

(2022) 05 KL CK 0153

In the High Court Of Kerala

Case No : Writ Petition (C) No. 32053 Of 2013

Chandrasekhara Kurup

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 26-05-2022

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 12, 34, 36, 69(2), 69(3)

Citation : (2022) 05 KL CK 0153

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : S.Ranjit, Gokul Das V.V.H., C.S.Manilal, Vidya Kuriakose

Final Decision : Disposed Of

Judgement

P.V.Kunhikrishnan, J

1. The above writ petition is filed with following prayers :

(i) To issue a writ of certiorari and quash Exhibits P4 notice as illegal and arbitrary.

(ii) To issue a writ of mandamus directing the respondents 2 and 3 to pay the outstanding amount of Rs.18,000/- along with interest @18% per annum to the petitioner from the date of unloading the materials till date.

(iii) To issue a declaration that the petitioner is not liable to pay any amount to the 2nd respondent

(iv) To pass such other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of this case." [SIC]

2. The petitioner was the Convenor of the beneficiary committee of the construction of a road in Karukachal Panchayath, Kottayam. The 2nd respondent advanced an amount of Rs.18750/- as mobilisation advance towards the construction of the above road and according to the petitioner, he unloaded

necessary materials worth Rs. 18,000/-. It is the case of the petitioner that the 2nd respondent was reluctant to sanction and pay the required amounts for carrying out the next stage of the above work in time. Therefore, it is alleged that due to the non-sanctioning of the amounts in time by the 2nd respondent, the work could not be completed. Thereafter, the petitioner was served with Ext.P4 notice under Sec.34 of the Revenue Recovery Act. According to the petitioner, respondent Nos. 2 and 3 are responsible for the non completion of work in compliance with the agreement. Hence, this writ petition is filed.

3. Heard the learned counsel for the petitioner, the learned counsel appearing for respondent Nos. 2 and 3 and the learned Government Pleader.

4. The learned counsel for the petitioner reiterated the contentions in the writ petition. The Government Pleader takes me through the counter affidavit filed by the 4th respondent, especially para No.4.

5. After considering the contentions of the petitioner and after going through para No.4 of the counter affidavit filed by the 4th respondent, I think nothing survives in this case. It will be better to extract para No.4 of the counter affidavit of the 4th respondent.

"4. It is respectfully submitted that it was on the basis of the requisition A5/13/05 dated 23.08.05 issued by Secretary of Karukachal Grama Panchayath under Section 69(2) of KRR Act that RR demand notices were prepared and were served to the defaulter on 16.01.06 according to the provisions under Sec.69(3) of KRR Act. Since there is neither movable nor immovable property owned by the defaulter in Karukachal Village attachment notices under sections 12 & 36 cannot be issued to him. Since the defaulter is 70 years old, action under section 65 cannot be taken against him. That is why no further notice was issued to him. The debt is not time barred. RR action against him is legal.

6. The 4th respondent submitted that there is neither movable nor immovable property owned by the defaulter in Karukachal Village. It is also stated that since the defaulter was 70 years old at that time, action under Sec.65 cannot be taken against him. In the light of the above statement, nothing survives in this case.

Recording para No.4 of the counter affidavit filed by the 4th respondent, this writ petition is closed.