

Valsamma Vs. District Collector and Others

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Court : Kerala

Decided On : Jan-19-2016

Judge : The Honourable Chief Justice Mr. Ashok Bhushan & A.M. Shaffique

Appeal No. : W.P.C. Nos. 28143 & 24720 of 2007, W.P.C. Nos. 23327 & 24024 of 2008, W.P.C. No. 16382 of 2009, W.A.No.1835 of 2008 & Cont.Case No. 661 of 2011

Appellant : Valsamma

Respondent : District Collector and Others

Judgement :

Shaffique, J

1. All these cases concern steps taken by the Revenue Authorities for recovery of sales tax due from one E.V.Thomas. The writ petitioners were proceeded against mainly on the ground that they have acquired properties which belonged to Sri.E.V.Thomas, his wife and children and therefore became liable to the extent of properties acquired by them. The said action of the revenue authorities came to be challenged in separate writ petitions.

2. The writ petitioners are the appellants in W.A.No.1835/2008. They challenge the judgment in W.P.C.No.26177 of 2008 by which the learned Single Judge as per judgment dated 01/09/2008 relegated the writ petitioners to prefer a revision before the Government under Section 83 of the Kerala Revenue Recovery Act

(hereinafter referred to as 'the RR Act').

3. W.P.C.No.16382/2009 is also filed by the appellants in W.A.No.1835/2008, seeking for a direction to consider Ext.P3 representation before taking any further proceedings to recover any amount from them.

4. Contempt Case No.661/2011 has been filed by the appellants in W.A.No.1835/2008 alleging wilful disobedience of the interim order passed by the Division Bench staying further proceedings for recovery of amount. It is contended that despite the order staying further proceedings, steps were taken to attach the properties of the petitioner.

5. All the other writ petitions were tagged together for hearing along with W.A.No.1835/2008 as it was submitted that common issues arise for consideration in those writ petitions.

6. First of all, we shall consider W.A.No.1835/2008, the facts of which are: The appellants filed the writ petition challenging Exts.P10 and P11 and for a direction to the District Collector to proceed against the person and properties of respondents 4 to 8 pursuant to Exts.P8 and P9 proceedings. Ext.P10 is an order passed by the Tahsildar on 11/08/2008 inter alia observing that Sri.E.V.Thomas transferred a portion of his property at Muvattupuzha to his wife Chinnamma Thomas. His liabilities towards sales tax had come to an amount of Rs.28,21,105/- for the assessment period 1987-88 to 1990-91. It is alleged that the sale was deliberately made by Sri.E.V.Thomas to avoid payment of sales tax arrears due to the Government. After selling the property, the family moved to Puducode village in Palakkad District, where he purchased land and property in the name of his wife Chinnamma Thomas and his son Saji Thomas. Notices were issued to Chinnamma Thomas and Saji Thomas for recovering the dues. Chinnamma Thomas contended that the property at Muvattupuzha Taluk was conveyed in her name as compensation for utilising her dowry money and it was from the sale of that property, she had purchased the landed properties in Puducode village. Sri.Saji Thomas contended that the money to purchase the land in his name was provided by his maternal uncle. It is further observed that in 2003, Smt.Chinnamma Thomas and Jobin Thomas S/o.E.V.Thomas, sold out certain

item of property to P.N.Pushpa Rajan and Smt.Leela Pushpa Rajan. They transferred the said property to Smt.Simi Surendran and Sri.K.K.Rajan, the appellants herein, as per document No.1875/2007 of SRO, Alathur. It was observed that E.V.Thomas had purchased the property in the name of his wife and children from the sale proceeds of Muvattupuzha property, which was deliberately done to defeat the liability towards sales tax and therefore it was declared that the transaction covered as per document No.500/1/03 dated 15/02/2003 and subsequent transfer as per document No.1875/07 of SRO Alathur are null and void. Ext.P11 is passed with reference to certain other item of property wherein also the appellants herein acquired properties from Sri.Saji Thomas and Smt.Ansamma Saji as per document No.2680/1/03 dated 16/06/2007. It is observed that Saji Thomas purchased the property from Chinnamma Thomas, w/o. Sri.E.V.Thomas as per sale deed No.1171/99. Saji Thomas is the son of E.V.Thomas. He later sold a portion of his property in the name of his wife Ansamma Saji. Having found that the sale was fraudulent, the documents were declared null and void. The appellants contended that they purchased the properties as per three separate sale deed nos.1875/2007 dated 27/04/2007, 1890/2007 dated 28/04/2007 and 2680/1/2007 dated 17/05/2007. They purchased the properties from respondents 6, 8, 9 and 10. They were served with notices under Section 44(2) of the Act alleging that the properties were liable for sales tax due from Sri.E.V.Thomas. Petitioners submitted a reply stating that they were bona fide purchasers for value and they purchased the property unaware of any sales tax dues or attachment. At the time of purchase they were not aware of any such liability. An enquiry came to be made on the basis of the direction issued by this Court in O.P.No.33609/2002 filed by the son of the defaulter. The appellants contended that Sri.E.V.Thomas, the defaulter and his family own substantial assets in Thalappilly Taluk of Thrissur District and strangely no action had been taken by the revenue authorities against them whereas they have now proceeded against the properties of the appellants. It is contended that the Tahsildar had no jurisdiction to come to a finding that the transaction is hit by the Benami Transactions (Prohibition) Act, 1988. The learned Single Judge, having observed that the orders impugned have not been passed under the Benami Transactions (Prohibition) Act, 1988, directed the appellants to prefer a revision before the

