(2013) 09 KAR CK 0309

In the Karnataka High Court

Case No : Writ Petition No. 23159 of 2013 (Excise)

Smt. Pramila P. Rai APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0309

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : S.P. Kandagal, for the Appellant; T.K. Vedamurthy, HCGP, for the Respondent

Final Decision : Disposed Off

Judgement

B.S. Patil, J.—In this writ petition, petitioner is seeking a writ of mandamus against the 2nd respondent - Excise Commissioner, Government of Karnataka, to consider the application dated 22.06.2012 filed by the petitioner vide Annexure-G and issue a no due certificate. As per the petition averments, petitioner''s father-in-law, K. Balkrishna Rao was an Excise Contractor for Mangalore Taluk in Dakshina Kannada District. He was in arrears of rental dues payable to the Department both towards principal and interest. According to the petitioner, the dues remained unpaid due to the loss sustained by the father-in-law of the petitioner. Petitioner''s father-in-law died on 26.06.2002 without making the payment of arrears. Later on, husband of the petitioner also could not discharge the dues. Unfortunately, the husband of the petitioner also died on 11.04.2006.

2. As per Annexure-B communication dated 26.10.2006 addressed to the petitioner, she was called upon by the Deputy Commissioner, Dakshina Kannada District, Mangalore, to pay total amount of Rs. 77,23,900/- on or before 31.10.2006 under what is known as ''Karasamadhana Scheme - 2. It was made clear in the said notice that if the said amount were to be paid on or before 31.10.2006 by filing necessary application in the prescribed form, then, the interest due and payable in a sum of Rs. 3,30,96,037/- would be waived as per

the scheme.

3. The case of the petitioner is that pursuant to this notice, she has paid the entire amount of Rs. 77,23,900/- within the time stipulated in the notice and requested the Authorities to issue No Due Certificate extending the benefit of the scheme. However, the Authorities did not take any action. This made the petitioner to address a representation dated 22.06.2012 to the Commissioner of Excise, Bangalore, enclosing several documents and requesting to issue No Due Certificate with regard to the arrears of rental dues which the father in law of the petitioner owed. The 2nd respondent has not considered this representation. It is in this background, the petitioner has approached this Court seeking a writ of mandamus to direct the 2nd respondent to consider the representation and issue No Due Certificate.

4. Learned Government Pleader has filed statement of objections. In the statement of objections, a defense is taken stating that the communication Annexure-B issued by the then Deputy Commissioner was not correct inasmuch as the actual dues towards the principal and arrears was not reflected in the rental register and therefore, the petitioner cannot be regarded as having discharged the total outstanding amount in terms of the scheme, thereby entitling her for issue of No Due Certificate. This defense taken in the statement of objections filed before this Court is strongly refuted by the learned counsel for the petitioner.

5. It is asserted by the petitioner that as the petitioner has acted in accordance with the terms and provisions mentioned in the notice and has paid huge amount to the department hoping to get the benefit under the scheme, it would not be open for the Authorities now to resile from their stand taken in the notice. Learned counsel for the petitioner further points out that the figures mentioned in the statement of objections are not correct and without prejudice to the other contentions open to the petitioner, she will be in a position to convince the Authorities that the dues have been properly discharged in terms of the scheme.

6. Having heard the learned counsel for both parties, I find that this Court will not be justified in embarking upon an enquiry as to whether the notice Annexure-B contained proper figures or not or as to whether the figures mentioned in the statement of objections filed by the respondent reflect the true state of affairs. At any rate, such an exercise cannot be undertaken without providing a fair and reasonable opportunity to the petitioner. What is the effect of the notice Annexure-B when the petitioner has acted upon the same by discharging the dues as claimed therein is also not necessary to be decided at this stage. Whether the principle of estoppel can be pressed into service by the petitioner need not be examined now. The proper course to be adopted, in my considered view, is to direct the 2nd respondent to afford an opportunity of being heard to the petitioner and thereafter take steps in accordance with law on the representation submitted by the petitioner seeking issue of No Due Certificate, keeping in mind the provisions of the scheme. Liberty is reserved to the

petitioner to challenge the action to be taken by the 2nd respondent in case she feels aggrieved by the same.

Writ petition is accordingly disposed of.

