

(2021) 02 KL CK 0038

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30510 Of 2019

Plakkattu Granite Industries (P) Ltd

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:

Revenue Recovery Act, 1890 — Section 6

Constitution Of India, 1950 — Article 226, 227

Kerala Minor Mineral Concession Rules, 1967 — Rule 49, 58(2), 62

Citation : (2021) 02 KL CK 0038

Hon'ble Judges : P.B. Suresh Kumar, J

Bench : Single Bench

Advocate : Paul Jacob, Enoch David Simon Joel, Rony Jose, George A. Cherian, Leo Lukose, Suzanne Kurian, Amal Amir Ali, Ranjith Thampan, K.J. Manuraj

Judgement

'''

the absence of any direction in Ext.P6 notice to pay interest, interest cannot be realised for the period prior to the notice in terms of the provisions of",,,

the Revenue Recovery Act.,,,

9. Normally, in a case of this nature, this Court would have set aside the impugned demand notice and disposed of the writ petition granting liberty to",,,

the respondents to initiate fresh proceedings against the petitioner for realisation of the amounts due in terms of Ext.P6 notice. But, I do not think that",,,

the same would be a justifiable course of action on the facts of the present case. It is seen that though the petitioner challenged the notice dated",,,

04.01.2002 issued by the Director under Rule 58(2) of the Rules in O.P. No.4734 of 2002, there was no interim order in the said case. Nevertheless, it",,,

is found that steps have not been taken for realisation of the amount covered by the said notice during the pendency of the writ petition, despite the",,,

fact that the petitioner was operating the quarry based on the quarrying lease obtained by them and despite the fact that the amount involved was,,, more than 5 Crores. Of course, this Court ultimately found that the order dated 04.01.2002 is unsustainable. As noted, this Court set aside the order" ,,, dated 04.01.2002 on 17.09.2008. It was almost four years thereafter that Ext.P6 notice was issued. As noted, though the petitioner challenged the said" ,,, notice in W.P.(C) No.25012 of 2013, there was no interim order in the said case as well. Nevertheless, even while steps are being taken by all other" ,,, Government Departments for realisation of even paltry sums by recourse to proceedings under the Revenue Recovery Act, steps have not been taken" ,,, by the officials concerned in the Mining and Geology Department for realisation of the hefty sum of Rs.5,68,58,560/- due from the petitioner in terms" ,,, of Ext.P6 notice till February 2018. Abstinence from initiating steps for realisation of amounts of such a magnitude, according to me, would not be" ,,, possible without the involvement of the concerned officers in the Department.,,,

10. Be that as it may, it is seen from the counter affidavit filed by the State in the matter that during the pendency of W.P.(C) No.25012 of 2013, even" ,,, when there was no interim order in the matter, without realising the amounts due from the petitioner, a fresh quarrying lease was granted to the" ,,, petitioner. Paragraph 17 of the counter affidavit reads thus:,,,

â??17. It has come to the notice of the Government that during the pendency of the aforesaid proceedings the Director of Mining & Geology has,,, issued an order No.740/2017-18/8571/M3/2017/DMG dated 09.2.2018 granting a fresh lease to the petitioner company in Sy.No.571/Pt of,,, Konnithazham Village without any prior permission from the Government. The Government is intending to cancel the lease granted to the petitioner,,, after proper notice.â?? ,,,

Though it is stated by the Government in the counter affidavit that the Government is intending to cancel the fresh lease granted to the petitioner, on a" ,,, query from the court, the learned counsel for the petitioner admitted that the said lease has so far not been cancelled. In a case of this nature, if I" ,,, adopt the course mentioned above, I have no doubt that the amount demanded from the petitioner in terms of Ext.P6 notice is not likely to be" ,,, recovered.,,,

11. That apart, on the peculiar facts of this case, according to me, this Court would not be justified in setting aside the impugned demand notice when",,,

there is no dispute to the fact that the petitioner has not remitted the dues in terms of Ext.P6 notice. Article 226 of the Constitution is a discretionary",,,

jurisdiction to be exercised on equitable grounds. The exercise of the said jurisdiction shall only be in furtherance of the interests of justice and not",,,

merely on making out a legal point or a technicality. In other words, the jurisdiction under Article 226 cannot be exercised if the exercise of the",,,

jurisdiction would confer on the applicant undue advantages/favours and deprive the opposite party benefits which they are legitimately entitled to.,,,

Needless to say, in exercise of the said jurisdiction, the High Court cannot do anything inequitable, for those who seek equity must bow to equity [see",,,