Government under Section 83 of the Act.

7. A statement has been filed by the Government Pleader as directed by this Court in which it is stated that when revenue recovery proceedings were under challenge before this Court by filing O.P.No.33609/2002, direction had been issued by the learned Single Judge of this Court to the Director General of Police to conduct an enquiry on the transfer of property effected by the defaulter and purchase of properties by his relatives in the Districts at Ernakulam, Thrissur and Palakkad. The Deputy Superintendent of Police submitted a report on 29/03/2007. Based on such report, this Court issued a further direction to conduct a detailed hearing regarding the transfer of immovable properties effected by the defaulter and purchase of properties by using the money of the defaulter by his relatives to evade of collection of tax arrears. It is, pursuant to the said directions, that the Tahsildar conducted a detailed hearing by issuing notice to the necessary parties and it was declared that certain sale deeds were null and void. It is further stated that these properties are notified for auction sale which are pending before the revenue recovery authorities. The District Collector, Thrissur reported that the defaulter has no movable or immovable property in Thrissur District. It is further reported that the defaulter and his wife are leading a financially and socially good standard of life and they possess a terrace building in a property having an extent of 0.4160 Hectares in Sy.No.157/3. They have property having an extent of 0.0757 Hectares in Sy.No.276/4 of Vadakkethara village in Thalappilly Taluk. It is also reported that the defaulter's wife is running a rubber shop at Pazhayannur and owns a jeep in her name.

8. W.P.C.No.16382/2009 is filed by the appellants in W.A.No.1835/2008 in which it is contended that the writ petition filed by the son of the defaulter as O.P.No.33609/2002 was dismissed as per judgment dated 26/02/2009. A learned Single Judge of this Court, having taken note of the fact that the writ petitioner was only 17 years age at the time of acquisition of property and the defaulter's other son was only 21 years, observed that there was no reason to set aside the observation made by the revenue authorities that the acquisition of the properties was with the funds of the defaulter. The petitioners therefore submitted Ext.P3 representation dated 12/03/2009 requesting the District Collector to drop further

proceedings initiated against the appellants in the light of the said judgment. The relief sought for in the said writ petition is to consider and pass appropriate orders in Ext.P3 representation especially in the light of the judgment in O.P.No.33609/2002.

9. The other writ petitions ventilate a slightly different set of facts. W.P.C.No.24720/2007 has been filed by one Augustine and Lizamma. Their contention is that they acquired 1 acre 80 cents of property from one Joy as per document No.989/1990. Sri.Joy had purchased the property from Sri.E.V.Thomas and his wife Chinnamma. Chinnamma had acquired the property as per sale deed No.996/83 dated 15/11/1983. The first petitioner also purchased 4 acres and 67 cents as per sale deeds 595/2003 and 1280/2005 of Kalloorkad SRO. The property was purchased from one Baby Thomas and Augustine Thomas. The original owner of the property was Sri.E.V.Thomas and his wife Chinnamma. It is by subsequent transfers by them that the property came into the possession of the 1st petitioner. It is contended that the petitioner had come to know of the liability of the defaulter only on receiving notice. They alleged that in so far as the defaulter is having substantial properties in various other villages, the Government officials are bound to take action against the properties available with the defaulter. It is also contended that they are bona fide purchasers who had no knowledge about the liability of the defaulter at the time of purchase of the property. Counter affidavit is filed by respondents 3 and 8 inter alia stating that the defaulter sold 94 cents of property in Sy.Nos.626/5-1, 626/1 and 624/2-2 of Enanalloor village to Sri.Joseph, S/o.Chacko and Smt.Thressiakutty W/o.Joseph, as per sale deed dated 18/10/1990 of Kalloorkkad SRO. This property was purchased by the petitioners in 2003. Further the defaulter and his wife sold 1.85 acres of property as per sale deed dated 18/10/1990 (document No.991/90) which was subsequently purchased by the 1st petitioner as per document No.1280/05. Similarly other items of properties were also purchased by the 1st petitioner from the assignees of the defaulter and his wife. It is alleged that the tax arrears pertains to the assessment year 1981-82 onwards and the transfer of properties by the defaulter was only during the year 1990. It is stated that by virtue of Sections 23,26A and 26B of the KGST Act read with Sections 3 and 44 of the Act, State has got first charge on the properties of the defaulter and all transfer of properties made by the defaulter are

void and not binding on the Government.

