

(1978) 01 KL CK 0026
In the High Court Of Kerala
Case No : O.P. No. 46 of 1976-B

Anandalakshmi

APPELLANT

Vs

The Deputy Tahsildar and Another

RESPONDENT

Date of Decision : 12-01-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Revenue Recovery Act, 1968 — Section 5, 7, 7(3), 8, 8(3)

Citation : (1978) 01 KL CK 0026

Hon'ble Judges : Chandrasekhara Menon, J

Bench : Single Bench

Advocate : K. Sukumaran and K.K. Usha, for the Appellant; N. Dharmadam, Government Pleader, for the Respondent

Judgement

Chandrasekhara Menon, J.—As per the Collector's proceedings dated 31st October 1975 a Revenue Recovery Certificate with requisition for realisation of an amount of Rs. 2,500 towards customs dues penalty from M/s Intercontinental Fisheries, Cochin, was received by the 1st Respondent, the Deputy Tahsildar, Revenue Recovery, Cochin. Demand notice u/s 7 of the Kerala Revenue Recovery Act, 1968 (hereinafter called "the Act") was issued to the Village Officer, Rameswaram Village, Cochin for realisation of the amount from the parties concerned. M/s Intercontinental Fisheries is a proprietary concern of Shri V.K. Sreedharan, husband of the Petitioner. According to the counter-affidavit filed by the 1st Respondent in the matter on 2nd December 1975, the village officer went to the house of the defaulter and enquired about him. The Petitioner informed him that Shri Sreedharan was at Calcutta. It is alleged that the Demand Notice was shown to her and the details of arrears explained. She is alleged to have requested for time till 10th December 1975 for intimating the fact to the defaulter and to settle the matter. It is further alleged that about a week after, the defaulter's son Sri V. Kishore met the village officer and intimated him that his father is not liable to pay the amount and the matter will be settled on 20th December 1975 when his father returns from Calcutta. The 1st Respondent

alleges that nothing was done on 20th December 1975, and the village officer met the Petitioner again. The Petitioner promised to settle the matter within a week. The Respondent is said to have waited for a week more. But it is alleged that the defaulter or the Petitioner did not do anything to settle the matter as promised by the Petitioner. Therefore, on 29th December 1975 the village officer went to the house of the Petitioner and asked the whereabouts of the defaulter and also requested the Petitioner to clear the arrears. As she is said to have shown an indifferent attitude stating that as neither she nor her husband is liable to pay the arrears no recovery steps can be taken against him, the second Respondent attached the movables found in the house. The attachment was effected by the Village Officer and the Revenue Inspector when the Petitioner and a major son of the defaulter were present.

2. The Petitioner has approached this Court contending that the movables belonged to her and there was no service of notice on the defaulter and in the absence of such notice the attachment is illegal and no further proceedings can be taken on that. She has prayed for a writ of certiorari to quash Exts. P-1 and P-2; Ext. P-1 being the demand notice u/s 7 of the Act and Ext. P-2 the list of movables attached. There is also a prayer for a writ of mandamus commanding the Respondents not to take any recovery proceedings against the Petitioner's property for the alleged arrears due from M/s Intercontinental Fisheries. Another prayer has also been made for a direction to return the articles attached to the Petitioner.

3. What was contended by the learned Counsel for the Petitioner is that the condition precedent for effecting the attachment u/s 8 of the Act has not been fulfilled in the case. His contention is that in the absence of non-compliance with Section 7 of the Act, no attachment could be effected.

4. In regard to the contention raised in the O.P. that the movables belonged to her, Mr. Sukumaran, learned Counsel for the Petitioner quite correctly conceded that the question as to whether the movables belonged to her or not cannot be decided in the proceedings. However, as the movables having been attached from the house where she is residing and also from her custody, if her other contentions are to be accepted, they should be given back to her.

