(2013) 03 KL CK 0080

In the High Court Of Kerala

Case No : WP (C) . No. 28336 of 2011 (N)

P.I. Mohanan		APPELLANT
	Vs	
Deputy Tahsildar (R.R.) and The Avoly Grama Panchayath		RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:
Kerala Panchayat Raj Act, 1994 — Section 243

Citation : (2013) 03 KL CK 0080

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : C.G. Bindu, for the Appellant; K.S. Arun Kumar and Smt. M.N. Maya for R2 and Smt. K.A. Sanjeetha for Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—Heard the learned counsel for the petitioner and the learned counsel for the respondent Panchayat. The respondent

Panchayat is the owner of a shopping complex at a place called Avoly. The shops were auctioned and the petitioner was the successful bidder of

shop room bearing Door No. III/231. According to the petitioner, the period of the licence was two years from 01/4/2004 and the agreed licence

fee was Rs. 440/- per month. It is also stated that the petitioner had deposited six months licence fee as advance.

2. Petitioner states that although he had made payments in time, later for reasons beyond his control, he committed default in paying the rent for

some months and that immediately on the expiry of the licence period on 31/3/2006, the Panchayat forcefully took over possession of the room. It

is also stated that in 2007, the room was auctioned and was given on lease to a third party. In spite of it, on 25/9/2007, Panchayat issued Ext. P1

notice requiring the petitioner to surrender key of the room and also informing him that a demand notice for the arrears is also enclosed.

3. However, notice under the Revenue Recovery Act was issued to the petitioner only by Ext. P2 dated 11/8/11 for the recovery of Rs. 55,142/-

which is stated to have fallen in arrears on 01/4/2004. It is challenging the recovery proceedings thus initiated against the petitioner, he has filed this

writ petition.

4. The contention raised by the learned counsel for the petitioner is mainly that the Apex Court has in its judgment in State of Kerala and Ors Vs.

V.R. Kalliyanikutty and Anr, held that only those debts which are legally recoverable can be recovered under the provisions of the Revenue

Recovery Act. It is stated that in view of the provisions contained in Section 243 of the Kerala Panchayat Raj Act, 1994, on expiry of a period of

three years from the date from which the debt has fallen due, the debt becomes time barred and therefore the recovery proceedings now initiated

against the petitioner for the debt of 01/4/2004 is time barred.

5. However, on behalf of the respondent Panchayat, the contention raised in the counter affidavit is that although the period of the licence expired

on 31/3/2006, petitioner did not surrender the room as claimed. According to them, Panchayat also did not took over forceful possession of the

room. It is stated that the petitioner still retains possession of the room and that it was in those circumstances that Ext. P1 notice was issued to the

petitioner on 25/9/2007 informing the petitioner that he is continuing to occupy the room after the expiry of the licence period unauthorisedly and

without paying the licence fee.

6. It is stated that the position continued thereafter and on account of it, Exts. R2(a) (b) and (c) notices were issued in July, August and

September, 2010 demanding licence fee for the period up to the date of issuing the notice. It is also stated that Ext. R2(b) was acknowledged by

the petitioner on 26/8/2010, a copy of which has been produced by the counsel along with his memo dated 11th of March, 2013. On this basis,

counsel contends that since the aforesaid demands were made on the petitioner within the three years from the date on which the arrears fell due,

Section 243 has no application and therefore the Panchayat is entitled to recover the dues.

7. Thus in the light of the contentions raised by both sides, what arises for

consideration is whether the recovery of the debt that is now sought to

be realised form the petitioner is barred in view of the provisions contained in Section 243 of the Kerala Panchayat Raj Act.

8. A reading of Ext. P2 shows that the notice has been issued for the recovery of Rs. 55,142/- together with other charges and the debt is shown

to have fallen due on 01/4/2004. However, the entire debt could not have fallen due on 01/4/2004 for the reason that the licensor-licencee

relationship commenced only from that date. In any case, Exts. R2(a), (b) and (c) demand notices show that the amount demanded from the

petitioner pertains to the period from 2004-05 to 2010-11.

9. Section 243 of the Kerala Panchayat Raj Act provides that no distraint shall be made, no suit shall be instituted and no prosecution shall be

commenced in respect of any tax or other sum due to a Panchayat under the Act or any rule or bye-law or order made under it after the expiration

of a period of three years from the date on which the distraint might first have been made, suit might first have been instituted or the prosecution

might first have been commenced, as the case may be, in respect of such tax or other sum. Therefore, the recovery proceedings can be only in

respect of the amount due to the Panchayat for a period immediately preceding three years from the date on which the distraint is made, suit is

instituted or the prosecution is commenced.

10. Admittedly in so far as this case is concerned, Ext. P2 revenue recovery notice was issued to the petitioner only on 11/8/11. This could not

have in any case taken in liability of 2004-05 etc., because that is beyond the period of three years from the date of requisition u/s 69(2) of the

Revenue Recovery Act, based on which the notice was issued on 11/8/11. Although it is true that the counsel for the Panchayat argued that since

demand notices were issued within a period of three years of the amount becoming due and that therefore Section 243 of the Kerala Panchayat

Raj Act referred to above has no application, I am not in a position to accept the said plea of the learned counsel for the reason that the mere

issuance of demand notices will not save the debt from becoming time barred. Thus, the resultant position is that since Ext. P2 demand notice

issued by the 1st respondent for the recovery of the dues to the Panchayat includes amounts which have prima facie become time barred in view of

Section 243 of the Kerala Panchayat Raj Act, necessarily the authorities should revise the demand and on that basis initiate fresh recovery action

for the realisation of the portion of the debt which has not become time barred.

Therefore, this writ petition is disposed of quashing Ext. P2 and leaving it open to the respondents to initiate fresh action against the petitioner for

recovery of the debt which has not become time barred as on the date on which requisition u/s 69(2) was issued which resulted in Ext. P2 notice

under the Revenue Recovery Act.