

Alexander Rebeiro Vs. State of Kerala

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Court : Kerala

Decided On : Feb-04-2014

Judge : Hon'Ble the Chief Justice Dr. Manjula Chellur

Appellant : Alexander Rebeiro

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON TUESDAY, THE 4TH DAY OF FEBRUARY 2014 15TH MAGHA, 1935 WP(C).No. 12912 of 2012 (L)

----- PETITIONER : ----- ALEXANDER REBEIRO, AGED 44 YEARS, S/O.ANTONY REBEIRO, KANIYATH HOUSE, KOCHI CORPORATION. BY ADVS.SRI.VIJAI MATHEWS SRI.T.P.SANTHOSH KUMAR
RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, THIRUVANANTHAPURAM.

2. THE WELFARE FUND INSPECTOR, TODDY WORKERS WELFARE FUND, IDUKKI DISTRICT.

3. DEPUTY TAHASILDAR (R.R.), TALUK OFFICE, DEVIKULAM.

4. THE VILLAGE OFFICER, VILLAGE OFFICE, VELLATHOOVAL.

5. M.K.SABU, MANJAMAKKAL HOUSE, VELLATHOOVAL, IDUKKI DISTRICT.

6. E.A.MOHANAN, ILLICKAL HOUSE, VELLATHOOVAL P.O., IDUKKI DISTRICT.

7. SUKUMARAN, THORANATHINGAL HOUSE, VELLATHOOVAL P.O., IDUKKI DISTRICT.

8. SREENIVASAN, MAROTTICKAL HOUSE, CHENGULAM P.O., IDUKKI DISTRICT-685 563. sts 2/- -2- WP(C)NO.12912/2012 9. SARALA,AGED49YEARS, W/O.LATE DENASAN, MANCHUMAKAL VEEDU, KUTHUPARA KARA, VELLATHUVAL P.O., IDUKKI DISTRICT-685 563.

10. OMANA SUKUMARAN, W/O.SUKUMARAN, THORANATHINGAL HOUSE, VELLATHOOVAL.P.O., IDUKKI DISTRICT -685 563.

11. SUDHEESH, S/O.SUKUMARAN , -DO- 12. SUMESH, S/O.SUKUMARAN, -DO- 13. SUJITH, S/O.SUKUMARAN, -DO- R1,R3 & R4 BY GOVERNMENT PLEADER SRI.V.K.RAFEEK R2 BY ADV. SRI.RENIL ANTO,SC,KTWWF BOARD R6 & R8 BY ADV. SRI.LATHEESH SEBASTIAN R9 BY ADV. SRI.K.JAJU BABU SMT.M.U.VIJAYALAKSHMI THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0402-2014, ALONG WITH WPC.NO. 16373 OF2013 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(C)NO.12912/2012 APPENDIX PETITIONER(S) EXHIBITS EXHIBIT P1: TRUE COPY OF THE SALE DEED NO.1193/11 OF DEVIKULAM SUB REGISTRAR OFFICE DATED55/2011. EXHIBIT P2: TRUE COPY OF THE

JUDGMENT

IN OP.NO.17951 OF 2002 DATED2211/2005. EXHIBIT P3: TRUE COPY OF THE

JUDGMENT

IN WPC.NO.10490 OF 2006 DATED54/2006. RESPONDENTS' EXHIBITS : EXHIBIT R3(A) PHOTOCOPY OF THE POWER OF ATTORNEY EXHIBIT R6(A) TRUE COPY OF THE POWER OF ATTORNEY DATED2103/1992 /TRUE COPY/ P.S.TO.JUDGE sts P.R. RAMACHANDRA MENON, J.