5. I am inclined to agree with the contention of the Petitioner that the attachment is vitiated by the fact that the condition precedent before such attachment could have been effected is not fulfilled in this case. Sections 7 and 8 of the Act read as follows:

7. Demand Notice: When any movable property is to be attached for arrears of public revenue due on land, the Collector or the authorised officer shall furnish the person employed to make the attachment a demand in writing signed by him. The demand shall contain the name of the defaulter, the amount of the arrears of public revenue due on land for which the attachment is to be made, the date on which such arrear fell due and such other particulars as may be

prescribed. The person employed to make the attachment shall show the demand on writing to the defaulter and if he fails to remit the amount in arrear together with the interest thereon and the cost of process immediately, the demand in writing shall be the authority for making the attachment.

8. Attachment of movable property (other than growing crops and ungathered products) in the possession of defaulter:

(1) Where the property to be attached is movable property (other than growing crops and ungathered products) in the possession of the defaulter, the attachment shall be made by actual seizure. The officer employed to make the attachment shall, after making the attachment, deliver a copy of the demand in writing to the defaulter endorsing thereon a list or inventory of the property attached and the details of the place where it is lodged or kept; and in the copy of the demand delivered to the defaulter it shall be stated that the property attached will be immediately brought to public sale, unless the amount in arrear together with the interest and the cost of process be previously discharged.

Explanation: For the purposes of this sub-section, touching of an article and declaring that it has been attached, shall be deemed to be attachment by actual seizure.

(2) The attachment shall, as far as possible, be made in the presence of two persons of the locality, other than Government servants, who shall be required to attest the list or the inventory of the property attached.

(3) When a defaulter is absent, a copy of the writing with the endorsement shall, immediately after the attachment, be left with some adult male member of his family living with him, or affixed at his usual place of residence or on the premises where the property was attached.

6. It might be noted that the demand in writing which should be shown to the defaulter is the authority for making the attachment. If the person employed to make the attachment shows the demand in writing to the defaulter and if he fails to remit the amount in arrears together with interest thereon, then only attachment could be effected. Therefore, for the purpose of effecting the attachment it is mandatory that the demand in writing should have been shown to the defaulter. If the demand in writing is shown to him he could have warded off the attachment by remitting the amount. I find there is no provision in Section 7 which deals with the case where the defaulter is absent. u/s 8 after attachment it is necessary that the demand in writing should be delivered to the defaulter, endorsing thereon a list of the property attached and the details of the place where it is lodged or kept. And in the copy of the demand delivered to the defaulter it shall also be stated that the property attached will immediately be brought to public sale unless the amount in arrear together with the interest and the cost of process be previously charged. Sub-section (3) of Section 8 states that when a defaulter is absent a copy of the writing with the endorsement shall, immediately after the attachment, be left with some adult male member of his

family living with him, or affixed at his usual place of residence or on the premises where the property was attached. Sub-section (3) deals only with regard to the delivery of the demand notice.

7. What was contended by the learned Government Pleader Shri Dharmadan is that Sub-section (3) would attach to Section 7 also because, according to him, the provisions in Sections 7 and 8 are enabling provisions for effecting immediate attachment of movables other than growing crops and ungathered products. I do not agree with him. Ordinarily to invoke coercive process without demanding first the amount due from the party concerned would be inequitable and unjust. In particular cases to avoid loss to public revenue, the Legislature had thought it fit to make the provision whereby the demand is shown to the defaulter and immediately thereafter the attachment is effected. That is what is provided in Sections 7 and 8. But the Legislature would not have thought at all as would be clear from the wording in the provision that such a procedure can be adopted when the defaulter is not even informed of the demand against him in writing.

