(1972) 11 KL CK 0026

In the High Court Of Kerala

Case No : Original Petition No. 6135 of 1971

Mundavalappil Kunhikannan APPELLANT

Vs

The State of Kerala and Others RESPONDENT

Date of Decision : 14-11-1972

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1974 Ker 21

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : M.P. Balagopalan Nambiar, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Balakrishna Eradi, J.—The right to conduct two toddy shops in the Pappinisseri Range for the period 1-10-1968 to 31-3-1969 was put to reauction by the Excise Department on 18-9-1968 and the writ petitioner was declared to be the highest bidder. The auction sale in respect of the two shops was subsequently confirmed by the Board of Revenue on 30-9-1968. According to the petitioner notwithstanding the confirmation of the sale the department did not give him possession of the shops and the petitioner was not even called upon to execute any agreement as contemplated u/s 25 of the Abkari Act. No licence was also issued to him in respect of the two shops. It is further alleged in the writ petition that when the petitioner went over to the two shops on 1-10-1968 it was found that both the shops were under the custody of certain labourers who had been employed in those shops by the previous bidder consequent on whose default in payment of the kist the reauction had been held. Even though this matter was brought to the notice of the Excise authorities the petitioner alleges that no action was taken by the department to deliver possession of the shops to him with the result that it became impossible for him to conduct the shops for any portion of the period covered by the resale notification. To the petitioner''s surprise revenue recovery proceedings were initiated against him for recovery of substantial amounts aggregating to about Rs. 10,000/- and odd by way of balance kist alleged to be due by him in respect of the two shops. There upon he made a representation to the revenue recovery authorities as per Ext. P2 dated 1-1-1970 denying any liability for kist in respect of the two shops and requesting that the revenue recovery proceedings should be dropped. In reply to the said representation the petitioner was informed by the District Collector, Cannanore, as per the communication Ext. P1 dated 23-7-1970 that he was given time till 30-9-1970 to clear the abkari arrears in question and that in the event of failure by the petitioner to remit the entire arrears before the said date steps would be taken to recover the amount under the Revenue Recovery Act. The petitioner has thereupon come up to this Court with this writ petition challenging the legality of the proposed revenue recovery proceedings and praying for the issuance of a writ of mandamus directing the respondents to forbear from resorting to such proceedings against him for the realisation of the alleged abkari arrears.

2. In the counter affidavit filed on behalf of the respondents it is stated that even though the petitioner had remitted on the date of resale 1/10th of the bid amounts by way of security, he had committed a default in remitting the balance sum required to make up 20% of the bid amount within ten days of the communication of the confirmation of the bid as required under the terms of the sale notification. It is further stated in the counter affidavit that it is only on account of the petitioner''s failure to comply with the aforesaid requirement that he was not allowed to conduct business in the shops. The counter affidavit proceeds to state that the two shops were under the departmental management for some time subsequent to 1-10-1968 and that they remained closed for certain subsequent periods for want of departmental management agents. It is not disclosed in the counter affidavit on what basis the alleged liability of the petitioner has been quantified and what steps had been taken by the department to mitigate the alleged damage suffered by it on account of the default stated to have been committed by the petitioner in complying with the provision regarding deposit of 20% of the bid amount by way of security. If the department had conducted a resale, things would have been different, because it would then have been possible to know precisely the quantum of loss suffered by it in consequence of the petitioner''s default which necessitated resale. In a case like the present one, where the department takes upon itself the responsibility of running the shop through its agents, it is necessary to have the account taken in a fair fashion and to have a quantification of the loss, if any, which can be reasonably said to have been caused on account of the default of the highest bidder consequent on which the departmental management was undertaken. It is not as if the law would permit an arbitrary demand being made against a person merely because he has committed a default in complying with the terms of the sale notification. His liability will have to be quantified in a fair and just manner and where the department itself had undertaken the responsibility of managing the shops, the necessity for such a quantification would become all the more

grave. In the present case, it is not disputed that the petitioner has not been informed about the manner in which and the data based on which the quantification of his liability has been effected. Nor has he been afforded any opportunity of making his representations, concerning the said matter. Rules of natural justice and elementary fairness require that before making any final demand on the petitioner for makings good the loss sustained by the department, he should be informed of the data on which the demand is based and should also be given an opportunity to state his case. It is only when the revenue recovery proceedings were initiated that the petitioner in this case came to know for the first time about the fixation of the liability and the issuance of a demand as against him. This is grossly violative of the principles of natural justice. The revenue recovery proceedings are therefore quashed and there will be a direction to the respondents to forbear from taking any steps against the petitioner for the realisation of any amount that may be due by him in respect of T.S. Nos. 4 and 24 of Pappinisseri Range for 1968-69 until the petitioner''s liability is duly quantified after notice to him in the manner indicated in this judgment.

3. The original petition is allowed to the extent indicated above. The parties will bear their respective costs.