(2016) 03 KL CK 0174

In the High Court Of Kerala

Case No : Writ Petition (C) No. 701 of 2011 (K)

C.B. Govindankutty APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:
Kerala Panchayat Raj Act, 1994 — Section 210

Citation : (2016) 4 KLT 929

Hon'ble Judges : Mr. K. Harilal, J.

Bench : Single Bench

Advocate : Sri. S. Shanavas Khan, Advocate, for the Respondents Nos. 2 to 4; Smt. V.P. Sathi, Government Pleader, for the Respondents No. 1; Sri. Shaji P. Chaly, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

K. Harilal, J. - This writ petition is filed challenging Ext.P1 revenue recovery demand notice issued to the petitioner under Section 210 of the Kerala Panchayat Raj Act, 1994 (for short ''the Act'') by the 2nd respondent for recovering the alleged loss caused to the Panchayat due to re-auction of the Chittoor - Mulampally Ferry Service. The petitioner had entered into an agreement with the 4th respondent Panchayat on 4/5/2010, for a period of one year, for conducting the ferry service between Chittoor and Mulampally and the aforesaid agreement was expired on 31/3/2011. As per the said agreement, an amount of Rs. 3,80,500/- is to be deposited to the Panchayat for conducting the ferry service. Subsequently, the petitioner could not proceed with the ferry service and thereupon, the 4th respondent Panchayat re-auctioned the ferry service to another person and the Panchayat has suffered heavy loss, by the re-auction.

2. According to the Panchayat, as per the contract, the petitioner is duty bound to conduct the ferry service without any break. But, contrary to the terms of the contract, the petitioner could not conduct the ferry service properly and later the

service itself ceased to exist. The Panchayat is duty bound to consider the grievance of the public. In such circumstance, the Panchayat had to conduct a re-auction at the risk and cost of the petitioner, since he stopped the ferry service abruptly during the contract period. In short, according to the Panchayat, the petitioner had committed breach of contract. Therefore, according to the terms of contract, the 4th respondent Panchayat has the right to realise the loss suffered due to breach of contract allegedly committed by the petitioner. The Panchayat has the right to initiate action for realisation of the loss suffered by the Panchayat and thereupon, initiated proceedings under the Revenue Recovery Act to realise an amount of Rs. 58,850/- with interest from the petitioner. Consequently, Exts.P1 and P2 notices are issued under the provisions of the Revenue Recovery Act.

3. The petitioner submits that the 4th respondent Panchayat failed to carry out their promises, rather they initiated hasty measures, to terminate the contract, for aiding some interested persons, who are having high political influence. He has not committed breach of contract. So, he is not liable to pay any amount. The amounts quantified under Exts.P1 and P2 are liquidated damage, which require adjudication by the civil court or an Arbitrator. The amount allegedly due from him is not recoverable under the provisions of the Revenue Recovery Act, as arrear of public revenue, as the same is not permissible under Section 210 of the Act. As per the Act, any arrear of cess, rate, surcharge or tax imposed or fees levied under the Act alone will be recoverable, as arrear of public revenue by resorting to the proceeding under the Revenue Recovery Act and the amount claimed as unliquidated loss suffered by the Panchayat would not fall under any of the aforesaid heads. It is with these averments, this writ petition is filed with a prayer to issue a writ of certiorari calling for Exts.P1 and P2 and quash the same.

4. The respondents 2 to 4 filed a counter affidavit to justify the revenue recovery proceedings initiated against the petitioner under Section 210 of the Act. According to the respondents, the damage or loss caused to the Panchayat, due to the breach of contract, committed by the petitioner, is also recoverable under Section 210 of the Act or Rule framed by the Government, as per SRO No. 319/1962 published in Kerala Gazette dated 13/11/1962.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent Panchayat.

6. In view of the rival pleas and the submissions made at the Bar, the question to be considered is, whether the claim for unliquidated damages or loss arising out of a breach of contract between the Panchayat and a person can be recovered by the Panchayat, without adjudication, invoking revenue recovery proceedings under Section 210 of the Panchayat Raj Act or the Rule framed by the Government, as per SRO No. 319/1962 published in the Gazette dated 13/11/1962.

7. The statutory mandate under Section 210 of the Act is that any arrear of cess

or rate, surcharge or tax imposed or fees levied under the Act shall be recoverable as an arrear of public revenue under the law relating to the recovery of arrears of public revenue for the time being in force. On an analysis of the above provision, it could be seen that the scope and extent of the right to recover the amount due to the Panchayat, as arrear of public revenue, is confined to arrear of cess or rate, surcharge or tax imposed or fee levied, under the Act only. Any amount due to the Panchayat, other than the arrear of cess or rate, surcharge, fees etc., is not recoverable as arrear of public revenue, as the same is seen consciously excluded from the various arrear specifically enumerated under Section 210 of the Act. In other words, no amount, other than arrear of cess or rate, surcharge or tax, can be recovered by initiating revenue recovery proceedings under Section 210 of the Act.

