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**(1988) 02 KL CK 0032**

**In the High Court Of Kerala**

**Case No : O.P. No"s. 4641 and 6271 of 1986**

V.A. David and Another

APPELLANT

Vs

Kerala State Financial Corporation and Others

RESPONDENT

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**Date of Decision : 28-02-1988**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Kerala Revenue Recovery Act, 1968 — Section 71  
State Financial Corporations Act, 1951 — Section 29, 31

**Citation : AIR 1988 Ker 319 : (1988) 2 ILR (Ker) 727**

**Hon'ble Judges : T.L. Viswanatha Iyer, J;K.S. Paripoornan, J**

**Bench : Division Bench**

**Advocate : O. George William and S. Sivaraman, for the Appellant; Mathews P. Mathew and Govt. Pleader, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Paripoornan, J.—In these two O.Ps. common questions arise for consideration. They were heard together. O.P. 4641 of 1986 : -- The petitioner obtained a loan from the 1st respondent, the Kerala Financial Corporation (in short, Corporation), An agreement was executed by the petitioner in favour of the Corporation. It is Ext, P-I. According to the petitioner, the Corporation did not act according to the terms and conditions of the agreement. The performance of certain conditions by the petitioner became impossible. The petitioner was earnest in complying with the terms of the agreement and for completing the industrial concern, for which the loan was obtained. Though the Corporation did not adhere to the terms of the agreement, the petitioner was pursuing the matter with the Corporation. He requested for enhancement of the loan amount. He also requested for immediate disbursement of the loan amount as per Ext. P-I. The full amount was not disbursed at any time. While say by Ext. P-5 dt. 2-4-1982, the 2nd respondent informed the petitioner that further disbursement of the amount will be made only after making firm arrangements for procurement of plant and machinery. The petitioner was compelled to spend further amounts on machinery from his

resources. There were further correspondence between the petitioner and the Corporation regarding the disbursement of the amount and other matters. By Ext. P-9 dt. 21-12-1983, the loan was recalled. The petitioner sent Ext. P-10 reply, dt. 27-1-1984. It is stated that the Corporation violated the provisions of Ext. P-I agreement, and they committed breach of contract. The petitioner issued a lawyer's notice dt. 11-9-1984, evidenced by Ext. P-I 1. He received a reply, evidenced by Ext. P-12, dt. 10-12-1984. Subsequently, by Exts. P-13 and P-B(A) the 3rd respondent (Deputy Tahsildar, Revenue Recovery) served notices on the petitioner u/s 34 and Section 7 of the Kerala Revenue Recovery Act (in short, the Act). The petitioner sent Ext. P-14 reply thereto and contended that no amount is realisable from the petitioner since the Corporation committed breach of contract. Without considering the above matters, the 3rd respondent issued a notice of attachment in Form 11 u/s 36 of the Act. It is dt. 10-2-1986, evidenced by Ext. P-15. The provisions of the Act are made applicable to the recovery of amounts due to the Corporation, by the Government by Ext. P-16 notification, Ext. P-16 is illegal and unenforceable. The attack is against Exts. P-13 and P-13(A) and P-15( notices and attachment under the Act) and Ext. P-16 notification issued by the State Government in exercise of the powers u/s 71 of the Act permitting recovery of amounts due to the Corporation under the provisions of the Act. The petitioner prays for the issue of a writ of certiorari to quash Exts. P-13, P-13(A), P-15 and P-16. He also prays for the issue of a writ of prohibition restraining the respondents from resorting to the provisions of the Act against the petitioner, and prays for a declaration that the petitioner is not liable to be proceeded against under the Act.

O.P. No. 6271 of 1976:- In this O.P., the petitioner obtained a loan from the 1st respondent (Corporation) for starting an oil mill. Due to misfortune, he could not pay up the dues and became a defaulter. The 1st respondent took over the management and possession of the industry. He filed O.P. No. 10892 of 1983. On paying an amount of Rs. 5,000/- the Court ordered to hand over back the industry to the petitioner. The petitioner remitted the amount and got back possession from the 1st respondent. The Court directed the petitioner to discharge the liability in installments. During the time the Corporation possessed the industry, considerable damages took place. The petitioner was constrained to file O. S. 170 of 1986 before the Sub Court, Trivandrum, for recovery of damages sustained by him against the 1st respondent. The suit is pending. The mill was not working. The petitioner was not able to pay up the amount actually due to the 1st respondent. The 1st respondent initiated steps under the Act to realise the amount due to it. The 2nd respondent issued a notice of attachment u/s 36 of the Act on 19-6-1986. This is Ext. P-I. The challenge is against Ext. P-I. It is stated that for recovering the arrears due to the 1st respondent, the provisions of the Act cannot be invoked. In particular, it is stated that the notification issued by the Government of Kerala u/s 71 of the Act permitting the recovery of the amounts due to the 1st respondent Corporation, to be recovered under the Act, is unauthorised. Section 71 of the Act travels beyond the purport and object of

the Act and is liable to be struck down; so also the notification issued by the State Government u/s 71 of the Act. The petitioner challenges Ext. P-I as illegal. He prays for a writ of prohibition commanding the respondents to forbear from resorting to the provisions of the Act to realise from the petitioner any amount that may be due from him to the 1st respondent.

