

(2010) 04 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20943 of 2009

Madhavan

APPELLANT

Vs

Sub Registrar

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Kerala Municipalities Act, 1994 — Section 270, 270(1), 270(2), 270(3), 565
Kerala Municipality (Assessment of Duty on Transfer of Property) Rules, 2003 — Rule 2
Kerala Stamp Act, 1959 — Article 16, 28
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 35
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules, 2004 — Rule 9(6)

Citation : AIR 2010 Ker 124 : (2010) 2 ILR (Ker) 552 : (2010) 2 KLJ 674

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : S.V. Balakrishna Iyer, Manju Rajan, A. Amrutha Vidyadharan, T.U. Vinod, Mohan Pulikkal, N. Rajendran and Raji George, for the Appellant; Smitha Sukumar, Government Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—The Federal Bank, a secured creditor in terms of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter, the "SARFAESI Act", exercised its rights under that Act as regards a secured debt, through its authorised officer, and the secured asset was sold to the petitioner and certificate of sale issued to him in terms of Rule 9(6) of the Security Interest (Enforcement) Rules, 2002, for short, the "Enforcement Rules". Is duty in the form of surcharge payable on that certificate of sale u/s 270 of the Kerala Municipality Act, 1994, hereinafter, the "Municipality Act" and the Kerala Municipality (Assessment of Duty on Transfer of Property) Rules, 2003, for short, the "Duty Rules"?

Rival contentions

2. Petitioner, the holder of the certificate of sale, contends that a conjoint reading

of Section 270(1)(ii) of the Municipality Act and the Duty Rules would show that a certificate of sale does not attract such duty and there is no power authorizing its levy and collection. The respondents contend that certificates of sales exempted in terms of the Duty Rules are only those granted to purchasers of properties sold by public auction of a Civil or Revenue Court or by the Government, Collector or other Revenue Officer, which fall in Article 16 under the Schedule to the Kerala Stamp Act, 1959, hereinafter, called the "Stamp Act", and that certificates of sales issued by authorised officers of secured creditors under the SARFAESI Act and the Enforcement Rules do not qualify for such exemption. It is also pleaded that the sale certificate in question was never produced before the registering authority; that there were only enquiries as to the amounts leviable for such registration; and therefore it has to be treated that the registration of the certificate of sale in question has since become barred.

Consideration by Court

3. Section 270(1)(ii) of the Municipality Act, in so far as it is relevant, provides that there shall be levied a duty on transfer of property in the form of a surcharge on the duty imposed by the Stamp Act on every instrument of "sale of immovable property" which relates to immovable property situated within a Municipal area, at such rate as fixed by the Government, which shall not exceed five per cent of the "amount or value of the consideration for the sale, as set forth in the instrument". By virtue of the saving clause contained in Section 575 of the Municipality Act, the Government notification under the prior enactment fixing the rate of such levy at 5% continues to apply.

4. Sub-section (3) of Section 270 of the Municipality Act provides that the Government may make rules, not inconsistent with the Act, for regulating the collection of the duty, the payment thereof to the Municipalities concerned and the deduction of expenses incurred by the Government in the collection thereof. Exercising that and also quoting Section 565, which empowers the Government to make rules generally and regarding various enumerated matters, the Duty Rules were made to regulate the collection of duty under the those rules, including by empowering the registering officers and other officials to impound deeds, etc. Duty Rules impose certain duties and responsibilities on registering officer, including the power to impound a deed where necessary details as required in Section 28 of the Stamp Act read with Clause (a) of Sub-Section (2) of Section 270 of the Municipality Act have not been separately set forth in it when presented for registration and to do certain acts thereupon. The term "Deed" is defined in Rule 2(c) of the Duty Rules as follows:

"Deed" means description of an instrument of sale, exchange, gift, mortgage, lease-perpetual or otherwise, release etc. of immovable property for which duty on transfer shall be leviable u/s 270 of the Kerala Municipality Act, 1994 (20 of 1994) but does not include the deeds of sale of hereditary rights of gifts coming under the definition of "settlement" in the Stamp Act or Certificate of sale;

Therefore, for the purpose of the Duty Rules, the word "deed," does not include "certificate of sale".