10. W.P.C.No.28143/2007 is filed by Smt.Valsamma. It is alleged that she is the owner in possession of 58.500 cents comprising Sy.Nos.849/3 and 849/4/1 of Pothanikkad village obtained as per sale deed No.1247/2006 dated 02/06/2006. The properties were purchased from N.U.Mathew and N.M.Sunny who got title from one V.U.Siddique. Siddique purchased the property from one John and Sri.John had purchased the property as per sale deed No.1588/1990 of SRO Pothanikkad from E.V.Thomas. It is stated that at the relevant time when they purchased the property, there was no charge on the aforesaid assets. It is further alleged that in so far as the revenue recovery proceedings were initiated only in the year 1998, the properties purchased by the petitioner would not become liable for the alleged debt. Hence the writ petition has been filed seeking to quash Exts.P7 and P11 notices issued by the revenue authorities attaching an extent of 58.500 cents and rejecting their contentions that their properties are not liable for attachment. Counter affidavits has been filed on behalf of 2nd respondent inter alia observing that when possession and non- attachment certificates have been issued to Sri.N.V.Mathew and Sri.N.M.Sunny, there was no file pending in the office of the District Collector to recover any amounts from the defaulter. It is stated that necessary action can be initiated against the defaulter in respect of the property he transferred as the transfer is void as per Section 26A of the KGST Act.

11. W.P.C.No.24024 of 2008 has been filed by one Sunny inter alia contending that he is the owner in possession of 20.500 cents of paddy land in Sy.No.275/1-2 of Kallorkkad village. He purchased the property as per sale deed dated 04/10/2004 from one Francis who had obtained the property from Smt.Mary Anchanikkal. Smt.Mary Anchanikkal obtained the property from the defaulter as per sale deed No.261/84 of Kallorkkad SRO dated 08/03/1984. He has also raised similar contentions as that of the other writ petitioners and sought for a declaration that his property cannot be proceeded against for the sales tax arrears of the defaulter Sri.E.V.Thomas and the proceedings initiated by the Tahsildar in terms of Ext.P5 against his properties has to be quashed. Counter affidavit has been filed by the 3rd respondent supporting the stand taken by the revenue authorities in this regard. Similar contentions as in the other writ petitions have been raised.

12. W.P.C.No.23327 of 2008 has been filed by Joy Thomas, Maju John, Mathai Mathew and Chacko Mathai. They contended that they own separate items of property in kalloorkkad village. 1st petitioner owns 2 cents, 2nd petitioner owns 2.89 cents, 3rd petitioner and his wife own 6 cents of property. 1st petitioner acquired the property from one Francis who acquired the property from the defaulter as per sale deed No.501/1983. 2nd petitioner acquired the property from his father Sri.E.V.John who acquired the property from the defaulter as per sale deed No.975/1982. The 3rd petitioner and his wife Thresyama acquired the property from the defaulter and his wife Chinnamma as per sale deed No.260/1984. The 4th petitioner owns 6 cents of property as coowner with one Joseph Baby. He acquired the property as per sale deed No.1157/2000. The prior title deeds would indicate that the property was purchased from the defaulter as per sale deed No.212/1992. Petitioners have also raised similar contentions and sought for a direction that their properties shall not be proceeded against for recovering sales tax arrears from the defaulter.

13. Heard Sri.K.I.Mayankutty Mather, Sri.Peeyus A.Kottam, Sri.Paulson Thomas and Sri.N.M.Varghese, the learned counsel for the petitioners and Sri.Sudheesh Kumar, learned senior Government Pleader appearing on behalf of the State and its Authorities.

14. It is argued that there was no provision akin to Section 26A or 26B of the KGST Act at the time when the sales tax arrears became due. Section 26A was introduced with effect from 01/04/1993 and Section 26B was introduced with effect from 01/04/1999. It is contended that the said provisions have no application at the time when the sales tax arrears became due and therefore there could not have been any charge on the property of the defaulter and the transfers cannot be held void, at the relevant time when the defaulter sold the properties. All the transfers were made prior to the amendment coming into force. With reference to Section 44 of the RR Act, it is contended that there was no prior demand to invoke Section 44(1). Section 44(2) also cannot be invoked as public revenue due on land had not fallen in arrears at the relevant time. Section 44(3) can apply only in respect of transfer of immovable property to a near relative or for grossly inadequate consideration after the public revenue due on any land has fallen in arrear. The

