

(1987) 11 KL CK 0009
In the High Court Of Kerala
Case No : O.P. 1817 of 1983

P. R. Ramavarma Raja

APPELLANT

Vs

Tahasildar and Others

RESPONDENT

Date of Decision : 09-11-1987

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 34

Citation : (1987) KLJ 1490

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : P. V. Madhavan Nambiar, for the Appellant;

Final Decision : Allowed

Judgement

K. Sreedharan J.

1. Petitioner challenges Exts. P2, P4, and P6. Ext. P2 is notice of demand served on the petitioner in Form No. 10 as provided by Section 34 of the Revenue Recovery Act. By that notice the petitioner was called upon to pay a sum of Rs. 2,71,157.21/- being the arrears of guarantee commission for the period between 23-10-1967 and 7-9-1978. On receipt of that notice the petitioner put in objection before the Tahasildar, Talipparamba. That objection was rejected by Ext. P4 order dated 15-10-1982. There-upon the petitioner moved the District Collector. The District Collector, by Ext. P6 order dated 29-1-1983 confirmed the decision of the Tahasildar. Hence this Original Petition. The short facts relevant for decision of this case are as follows:

A detailed scheme was prepared for the development of the petitioner's land. As per that plan the property belonging to the petitioner was mortgaged to the Central Bank of India for the amount to be advanced by them and the Government of Kerala to stand surety for the amount advanced. For the Government to be the guarantor for the advance to be made by the Bank, the petitioner was to pay commission at the rate of 1% of the amount guaranteed.

This commission, it is alleged, has not been paid. The contract allowed the Government to realise the amount due from the guarantor under the provisions of the Revenue Recovery Act. Therefore, proceedings under that Act were initiated for recovery of the guarantee commission.

2. The petitioner would contend that the guarantee commission to be paid by him was only 1% of the amount guaranteed. The amount guaranteed was 46.61 lakhs. 1% of that amount is Rs. 46,610/-. That amount has been paid to the Government as and when the amounts were advanced. The agreement did not provide for an yearly commission of 1% on the amount guaranteed. The quantification of guarantee commission made by the Government is against the provisions of the mortgage deed, a copy of which is marked in this case as Ext. P1, Therefore, it is stated that the proceedings initiated under the Revenue Recovery Act are without jurisdiction.

3. A detailed counter affidavit has been filed on behalf of the State. The contentions raised therein are that for the long term loan of Rs. 46.61 lakhs from the Central Bank of India a mortgage deed was executed on 23-10-1967 between the petitioner and the Bank with the state of Kerala as the guarantor, that in the year 1970 the scheme was revised and loan amount was reduced to Rs. 43.58 lakhs, that a total amount of Rs. 39.95 lakhs was disbursed, that the mortgagor failed to repay the loan, that the Government paid a sum of Rs. 45.59 lakhs to the Bank in full settlement of the liabilities to the Bank, that the state has stepped into the shoes of the mortgagee on 7-9-1978, that paragraph-8 of the mortgage deed dated 23-10-1967 provided for the payment of guarantee commission at the rate of 1% of the amount guaranteed, that the said provision implies the commission to be paid annually, that the mortgagor paid a sum of Rs. 39,950 only, that Rs. 2,71,157.21/- is outstanding towards the guarantee commission and that steps initiated under the Revenue Recovery Act are valid and proper.

4. Clause-8 of the mortgaged deed executed on 15-11-1967 is in the following terms:

The mortgagors shall pay to the Government a guarantee commission at the rate of one percent of the amount guaranteed." According to this clause, it is the contention of the petitioner that he need pay only 1% of the amount guaranteed as commission. It is not a recurring liability. The amount guaranteed under Ext. P1 was Rs. 46.61 lakhs. 1% of that amount, viz., Rs. 46,610/- alone can be claimed as guarantee commission. Petitioner would contend that the said amount of Rs. 46,610/- has been paid to the Government as and when the amounts were advanced.

