Philomina Ephrem. Vs.

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SooperKanoon Citation : sooperkanoon.com/912590

Court : Kerala

Decided On : Nov-29-2010

Judge : Antony Dominic, J.

Appeal No. : WP(C).No. 11859 of 2009(B)

Appellant : Philomina Ephrem.

Respondent : Union of IndiA.

Advocate for Def. : SRI.R.S.KALKURA, Adv.

Advocate for Pet/Ap. : SRI.K.S.HARIHARAPUTHRAN, Adv.

Judgement :

1. According to the petitioner, she owns and possesses 2.92 acres of patta land situated in survey Nos.24/1-1 and 24/1-2 of Ayyappankovil village in Udumbanchola Taluk of Idukki district. She availed of a loan of Rupees 5 lakhs from the fifth respondent Bank mortgaging the said property. According to the petitioner, her son, who then possessed 15 acres of non patta land, was the guarantor to the loan.

2. Default was committed and while so, the Government of India issued Ext.P4, the Agricultural Debt Waiver and Debt Relief Scheme, 2008. On the basis that the petitioner is a "small farmer" as defined in clause 3.6 of Ext.P4, petitioner applied for waiver of the entire liability. However, treating the petitioner as an "other farmer" as defined in clause 3.7 of Ext.P4, only 25% of the liability was waived. It

is aggrieved by the above, she has approached this Court.

3. Case of the petitioner is that she owns and possesses only 2.92 acres of land situated in the aforesaid survey numbers and since the total extent of property held by her is less than 2 hectres, she is entitled to waiver of the entire liability. According to the petitioner, the Bank declined that benefit to the petitioner by adding property held by her son also along with her property, which is contended to be illegal.

4. Going by the statement filed by the Bank, the reason for declining the benefit of small farmer to the petitioner is that at the time the loan was availed of, the petitioner held property in excess of 2 hectres and that therefore she is an "other farmer". However, the Bank has not produced any document to substantiate this contention.

5. If as stated by the petitioner, the property held by her at the time of availing the loan, was less than 2 hectres, her eligibility for the benefit available to the small farmer is liable to be assessed on that basis without including any portion of the property held by her guarantor. Therefore, the claim of the petitioner for the benefit available to small farmer is liable to be reconsidered in the light of the above.

6. Having regard to the above, this writ petition is disposed of, directing that respondents 4 and 5 will reconsider the claim of the petitioner, for the benefit of small farmer as contemplated in Ext.P4, reckoning her eligibility on the basis of the extent of property held by her at the time when she availed of the loan and without including any extent of property held by her guarantor. On that basis, the matter will be reconsidered and fresh orders will be passed, as expeditiously as possible, at any rate, within eight weeks from the date of production of a copy of this judgment.

7. Along with I.A.No.16456/2010, petitioner has produced Exts.P5 and P6 revenue recovery notices issued at the instance of the Bank for realising the dues. Counsel submits that if the petitioner's claim for total waiver was accepted, she would not have had any liability to the Bank.

8. As the decision to be taken by the Bank will have an impact on further continuance of Exts.P5 and P6, I direct that, till a decision is taken by respondents 4 and 5 as directed above, Exts.P5 and P6 will be kept in abeyance.

9. Petitioner to produce a copy of this judgment and writ petition before respondents 4 to 8 for compliance. Writ petition is disposed of as above.