Section only raises a presumption until the contrary is proved. Therefore, it was open for any person to have adduced evidence to show that the sale was for valid consideration and in such an event, no steps could be taken for effecting any recovery from the said property which was acquired by paying valid and proper consideration. Sri.Mayankutty Mather also relied upon a three Bench judgment of the Apex Court in Maruti Wire Industries (P) Ltd. v. STO [2001(3) SCC 735] wherein the question involved was regarding the liability to pay any penal interest on the tax assessed under Section 23(3) of the KGST Act, 1963. That was a case in which M/s.Tata Oil Mills Company Limited imported inedible tallow. After import, they delivered the same to a buyer at Patna. The buyer M/s.Maruti Wire Industries did not file any return on the turnover relating to the said transaction. Sales Tax Officer finalised the assessment on 10/10/1984 and a demand notice was issued on 04/03/1985 which included penal interest of Rs.1,85,882.58/-, in terms of Section 23(3) of the KGST Act for the period from 20/05/1983, the date on which return of turnover was due to be filed, upto 25/02/1985. The demand was impugned before this Court. The learned Single Judge allowed the writ petition and quashed the demand. In a writ appeal filed by the State, the Division Bench allowed the writ appeal and judgment of the learned Single Judge was set aside. After referring to Section 23(3) of the KGST Act and also the judgments in Associated Cement Company Ltd. v. Commercial Tax Officer [(1981) 48 STC 466] and J.K.Synthetics Ltd. v. Commercial Taxes Officer [(1994) 94 STC 422], the Supreme Court observed that the liability of the assessee appellant to pay sales tax could have arisen either on return of turnover being filed by way of self assessment or else on an order of assessment being made. It was further held that failure to file return of taxable turnover may render the assessee liable for any other consequences or penal action as provided by law but cannot attract the liability for payment of penal interest under Sub Section 3 of Section 23 of the Act. Paragraphs 7 and 8 of the said judgment are relevant which reads as under:

7. The same issue which was dealt with by a three-Judge Bench of this Court in the case of Associated Cement Co. Ltd. came up for the consideration of Constitution Bench in the case of J.K. Synthetics Ltd. This Court overruled the majority opinion and approving the minority opinion in Associated Cement Co. case held that the provision by which the authority is empowered to levy and

collect interest, even if construed as forming part of the machinery provisions, is a substantive law, not adjectival law, and interest cannot be recovered by way of damages for wrongful detention of the amount. This Court further held that the tax payable or tax due is that amount which becomes due *ex hypothesi* on the turnover and taxable turnover shown in or based on the return or as to which an order of assessment has been made.

8. In view of the law laid down by the Constitution Bench, we are clearly of the opinion that the liability of the assessee-appellant to pay sales tax could have arisen either on return of turnover being filed by way of self-assessment or else on an order of assessment being made. No doubt Rule 27(7-A) of the Kerala General Sales Tax Rules, 1963 casts an obligation on the assessee to file a return of total turnover and taxable turnover accompanied by proof of payment of the amount of tax due within 20 days of the previous quarter but such a return was not filed by the appellant. A failure to file return of taxable turnover may render the assessee liable for any other consequences or penal action as provided by law but cannot attract the liability for payment of penal interest under sub-section (3) of Section 23 of the Act on the parity of reasoning that if a return of turnover would have been filed on the due date then the tax as per return would have become due and payable on that date.

15. On the basis of the above judgment, it was argued that the defaulter had not filed any return and in so far as the assessments were completed only subsequent to the date on which the first sale was effected by the defaulter, it cannot be stated that there was a liability on the defaulter at the relevant time. In other words, it cannot be stated that any public revenue due on land has fallen in arrears at the time when the sales were effected by the defaulter in favour of third parties. Reference is also made to the judgment of the learned Single Judge of this Court in *M/s.Catholic Syrian Bank Ltd. v. P.B.Sunil Kumar and Others* [2010(3) KHC 93]. That was a case in which the question considered was whether the amount payable to the Toddy Workers' Welfare Fund Act is having any priority over the debt due to the petitioner bank in whose favour the mortgage was created prior to the date on which the amount had become due to the Toddy Workers Welfare Fund Board. The learned Single Judge also considered the question as to when

the arrears of public revenue due on land falls due as Section 9 of the Toddy Workers' Welfare Fund Act stipulates the mode of recovery of money due from the employers as arrears of public revenue due on land. While considering the said issue, it was held that the amount due under Section 9 of the Kerala Toddy Workers Welfare Fund Act is not public revenue due on land and therefore no priority can be given. It was also observed that the Kerala Toddy Workers' Welfare Fund does not have any provision like Section 23B of the KGST Act in order to confer any priority for the amount due under the Kerala Toddy Workers' Welfare Fund Act. Learned Counsel also placed reliance on the observation made by the learned Single Judge that once a debtor is divested of his property in discharge of satisfaction of a debt due to an ordinary creditor before the conflict arises, it cannot be proceeded against since the property no longer belongs to the debtor.

