

(2013) 02 KL CK 0001
In the High Court Of Kerala
Case No : W.A. No. 578 of 2012

Special Deputy Tahsildar (RR), KSFE Ltd. and Another

APPELLANT

Vs

K.P. Rajan and Another

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 3 KHC 232

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : P.K. Soyuz, Special Government Pleader, Revenue, A.M. Antony, M.L. Sajeewan and Johnson T. John, s, KSFE Ltd, for the Appellant; V. Rajendran (Perumbavoor) and George Varghese Kizhakkambalam, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—The above Writ Petition was filed against the collection charges demanded by the second respondent, who had taken revenue recovery proceedings for recovery of amounts due to the first respondent. The petitioner was a defaulter and his properties were proceeded against under the Revenue Recovery Act. The petitioner having made part payment on 19/07/2011 again approached the second respondent for a statement of accounts to facilitate the balance payment. As per Ext. P7, a statement of accounts was issued wherein 5% collection charges was demanded as per Rule 5 of the Kerala Revenue Recovery Rules, 1968. The petitioner though was ready to pay the amount due to the second respondent, refused to make good the collection charges demanded by the second respondent. In the circumstances, the second respondent refused to accept the payment in toto and the petitioner was before this Court. The learned Single Judge by an interim order dated 22/09/2011 directed the first respondent to release title deeds of the petitioner, on the petitioner paying under protest 1% of the amount recovered towards the payment of collection charges. The title deeds, on making of such deposit, was directed to be returned within one week from the date of payment It was also directed that the attachment of

the property also would stand lifted on such payment being made. The petitioner made the payments as per the interim order and though the title deeds were returned he was aggrieved by the attachment of the property not being lifted by Arising against the revenue recovery authorities. The petitioner approached the learned Single Judge with IA No. 724 of 2012 seeking for a direction to the second respondent to communicate lifting of attachment order of the property of the petitioner covered by Ext. P1 document to Rayamangalam Village Office and Kunnathunad Taluk Office to facilitate registration of the properties in the name of the purchaser of the property. The above IA was allowed by the learned Single Judge by order dated 19/01/2012 against which the State has filed Writ Appeal No. 578 of 2012.

2. The learned counsel for the petitioner would submit that a division bench of this Court in *State of Kerala v. Shibukumar P.K.* (Writ Appeal No. 1107 of 2009 judgment dated 18/08/2009) found that item (viii) under Rule 4 and Rule 5(1) are unreasonable and discriminatory and ultra vires.

3. The learned Government Pleader, however, would place before us an interim order issued by the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 1107/2010 dated 22/01/2010, wherein the judgment of this Court has been stayed.

4. In such circumstance, we are unable to sustain the interim order which directed lifting of attachment of the properties, on the premise that the 1% of the collection amount as directed, in the earlier order, was complied with. The learned counsel for the writ petitioner, however, would raise an objection to the effect that the earlier order passed by the learned Single Judge directed return of title deeds as also lifting of attachment on payment of 1% of the collection charges, that too, under protest. Since the earlier order had not been challenged it is the contention of the learned counsel that the writ appeal which merely challenged the consequential order cannot lead to vacation of the earlier order. We notice that though there was an earlier order, the petitioner chose not to file a contempt but came with a further application for lifting of attachment; the order in which is challenged in the above writ appeal. It is also pertinent that we have in the context of the Supreme Court order, called for the writ petition itself which is posted along with the writ appeal. The writ appeal being not disposed of, the disposal of the same would put an end to the technical objection raised since any interim orders passed are subject to the final orders in the writ petition.

In the circumstance stated above we vacate the interim order dated 19/01/2012 and allow Writ Appeal No. 578 of 2011. The Hon'ble Supreme Court having stayed the judgment of the Division Bench of this Court, we are of the opinion that the writ petition is devoid of merit and is liable to be dismissed and we do so. Parties to both the writ appeal as also the writ petition are identical and they are left to suffer their respective costs.