

(2016) 01 KL CK 0139
In the High Court Of Kerala
Case No : W.A. No. 421 of 2010

Deputy Collector (RR)

APPELLANT

Vs

Appu Jose

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Kerala Revenue Recovery Rules, 1968 — Rule 5

Citation : (2017) 1 ILRKerala 511

Hon'ble Judges : Mr. Ashok Bhushan, CJ. and Mr. A.M. Shaffique, J.

Bench : Division Bench

Advocate : Sri P.I. Davis, Senior Government Pleader, for the Appellants; Sri M.C. John, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J. - This appeal has been remitted back to this Court by the Supreme Court for fresh disposal, in accordance with law, with the following observations:

"7. In our opinion, in these types of cases, the High Court should have taken up the matters individually and decided whether the State was justified in issuing the demand notice(s) for the purpose of collection charges as well as service charges under Rules 4 and 5 of the Rules.

8. In view of the above, we set aside the judgment and order passed by the High Court and remand the matters to the High Court for a fresh disposal in accordance with law. We also request the High Court to take the cases individually instead of clubbing all the matters and look into the facts of each case and take a positive decision on the pleadings adduced by both the parties."

2. The writ petition was filed challenging Exts. P-2 and P-4 by which petitioners were called upon to remit 7.5% on Rs. 14,00,000 which was paid by the petitioner before availing the OTS facility and calling upon the petitioner to pay 1% service tax on Rs. 72 lakhs.

3. According to the petitioners, they availed a loan from Kerala Financial Corporation (for short "KFC"). They further availed One Time Settlement (for short "OTS") facility by which they remitted Rs. 72 lakhs. When the title deeds were not returned, he filed W.P.C. No. 8739/2009 before this Court which was disposed of by judgment dated 22-5-2009 observing that the issue regarding collection charges which are liable to be paid by the petitioners is left open and will be subject to the result in W.P.C. No. 23991/2005. It is stated that the said case was decided on 18-8-2009 declaring that collection charges are not leviable. The said judgment is reported in *Malabar Organics Ltd. v. State of Kerala* 2009 (4) K.L.T. 328. It is contended that a notice dated 25-8-2009 came to be issued by KFC calling upon the petitioners to pay collection charges, which is impugned.

4. The learned Single Judge, in the impugned judgment held that the issue is covered by the judgment in *Malabar Organics Ltd.* (supra) and hence allowed the writ petition quashing Ext. P-4, however observing that the 1st respondent shall take effective steps for lifting the attachment and that the said judgment does not preclude the 1st respondent from claiming expenses, if any, actually incurred which will fall in the category in item (i) to (vii) of the Table appended to Rule 4 of the Revenue Recovery Rules, 1968.

5. The State and its authorities are in appeal. While impugning the aforesaid judgment, it is contended by the learned Government Pleader that the judgment in *Malabar Organics Ltd.* (supra) had been set aside by the Supreme Court. It is argued that as far as the petitioners are concerned, Rule 5 of the Rules clearly applies to the fact situation. It is stated that Rs. 14 lakhs was recovered during revenue recovery proceedings and the balance amount was recovered by way of OTS, after sub rule (3) of Rule 5 came into force.

6. Perusal of the writ petition does not disclose any facts controverting the stand taken in Ext. P-4. In Ext. P-4, it is stated that Rs. 14 lakhs was recovered before OTS and Rs. 72 lakhs after the OTS. It is apparent that, if the payment of Rs. 14 lakhs has been made during revenue recovery proceedings, the revenue authorities are entitled to collect the collection charges. In regard to OTS, the amended provision clearly applies as the payment had been made by the petitioners subsequent to Rule 5(3) coming into force. Rule 5(3) reads as under:

"5(3) Institutions except Government Departments accepting defaulted payments directly from the defaulter after initiating Revenue Recovery Proceedings under the Kerala Revenue Recovery Act, 1968 (15 of 1968) and filing the certificate by the District Collector under sub-section (3) of Section 69 of the said Act shall be liable to pay 1% of the amount so collected towards service charge for the initiation of Revenue Recovery Proceedings against the defaulter and to intimate the fact of such acceptance to the District Collector concerned at once."

Rule 5(3) had come into force on 6-5-2008 and if the payment of Rs. 72 lakhs was after 6-5-2008, definitely the KFC is entitled to collect 1% of the amount as

service charges for initiating revenue recovery proceedings. No materials have been produced to arrive at a different finding and the entire factual scenario, especially the details of payment, the date of payment and other particulars are not made available in the case. Hence we do not think that the learned Single Judge was justified in quashing Ext. P-4. Ext. P-4 had been issued based on the fact that Rs. 14 lakhs have been collected by revenue recovery proceedings. In such an event, even going by the law laid down by this Court in Bhaskaran v. Sub Registrar, 2005 (3) K.L.T. 150 and Kadeeja Beevi v. Kerala Financial Corporation, 1985 K.L.T. 741 the petitioners have the obligation to pay collection charges. Similarly, on account of Rule 5(3) came into force, the petitioners will be liable to pay 1% of the amount as demanded by KFC. In the light of the above factual scenario, we are of the view that the appeal is liable to be allowed.

Hence the appeal is allowed. The judgment of the learned Single Judge is set aside and the writ petition is dismissed.

Editor's Note. - The judgment is being reported belatedly, in view of the importance of the issue decided.