16. Sri.Paulson, learned counsel placed reliance on the judgment in St.Arnold Divine Works Society v. State of Kerala [2006(3) S.N.48 (Case No.67)]. That was a case in which the Division Bench of this Court held that if a person has purchased the property for valid consideration, and is a bona fide purchaser before attachment, the property cannot be sold for the purpose of dues of the defaulter.

17. Sri.Peeyuz.A.Kottam, learned counsel placed reliance on the judgment in Krishna Kumar.T v. State of Kerala and Others [2012 KHC 2973]. That was a case in which a learned Single Judge of this Court had occasion to observe that Section 26A of the KGST Act applies only if the property of the defaulter is transferred after 01/04/1993. It is held that in so far as the properties of the defaulter is transferred in the year 1990 and 1992, Section 26A has no application.

18. Another judgment relied upon is State of Karnataka and Another v. Shreyas Papers [C.A Nos.3170 to 3173 of 2000]. That was a case in which the Supreme Court was considering the question whether the purchaser of assets of a concern sold by a State Financial Corporation under Section 29 of the State Financial Corporations Act, 1951 would be liable to pay arrears of sales tax of the concern under the Karnataka Sales Tax Act, 1957 and under what circumstances, a charge created on a property becomes unenforceable against transferee of such a property. It was observed that the sale was not as a going concern and therefore

Section 15 of the relevant Act which shows certain consequences foisting the liabilities on the transferees will have no application. Coming to the second issue relating to the question whether a charge is created on the property it was held at paragraphs 18 to 23 as under:

18. The next limb of Mr. Hegde's arguments was that since Section 13(2)(i) of the KST Act creates a charge on the property of the Defaulting Company, the charge would continue on the properties, even" if it changes hands by transfer.

19. WHILE the expression "charge" is not defined by the KST Act, this concept is well known in property law and has been defined by Section 100 of the Transfer of Property Act, 1882 (hereinafter "the TP Act"). Here "charge" is defined as:

"Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

20. As the section itself unambiguously indicates, a charge may not be enforced against a transferee if she has had no notice of the same, unless by law, the requirement of such notice has been waived. This position has long been accepted by this Court in *Dattatreya Shanker Mote v. Anand Chitaman Datar*, and in *Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdul Gafur Haji Hussienbhai* (hereinafter "Ahmedabad Municipal Corporation"). In this connection, we may refer to the latter judgment, which is particularly relevant for the present case.

21. Ahmedabad Municipal Corporation was a case where a person was in arrears of property tax, due under the Bombay Provincial Municipal Corporation Act, 1949.

Consequently, the Municipal Corporation created a charge over the property of the defaulter. However, the property was sold in execution of a mortgage decree. When the Municipal Corporation purported to exercise their charge over the property, the purchaser in court auction filed a suit for a declaration that he was the owner of the property and that the arrears of municipal taxes due by the transferor were not recoverable from him by proceeding against the property purchased in auction. In the appeal before this Court, the Municipal Corporation's main argument was that where the local law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive knowledge of any charge created against the properties that they had purchased. This argument was, however, rejected. This Court held that while constructive notice was sufficient to satisfy the requirement of notice in the proviso to Section 100 of the TP Act, whether the transferee had constructive notice of the charge had to be determined on the facts and circumstances of the case. In other words, this Court held that there could be no fixed presumption as to the transferee having constructive notice of the charge against the property. In fact, the principle laid down in Ahmedabad Municipal Corporation has been correctly applied in a sales tax case similar to the present case.

22. IN the present case, firstly, no provision of law has been cited before us that exempts the requirement of notice of the charge for its enforcement against a transferee who had no notice of the same. It remains to be seen, therefore, if in the facts of the present case, the First Respondent had notice - actual or constructive of the charge. At the outset, in the advertisement/notice dated 17-3-1992 issued by the Corporation, mention is only made of the sale of the Defaulting Company's assets and there is no indication, whatsoever, of any sales tax arrears. Further, the bid offer made on behalf of the First Respondent on 5-6-1992 specifically excludes any statutory liabilities, including sales tax. This offer was accepted by the Corporation on 15-7-1992. Even at that stage, there was no mention of any sales tax arrears. The sale of the assets took place pursuant to the agreement dated 12-8-1992 in which a specific clause was inserted that the First Respondent would be liable to pay all property taxes, other taxes, electricity bills, water taxes and rents from the date of the agreement (i.e.12-8-1992). For the first

time, by letter dated 8-1-1993 of the Second Appellant to the Mandal Panchayath, Aloor Taluk, the issue of sales tax dues of the Defaulting Company was brought to the surface. This is further borne out by the correspondence between the First Respondent and the Corporation. Thus, it is evident that the First Respondent had no actual notice of the charge prior to the transfer. As to whether the First Respondent had constructive notice of the charge, no substantive argument on this issue was made, either before the High Court or at any rate before us. Hence, we cannot hold that the First Appellant had constructive notice of the charge.

