

(2017) 04 KL CK 0016
In the High Court Of Kerala
Case No : 12884 of 2017 (I)

Sarafunneesa

APPELLANT

Vs

The Village Officer

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

[Kerala Revenue Recovery Act, 1968](#), [Section 44](#), [Section 44\(3\)](#)

Citation : (2017) 04 KL CK 0016

Hon'ble Judges : Shaji P. Chaly

Bench : SINGLE BENCH

Advocate : K.M. Sathyanatha Menon, Kavary S. Thampi, P. Arun Kumar, Santhosh Peter

Judgement

1. This writ petition is filed by the petitioner seeking to restrain respondents 1 to 3 from selling off petitioner's property covered by Ext.P1 for recovering the arrears due from the 4th respondent, and for other related reliefs. Material facts for the disposal of the writ petition are as follows: 2. Petitioner is allegedly the deserted wife of the 4th respondent. According to the petitioner, 4th respondent is now residing in Tamil Nadu with his second wife and children. Petitioner along with her children are residing in the property situated in Survey No.241/2 after the marriage. Thereafter, when the marital relationship between the petitioner and 4th respondent got irretrievably broken down, due to the intervention of family members and using the fund raised by petitioner's family members, the property belonging to the 4th respondent situated in Survey No.241/2 was purchased in the name of the petitioner, evident from Ext.P1. 2. Now, the 1st respondent has proceeded to attach the property of the petitioner, admeasuring 4.99 cents, resorting to the provisions of the Kerala Revenue Recovery Act, in order to recover the dues from the 4th respondent. It is also stated that the 1st respondent after attaching the property has prepared Ext.P2 mahazar. Thereupon, stating the aforesaid reasons, petitioner submitted Ext.P3 objection before the 2nd respondent and Ext.P4 before respondents 1 to 3. On receipt of

Ext.P3, petitioner was called for a hearing. It is stated, Ext.P2 read with Ext.P5 would reveal the illegality in the proceeding initiated by respondents 1 and 2. It is also submitted that Ext.P2 reveals that the attachment is made by proceeding under Section 44(3) of the Kerala Revenue Recovery Act, and according to the petitioner, the procedure adopted is totally against the procedure contemplated under Section 44(3) of the Revenue Recovery Act, and hence it is liable to be interfered with. 3. Heard learned counsel for the petitioner and the learned Senior Government Pleader and perused the documents on record and the pleadings put forth by the petitioner. 4. The sole question to be considered is whether any manner of interference is warranted on Ext.P3, at this stage of the proceedings. The predominant contention advanced by learned counsel for the petitioner is that, as per Section 44(3) of the Kerala Revenue Recovery Act, the proceedings can be continued with only after securing orders from a court of law. Learned counsel has invited my attention to the Malayalam version of Section 44(3) and submitted, it is clear that without taking further orders from a court of law, the statutory authority cannot proceed with the action. In order to appreciate Section 44 in its intrinsic worth, it is only appropriate that the said section is extracted here, which read thus: "44. Effect of engagements and transfers by the defaulter:- (1) Any engagement entered into by the defaulter with any one in respect of any immovable property after the service of the written demand on him shall not be binding upon the Government. (2) Any transfer of immovable property made by a defaulter after public revenue due on any land from him has fallen in arrear with intent to defeat or delay the recovery of such arrear, shall not be binding upon the Government. (3) Where a defaulter transfers immovable property to a near relative or for grossly inadequate consideration after public revenue due on any land from him has fallen in arrear, it shall be presumed until the contrary is proved, that such transfer is made with intent to defeat or delay the recovery of such arrear, and the Collector or the authorised officer may, subject to the orders of a competent Court, proceed to recover such arrear of public revenue by attachment and sale of the property so transferred, as if such transfer had not taken place: Provided that, before proceeding to attach such property, the Collector or the authorised officer shall- (i) give the defaulter an opportunity of being heard; and (ii) record his reasons therefor in writing." 5. In my considered opinion, the contention raised by the learned counsel for the petitioner cannot be sustained for the reason, what is meant under Section 44(3) is that, if there are any enabling orders secured by an aggrieved person from a court of law, the action shall be subject to the orders so passed by the court. On a reading of the Malayalam version of the said provision also, I have no doubt in my mind that no other meaning can be attributed to interpret the said provision otherwise. Moreover, when the statute confers a power on an authority, the said authority is to exercise the power in accordance with law, which thus means, if any orders are passed by a competent court in respect of the attachment proceedings, the statutory authority will be bound by the same. In this case, no such factual circumstances remain, in order to enable the petitioner to import the rider contained under the said provision. 6.

Moreover, the Kerala Revenue Recovery Act is a self contained statute, having its own mechanism to tackle the situations arising thereunder in its entirety, and therefore, the course of action propounded by the learned counsel for the petitioner, to secure any orders from a court of law to proceed under Section 44 of the Act cannot be sustained under law. So also, if any such meaning is assigned to sub-section (3) of Section 44 of the Act, it will be nothing short of doing violence to the provisions of the statute. Moreover, the purpose of introduction of the Kerala Revenue Recovery Act is to recover the amounts due in a speedy and efficient manner. Therefore, by no stretch of imagination, it can be said that, interference of any court of law is envisioned by the framers of law at that stage of the proceedings. Above all, the phraseologies used under the provision in question, makes it abundantly clear, it envisages only a plain meaning, and do not intent to make a departure from the general tenor and terms of the provisions of the Act. Therefore, I have no hesitation to hold that the said legal question raised by the learned counsel for the petitioner with respect to Section 44(3) of the Act cannot have any sustenance under law. 7. The next question to be considered is whether at this stage of the proceedings any interference is warranted. To Ext.P2 notice, petitioner has submitted Ext.P3 objection, which is pending consideration before the 2nd respondent. Therefore, I think it is only appropriate that the writ petition is given a quietus by directing the 2nd respondent to attain finality to Ext.P3. 8. In that view of the matter, there will be a direction to the 2nd respondent to take on board Ext.P3, and finalize the proceedings after affording sufficient opportunity of hearing to the petitioner. Petitioner will be at liberty to raise all contentions before the said authority. A finality shall be attained within a month from the date of receipt of a copy of this judgment. Coercive proceedings, if any, on the basis of Ext.P2 shall be kept in abeyance till such time. The writ petition is disposed of accordingly.