P. Sujeesh, vs State of Kerala,

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Court : Kerala

Decided On : Jun-23-2022

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/1701/2019

Appellant : P. Sujeesh,

Respondent : State of Kerala,

Judgement :

WP(C) NO. 1701 OF 2019 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN THURSDAY, THE 23RD DAY OF JUNE 2022 / 2ND ASHADHA, 1944 WP(C) NO. 1701 OF 2019 PETITIONER/S: P. SUJEESH, AGED 37 YEARS S/O BALAN, VALAYAL HOUSE, KEEZHALLUR P.O., KANNUR TALUK, KANNUR DISTRICT. BY ADVS. P.K.VARGHESE SRI.P.P.BIJU RESPONDENT/S: 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 THE TAHSILDAR, REVENUE RECOVERY, THALASSERY, KANNUR DISTRICT-670101. 3 THE SPECIAL DEPUTY TAHSILDAR, REVENUE RECOVERY, THALASSERY, KANNUR DISTRICT-670101. 4 KUTHUPARAMBA MUNICIPALITY, REPRESENTED BY SECRETARY, KUTHUPARAMBA, KANNUR DISTRICT- 673572.

BY ADVS. GOVERNMENT PLEADER, SMT.DEEPA NARAYANAN SMT.BINDUMOL JOSEPH,R4 SRI.B.S.SYAMANTHAK SHRI.SRIVIDYA K THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 1701 OF 2019 2 P.V.KUNHIKRISHNAN, J --- W.P.(C.) No. 1701 of 2019 ------------------------------------- Dated this the 23rd day of June, 2022

JUDGMENT

The above writ petition is filed with following prayers :

i. Call for the records pursuant to Ext P5 and Ext P6 and quash the same by invoking the writ of Certiorari. ii. Issue a writ of mandamus or such other writ or direction directing the 4th respondent to compute the amount paid by the petitioner as per Ext P4 receipt towards the total dues. iii. Grant such other writ or direction if deem fit and proper to the facts and circumstances of the case. [SIC]

2. The petitioner entered into an agreement with the 4 th

respondent for the business of collecting fees from the private busus in the Municipal Bus Stand, Kuthuparamba, Kannur District during the period from 1.6.2015 to 31.3.2016 at the rate of Rs.20/- per bus daily upon condition that the petitioner shall pay Rs. 12,000,00/- as consideration to the 4th respondent. As per Ext.P1 agreement, the amount shall be deposited in WP(C) NO. 1701 OF 2019 3 three monthly installments and it is the case of the petitioner that the petitioner had deposited all the instalments without default to the 4th respondent. It is the case of the petitioner that while so on 22.3.2017, the 2nd respondent issued demand notice to the petitioner under Sec.7 of the Revenue Recovery Act demanding Rs. 35,098/- with interest 12.50% alleging arrears. Therefore, the petitioner remitted Rs.40,753/- to the 4 th respondent Municipality which include interest. But thereafter, the 3rd respondent issued another notice under Sec.34 of the Kerala Revenue Recovery Act to the petitioner demanding Rs.3,50,757/-. Hence, this writ petition.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for respondent No.4. I also heard the learned Government Pleader who appeared for respondent Nos. 1 to 3.

3. The short point raised by the petitioner is that he

paid the entire amount as per the agreement to the 4 th respondent. But the counsel appearing for the 4 th respondent strongly opposed the same. The counsel submitted that when the requisition was issued originally to the Revenue Recovery WP(C) NO. 1701 OF 2019 4 authorities, there was a small mistake in entering the amount and that is why the second revenue recovery proceedings was initiated. The amount due is Rs.3,50,980/- with interest. The counsel for the petitioner takes me through paragraph 7 of the counter affidavit filed by the 4th respondent.

> 7. It is respectfully submitted that the Secretary of the Municipality submitted a requisition vide reference No.716/2016 before the competent authority under the Revenue Recovery Act for recovering the amount. Due to an inadvertent mistake a clerical error crepted into the requisiton and the amount was shown as Rs.35098/- instead of Rs.3,50,980/-. The same clerical error was repeated while uploading the requisition online. On realizing the mistake the Secretary of the Municipality approached the competent authorities including the District Collector and intimated about the error in the requisition in writing. A true copy of the letter dated 7.6.2016 is produced herewith and marked as Ext R4(b). It is understood that the said requisition application was forwarded to the Tahsildar, Thalassery(Revenue Recovery).

4. The counsel for the petitioner on the other hand

submitted that the entire amount due from the petitioner is paid and the second revenue recovery proceedings is initiated even without giving an opportunity of hearing. I do not want to make any observation about the amount due from the petitioner. The petitioner has got a definite case that after WP(C) NO. 1701 OF 2019 5 paying the amount based on the first recovery notice, a second recovery notice is initiated without any notice to the petitioner. According to the counsel for the 4th respondent, the 2nd notice necessitated because of a mistake committed earlier. Even then, a hearing should be given to the petitioner before proceeding further. Therefore, according to me, the 4th respondent will give an opportunity of hearing and thereafter proceed with the revenue recovery proceedings. Till final orders are passed after hearing the petitioner, the revenue recovery proceedings can be kept in abeyance. Therefore, this writ petition is disposed of with the following directions :

1) The petitioner will file representation before the 4 th respondent narrating the grievance raised in this writ petition within three weeks from the date of receipt of a copy of this judgment.

2) Once such a representation is received, the 4 th respondent will consider the representation and pass appropriate orders in it, as expeditiously as possible, at any rate, within three weeks from the date of receipt of the WP(C) NO. 1701 OF 2019 6 representation after giving an opportunity of hearing to the petitioner.

3) I make it clear that I have not considered the matter on merit and the 4th respondent is free to pass appropriate orders in accordance to law.

4) If the 4th respondent found that the amount is due, the 4th respondent can intimate the revenue recovery authorities to proceed with the revenue recovery already issued from the stage where it is stopped. SD/- P.V.KUNHIKRISHNAN JUDGE SKS WP(C) NO. 1701 OF 2019 7 APPENDIX OF WP(C) 1701/2019 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF THE DRAFT AGREEMENT ENTERED BETWEEN THE PETITIONER AND THE 4TH RESPONDENT EXHIBIT P2 TRUE COPY OF THE DEMAND NOTICE DATED

22.3.2017 ISSUED BY THE 2ND RESPONDENT EXHIBIT P3 TRUE COPY OF THE DEMAND NOTICE DATED 22.3.2017 UNDER SECTION 34 OF THE KERALA REVENUE RECOVERY ACT ISSUED BY THE 2ND RESPONDENT EXHIBIT P4 TRUE COPY OF THE RECEIPT DATED 30.3.2017 ISSUED BY THE 4TH RESPONDENT EXHIBIT P5 TRUE COPY OF THE DEMAND NOTICE DATED 24.4.2018 ISSUED BY THE 3RD RESPONDENT EXHIBIT P6 TRUE COPY OF THE DEMAND NOTICE DATED 24.4.2018 ISSUED BY THE 3RD RESPONDENT UNDER SECTION 7 OF KERALA REVENUE RECOVERY ACT EXHIBIT P7 TRUE COPY OF THE REPLY DATED 1.8.2018 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT RESPONDENT EXHIBITS EXHIBIT R4(A) TRUE COPY OF THE AGREEMENT DATED 3.9.2015 EXHIBIT R4(B) A TRUE COPY OF THE LETTER DATED 7.6.2016