23. IN these circumstances, we are of the view that the First Respondent was a purchaser for value without notice of the sales tax arrears of the Defaulting Company or the consequent charge on the property. This would, therefore, attract the principle laid down by this Court in Ahmedabad Municipal Corporation, which is also embodied in the proviso to Section 100 of the TP Act. Thus, the property in the hands of the First Respondent was free of the charge and it is not open to the appellants to enforce the liabilities of the Defaulting Company in this manner against the First Respondent. The Liability of the State Financial Corporation "

19. Learned Government Pleader also placed reliance on a report prepared by the Deputy Superintendent of Police, CBCID in which it was indicated that the landed property acquired by the wife and children of the defaulter in Palakkad District were not purchased by their own source as stated by the District Collector, Palakkad and that the sale effected by the defaulter and his wife were hit by the provisions of Section 44 of the RR Act read with Section 43 of the Transfer of Property Act and Section 26A of the KGST Act. It was also observed that the sales were effected during 1990 in respect of the properties at Enanalloor Village in Muvattupuzha Taluk which was after demand notices were issued by the Assistant Commissioner, Commercial Taxes on 18/12/1987, 22/05/1989, 28/07/1989 and by the Tahsildar on 17/10/1989 which were prior to the dates of transfer of the property. It is contended that the sale of properties by the defaulter and his wife were fraudulent sales with an intention to defeat payment of sales tax arrears and therefore revenue authorities are legally entitled to proceed against the properties for recovery of sales tax arrears and even against the properties which were purchased from the consideration received by sale of such properties.

20. Before proceeding further, it would be useful to refer to the relevant provisions of the KGST Act. Section 22 creates an obligation on a registered dealer to collect the tax payable by him on the sale of any goods from the person to whom he sells the goods and to pay over the same to the Government in the manner prescribed. Section 23 of the KGST Act relates to payment and recovery of tax. Section 23(1) and (2) reads as under:

23. Payment and recovery of tax:-

(1) The tax assessed or any other amount demanded under this Act shall be paid in such manner and in such instalments, if any, and within such time, as may be specified in the notice of demand, not being less than twenty one days from the date of service of the notice. If default is in paying according to the notice of demand, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under this Act:

Provided that the time limit of twenty one days for a notice under this Sub-section shall not apply to casual traders.

(2) Any tax assessed or any other amount due under this Act from a dealer or other person may, without prejudice to any other mode of recovery, be recovered.

(a) as if it were an arrear of land revenue:

(b) on application to any Magistrate, by such Magistrate, as if it were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as such dealer or other person has, in regard to the payment of such tax or other amount, as the case may be, complied with an order by any of the authorities to whom he has appealed or applied for revision, under the provisions of this Act.

Section 44 of the RR Act which is relevant for the purpose of the case reads as under:

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.

(2) Any transfer of immovable property made by a defaulter after public revenue due on any land from him has fallen in arrear, with intent to defeat or delay the recovery of such arrear, shall not be binding upon the Government.

(3) Where a defaulter transfers immovable property to a near relative or for grossly inadequate consideration after public revenue due on any land from him has fallen in arrear, it shall be presumed until the contrary is proved, that such transfer is made with intent to defeat or delay the recovery of such arrear, and the Collector or the authorised officer may, subject to the order of a competent Court, proceed to recover such arrear of public revenue by attachment and sale of the property so transferred, as if such transfer has not taken place:

Provided that, before proceeding to attach such property, the Collector or the authorized officer shall-

- (i) give the defaulter an opportunity of being heard; and
- (ii) record his reasons therefor in writing.

Explanation.- For the purpose of this section, near relative includes husband, wife, father, mother, brother, sister, son, daughter, step son, step daughter, uncle, aunt, son-in-law, daughter-in-law, brother-in-law, nephew or niece of the transferor.

Section 68(1) of the RR Act reads as under:

68. Application of the Act for the recovery of certain other dues to Government.- (1) All sums due to the Government on account of quit rent or revenue other than public revenue due on land; all moneys due from any person to the Government which under a written agreement executed by such person are recoverable as arrears of public revenue due on land or land revenue, and all specific pecuniary penalties to which such person renders himself liable under such agreement or

contract; all sums declared by any other law for the time being in force to be recoverable as arrear of public revenue due on land or land revenue; and all fees and other dues payable by any person to the Government, may be recovered under the provisions of this Act.