5. "Certificate of sale" is not defined in the Duty Rules or in the Municipality Act. In terms of the Duty Rules, words and expressions not defined in those rules or in the Municipality Act, if defined in the Stamp Act or Rules framed thereunder, will have such meaning. But "certificate of sale" is not defined in the Stamp Act or rules under it, either. In that Act, the only legislative material we can see; which, according to the State, is relevant; is Article 16 under the Schedule. That Article contains the prescription as to the rate of stamp duty payable on a certificate of sale granted to the purchaser of any property sold by public auction of a Civil or Revenue Court or by the Government, Collector or other Revenue Officer. But, that is not a definition and therefore, would not get incorporated by reference into the Duty Rules. Not only that, the description of certificate of sale in that Article, as one issued by any of the authorities mentioned therein, is solely for the purpose of making that fiscal imposition by way of stamp duty as per that legislation. It would be an impermissible and unauthorized interpretative process, to adopt the content of that Article to construe yet another piece of statute law. Such approach would even lead to results never conceived by the author of the Duty Rules, namely, the State acting through its statutory delegate, the Government.

6. Now, advertent to the provisions of the SARFAESI Act and the provisions of the Enforcement Rules, it can be seen that when a measure is taken as per that Act, particularly u/s 13, such measure and the procedure there for, are regulated by those statutory provisions and when such a measure results in the completion of a sale, Rule 9(6) of the Enforcement Rules prescribes issuance of certificate of sale. The provisions of the SARFAESI Act provide a statutory procedure against a measure taken under that Act. All these provisions have been made, also by excluding the jurisdiction of the civil court to touch such matters. The provisions of the SARFAESI Act, going by Section 35 thereto, overrides the provisions of the other laws. In that context, the secured creditor is entitled to take recourse to the SARFAESI Act and ultimately issue a certificate of sale in terms of the statutory provisions. Therefore, it is essentially a certificate of sale in lieu of certificate of sale that may issue from a civil court or a revenue court in exercise of statutory powers to sell.

7. When the Duty Rules are made and issued excluding "certificate of sale" from the sweep of the term "deed", without making any restriction as to the application of that exclusion to be confined only to certificates of sale issued by any particular authority; say, granted to the purchaser of any property sold by public auction of a Civil or Revenue Court or by the Government, Collector or other Revenue Officer; does the provision warrant a interpretative construction importing such a restriction which is not explicit? Is such a restriction predominantly and inexcusably implicit that it ought to manifest as against what is discernible on a plain reading of the provision?

8. The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. See *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* AIR 1955 SC 376. In the present case a literal construction of the rule leads to no apparent absurdity and, therefore, there is no compelling reason to depart from literal reading, the primary mode of statutory interpretation, often referred to as the golden one.

9. In *A.V. Fernandez Vs. The State of Kerala*, , the Apex Court laid down that in construing fiscal statutes and in determining the liability of a subject to tax, one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe in to the intentions of the legislature and by considering what was the substance of the matter. It was held that in fiscal statutes what you have got to look to, is not the spirit of the statute but the letter of the law and if you could not bring a particular tax within the letter of the law, the subject could not be made liable for the same. The Apex Court quoted the following observation of Lord Russell of Killowon in *Inland Revenue Commrs. v. Duke of West-Minster* 1936 AC 1:

I confess that I view with disfavour the doctrine that in taxation cases the Subject is to be taxed if in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstance of his case.

Their Lordships recalled Lord Cairns as having said many years ago in *Partington v. The Attorney General* (1869) 4 H 1100:

As I understand the principle of all fiscal legislation, it is this; if the person sought to be taxed, comes within the letter of the law he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

It was also noted that the above passage was quoted with approval by the Privy Council in the AIR 1940 183 (Privy Council) and the Privy Council registered its protest against the suggestion that in revenue cases "the substance of the matter" may be regarded as distinguished from the strict legal position.

10. In *The Commissioner of Income Tax, Bombay Vs. The Elphinstone Spinning and Weaving Mills Ltd.*, , it was laid down that if the words of a taxing statute

fail, then so must the tax. The Courts cannot, except rarely, and in clear cases, help the draftsmen by a favourable construction.

11. In *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, it was noticed that the ratio of the rule of interpretation that words of legal import occurring in a statute should be construed in their legal sense is that those words have, in law, acquired a definite and precise sense, and that, accordingly, the Legislature must be taken to have intended that they should be understood in that sense. In interpreting an expression used in a legal sense, therefore, we have only to ascertain the precise connotation which it possesses in law. Adverting to the law as laid by the Apex Court in *Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another*, and in *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad*, two principles need to be emphasized. Firstly that, when words and phrases previously interpreted by the courts are used by the Legislature, there is a presumption that the Legislature intended to convey by their use, the same meaning which the courts had already given to them. Secondly, where the legislative history and practice show that a particular term has been used in a particular legal sense, and that term is employed in a later piece of statute law, that too, without in any manner indicating any variation from its accrued and accepted legal sense, it would be taken that the legislature never intended any deviation from such settled meaning. Though the first among these principles specifically apply when interpreting a later enactment which replaces the previous statute, a word or phrase whereof has been judicially construed, I find no reason why that rule of interpretation shall not apply, except where the contextual compulsion would persuade the court away from following the settled understanding of the term.

