(2014) 10 KL CK 0109

In the High Court Of Kerala

Case No : W.P. (C). No. 5906 of 2011 (K)

M.P.M. Munawar — APPELLANT

Vs

The Kozhikode District Tourism Promotion Council with Address for Service The Chairman — RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0109

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : B. Krishnan, R. Parthasarathy and Seema, Advocate for the Appellant; A.K. John, Special Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—Exts. P4 and P5 notices issued under the Revenue Recovery Act are impugned in this writ petition. The aforesaid notices were issued to the petitioner pursuant to Ext. P2 proceedings of the District Collector, Kozhikode, wherein it was found that the petitioner had defaulted on payment of licence fees, under the agreement dated 15.02.2005 entered into between the petitioner and the 1st respondent. Ext. P1 is a copy of the said agreement. A perusal of the same would indicate that the agreement between the petitioner and the 1st respondent was to permit the petitioner to operate a boat, that was owned by the 1st respondent, for the period stipulated in the agreement. The boat was to be used by the petitioner for tourism related purposes and the 1st respondent was to get a licence fees of Rs. 4,68,000/- over the period of the agreement. It would appear that the petitioner defaulted on payment of arrears of licence fees, and also in complying with some of the other obligations under the agreement, and this prompted the 2nd respondent District Collector, who was the Chairman of the 1st respondent, to issue Ext. P2 notice. In Ext. P2 notice, apart from demanding the arrears of licence fees that was due and payable to the 1st respondent, the 2nd respondent has also included an amount of Rs. 20 lakhs towards the cost of the boat which, according to the 2nd respondent, was not returned to it by the petitioner after the period of the agreement. When no amounts were paid by the petitioner pursuant to Ext. P2 notice, steps were taken in terms of Exts. P4 and P5 notices under the Kerala Revenue Recovery Act. The said notices have been impugned by the petitioner inter alia on the ground that, prior to invoking the provisions of the Kerala Revenue Recovery Act, the respondents had not pursued any steps for getting the amounts due to it, from the petitioner, adjudicated and determined and in that view of the matter the proceedings under the Revenue Recovery Act were vitiated. Reliance has been placed on the decisions in P.V. Paily Vs. State of Kerala and Others, and Shriram Engineering Construction Co. Ltd. Vs. K.S.I.D.C. and Another .

2. A statement has been filed on behalf of the 1st and 2nd respondents, wherein it is pointed out that the petitioner had defaulted on his obligation under Ext. P1 agreement and it was in view of this that the 1st respondent was constrained to take steps under the Revenue Recovery Act for realizing the amounts due to it. It is contended that the arrears of licence fees due to the 1st respondent were clearly discernible from the terms of the contract between the parties and in this sense there could not be any dispute with regard to the amount liable to be paid by the petitioner to the 1st respondent, towards license fees, in terms of the contract. The learned Government Pleader would also contend that the amount of Rs. 20 lakhs, shown in Ext. P2 towards the value of the boat, is an estimation done by the 2nd respondent, taking into account relevant factors for arriving at the cost of the boat, which had not been returned to the 1st respondent despite the expiry of the period of the contract between the parties.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that the proceedings initiated by the 1st and 2nd respondents under the Kerala Revenue Recovery Act can only cover such amounts as are found to be due and payable by the petitioner in terms of the contract. The decisions in P.V. Paily Vs. State of Kerala and Others, and Shriram Engineering Construction Co. Ltd. Vs. K.S.I.D.C. and Another clearly indicate that the words "amount due" for the purposes of the Kerala Revenue Recovery Act can only be such amounts as have been arrived at after an adjudicatory process or such amounts as are admitted to be payable by the person, against whom the proceedings are initiated. In the instant case, the admitted amounts can only be in respect of the arrears of licence fees that was payable by the petitioner to the 1st respondent in terms of Ext. P1 agreement. It is seen from the file that, at the time of granting an interim stay against further proceedings against the petitioner, there was a condition requiring the petitioner to remit an amount of Rs. 3,50,000/- within six weeks from 24.02.2011 either in lump sum or in two equal monthly instalments. Counsel for the petitioner would submit that the said amount has since been paid. The respondent will therefore have to compute the amounts that remain to be paid towards arrears of licence fee and interest thereon in terms of Ext. P1 agreement and continue the recovery proceedings, initiated by Exts. P4 and P5 notices, only to the extent of demanding the balance licence fee and interest thereon, if need be by issuing a

fresh recovery notice for the said purpose.

4. As regards the demand made by the 1st and 2nd respondents for an amount of Rs. 20 lakhs towards the alleged cost of the boat, this amount, I feel, cannot be demanded by the said respondents as the quantification of damages has been done, unilaterally, by one of the contracting parties. In my view, the quantification of damages, for the boat that was allegedly not returned by the petitioner, has to be done pursuant to a formal adjudicatory process, initiated by the 1st and 2nd respondents against the petitioner, in a court of competent jurisdiction. It is only in such adjudicatory proceedings that an examination, of the factual aspects of the case and the evidence adduced by the parties, can be undertaken to ascertain the liability of the petitioner, if any, in respect of the boat in question. Accordingly, while I sustain the recovery steps initiated by the 1st and 2nd respondents against the petitioner to the limited extent of recovery of the arrears of licence fees payable by the petitioner to the 1st and 2nd respondents under Ext. P1 agreement, the recovery steps insofar as they relate to the amount of Rs. 20 lakhs, covering the value of the boat, are set aside. I make it clear that while I am not interfering with the steps initiated by the 1st and 2nd respondents for recovery of the arrears of licence fees, together with interest thereon, it may be in their interests for the 1st and 2nd respondents to issue a fresh notice for the recovery of the said amounts since Exts. P4 and P5 notices have been issued taking into account the amounts which have been held not recoverable, in terms of the Revenue Recovery Act, in this judgment.

The writ petition is disposed as above.