21. It is apparent from Section 23(1) of the KGST Act that the tax assessed or any other amount demanded under the Act shall be paid within such time as specified in the notice of demand. If default is made in payment, according to the notice of demand, the whole of the amount outstanding on the date of the demand shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or other amount under the Act. It is therefore clear that the Statute creates a charge on the property of the person who is liable to pay tax when there is default in making payment of the whole of the amount outstanding as on the said date, according to the notice of demand. Sub Section (2) of Section 23 indicates that any tax assessed or any other amount due under the Act without prejudice to any other mode of recovery be recovered as if it were an arrear of land revenue.

22. Section 26A of the KGST Act treat certain transfers to be void and Section 26B creates the tax payable to be first charge on the property. Said provisions read as under:

26A. Certain transfers to be void:- (1) Where, during the pendency of any proceedings under this Act or after the completion thereof, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever), of any of his assets in favour of any person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee under this Act.

26B. Tax payable to be first charge on the property:- Notwithstanding anything to the contrary contained in any other law for the time being in force, any amount of tax, penalty, interest and any other amount, if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer, or such person.

Section 26A had come into effect from 01/04/1993 and Section 26B from 01/04/1999. By virtue of Section 26A, any transfer made during the pendency of any proceedings under the Act which includes creation of a charge, transfer of possession by sale, mortgage, gift etc. is treated to be void as against any claim in respect of any tax or other sum payable by the assessee under the Act. Similarly, Section 26B creates a first charge on the property of the dealer in respect of any amount of tax, penalty, interest etc. Even assuming that the above provisions have no application to the case on hand, the moment a notice of demand had been issued to a dealer or any person liable to pay tax, a charge is created on the property of such person and the amount could be recovered as an arrear of land revenue.

23. Now, coming to the RR Act, arrear of public revenue due on land is defined under Section 2(a) as under:

2(a): arrear of public revenue due on land means the whole or any portion of any kist or instalment of such revenue not paid on the day on which it falls dues according to the kistbandy or any engagement or usage;

Section 2(j) defines public revenue due on land which reads as under:

2(j): public revenue due on land means the land revenue charge on the land and includes all other taxes, fees and cesses on land, whether charged on land or not and all cesses or other dues payable to the Government on account of water used for purposes of irrigation.

24. The primary question to be considered is whether there was any notice of demand on the defaulter for arrears of tax under the KGST Act at the time when he effected sale of property. The materials available on record clearly indicates that he sold the properties during 1990. There had been demand for sales tax arrears as per assessment orders dated 18/09/1987, 02/04/1988, 03/04/1989, 27/09/1990 and as evident from the report submitted by the Deputy Superintendent of Police, demand notices were issued on 18/12/1987, 22/05/1989 and 27/08/1989. It is therefore apparent that the properties were sold in the year 1990, that is even after the demand had been made. Hence, these are instances

where a charge had been created on the property, the moment a demand for sales tax is made and once the charge is created, unless the liability is settled by payment, any sale by the defaulter will only be subject to the charge. Therefore, even if Section 26A and 26B cannot be made applicable to the fact situation, still section 23(1) was very much available under the Statute which created a charge on the property of the defaulter and it remains until the liability is settled. Further section 44 of the R.R.Act also indicates that any engagement entered into by the defaulter in respect of immovable property after the service of the written demand and any transfer of immovable property made by a defaulter after public revenue due on any land from him has fallen in arrear, with an intention to defeat or delay the recovery of such arrear, shall not be binding upon the Government. Sub Section (3) of Section 44 gives a presumption that transfer made in favour of a relative is with the intent to defeat or delay the recovery of such arrear unless the contrary is proved. In these cases, it is evident that the transfer was effected after the demand was made by the sales tax authorities. In that view of the matter, the revenue authorities were justified in taking action against the petitioners.

25. *Shreyas Papers* (supra), was a case in which the question was whether the purchaser of the property had notice of the charge. It was held that no provision of law has been cited before the Court which exempts the requirement of notice of the charge for its enforcement against the transferee, who had no notice of the same. But that was a case in which the purchaser had purchased the property when the property was put to sale under Section 29 of the State Financial corporations Act. And that apart, the bid offer contained a provision specifically excluding any statutory liabilities including sales tax. On facts, therefore, it was found that purchaser was a person who had purchased property for value without notice of sales tax arrears of the defaulting company.