2. The substantial challenge in both the O.Ps. is against the notification issued by the State Government permitting the recovery of the amounts due to the Corporation under the Act. The said notification is Ext. P-16 in O.P. No. 4641 of 1986 - S.R.O. No. 851/79 - G.O. No. 42026/G1/78/RD dt. 6-7-1979, published in Kerala Gazette No. 31 dt. 31-7-1979. The said notification is extracted herein below : --

"In exercise of the powers conferred by Section 71 of the Kerala Revenue Recovery Act, 1968 (15 of 1968) the Government of Kerala being satisfied that it is necessary to do so in public interest hereby declare that the provisions of the said Act shall be applicable to the recovery of amounts due from any person or class of persons to the Kerala Financial Corporation."

3. There is no challenge in O.P. No. 4641 of 1986 that Section 71 of the Revenue Recovery Act is ultra vires or illegal. Even in O.P. No. 6271 of 1986 the challenge against Section 71 of the Act is really vague. Counsel for the petitioners contended that the notification -- S.R.O. No. 851/79 (Ext. P-16 in O.P. No. 4641 of 1986) -- is beyond legislative competence and so invalid. It was argued that there is no legislative entry in List II of Sch. 7 of the Constitution under which the notification - S.R.O. No. 851/79 -- can be sustained. Reference was made to Sch. 7, List II, Entry 43 and Entry 45. On the other hand, counsel for the Corporation, Mr. Mathews P. Mathew, submitted that there is no real challenge against Section 71 of the Act, that it is incorrect to say that Section 71 cannot be sustained under any one of the Entries in List II, and that the challenge by the petitioners against the recovery proceedings initiated by the Corporation is without substance. It was argued that in both the cases, the petitioners had executed agreements and obtained the loan. The jural relationship between the petitioner and the Corporation is purely contractual. It is not based on any statute. Substantially, in both the cases the complaint is that the Corporation did not conform to or adhere to the terms and conditions contained in the agreements and committed breach of contract, and after having committed breach of contract, for amounts, alleged to be due to it, the Corporation has resorted to revenue recovery proceedings for realising the amount, which is not permissible. Such a plea is not open to the petitioners. Counsel for the Corporation contended that even if there is any breach or violation of the agreement, since the contract does not stem from, or based on, any statute, the petitioners should seek their remedy by ordinary civil action, and proceedings under Article 226 of the Constitution of India will not lie either to enforce the terms of the contract, or to complain that the Corporation is taking steps to realise amounts, which are not due.

4. We see considerable force in the plea raised by the counsel for the Corporation, Mr. Mathews P. Mathew. The jural relationship between the petitioners and the Corporation is purely contractual. For breach of any conditions in the said contract, or for enforcing the rights thereunder, or for getting redressal against recovery of amounts pertaining to such contract, the remedy of the petitioners should be, by filing a suit in the ordinary civil court, it is not open to the petitioners to invoke the extraordinary jurisdiction vested in this Court under Art. 226 of the Constitution. *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, and *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, at P. 343 : *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, at p. 1423).

5. As stated, the real challenge is only against the notification -- S.R.O. 851/79. So long as Section 71 of the Act has not been precisely challenged by adducing cogent reasons, it is not for this Court to pronounce upon the vires of the Act. So long as Section 71 of the Act stands, it is not open to the petitioners to challenge the notification (S.R.O. 851/79), issued by the State Government, in exercise of the powers vested in it u/s 71 of the Act, as lacking in legislative competence. If the Act is within legislative competence or otherwise valid, the notification promulgated in exercise of the powers vested in the State Government under the Act is not open to attack as lacking in legislative competence. Apart from lack of legislative competence, the notification - S.R.O. 851/79 - is not challenged on any other ground.

6. The petitioners' counsel placed reliance on the decision in *G.N. Venkataswamy Vs. Tamil Nadu Small Industries Development Corporation Ltd.*, and contended that Section 71 of the Act is ultra vires and illegal. In the Madras case, Section 52A of the Tamil Nadu Revenue Recovery Act was challenged as ultra vires. The Legislation was sought to be defended under Entries 43 and 45 of List II of 7th Sch. of the Constitution. Entries 43 and 45 of List II of 7th Sch. of the Constitution are as follows :

"43. Public debt of the State.

