

(1981) 08 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 2909 of 1980-K

A. Padmanabhan

APPELLANT

Vs

District Collector, Trivandrum

RESPONDENT

Date of Decision : 25-08-1981

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 65, 81

Citation : AIR 1982 Ker 177

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Advocate : S. Sankarasubban, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Khalid, J.—The petitioner was an assessee under the Travancore General Sales Tax Act. He was conducting a business in coir about 30 years back. Revenue recovery proceedings were initiated against him under the Travancore-Cochin Revenue Recovery Act, 1951, for the arrears of sales tax due for the years 1125, 1950-51 and 1951-52. 3 cents of land which belonged to him were sold in public auction in 1961 pursuant to revenue recovery proceedings. This did not satisfy the entire arrears due. Therefore, the petitioner was served with a notice, Ext. P1. dated 23-7-1980 u/s 65 of the Kerala Revenue Recovery Act, 1968 informing him that he would be arrested in case the balance amount was not paid. Hence this petition to quash Ext. P1 and all further proceedings pursuant to Ext. P1.

2. It is not disputed that the arrears for which revenue recovery proceedings were taken were for the relevant years mentioned above and that the property was sold pursuant to the action taken under the Travancore-Cochin Revenue Recovery Act.

3. The question for consideration is whether the proposed action as per Ext. P-1 under the Kerala Revenue Recovery Act is valid in law.

4. The petitioner's case is that proceedings u/s 65 of the Kerala Revenue Recovery Act for his arrest can be taken only after the service of the written demand u/s 34 of the said Act and after being satisfied of the conditions laid down in Section 65 and that such a notice has not been issued. The State in the counter-affidavit states that such a notice was issued to him. I do not think it necessary to try to resolve this factual dispute between the parties,

5. Section 87 of the Kerala Revenue Recovery Act, 1968 repeals among other Acts the Travancore-Cochin Revenue Recovery Act, 1951 also. There is no saving clause in the section which either keeps alive the action taken under the repealed Act or which enables the authorities to pursue the remedies once initiated under the said Act. That being so, what falls for decision is whether the proceedings initiated u/s 65 of the Kerala Act are sustainable.

6. provisions of statutes like this whereunder the concerned authorities have powers to attach and sell properties or to deny a citizen his personal liberty have to be very strictly construed and unless the authorities exercising such powers satisfy the Court about the source of such power the Courts will be extremely slow in going to the rescue of the authorities to uphold the action taken by them. The repealed Act did not contain a provision similar to Section 65 of the Kerala Revenue Recovery Act. Therefore arrest of a defaulter under the repealed Act was not permissible. Is it permissible to resort to Section 65 of the Kerala Act and arrest the defaulter? My answer is in the negative. Unless it is possible to locate the specific conferment of power to continue the recovery proceedings, even by resort to Section 65, arrest in such cases has to be faulted. Act 15 of 1968: was enacted to consolidate and amend the laws relating to the recovery of arrears of public revenue. All modes of recovery which were permissible under the repealed Act can be resorted to for recovery of arrears which fell due before the new Act came into force. To apply a provision like Section 65 of the new Act for such arrears would be to make it retrospective in operation. This cannot be allowed.

7. Support for this conclusion of mine can be had from a case decided by a Division Bench of this Court reported in Kunjacko v. Tax Recovery Officer 1966 KLT 167. In that case, arrears due under the Travancore I.T. Act and the I.T. Act were sought to be realised by recourse to arrest of the petitioner there under the relevant provisions of the I.T. Act, which power was not available to the authorities under the Travancore Act. The Division Bench was considering a writ of habeas corpus filed by the aggrieved person. It was held that the petitioner there was not liable to be arrested or detained for non-payment of the tax under the Travancore I.T. Act, 1121 apparently on the ground that the said Act did not confer on the authorities a power to arrest the defaulter. The principle enunciated by the Division Bench applies squarely to this case. I hold that the proposed arrest in this case is not permissible in law.

In the result, I quash Ext P1 and all proceedings pursuant to Ext. P1 and allow this petition. The parties are directed to bear their costs.