5. According to Government, the guarantee commission is to be paid annually at the rate of 1% of the amount guaranteed. The amount guaranteed being Rs. 46.61 lakhs, the annual guarantee commission to be paid by the petitioner was Rs. 46,610/-. The petitioner has not paid that amount. Ext. P1 does not go to

show that the guarantee commission is not to be a recurring payment. In the Ext. P6 the Collector observed:

According to Government letter No. 68701/IF2/72/AD dt. 2-11-80, the guarantee commission at the rate of 1% per annum should be realised.

Thus, it is seen that the Government have given an interpretation to clause-8 in Ext. P1 quoted above, making the petitioner liable for payment of guarantee commission annually. Can this be done by the Government unilaterally? The answer should be in the negative. The mortgage deed, Ext. P1 was a tripartite agreement. On payment of the amount covered by the document to the bank the Government stepped into the shoes of the mortgagee. Now the dispute is between the Government and the mortgagee regarding the interpretation of clause-8 of the Mortgage deed. The mortgagor disputes his liability to pay guarantee commission Annually. According to him the guarantee commission of 1% amounting to Rs. 46,610/- has already been paid and therefore, there is no breach of any of the terms of the contract.

The Government has now taken a stand that Ext. P1 provides for an annual payment of guarantee commission. What they stated is:

By virtue of para 8 of the mortgage deed dated 23-10-1967, the mortgagor, (the Estates) shall pay to the Government; a guarantee commission at rate of 1% of the amount guaranteed. Necessarily, it implies that the mortgagor is liable to pay guarantee commission at the rate of 1% of the amount guaranteed every year, till 7-9-1978, the date on which the mortgagee's rights were got assigned in favour of the guarantor.

It is further reiterated in paragraph-8 of the counter affidavit stating;

Para-8 of the Ext. P1 mortgage deed says that the mortgagor is liable to pay guarantee commission at the rate of 1% of the amount guaranteed. Necessarily, it implies that the mortgagor is liable to pay guarantee commission at the rate of 1% of the amount guaranteed every year as long as the guarantee subsists.

This means that the Government who were a party to Ext. P1 have assumed the part of an adjudicator on the interpretation of Ext. P1 agreement. Where the party to a contract disputes his liability on an alleged breach of condition of that contract, the adjudication should be by an independent person or body. It should not be by the other party to the contract. In the instant case the petitioner relies on the plain meaning of clause-8. As per that clause he need pay guarantee commission of 1% of the amount guaranteed. According to Government it should be an annual liability. This disputed question regarding the interpretation of Ext. P1 cannot be left to be decided by the Government, a party to the contract. More so, when the petitioner denies the" very breach of the contract. According to him the entire liability has been discharged, by paying Rs. 46,610. The contention of the petitioner has been rejected and the Government, a party to that agreement, has assumed the part of a judge in its own cause. At this juncture, it is

worthwhile to refer the following observation in the decision in State of Karnataka Vs. Shree Rameshwara Rice Mills, Thirthahalli, :

Even assuming for argument's sake that the terms of clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the Officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract.

Their Lordships went on to State:

We are, therefore, in agreement with the view of the Full Bench that the powers of the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined only to those cases where the breach of conditions is admitted or it is not disputed.

In the case before me, the petitioner disputes the breach of the terms of Ext. P1 mortgage deed. It is his specific case that he has strictly complied with the terms of the agreement and paid the guarantee commission due to the Government. The interpretation now put on the agreement by the State is not discernible from the agreement either. In such a situation, the decision of the Government that the guarantee commission is to be paid annually, cannot be accepted, because, the State Government being a party to the agreement cannot be the arbiter in its own cause. The dispute between the parties ought to have been adjudicated upon by a court or tribunal competent to do the same. That should not be done by the Government, a party to the contract. Such a decision has not been rendered by any authority. An independent body has not examined the matters in dispute and quantified the damages, if any, due to the Government. In the absence of such an adjudication the Government cannot realise any amount from the petitioner. In view of what has been stated above, I allow this Original Petition and quash the proceedings initiated against the petitioner under the Revenue Recovery Act. No costs.