8. In the instant case, indisputably, the amount is claimed as unliquidated loss, suffered by the Panchayat, caused by re-auctioning of the right to conduct ferry service. Indisputably, the loss is unliquidated one which requires adjudication and quantification thereunder. That apart, breach of contract is also a disputed question which requires adjudication before a civil court or an Arbitrator. In this analysis also I find that the claim for an unliquidated loss or damage caused to the Panchayat, under a contract between the Panchayat and a person, cannot be realised under Section 210 of the Kerala Panchayat Raj Act by resorting to revenue recovery proceedings as the recovery of amount due as unliquidated damages or loss are seen excluded from various arrear enumerated under Section 210 of the said Act. The Revenue Recovery Act is only an instrument in the hands of the Government or Local Authority for realisation of the amount due to them, if the amount sought to be recovered is liquidated or quantified amount. This may be the reason why the legislature so consciously excluded such claims from the purview of Section 210 of the Kerala Panchayat Raj Act. So, it can be safely concluded that damage or penalty or compensation, for the loss suffered by the Panchayat, due to breach of contract, by the other party to the contract cannot be realised by resorting to revenue recovery proceedings under the Revenue Recovery Act, invoking the power under Section 210 of the Act, as all claims other than cess, rate, surcharge, fees are excluded from the ambit of Section 210 of the Act.

9. The learned counsel for the respondent Panchayat cited the decision reported in Pudunagaram Grama Panchayat v. Saleem [2005 (4) KLT 415]. In the above decision, the Division Bench of this Court held that arrear of rent payable by successful bidder in respect of a market is an amount recoverable under the revenue recovery proceedings. Here, I am of the view that the facts involved in the above case are entirely different, as, there, the amount was a liquidated arrear and not one which requires adjudication. But, here the claim is one which requires to be adjudicated and decided by the court or Arbitrator.

10. The next point to be considered is, can the unliquidated loss or damage suffered by the Panchayat be recovered in the manner provided for collection of

taxes by resorting to revenue recovery proceedings, under the Rule framed by the Government, as per SRO No. 319/1962 published in the Kerala Gazette dated 13/11/1962. The said Rule reads as follows :

"All costs, damages, compensation, penalties, charges, fees (other than school fees), expenses, rents, contributions and other sums which under the Kerala Panchayats Act, 1960 (Act 32 of 1960) or any other law or rules or bye-laws made thereunder are due by any person to the Panchayat, may, if there is no special provision in the Act or in the other law or in the rules or bye-laws made thereunder for their recovery be demanded by bill which shall be served on the person concerned and recovered in the manner provided in the rules for the collection of taxes under the said Act."

According to the said Rule, all costs, damages, compensation, penalty, charges, fees, expenses, rents and contributions and other sums due to the Panchayat from any person under the Panchayat Raj Act, 1960 or any other law or rules or bye-law alone can be recovered in the manner provided in Rules for collection of taxes under the said Act. Obviously, the aforesaid amounts due to the Panchayat from any person are made recoverable in the manner provided for collection of taxes under the said Rule provided that the amount must be one due under the Panchayat Raj Act or any other law or rules or bye-laws. It follows that the amount due to the Panchayat under any source other than Panchayat Raj Act or Rules or bye-laws, cannot be recovered under the said Rule. A claim for unliquidated loss or damage arising out of a breach of contract between the Panchayat and a person can never be deemed to be a claim under the Panchayat Raj Act or any other Act, Rules or bye-laws and it is a claim under the agreement entered between the parties and the breach of contract is the cause of action that gives rise to claim.

11. In the above analysis, I find that a claim for unliquidated damages or loss arising out of the breach of contract between the Panchayat and a person cannot be recovered by resorting to the revenue recovery proceedings either under Section 210 of the Kerala Panchayat Raj Act or the Rule framed by the Government as per SRO No. 319/1962 published in the Kerala Gazette dated 13th November, 1962. In short, the Panchayat cannot be allowed to realise unliquidated damages or loss arising out of a breach of contract by resorting to revenue recovery proceedings without an adjudication and quantification of the amount thereunder, by a civil court or arbitration proceedings, as the case may be.

12. In the above analysis, Exts.P1 and P2 will stand quashed. But, I make it clear that this judgment will not stand in the away of resorting to the proper proceedings, for remedies, in accordance with law.

This writ petition is disposed of accordingly.