12. In the case in hand, it needs to be immediately recalled that Duty Rules are made by the competent delegate under the Municipality Act. Therefore, subject only to the requirement that they answer the touchstones as to validity, as a piece of subordinate legislation, it is statute law. Hence, as in the case of primary legislations, it has to be presumed that the duly authorised agent of the sovereign, in making that piece, knew, and consciously chose and applied the words employed in those rules.

13. The Duty Rules were made in 2003, that is, after the SARFAESI Act and the Enforcement Rules came into force. The evolution of the legislative history by that time would show that public auctions under statutory power had spread out through legislative provisions beyond Civil and Revenue Courts, as also, the Government, Collector and other Revenue Officers. These powers, as already noticed, were even coupled with exclusion of jurisdictions which were until then available otherwise, and also be conferring exclusive jurisdictions. The modalities of distress actions thus brought in were intended to accelerate recovery mechanisms which were noticed by the Legislature as getting crippled under procedural hurdles. SARFAESI Act and the rules framed, thereunder, including the Enforcement Rules form part of this measure to augment the recovery of

debts. In *The Madras Refineries Ltd. Vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras*, , the Apex Court noted that in order to determine whether any, and if any, what stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained. In its truest sense, a certificate of sale is the document issued by the duly authorised statutory authority evidencing the factum of a statutory sale, essentially by way of a distress action, as authorised by law. Qualitatively, it is the certification of the lawful transfer of, or the authority to transfer, the interest in the property, immovable or movable, that is subjected to such statutory proceedings. Jurisprudentially, no reasonable or rational distinction can be deduced to treat sales under the SARFAESI Act and the Enforcement Rules differentially from sales under different other provisions, through Courts or Revenue authorities.

14. Dealing with Section 270 of the Municipality Act and the Duty Rules which are pieces of fiscal legislations, it needs to be stated that even if two views are possible, that which goes in favour of the assessee and the tax payer has to be accepted. Not only that, a fiscal burden to duty in the form of a surcharge under the Duty Rules cannot be admitted, by invoking the provisions of another Act, namely, the Stamp Act, as canvassed for by the respondents. In *Sneh Enterprises Vs. Commnr. of Customs, New Delhi*, , the Apex Court stated as follows:

While dealing with a taxing provision, the principle of "strict interpretation" should be applied. The court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the court ordinarily would interpret the provisions in favour of a taxpayer and against the Revenue.

Following the above, it was reiterated in *Pradip J. Mehta v. C.I.T.* 2008 (2) KLT 38 (C. No. 46) SC : (2008) 14 SCC 283, that "...when two interpretations are possible, then invariably, the Court would adopt the interpretation which is in favour of the taxpayer and against the Revenue." See also: *The Commissioner of Income Tax, Lucknow Vs. Sh. Madho Pd. Jatia*, : *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd.*, ; *Commissioner of Income Tax, Punjab Vs. Kulu Valley Transport Co. P. Ltd.*, .

15. Applying the law as deduced above, which applies on all fours to the levy of the nature in hand, it has to be held that by the issuance of the Duty Rules by defining deed to exclude certificates of sale, with no exception being statutorily made; the provisions of Section 270, the charging provisions, cannot be enforced against certificates of sale issued by authorities, including the secured creditors who act under the provisions of the SARFAESI Act.

16. As regards the respondents' plea that the sale certificate in question was never produced before the registering authority and that there were only

enquiries as to the amounts leviable for such registration, I am inclined to think that the version of the petitioner to the contrary comments acceptance because, there could have been no reason for the alleged non-presentation of the certificate for registration, except the stand of the respondents that the petitioner was liable to pay duty in the form of surcharge under the Duty Rules. Therefore it has to be treated that the certificate of sale in question has to be effected as if it were duly presented within the time prescribed.

For the aforesaid reasons, this Writ Petition succeeds. Resultantly, it is declared that the petitioner is not liable to pay duty u/s 270 of the Municipality Act and it is directed that on production of the document, of which Ext.P1 is the copy, it shall be duly received and appropriately registered by the competent registering authority among the respondents, notwithstanding any controversy as to whether it was earlier produced. In view of the fact that the authorised officer who issued Ext.P1 certificate has since demitted office, it is further ordered that the registering authority will do the needful on the authorised officer of the Federal Bank, who now holds such office, presenting himself before the registering authority vouchsafing Ext.P1. The Writ Petition is ordered accordingly. No costs.