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Court : Kerala

Decided On : Nov-06-2015

Judge : Dama Seshadri Naidu

Appeal No. : WP(C) No. 29422 of 2015 (C)

Appellant : Ajith Kumar

Respondent : The State of Kerala, represented by The Principal Secretary (Taxes), Taxes Department and Others

Judgement :

1. Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.
2. The petitioner, in relation to a piece of his immovable property, seeks a 'No Liability Certificate' from the Excise Commissioner, the second respondent. Questioning what is said to be the delay on the second respondent's part in granting the so-called 'No Liability Certificate,' the petitioner has approached this Court.
3. As can be gathered from the submission of the learned counsel for the petitioner, the petitioner being an abkari licencee once had certain dues to the Government for the abkari year 1993-1994. In the civil litigation that ensued--in

O.S. No. 215 of 2013 filed by the petitioner--a competent civil court passed Ext.P11 judgment and decree.

4. A perusal of Ext.P11 judgment reveals that the civil court has declared that the petitioner was liable to pay Rs. 11,76,064/- to the Government. Having thus invited Ext.P11 judgment, the petitioner is said to have satisfied the debt, as can be seen from Ext.P14 challan.

5. In this context, the learned counsel for the petitioner has strenuously contended that the amount declared by the civil court in Ext.P11 judgment to be due to the Government has been satisfied by the petitioner; and, in fact, the Government accepted the amount through Ext.P14 challan. Under these circumstances, there is no statutory embargo, according to the learned counsel, on the second respondent to grant to the petitioner the 'No Liability Certificate'.

6. At this juncture, this Court queried with the learned counsel for the petitioner as regards under what statute compels the petitioner to have a 'No Liability Certificate.' In other words, whether any specific statutory provision mandates either the petitioner to obtain a 'No Liability Certificate' or the Government to grant one.

7. In response, the learned counsel has submitted that no law mandates that a person should obtain a 'No Liability Certificate' concerning his immovable property from the Government. Nor is the Government obligated to respond. He has, however, submitted that if at all the petitioner intends to sell his property, the prospective purchaser may insist that he should produce a certificate from the Government that the property has not been encumbered. Hence, the recourse to the 'No Liability Certificate', contends the learned counsel.

8. The learned Government Pleader, on the other hand, has submitted, in tune with the statement filed on behalf of the second respondent, that the Government has already filed an appeal a Regular First Appeal--before this Court. He has further submitted that the Government has been making all efforts to obtain an interim direction in the appeal because the actual amount demanded by the Government was about Rs. 3 crores, but the civil court declared the amount due

from the petitioner to be a paltry sum of Rs. 11,76,064/-.

9. According to the learned Government Pleader, at this juncture, if the Government were to grant a 'No Liability Certificate', that would be to its prejudice. And, in that event, it could not subject the petitioner's property to any distraint to recover the amounts still due from the petitioner, notwithstanding the result of the appeal, contends the learned Government Pleader.

10. In reply, the learned counsel for the petitioner has submitted that Ext.P11 judgment by the civil court is in the wake of the guidelines issued by the Hon'ble Supreme Court in Ext.P7 judgment.

11. Be that as it may, so long as no statute compels the petitioner to have a 'No Liability Certificate'; and, equally, so long as no law compels the Government to issue one, this Court cannot indulge in any extra-judicial adjudication. Put differently, unless there is a statutory obligation on the part of the Government, this Court is loath, justly so, to compel the Government through a mandamus to issue a certificate that has no legal recognition, much less sanctity.

12. It is axiomatic to observe that the sale of immovable property is governed by the relevant statutes, such as the Transfer of Property Act. The encumbrance is an ascertainable aspect of title verification by the prospective purchaser by taking recourse to a mechanism, say, under the Registration Act.

13. Under these circumstances, this Court intends only to make it clear that the petitioner requires no certificate of whatever description to sell his property, if he is otherwise legally entitled to. For the enjoyment of property signifies a bundle of rights, of which the vital one is the right to alienate. The courts have repeatedly declared that the right to properties is not only a constitutional right, but also a human right.

14. I hasten, at the same time, to add that even if the Government were to give the so-called 'No Liability Certificate' in presenti, it would not affect the right of the Government to take any legally permissible steps, in the course of time, vis-Rs.-vis the same property.

With the above observations, the Court disposes of the writ petition. No order as to costs.

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