

(1980) 06 KL CK 0013
In the High Court Of Kerala
Case No : W.A. No. 231 of 1978

Special Deputy Tahsildar and Others

APPELLANT

Vs

Kunju Moideen

RESPONDENT

Date of Decision : 09-06-1980

Acts Referred:

Kerala Forest Act, 1961 — Section 79

Citation : (1980) 06 KL CK 0013

Hon'ble Judges : V. Balakrishna Eradi, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; Varghese Kalliath, Joseph A. Vadakkal, George K. Varghese and Jose P. George, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Eradi, C.J.—This writ appeal has been preferred by Respondents Nos. 1 to 3 in O.P. No. 4233 of 1976--Special Deputy Tahsildar, Manjeri Circle, Forest Conservator, Calicut and the Divisional Forest Officer, Nilambur Division, Nilambur--Against the judgment of a learned single Judge of this Court allowing the said writ petition filed by the Respondent herein and quashing the revenue recovery proceedings initiated against him in purported exercise of the powers conferred by Section 68 of the Revenue Recovery Act for realisation of an amount of Rs. 3,150 said to represent the loss sustained by the Forest Department on account of resale of the right to raise Punam cultivation on certain lands, which was necessitated by the default committed by the writ Petitioner in paying the balance of the bid amount, for which the said right had been formally knocked down in his favour, and in executing the necessary written agreement.

2. The learned single Judge held that since the amount sought to be recovered was not money due to the Government under a written agreement executed by the writ Petitioner, the resort taken to the power conferred by Section 68 of the Kerala Revenue Recovery Act was unwarranted. A contention advanced by the

Respondents-Appellants that the amount in question was recoverable as an arrear of land revenue u/s 79 of the Kerala Forest Act was rejected by the learned Judge and it was held that the revenue recovery proceedings initiated against the writ Petitioner were wholly without jurisdiction. Hence this writ appeal by Respondents numbers 1 to 3 in the Original Petition.

3. Section 68(1) of the Revenue Recovery Act the impugned proceedings are not sought to be supported on the basis of any other Sub-section of the Section--will get attracted only if the amount sought to be recovered is:

(i) a sum due to the Government on account of quit rent or revenue other than public revenue due on land; or

(ii) money due from any person to the Government which are under a written agreement executed by such person is recoverable as arrears of public revenue due on land or land revenue; or

(iii) any sum declared by any other law for the time being in force to be recovered as arrears of public revenue due on land or land revenue; or

(iv) fees and other dues payable by any person to the Government.

It is not contended--Nor is it possible to countenance such a contention if advanced--that the amount sought to be recovered from the writ Petitioner is quit rent or land revenue or revenue other than public revenue. There is also no case for the Appellants that it is a sum declared by any other law for the time being in force to be recoverable as arrear of public revenue. It does not also fall within the description "fees and other dues payable by any person to the Government". Such being the position, in order to fall within the scope of Sub-section (1) of Section 68, it is to be money due from the writ Petitioner to the Government under a written agreement executed by him containing a stipulation that it may be recovered as arrears of public revenue due on land. Admittedly, there is no written agreement at all executed by the writ Petitioner. Hence the applicability of Section 68(1) has to be ruled out.

4. The only other provision relied on by the Appellants for sustaining the legality of the impugned revenue recovery proceedings is Section 79 of the Kerala Forest Act. That Section reads:

All money, other than fines, payable to the Government under this Act or any rule made thereunder, or on account of timber or forest produce or of expenses incurred in the execution of this Act in respect of timber or forest produce, or under any contract relating to timber or forest produce including any sum recoverable thereunder for the breach thereof or in consequence of its cancellation or under the terms of a notice relating to the sale of timber or forest produce by auction or by invitation of tenders, issued by or under the authority of a Divisional Forest Officer, and all compensation awarded to the Government under this Act may if not paid when due, be recovered under the law for the time being in force, as if it were an arrear of land revenue.

What is sought to be realised from the Petitioner is not money payable to the Government under the Forest Act or any rule made thereunder. Nor is it an amount due on account of or in respect of timber or forest produce under any contract relating to timber or forest produce. We are in complete agreement with the view expressed by the learned single Judge that in such circumstances the provisions of Section 79 are not at all attracted.

The result that emerges from the foregoing discussion is that the Writ Appeal is devoid of merits and it has only to be dismissed. We do so, but, in the circumstances, without any direction regarding costs.