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45. Land revenue, including the assessment and collection of revenue, the maintenance--of land records, survey for revenue purposes and records of rights, and alienation of revenues."

The Madras High Court held that Section 52A of the Tamil Nadu Revenue Recovery Act will not fall within List II, Entry 43 or List II, Entry 45 of the 7th Sch. to the Constitution of India and so the Legislature was incompetent to enact the law. It was ultra vires the powers of the Tamil Nadu Legislature. In this connection, we should state that the Madras High Court had no occasion to consider List II, Entry 30, which is to the following effect:

"30. Money-lending and money-lenders; relief of agricultural indebtedness."

7. The Kerala Revenue Recovery Act is an Act to consolidate and amend the laws relating to the recovery of arrears of public revenue in the State of Kerala. The long title as well as the preamble say so. u/s 71 of the Act the State Government is authorised to declare the Act applicable to any institution. The section states as follows :

"71. Power of Government to declare the Act applicable to any institution:-- The Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery."

A look at Section 71 would show that it is open to the Government to declare, if it is necessary in public interest, that the provisions of the Act shall be applicable to the recovery of amounts due to any specified institution. The Kerala Financial Corporation is advancing loans to many persons and institutions. It cannot act as an ordinary banker with the objective to earn interest or profit alone. Primarily it advances loans in order to assist needy people to establish industries in the State or development of industries and other commercial ventures, which would advance the prosperity and economic well being of the people in the State. The amounts are repayable in easy instalments and the interest rate will be lower than the interest charged by commercial bankers. The Corporation is a public institution, in which the State and all the people of the State are vitally interested. It is in public interest that the amounts advanced by such Corporation are recovered speedily or expeditiously, so that the amounts may be available for being further ploughed for fresh advances to others who need financial assistance from the Corporation. It is again to achieve that purpose the Corporation should have a speedier and more effective remedy to realise its dues, since the remedy by way of suit or the other remedies contained in the Financial Corporation Act may be dilatory or burdensome. Any delay in the realisation of the amounts due to the Corporation will result in loss of liquidity to the Corporation for advancing further or fresh loans to the needy people. The Legislature has armed the Government with enough powers to extend the provisions of the Act, whenever Government is satisfied that in public interest the amounts due to any (public) institution which is engaged in advancing money to the public, should be realised speedily and without delay or lengthy proceedings. That is the plain tenor of Section 71 of the Act. Keeping these salient aspects in view, and in order to avoid delay that is likely to be involved in realising the amounts by way of suits, or other proceedings under the Financial Corporation Act, the State Government has issued the notification (S.R.O. 851 of 1979) in exercise of its powers vested in it u/s 71 of the Act. It cannot be denied that speedy realisation of the amounts due to the Corporation is in public interest to make the functioning of the Corporation more effective and meaningful. If the State Government is authorised by the Legislature u/s 71 of the Act to extend the provisions of the Act, in public interest, for recovery of amounts due to

specified institutions, the said legislation should be understood in the peculiar background as stated above. Krishna Iyer J., in delivering the judgment of the Court in Fatehchand Himmatlal and Others Vs. State of Maharashtra, at P. 1844, para 54, stated thus :

"Entry 30 in List II is money-lending and money-lenders, relief of agricultural indebtedness. If common sense and common English are components of constitutional construction, relief against loans by scaling down, discharging, reducing interest and principal, and staying the realisation of debts will, among other things, fall squarely within the topic. And that, in a country of hereditary indebtedness on a colossal scale. It is common place to state that legislative heads must receive large and liberal meanings and the sweep of the sense of the rubrics must embrace the widest range. Even incidental and cognate matters come within their purview. The whole gamut of money-lending and debt-liquidation is thus within the State's legislative competence."

It is established law that the legislative entry is a field of legislation and it should be given its widest scope. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. It would not be reasonable to interpret a legislation by comparing or contrasting one entry with any other entry in the same list. While interpreting the entries in the various lists, the Court should read the words in their ordinary, natural and grammatical meaning and the most liberal construction should be put on the words, so that they may have effect in their widest amplitude so as to take within their sweep all ancillary and subsidiary matters, which can be fairly, reasonably and properly comprehended in them. It is also settled law that "the law", can be justified as falling within one or more entries of the relevant list, or parts of it may be justified under one entry and the other parts may be justified under another. In the light of the above settled principles of interpretation of the legislative entries in the Constitution, and the weighty observations contained in the decision of the Supreme Court in Fatehchand Himmatlal and Others Vs. State of Maharashtra, at P. 1844, paragraph 54, we have no hesitation to hold that Section VI of the Kerala Revenue Recovery Act will fall within Entry No. 30 of List II of the 7th Schedule of the Constitution of India. Section 71 of the Kerala Revenue Recovery Act is intra vires and is not open to any attack.

8. These two O.Ps. are without merit. They are dismissed.