(1975) 11 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No. 544 of 1973

Thayambath Janaki APPELLANT

Vs

The State of Kerala and Others RESPONDENT

Date of Decision : 20-11-1975

Acts Referred:

Kerala Revenue Recovery Act, 1968 — Section 2(e), 68

Citation : (1976) 5 CTR 158B

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Judgement

V.P. Gopalan Nambiyar, J.—I see no merit in this writ petition field to declare Section 18 and 18-A of the Abkari Act and the Rules and Notifications as ultra vires; to quash Exts. P1, P4 and P6; and to declare that the petitioner is not liable to pay the dues left by her husband who is dead; to issue a writ of Mandamus directing respondents 2 to 4 not to proceed against the petitioner under the Revenue Recovery Act, and for incidental reliefs.

2. One Koora Raman was an Abkari contractor in respect of T.S. No. 28 in Payyannur Range for 1968-69. He died on 16-8-1971. It is not disputed that he was in arrear for a sum of Rs. 11,588.87 in respect of arrears of bid amount. The petitioner, his wife and the legal representative, was called upon to satisfy the arrears. She paid Rs. 2,000/-said to be under protest - on 31-12-1971, and a further sum of Rs. 600/- on 12-1-1972 (vide Exts. P2 and P3). It was thereafter that Ext. P1 notice threatening a sale of the property of the deceased which had devolved on the petitioner on is death, was issued. Ext. P4 is a copy of Ext. P1.

3. The contention of the petitioner was that the petitioner is not a defaulter as defined in the Revenue Recovery Act, that no steps having been taken against the property of the deceased during life time the coercive processes of the Revenue Recovery Act cannot be put into operation against the deceaseds property which had devolved on the petitioner by inheritance, and therefore the proceedings are illegal and void. Reliance was placed on the definition of

defaulter u/s 2(e) of the Kerala Revenue Recovery Act, as a person from whom an arrear of public revenue due on land is due and is including a person who is responsible as surety for the payment of any such arrear. It was, stressed that the absence in the definition, of any mention of legal representative was significant. This was read along with Section 68 of the Act, under which, inter alia, all moneys due from any person to the Government under a written agreement executed by him are recoverable as arrears of public revenue. It was contended that Section 28 of the Abkari Act authorises only the recovery of arrears of Abkari due from the person liable to pay the same or his surety.

4. The argument, to my mind, ignores the concept of a legal representative, that, in law he is not a different person from the deceased, but only continues the person of the deceased. The counter affidavit in paragraph 3 stated that the petitioners husband had executed the necessary agreements but had defaulted payment of list for the shop, and hence the shop was under departmental management, and a sum of Rs. 11,551.27 was due from him on 1-4-1969. Together with future interest. Revenue Recovery proceedings were taken out in respect of this amount. I do not see any flaw or infirmity in the proceedings thus started.

5. Petitioners counsel relied on the decisions in Mariam vs. Tahsildar, North Wynad 1969 KLT 860 and Kunhi Avisia Umma vs. District Collector, Kozhikode ILR 1974 Ker 391. It is plain that these cases can have no application. In the first of these, coercive proceedings were sought to be taken out against a person in whom title had become vested by assignment in respect of dues which had accrued against the assignor prior to the assignment. In the second, title had similarly become vested in a third party by gift, and proceedings were in respect of dues which had accrued against the donor prior to the gift. The position here disclosed is fundamentally different. The arrears due from the deceased are sought to be recovered from his legal representative who continues the person of the deceased.

6. No arguments were advanced regarding the constitutionality of the Abkari Act or its provisions.

7. I dismiss this writ petition with no order as to costs.