(2002) 04 KL CK 0012

In the High Court Of Kerala

Case No : W.A. No. 713 of 2002 along with O.P. No. 18137/00

Govindankutty APPELLANT

Vs

The General Manager RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

General Clauses Act, 1897 — Section 2
Revenue Recovery Act, 1890 — Section 3, 4, 5

Citation : (2002) 2 ILR (Ker) 173

Hon'ble Judges : B.N. Srikrishna, C.J;G. Sivarajan, J

Bench : Division Bench

Advocate : K.T. Shyamkumar, for the Appellant; P. Haridas, A.C.G.S.C. and C.K. Abdul Rahim, Sr. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, C.J.—Appeal admitted. Notice made returnable forthwith. Respondents 1 and 3 waive service through Mr. P. Haridas, A.C.G.S.C. Respondent No. 2 waives service through Senior Government Pleader, Sri. C.K. Abdul Rahim. By consent, appeal called out for hearing and heard.

2. This appeal arises out of an interim Order of the learned Single Judge dated 27th February 2002, by which a conditional order of stay of arrest warrant issued against the appellant was granted on deposit of rupees fifty thousand.

3. The appellant is a subscriber of Telephone No. 502760 in Kannur Exchange. Certain bills have been raised against the appellant and it is the case of first respondent that the bills have remained unpaid. On the footing that there is arrears of public revenue due from the appellant, proceedings were initiated under the provisions of the Keraja Revenue Recovery Act, 1968 (hereinafter referred to as "the Act") and an arrest warrant was issued against him u/s 65 of the Act. The appellant challenged the arrest warrant by his Original Petition. Though the Original Petition was admitted, a conditional stay of the warrant has been granted by calling upon him to deposit rupees fifty thousand failing which

the stay of arrest warrant would vacate. Being aggrieved, the appellant is before us.

4. Article 21 of the Constitution of India guarantees the fundamental right to liberty to every citizen irrespective of how dishonest he may be. The provisions of Article 21 cannot be abridged because of alleged dishonest conduct of a citizen, except to the extent permissible by a validily enacted law. The Court must view all inroads on the liberty of a citizen strictly and refuse to uphold an order which is not in strict conformity with the liberty guaranteed under Article 21 of the Constitution.

5. In the instant case, we notice that arrears claimed are due to the Telecom Department, a Department of Government of India. The arrest warrant is issued by the District Collector of Kannur, purportedly u/s 65 of the Act. Section 65 permits issue of an arrest warrant only when arrears of public revenue are not paid after the service of a written demand u/s 34 and the District Collector is satisfied that the defaulter is wilfully withholding payment of the arrears or has dishonestly transferred any part of his property, or has been guilty of fraudulent conduct in order to evade payment, or that the defaulter has the means to pay the arrears or some substantial part thereof and refuses or neglects to pay the same, or the proceeds of the sale of the property of the defaulter is not sufficient to liquidate the arrears with interest. These are the parameters subject to which only an arrest warrant can be issued u/s 65 of the Act. Further, the expression "public revenue due on land" is defined u/s 2(j) of the Act as under:

"public revenue due on land means the land revenue charged on the land and includes all other taxes, fees and cesses on land, whether charged on land or not, and all cesses or other dues payable to the Government on account of water used for purposes of irrigation."

As we read it, the amount due to the Telecom Department for using a telephone do not amount to arrears of public revenue. Further, the Kerala Revenue Recovery Act is intended for recovery of public revenue which is due to the Government. The expression "Government" is defined in the Kerala Interpretation and General Clauses Act, 1125 u/s 2(xv) to mean the Government of the State of Kerala. It is nobody''s case that the appellant owes monies to the State Government of Kerala.

6. Learned Counsel for the first respondent contends that under the provisions of the Revenue Recovery Act, 1890, it is open to the Central Government to utilise the machinery for recovery of public revenue in the State. If it-be so, the procedure u/s 3, 4 and 5 have to be strictly complied with. It is conceded that this procedure has not been complied with. There is also doubt as to whether the provisions with regard to arrest warrant can be read into the Revenue Recovery Act, 1890. Even without going into that question, we are satisfied that the arrest warrant issued against the appellant is without jurisdiction as much as the District Collector could not have resorted to proceedings under the Kerala

Revenue Recovery Act without the procedure under Ss. 3, 4 and 5 of the Revenue Recovery Act, 1890 being complied with. For that reason, the appellant is entitled to succeed. Learned counsel for the first respondent cited the decision in Century Cashew Products v. Tahsildar, Quilon 1981 KLT 102. This decision does not advance the case of the appellant.

7. Though the appeal has come before us only against an interlocutory order, in the view we have taken, the appellant is entitled to succeed even in the Original Petition. Counsel are agreed that the Original Petition itself may be disposed of. Hence, the order of the learned Single Judge dated 27th February 2002 is set aside. The order of the District Collector, Kannur at Exts. P1 and P2, and the consequential arrest warrant are hereby quashed. This shall be without prejudice to the right of respondents 1 and 3 to take appropriate action in accordance with the Revenue Recovery Act, 1890 for recovering amounts due to him.

The Writ Appeal and the Original Petition are allowed as above.