
(1988) 06 KL CK 0047
In the High Court Of Kerala
Case No : O.P. No. 6305 of 1984-G

Pareedthukutty

APPELLANT

Vs

Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 20-06-1988

Acts Referred:

Kerala Debt Relief Act, 1977 — Section 2(4)

Citation : (1988) 06 KL CK 0047

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : P.H. Sankaranarayana Iyer, for the Appellant; Government Pleader for Respondents 1 and 2 and P. Sukumaran Nair and A.K. Chinnan for Respondents 3 to 5, for the Respondent

Judgement

Chettur Sankaran Nair, J.—Petitioner seeks to quash Ext. P-5 order of the 2nd Respondent, affirmed in appeal by Ext. P-8.

2. One Paru executed a mortgage in respect of four items of property, in favour of the Petitioner. Thereafter, on 2nd November 1975, she executed a gift in respect of a part of the mortgaged property, in favour of Respondents 3, 4 and 5, her daughter and grand daughters respectively, retaining the major portion of the property. When Petitioner claimed the mortgage money Respondents 3 to 5 set up the defence that they were "debtors as defined in Section 2(4) of the Kerala Debt Relief Act (Act 17/77)". In Ext. P-4, Petitioner raised a specific objection that no debtor and creditor relationship existed between him on the one hand, and Respondents 3 to 5 on the other. According to him, his dealings were only with Paru. It was also contended that the income and debt of Respondents 3 to 5, exceeded the limit of Rs. 3,000. It was further contended that unlike in the case of a "creditor", heirs or successors in interest of a debtor are not comprehended by the definition of "debtor" and that the gift itself was not a bona fide.

3. The authorities below held that Petitioner had not substantiated his

contentions. 2nd Respondent farther held that the burden of proof was on the Petitioner, to prove that Respondents 3 to 5 were not "debtors". The statement of law is neither precise, nor correct. It is clearly opposed to the view taken by this Court in Ouseph Joseph v. Kochunni Moosa 1983 KLT 867 and Narayani Amma v. Kochu Pillai 1987 (1) KLT 184.

4. The authorities below have passed brief orders, the only virtue of those being brevity. None of the contentions raised has been considered. There is only a bare statement that Petitioner has not adduced sufficient evidence.

5. Quasi Judicial tribunals determining causes, must adhere to requirements of fair consideration and objective decision. This is more so, when parties do not have the benefit of legal assistance or procedural safeguards. Representation by counsel, is not permitted in proceedings under the Act. As observed by Sir F. Pollock.

Judge or a person sitting as judge must decide according to law. His decisions must not be arbitrary or absolute. It must conform to law and the usages of the realm. His administration must be objective and impersonal. He must state explicitly the reasons for the decision. He must be able to suspend judgment until he has systematically surveyed the circumstances of the case. Judicial approach or acting judicially involves the exercise of these qualities of mind.

These broadly indicate the duties that are imposed on, any judicial, or for that matter, quasi judicial tribunal. We are accustomed to a situation where several tribunals outside the hierarchy of Courts, are invested with powers to adjudicate rights of citizens. Basically, what is a judicial function is conferred on non-judicial functionaries. The fact that they are not judicial bodies, will not absolve them of the duty to act judicially. It may be that rules of procedure that bind Courts do not bind them. But, the essential requisites of the exercise of judicial power, govern them also. The absence of procedural laws cannot justify departure from the basic norms, like application of mind, fair hearing and objective determination. Even in the absence of the law of procedure requiring formulation of points or settling of issues, the need to focus attention on the different issues raised cannot be underscored. In a way, without detailed procedure indicating the methodology to be followed, such tribunals are on a voyage without a compass. Yet, the essentials, must be adhered to. I think that it is necessary that rules of procedure should be framed, wherever it has not been framed requiring authorities or tribunals to formulate points and enter findings on them. This would be an effective way to ensure consideration of the various aspects arising in a proceeding. Expediency or expedition cannot do service for these responsibilities. Among the multifarious duties, largely executive in character, sufficient attention is not seen paid to these aspects. It is a disturbing thought that when judicial power is arrogated to executive authority, it is sometimes not performed with the seriousness such duties require. The need to do this has been stressed in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI)* and Another, the Court said:

Where an authority makes an order in the exercise of a quasi judicial function, it must record its reasons. It is essential that administrative authorities and quasi judicial tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders. Then alone administrative authorities and tribunals exercising quasi judicial functions will be able to justify their existence and carry credibility.

If they fail in this, their orders are liable to be interfered with. The position has been stated by Atkin, L.J. In *The King v. Electricity Commissioner* 1924 (1) K.B. 171.

Whenever any body of persons having legal authority to determine questions affecting rights of subjects, having duty to act judicially, act in excess of their legal authority, they are subject to controlling jurisdiction of Kings Bench Division.

In short, authorities below have made an apology of their responsibilities. The impugned orders are set aside and 2nd Respondent is directed to consider the matter afresh with specific reference to the question of burden of proof, the contention regarding debtor creditor relationship and the plea of bona fides. Notice should be issued to affected parties before proceeding further and reasonable opportunity must be afforded to them to put forward their case and lead evidence if they wish.

Original petition is disposed of as above. No costs.