tahsildar on 9 December 2024 at 11:00 a.m. The impugned order stands modified as above.

6. The writ appeal is accordingly disposed of.