IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

RP.No. 214 of 2007 ( ) IN WA.1830/2005

AGAINST THE JUDGMENT IN WA 1830/2005 DATED 20-09-2006

REVIEW PETITIONER(S)/APPELLANT/PETITIONER :-

K.M.SURESH BABU, AGED 62 YEARS,
S/O.K.M.BALAKRISHNAN (LATE), `DHANYAM',
ST.VINCENT COLONY P.O., KOZHIKODE,
REPRESENTED BY POWER OF ATTORNEY HOLDER K.N.HANSA,
AGED 54, W/O.SURESH BABU, `DHANYAM',
ST.VINCENT COLONY P.O., KOZHIKODE,
REPRESENTED BY POWER OF ATTORNEY HOLDER.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT(S)/RESPONDENTS/RESPONDENTS :-

1. STATE OF KERALA REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF LAND REVENUE,
PUBLIC OFFICE, THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR, KOZHIKODE.

4. THE SALES TAX OFFICER, III CIRCLE,
SALES TAX COMPLEX, JAWAHAR NAGAR, KOZHIKODE.

5. THE TAHSILDAR, REVENUE RECOVERY,
KOZHIKODE.

6. SMT.O.K.NARAYANIKUTTY (DIED), TEACHER,
D/O.PADMANABHAN NAIR, SIVOHAM, M-26A
KERALA STATE HOUSING BOARD COLONY, MALAPARAMBA
CHEVAYOOR AMSOM AND DESOM, KOZHIKODE DISTRICT.

7. M/S.CORONET SALES AGENCIES,
JAWAHAR BUILDING, K.P.KESAVA MENON ROAD, KOZHIKODE-1
REPRESENTED BY ITS PARTNER, BHARATHAN JAYAKRISHNAN
RESIDING AT KRISHNA NIVAS,
OLD POST OFFICE CROSS ROAD, KANNUR.

BY ADV. SRI.M.KRISHNA KUMAR
SMT.PRABHA R.MENON
R1 - R5 BY SR.GOVERNMENT PLEADER SRI.S.SUDHEESHKUMAR
BY ADV. SRI.T.KRISHNAN UNNI (SR.)

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 26-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

ANNEXURE-I :- TRUE COPY OF THE ORDER DATED 20.9.2006 PASSED BY THE HON'BLE SUPREME COURT IN S.L.P (C)No.17660/2006.

ANNEXURE-II :- TRUE COPY OF THE REPLY DATED 25.10.2006 GIVEN TO THE PETITIONER BY THE AUTHORITIES UNDER THE RIGHT TO INFORMATION ACT ON THE APPLICATION SUBMITTED BY HIM.

ANNEXURE-III :- TRUE COPY OF THE ORDER OF THE KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL DATED 25.9.2006.

RESPONDENT'S EXHIBITS :- NIL.

//TRUE COPY//

P.A. TO JUDGE

ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.

R.P. No.214 of 2007
in
W.A. No.1830 of 2005

Dated this the 26th day of November 2015

<u>O R D E R</u>

<u>Shaffique, J.</u>

This review petition has been filed seeking to review the judgment dated 20.9.2006 in W.A. No.1830 of 2005. In fact the petitioner had approached the Supreme Court challenging the said judgment in W.A.No.1830 of 2005, however, the Special Leave Petition was dismissed by the Supreme Court as under :-

> "Heard.
>
> The special leave petition is dismissed.
>
> However, at this stage, counsel for the petitioner states that he wants to file a Review Petition in the High Court. It shall be open to the petitioner to do so, if permissible in law. If such a review petition is filed, the High Court shall decide the same in accordance with law."

2. Learned counsel for the review petitioner alleges that the sale of the property was held without notice to him, that apart, he was not a partner during the relevant time when the liability was fastened on the firm and that though he had offered a higher value, the property was not given back to him.

3. A perusal of the order passed by the authorities below would clearly indicate that the authorities have come to a categoric conclusion that the property was sold after notice to the writ petitioner and after affixture of notice at his premises.

4. As far as the claim of the petitioner that he was not a partner is concerned, no materials were produced before the concerned authorities to indicate that any such notice regarding resignation or retirement from the partnership firm has been produced before the Sales Tax Authorities during the relevant time. In the counter affidavit filed by the 4th respondent, the Assistant Commissioner (Law), Commercial Taxes, Ernakulam, it is stated that as per the office records maintained, no change of partner till the time of closure of the firm was reported in the office. The petitioner now relies upon certain additional documents to contend that his retirement from the firm was intimated to the Sales Tax Department. But, there is no material to indicate that such documents were served to the Sales Tax authorities. Hence, we do not think that such issues can be re-agitated by way of review.

5. As far as the offer for paying higher value is concerned, since the property is sold and rights have been created to a 3rd

party, this Court will not be in a position to consider such claims.

6. It is also submitted by the learned counsel for the petitioner that subsequently, the original order of assessment had been set aside by the appellate authority.

7. Be that as it may, when third party rights have already been created by sale of property, it may not be possible for the petitioner to seek for setting aside the said sale and to give back the properties to the petitioner. His remedy is only to seek refund of the amount recovered, for which, he has to approach the competent authorities.

Under such circumstances, we do not find any ground to interfere with the impugned judgment and accordingly, this review petition is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

Jvt/27.11.2015.