A. P. State Financial Corporation v. Gar Re-rolling Mills and Another, (1994) 2 SCC 647]. In this context, it is worth referring to a few paragraphs of",,,

the judgment of the Apex Court in Ramesh Chandra Sankla and Others v. Vikram Cement and Others, (2008) 14 SCC 58. Paragraphs 90, 91 and 98",,,

of the said judgment read thus:",,,

â??90. Now, it is well settled that jurisdiction of the High Courts under Articles 226 and 227 is discretionary and equitable. Before more than half a",,,

century, the High Court of Allahabad in the leading case of Jodhey v. State observed: (AIR p. 792, para 10)",,,

â??10. â?| There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be",,,

to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for",,,

the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein.â??",,,

(emphasis supplied),,,

91. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the",,,

territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised ex debito justitiae i.e. to meet the",,,

ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of",,,

equity. It is, therefore, power and also the duty of the Court to ensure that

power of superintendence must advance the ends of justice and uproot" ,,,
injusticeâ??.,,,

x x x x x x x x x x x x x x x.,,,

98. From the above cases, it clearly transpires that powers under Articles 226 and 227 are discretionary and equitable and are required to be exercised" ,,,

in the larger interest of justice. While granting relief in favour of the applicant, the court must take into account the balancing of interests and equities." ,,,

It can mould relief considering the facts of the case. It can pass an appropriate order which justice may demand and equities may project. As ,,,

observed by this Court in Shiv Shankar Dal Mills v. State of Haryana courts of equity should go much further both to give and refuse relief in ,,,

furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good" ,,,

conscienceâ??.,,,

As explicit from the extracted paragraphs of the judgment, while granting relief in favour of the applicant in exercise of the power under Article 226," ,,,

the court must certainly balance the interests and equities and is empowered to mould relief having regard to the facts of the case. Having regard to ,,,

the totality of the facts and circumstance of the case, I am of the view that the writ petition can be disposed of making it clear that the amount" ,,,

recoverable in terms of Ext.P7 demand notice would be only the amounts covered by Ext.P6 notice with interest from the date of Ext.P6. Ordered ,,,

accordingly.,,,

12. Having regard to the materials on record, I deem it appropriate to direct the Chief Secretary of the State to ascertain through appropriate enquiry" ,,,

as to whether abstinence from initiating steps for realisation of amounts covered by Ext.P6 notice is with the concurrence of the officials concerned in ,,,

the Department of Mining and Geology. Needless to say, if it is found in the said enquiry that any of the officers in the Department are guilty of" ,,,

dereliction of duty, steps shall be taken against them in accordance with law." ,,,

13. I have already indicated in the preceding paragraphs of this judgment, the manner in which the officers concerned in the Mining and Geology" ,,,

Department have acted in the matter of realising the dues to the Government from the petitioner. Before parting with this judgment, I am constrained" ,,,

to make a few observations regarding the grant of a fresh quarrying licence to the petitioner also. There cannot be any doubt that natural resources,,, constitute public property, and the State is empowered to distribute the same only by ensuring that the distribution is not detrimental to public interest",,, [See State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 and Kasturi Lal Lakshmi Reddy, Represented by its Partner Kasturi Lal, Jammu and Ors. v.,",,, State of Jammu and Kashmir and Ors., (1980) 3 SCR 1338]. It is trite that while distributing the natural resources, the Government must act as a,",,, prudent businessman and where the State is simply selling a produce, the State must endeavour to obtain the highest price. No part of the natural,",,, resources can be dissipated for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration to the State.,,,, Whenever Government or the authorities get less than the full value of the asset, the country is being cheated [See Natural Resources Allocation, In,",,, re, Special Reference No.1 of 2012, (2012) 10 SCC 1]. I do not think that a prudent business man would grant a quarrying lease to a person from,",,, whom substantial amounts running to several crores are due to him, without realizing the dues. As noted, when sizable amounts running to several,",,, crores of rupees are due from the petitioner, the officers concerned of the Department have granted a fresh quarrying lease to the petitioner without,",,, insisting settlement of the dues to the Government, that too, without the concurrence of the State Government. According to me, even if there is no,",,, interdiction in the Rules to renew an existing quarrying lease or grant a fresh quarrying lease in favour of a person from whom amounts are due to the,",,, Government and even if realisation of the dues is interdicted by way of interim orders of the court, the competent authority is not expected to make,",,, such grants without insisting payment of the entire dues for the purpose of granting renewal or a fresh grant. It is for the Government to take,",,, appropriate measures to prevent such occurrence in future, if necessary, by introducing appropriate amendments to the Rules.",,, The registry is directed to forward a copy of this judgment to the Chief Secretary of the State for appropriate action.,,,,