
(2016) 12 KL CK 0067
In the High Court Of Kerala
Case No : WA. No. 1933 of 2014

State of Kerala

APPELLANT

Vs

Suresh

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 44(1)

Citation : (2017) 2 ILRKerala 340 : (2017) 1 KLT 73

Hon'ble Judges : Mr. Antony Dominic and Mrs. Shircy V., JJ.

Bench : Division Bench

Advocate : Sri C.P. Sudhakara Prasad, Advocate General and Sri Paul Abraham Vakkanal, Government Pleader, for the Appellants; Sri. M.K. Faisal, Advocate, for the Respondent No. 1; Sri. M. Shaju Purushothaman, Advocate, for the Respondent No. 1; Sri. K.S. Rajesh, Adv

Final Decision : Allowed

Judgement

Antony Dominic, J.—The respondent herein filed W.P.(C) No. 31986 of 2011 seeking to quash Exts. P5, P7 and P8, notice of demand, an order passed by the third appellant herein rejecting his objection thereto and sale notice issued under the provisions of the Kerala Revenue Recovery Act (hereinafter referred to as "the Act"). The writ petition having been allowed by the learned single Judge, the respondents in the writ petition have filed this appeal.

2. Briefly stated the facts of the case are that four joint contractors were the licensees of T.S. Nos.1 to 86 of Kodungallur Excise Range during the period from 1997 to 2000. They committed default in remitting the licence fee from September 1997 onwards. Thereupon Ext.R3(a) demand notice dated 22.5.1998 was issued by the Assistant Excise Commissioner, Thrissur, demanding payment of a total sum of Rs.2,22,17,787/- which included the defaulted instalments, interest and notice fee. Annexure-I produced in the appeal shows that the notice was served on the father of one of the joint contractors Sri.A.S. Sudheeshkumar, on 24.5.1998. Payment was not made and subsequently on 30.9.1998, the

licence was cancelled and the security deposit was forfeited by the Assistant Excise Commissioner.

3. In the meanwhile, Exts.P1 and P2 sale deeds were executed by Sudheeshkumar on 25.6.1998 whereby his immovable properties comprised in Survey Nos. 41/6 and 44/7 of Panangad Village were sold to the respondent, who is a relative of the vendor. Subsequently in order to recover the dues of the defaulters, Ext.R3(b) requisition under Section 69(2) of the Revenue Recovery Act was issued to the District Collector on 30.1.1999. Based on the requisition, demand notices under Sections 7 and 34 were issued to the defaulters on 10.2.1999 for recovery of Rs.7,70,71,538/-. There was no response from the defaulters.

4. In such circumstances invoking their powers under Section 44 of the Act, Ext.P5 notice was issued to the respondent on 23.6.2011 demanding payment of Rs.2,02,66,011/-. The respondent objected to the demand which was finally rejected by Ext.P7 order of the third appellant. Subsequently, Ext.P8 sale notice was issued on 31.10.2011 to sell the property on 8.12.2011. It was at that stage, the respondent filed the writ petition contending that in the absence of serving a demand notice under Section 7 or 34 of the Act on his vendor before the property was sold, Section 44 of the Act could not be invoked. In the judgment under appeal, the learned single Judge accepted the contention and allowed the writ petition. It is this judgment which is under challenge before us.

5. We heard the learned Advocate General for the appellants and the learned counsel appearing for the respondents.

6. According to the learned Advocate General, in order to invoke Section 44(1) of the Act, the statute only contemplates the service of a written demand on the defaulter. It is stated that such a written demand was served on the defaulter by Ext.R3(a) on 24.5.1998 and that since the property was transferred by the defaulter subsequently on 25.6.1998, the conclusion of the learned single Judge that there was no written demand served on the defaulter before the transfer of the property is erroneous. On the other hand, the learned counsel for the respondent/writ petitioner contended that the written demand contemplated in Section 44(1) of the Act is the demand notice as provided in Sections 7 & 34 of the Act. According to him, admittedly no demand notice as provided in Sections 7 or 34 was served on the defaulter any time before 25.6.1998. Therefore, the learned single Judge was perfectly justified in his conclusions.

7. We have considered the submissions made. Section 44(1) of the Act, which alone is relied on by the learned Advocate General, providing for the effect of engagements by the defaulter, reads 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."

8. Reading of the above provision would show that any engagement entered into by the defaulter with anyone in respect of any immovable property after the service of the written demand on him shall not be binding upon the Government. Therefore, all that is required to be satisfied to attract Section 44(1) of the Act is that a defaulter should have been served a written demand and the defaulter must have subsequently entered into an engagement in respect of his immovable property. The term "written demand" is not defined in the Act. In the absence of any such statutory definition to the expression "written demand", the term has to be understood bearing in mind the object that is sought to be achieved by the statute, viz. recovery of public revenue dues on land and also the common parlance meaning of the term. If the term is so understood, it only warrants an understanding that what is required to be served on the defaulter is only a demand indicating the liability that is due from him. This very question has engaged the attention of this Court in *Jameela Bose v. State of Kerala* (2012(1)KLT 258) where rejecting a similar contention, a learned single Judge of this Court held thus:

"5. One of the contentions raised by the petitioner is that, the relevant date for the purpose of Section 44 is the date when a notice under the Revenue Recovery Act is issued to the defaulter. I am of opinion that, such a strict interpretation of Section 44 would defeat the very purpose of the Revenue Recovery Act. A defaulter will certainly know when exactly the defaulted amounts became due from him. It is common knowledge that revenue recovery proceedings follows much later. So if the interpretation sought to be put by the petitioner on Section 44 is accepted, the defaulter will have plenty of time to dispose of his assets before the revenue recovery notice visits him. Therefore, I am inclined to construe the "written demand" mentioned in Section 44 as the date when the appropriate authority serves a written demand on the defaulter and not the date when the revenue recovery authorities issue a demand notice under Section 34 as contended by the petitioner."

Therefore, with the service of Ext.R3(a), the first requirement of Section 44(1) insofar as this case is concerned, has to be held as satisfied.

9. The second issue to be considered is whether a sale deed executed by a defaulter can be considered as an engagement entered into by the defaulter. This issue, need not detain us any longer for the reason that the same question has already been considered by a Division Bench of this Court in *Agri. Income Tax Officer v. Thankamma Parameswaran* 1986 KLT 416. In that case, the Division Bench held as follows:

"14. The word "engagement" even according to accepted dictionaries like Shorter Oxford, Websters or Random House, takes in a contract or a promise. Ordinarily therefore a contract of sale would also be enveloped within the term "engagement" as referred to in Section 44(1). There is no good ground for

excluding contracts such as sale, mortgage or gift from the purview of the term "engagement".

Therefore, the second requirement of Section 44(1) of the Act is also satisfied in this case.

10. The judgment under appeal shows that the learned single Judge has referred to a Division Bench judgment of this Court in *Special Tahsildar v. Vasu* (2006(4)KLT 557). Reading of the judgment show that the issue considered in that case arose out of a suit in which the validity of a proceedings under Section 44 was called in question. Reading of the judgment shows that while examining the contention with reference to Section 44 of the Act, the Bench was not called upon to the answer specifically the scope of the term "written demand" employed in Section 44(1) of the Act. Therefore, we are unable to understand the principles laid down in the judgment in *Vasu's* case (*supra*) as laying down that the term "written demand" used in Section 44(1) should be the demand notice specified in Sections 7 & 34 of the Act.

11. For all the aforesaid reasons, we are unable to sustain the judgment under appeal.

12. Accordingly, the judgment under appeal is set aside and the writ appeal is allowed.