..... W.P.(C)Nos. 12912 OF2012& 16373 OF2013..... Dated this the 4th February, 2014

JUDGMENT

The issue involved in these cases is common and hence both the cases are dealt with together. The property involved herein was purchased by the petitioners on the strength of Ext.P1 document dated 05.05.2011 from one Sarala (12th respondent in W.P.(C) 16373 of 2013 / 9th respondent in W.P.(C (12912 of 2012) and her children. One Kunju Gopalan was the original owner of the property, who was a licensee and an 'employer' under the Kerala Toddy Workers' Welfare Fund Act. It is stated that he was given Solvency Certificate involving the said property and he had given Power of Attorney in favour of one M.K. Sabu, for running the concerned Toddy shops. There occurred some default with regard to the contribution to be remitted under the Kerala Toddy Workers' Welfare Fund Act. In the meanwhile, the owner of the property (Kunju Gopalan) passed away on 11.04.1993. It is stated that, by virtue of the 'Will' executed by late Kunju Gopalan, the property came to the hands of his son by name Denesan, who also took his last breath W.P.(C)Nos. 12912 OF2012& 16373 OF20132 on 15.09.1998. Pursuant to the death of Denesan, the widow and children came to enjoy the property as legal heirs of Denesan. The respondents proceeded against the property for realisation of the amount due under the 'Act', which was sought to be challenged by the widow and children by filing O.P.No.17951 of 2002. After considering the merits involved, it was disposed of as per the judgment dated 22.11.2005, the operative portion of which as contained in paragraphs 3 and 4, are extracted below, for the convenience of reference: " 3. For the abkari year 1993-94, the Welfare Fund Inspector raised a claim against Kunju Gopalan also. He was alive only 10 days after the commencement of the Abakari year 1993-94. There is no material on record on behalf of the official respondents to hold that Kunju Gopalan was the contractor. He, at the most was one, whose solvency certificate was produced by the 5th respondent Sabu, who was the contractor of the shop.

4. In the aforesaid circumstances, there can be no levy or any liability under the Kerala Toddy Workers Welfare Fund against Gopalan or his estate which may now be in W.P.(C)Nos. 12912 OF2012& 16373 OF20133 the possession of the legal representatives of Denesan including the petitioners herein. Though the 5th respondent, Sabu is stated to be the son of a daughter of late Kunju Gopalan, that

would not in any way fasten any liability under the Kerala Toddy Workers Welfare Fund Act as against Gopalan or his estate. With the aforesaid declaration this writ petition is allowed quashing Ext.P3 and any further proceedings thereon, against the estate of Gopalan. It is clarified that this judgment does not interdict any proceedings against the 5th respondent. This Original Petition is allowed as above." 2. Subsequently some other contractors approached this Court by filing W.P.(C) 10490 of 2006, challenging the assessment orders, wherein interference was declined, holding that the writ petition itself was belated. However, taking note of the submissions made on behalf of the petitioners therein, it was observed in paragraph '3' that, it would only be just and proper for the respondents 2 to 4 therein, to proceed first against the solvency properties and thereafter, to proceed against the others concerned. This direction, according to the petitioners, is not correct or proper and not binding upon them, for the prime W.P.(C)Nos. 12912 OF2012& 16373 OF20134 reason that they were not parties to the said writ petition; and that the concerned owner of the solvency property was never included in the party array. Interference was declined in the writ petition holding that the same was belated and hence the merit was not liable to be looked into and hence it is contended that the said judgment cannot bind the petitioners herein. It is only on the basis of the said direction, that the property covered by Ext.P1 is sought to be proceeded against by the respondents and hence the challenge.

3. During the course of hearing, the learned Standing Counsel for the respondent/Kerala Toddy Workers' Welfare Fund submits that the entire contribution due under the Act has already been satisfied by the defaulter/s but for a paltry amount of about Rs.194/-. It is also brought to the notice of this Court that the petitioners are no more owners of the property covered by Ext.P1, since they have already sold the same to somebody else, who are not brought in the party array.

4. In the above circumstance, this Court finds that no positive orders are required to be passed in these cases. If any further liability is there, it is always open for the concerned W.P.(C)Nos. 12912 OF2012& 16373 OF20135 respondent/authority to proceed against the defaulters in accordance with the relevant provisions of law.

Both the writ petitions are disposed of. P.R.RAMACHANDRA MENON JUDGE Ik

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