26. It is argued on behalf of the writ petitioners that, in the present case also, they were not aware of the charge. It is not in dispute that Section 23(2)(a) of the KGST Act clearly indicates that any tax assessed or any other amount due under the Act from a dealer or other person be recovered as if it were an arrear of land revenue. Arrear of land revenue is recovered by invoking the provisions of the RR Act and Section 44(1) of the Act clearly indicates that any engagement entered into by the

defaulter with anyone in respect of any immovable property after the service of written demand on him shall not be binding on the Government. Further Section 44(2) indicates that any transfer of immovable property made by the defaulter after public revenue due on land has fallen in arrear, shall not be binding upon the Government, if the transfer is made with an intention to defeat or delay the recovery of such arrear. Though it is argued by the learned counsel for the petitioners that the defaulter was not served with any notice of demand prior to the sale being effected by him, there is no material to arrive at such a conclusion. All such issues are to be raised before the competent revenue authorities, who have to consider the same, in accordance with law. This Court cannot go into the factual circumstances involved in the matter to analyze as to whether there was a proper demand or not. From the materials available on record, especially Ext.P5 produced in W.P.C.No.23327/2008, steps had been taken by the Tahsildar to recover amount from various parties in which it is stated that the sale had been effected by the defaulter deliberately to avoid payment of sales tax arrears and therefore steps are to be taken for recovering the amount by sale of properties.

27. From the facts available on record, it is rather evident that the revenue authorities were justified in invoking the provisions of the Act. Accordingly, we do not find any merit in the contentions raised on behalf of the writ petitioners in W.P.C.Nos.28143 and 24720 of 2007, W.P.C.Nos.23327 and 24024 of 2008, and the writ petitions are to be dismissed.

28. Coming to the contentions urged on behalf of the appellants in W.A.No.1835/2008 who are the petitioners in W.P.C.No.16382/2009, it is evident that their case stand on a different footing. The appellants have purchased the properties from the assignors of the defaulter's wife and children. The revenue authorities have taken up a case that the defaulter's wife and children had acquired the properties from the consideration received by sale of properties at Muvattupuzha. Since we have already held that it is open for the revenue authorities to take steps to recover the amount from the properties sold by the defaulter at Muvattupuzha, we do not think that the revenue authorities will be justified in proceeding against the property of the appellants in this case. The appellants have a case that they are the subsequent purchasers of the property

and that they were not aware of the sales tax arrears. They also have a case that there is no charge created on the properties purchased by them. It is apparent from the materials on record that though it will be proper on the part of the revenue authorities to proceed against the properties in the hands of the defaulter, his wife and children, in the absence of any statutory provision which creates a charge on such properties or creates a legal impediment to treat such transfer void, it may not be possible for the revenue authorities to proceed against the properties in the hands of the appellants. Even according to the appellants, they purchased the properties as per sale deed dated 27/04/2007, 28/04/2007 and 17/05/2007. At the time when the properties were purchased, no proceedings were initiated against the properties. Proceedings were taken only when Ext.P10 had been issued on 11/08/2008. As far as the appellants are concerned, we do not think that the revenue authorities are entitled to invoke Section 44 of the Act. Appellants have purchased the property from certain persons who acquired the property from the wife and children of the defaulter. There cannot be any dispute regarding the fact that any property in the hands of the wife and children of the defaulter could be proceeded, if it is a fraudulent transfer, especially since the contentions urged by them had been negated by this Court as per judgment in O.P.No.33609/2002. Therefore, we are of the view that in the absence of any statutory provision which creates a charge on the property or declares the transfer as void and not binding on the Government, and since there was no attachment on the properties prior to the date on which the appellants had purchased the property, the said property cannot be proceeded by invoking the provisions of the Act.

29. In Cont.Case No.661/2011, the contention urged is that though there was an interim stay of operation of Exts.P10 and P11 as per interim order dated 04/09/2008 in W.A.No.1835/2008 and interim order was extended until further orders, property of the appellants were subsequently attached as per Annexure III. A statement is filed by the respondent inter alia stating that subsequent to the interim order passed by this Court, O.P.No.33609/2002 was decided on 26/02/2009 approving the action taken by the revenue authorities. It is submitted that it was on account of a mistake that the proceedings were initiated against the property of the appellants.

30. Having regard to the fact that the property of the appellants were proceeded only on account of a mistake of fact, we do not think that it amounts to wilful contempt. Accordingly we do not find it necessary to proceed with the contempt case. In the light of the above discussion, these cases are disposed of as under:

i) W.A.No.1835/2008 is allowed by setting aside the judgment of the learned Single Judge. It is made clear that Exts.P10 and P11, to the extent it declares void, the title deed under which the petitioners have purchased the property, is set aside.

ii) In view of the finding in W.A.No.1835/2008, W.P.C.No.16382/2009 requires no further orders and the same is closed.

iii) W.P.C.Nos.23327/2008, 24024/2008, 28143/2007 and 24720/2007 are dismissed.

iv) Cont.Case No.661/2011 is dropped.

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