8. It might be noted that in considering the question of validity of Section 5 of the Act, a Division Bench of this Court has pointed out that Chapter III of the Act provides for the attachment and sale of the defaulter's immovable property and also for appointing an agent for the management of the defaulter's immovable property as well as for the arrest of the defaulter. Chapter II provides for attachment of movables. The court pointed out that detailed safeguards are provided under the chapter to protect the rights of the defaulter. Pointed reference is made to Section 7, for instance, in Chapter II which provides that when any movable property is to be attached for arrears of public revenue, the Collector or the authorised officer shall furnish the person the demand in writing signed by him. And it is after showing the demand notice to the defaulter that the officer proceeds to attach the movables of the defaulter. No doubt, when the question of presenting the demand notice after attachment is not possible, the Legislature makes the provision that when the defaulter is absent, a copy of the writing shall be left with some adult male member of the family. But that will not indicate that the initial showing of the demand notice to the defaulter can be avoided by leaving the demand notice with some adult member of the family or affixing the same at the place of residence or on the premises where the property was attached. According to me the legislature might have thought it fit not to empower the revenue recovery officers to proceed with the attachment without first showing the notice to the defaulter. That is why, no provision is made in Section 7 like that in Section 8 under Sub-clause (3).

9. Apart from that, the courts cannot extend beyond natural and proper limits the language of an Act. The courts need not supply omissions or defects nor language strained to meet the justice of an individual case. It will be apposite in this connection to quote the words of Lord Brougham in *Gwynne v. Burnell* (1840) 7 Cl. and F. 572, 696.

We depart from the plain and obvious meaning on account of such views (as

those pressed in 43 Geo. 3, c. 99), we do not in truth construe the Act, but alter it. We add word to it, or vary the words in which its provisions are couched. We supply a defect which the legislature could easily have supplied, and are making the law, not interpreting it. This becomes peculiarly improper in dealing with a modern statute, because the extreme consciousness of the ancient statutes was the only ground for the sort of legislative interpretation frequently put upon their words by the judges. The prolixity of modern statutes, so very remarkable of late, affords no grounds to justify such a sort of interpretation.

[See also *Kumar Kamalajaran Roy v. Secretary of State* (1939) L.R. 66 Ind. App. 1, 10].

A statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. The mere fact that some certain point was not present to the mind of the draftsman when he drew the Act does not necessarily constitute that point a *casus omissus*.

10. More than that, this is a case of interpreting of a provision where power is given to Government to effect the recovery by summary process. That is a special provision resting on public grounds as the Supreme Court pointed out in *Ramrao Jankiram Kadam Vs. State of Bombay*, . The provision being so very special it is clear that the limitations on the power thus conferred should be strictly construed. The learned Government Pleader referred to the decision of the Supreme Court in *The State of Kerala and Others Vs. Motor and General Finance Ltd.*, contending that in the matter of attachment, the proper remedy to the aggrieved party would be to file a fresh suit in proper court and not to invoke jurisdiction under Article 226 of the Constitution. Certainly this would be relevant in the matter of consideration of the question whether the properties attached belonged to the wife of the defaulter and therefore the attachment was wrong. But, here I am not disposing of the matter on that ground. The question that is raised by the Petitioner from whose residence the movables have been attached (the list of the movables itself would indicate that they are household utensils and furniture, etc.) is that no attachment at all has been effected in the legal manner as the condition precedent which should empower the officers to attach the movables has not been fulfilled, and therefore, those movables should be returned to the Petitioner. This court certainly under Article 226 could consider the question, whether the movables have really been attached in accordance with the mandatory statutory provisions in the matter. By an order dated 2nd January 1976, in C.M.P. No. 158 of 1976 filed in this O.P. this Court had directed that the articles seized will be released to the Petitioner on condition that she provides security to the satisfaction of the officer as regards the value of the articles. It is submitted that she has taken back the movables on the basis of that order. In the circumstances, I would declare that the attachment effected is illegal and of no effect as such and the Respondents will not take any revenue recovery proceedings against the properties attached on the basis of the attachment. This will not certainly prevent the Respondents from taking

appropriate proceedings for collecting of the amount of Rs. 2,500 towards customs dues penalty from M/s Intercontinental Fisheries and its proprietor in accordance with law.

The O.P. is disposed of as above. I make no order as to cost. In the light of the decision that I have given that the attachment was illegal, the security furnished by the Petitioner would be released.