
(1983) 06 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 1872 of 1981

K. T. Thomas

APPELLANT

Vs

Tahsildar Kozhikode and Another

RESPONDENT

Date of Decision : 01-06-1983

Acts Referred:

Constitution of India, 1950 — Article 14
Kerala Revenue Recovery Act, 1968 — Section 34, 7

Citation : (1983) KLJ 339

Hon'ble Judges : S. K. Kader, J

Bench : Single Bench

Advocate : Mani. J. Meenattoor and M. M. Abdul Aziz, for the Appellant;

Final Decision : Allowed

Judgement

S. K. Kader, J.—The petitioner herein who claims to be the owner and holder of a revolver, two riffles and a gun, which were attached u/s 7 of the Revenue Recovery Act, hereinafter called the Act, seeks to quash the demand notice, Ex. P2, by which the above mentioned articles were attached. There is also a prayer for a declaration that section 7 of the Kerala Revenue Recovery Act is violative of Article 14 of the Constitution of India. According to the petitioner, he had sent the weapons mentioned above along with the licenses through one K. Chandrasekhar an for production before the Tahsildar, Kozikode, the first respondent herein, and these weapons along with the licenses were produced before the first respondent for verification on 7-4-1981 by Chandrasekharan. On the same day, the Special Revenue Inspector, the second respondent herein, attached the weapons and the licenses. After attachment, the second respondent served a notice Ex. P2 on Chandrasekharan. It is alleged in the said notice that a sum of Rs. 8792.35 is due from the petitioner by way of E.P.F. arrears, Emergency Risk Insurance, Subsistence Allowance, etc., for the period from April, 1973 to December 1974. The petitioner contends that there is no such amount due from him and the attachment is illegal and without jurisdiction. A counter

affidavit has been filed by respondents 1 and 2 wherein they have stated that the attachment of the weapons mentioned was made in accordance with the provisions of the Act and that their action was quite legal. It is said that an amount of Rs. 14012.77 was due from the petitioner by way of E.P.F. arrears; that the petitioner has already paid a sum of Rs. 5310/- and a balance amount of "Rs. 8792.77" is now due from the petitioner.

2. Assailing Ex. P2 notice, although the learned advocate appearing for the petitioner contended that section 7 of the Act is violative of Article 14 of the Constitution, he did not - and rightly too - pursue that contention. This point is covered by a ruling of a Division Bench of this Court in Govindankutty Menon v. Tahsildar (1972 KLT 1010 = 1972 K.L.J. 802). But the main point urged by the counsel was that the attachment is illegal and void in as much as the mandatory provisions in section 7 have been violated. Section 7 reads:

When any movable property is to be attached for arrears of public revenue due on land, the Collector or the authorized, 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 arrears fell due and such other particulars as may be prescribed. The person employed to make the attachment shall show the demand in writing to the defaulter and if he fails to remit the amount in arrears together with the interest thereon and the cost of process immediately, the demand in writing shall be the authority for making the attachment.

The latter portion of the Section clearly shows that the demand in writing shall be the authority for making the attachment, if only the person employed to make the attachment showed the demand in writing to the defaulter and if the defaulter failed to remit the amount together with interest thereon and cost immediately. The provision in this regard is mandatory and is intended to give an opportunity to the defaulter to remit the amount demanded. The intention of the legislature is clear that they did not think it proper to clothe the person employed to make the attachment with the necessary power or authority to proceed with the attachment without first showing the demand in writing to the defaulter. It is also clear that the demand in writing should be shown to the defaulter himself. Showing the demand in writing to any one else or serving the demand by affixture at the place of residence of the defaulter will not be compliance of the provisions in section 7. A service of a written demand as contemplated u/s 34 of the Act also cannot satisfy the mandatory requirements u/s 7.

3. It is not disputed that the weapons were attached from the Taluk Office on 7-4-1981. In paragraph 6 of the counter affidavit it has been admitted that the articles were attached from the Taluk Office, Kozikode, when they were produced for inspection at the Taluk Office through one Chandrasekharan. Ex-P2 also shown that the weapons were attached when they were brought for production before the Taluk Office, Kozhikode by one Chandrasekharan for verification. The

learned advocate appearing for the respondents made a feeble attempt to support the order contending that demand notice has already been issued and served on the petitioner long ago and therefore Ex. P2 is not illegal or invalid for want of service of notice. It is true that as contemplated u/s 34 of the Act, there is no provision contained in section 7 of the Act to cause a written demand to be served on the defaulter. But that is the very reason why section 7 insists that the person employed to make the attachment shall show the demand in writing to the defaulter and if he fails to remit the amount together with interest thereon and cost of process immediately, the demand in writing shall be the authority, for making the attachment. If previous notice is given, the moveables will disappear and the very purpose of attachment will be defeated. Although in the counter affidavit it has been stated that demand notice under the Act has been issued and served on the defaulter prior to the attachment, and an attempt was made to support it in the course of the argument, it was fairly conceded that no notice or demand in writing as contemplated u/s 7 of the Act was shown to the petitioner before the moveables in this case were attached. The counsel for the respondents produced a copy of the notice said to have been served on the petitioner. The notice produced before this Court is one purported to have been issued to the petitioner in Form 10 u/s 34 of the Act. Admittedly the records made available for the perusal of the Court do not show that any demand in writing as contemplated u/s 7 was shown to the defaulter. It is clear from Ex. P2 itself that the moveable were attached in the absence of the petitioner and that fact is not disputed also. There is, therefore clear violation of the second part of the proviso to section 7 and this goes to the very root of the attachment. I am fortified in this view by the decisions of this Court reported in Marimma Antony v Tahsildar (1974 KLT 167) and Anandalakshmy v Deputy Tasildar .L.R. 1978 (1) Kerala 584 On the admitted facts neither notice nor a demand in writing was shown to the defaulter before attachment and the attachment effected in flagrant violation of the provisions in section 7 of the Act is illegal and has to be interfered with.

In the result this original petition is allowed and Ex. P2 is quashed. But it is made clear that this judgment will not stand in the way of the concerned authorities taking appropriate action against the petitioner for the recovery of the amount claimed in accordance with law.