IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WA.No. 1005 of 2010 ( ) IN WP(C).22774/2006
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AGAINST THE ORDER/JUDGMENT IN WP(C) 22774/2006 of HIGH COURT OF KERALA DATED 06-04-2010

APPELLANT(S)/PETITIONER:
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GEORGE THEKKEKKARA, THEKKEKARA HOUSE,
VAPPALASSERY P.O., ERNAKULAM DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENT(S)/RESPONDENTS:
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1. STATE OF KERALA, REP.BY THE SECRETARY,
   AGRICULTURAL DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE ASSISTANT EXECUTIVE ENGINEER(AGRI),
   VYTTILA.

3. THE ASST.DIRECTOR OF AGRICULTURE,
   NEDUMBASSERY KRISHI BHAVAN, MAIKKAD P.O., ERNAKULAM.

4. THE DEPUTY TAHSILDAR,
   REVENUE RECOVERY, ALUVA, ERNAKULAM DISTRICT.

BY SR GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ANTONY DOMINIC & ALEXANDER THOMAS, JJ.**
**================================**
**Writ Appeal No. 1005 of 2010**
**======================**

**Dated this the 13th day of January, 2015**

**J U D G M E N T**

Antony Dominic, J.

The appellant filed WP(C) No.22774/06 seeking to quash Ext.P12 Government Order and also for a direction to the 1st respondent to pay balance amount of ₹1,30,000/- to him in connection with the execution of Kayathukuzhi Puncha Padasekharam deepening, widening and side protection of the Valiyathodu. Consequential reliefs were also sought for. Learned single Judge declined the prayer sought for and it is aggrieved by the judgment, this appeal is filed.

2. We heard the learned counsel for the appellant and the learned Government Pleader appearing for the respondents.

3. Facts of the case are that Ext.P1 is an agreement executed between the appellant and the Agricultural Officer on 7/1/1995 for the execution of deepening, widening and side protection of the Valiyathodu leading to the padasekharam mentioned above. The appellant executed the agreement in his capacity as Convener of the Beneficiary Committee and the work

was to be implemented under the National Calamity Scheme, 1994. Facts show that the estimated cost of the work was ₹4,00,000/- and that three instalments of ₹1 lakh, ₹1 lakh and ₹1.5 lakhs were paid to the appellant as advance on 21/1/95, 22/2/95 and 15/3/95 respectively. Though the appellant claims to have completed the work, he himself has admitted in the previous proceedings that the work was not completed in all respects.

4. According to the respondents, the work done was valued by the Assistant Executive Engineer on 4/10/2002 and the value of the work done was estimated at ₹1,66,778/-. It appears that, thereafter, by Ext.P5 notice dated 17/10/2002, respondents called upon the appellant to remit the excess amount of ₹1,83,222/- received by him. To that notice, there was no reply from the appellant. Subsequently, under cover of Ext.P2 dated 18/6/03, the valuation certificate signed by the Assistant Executive Engineer (Agri.), Ernakulam was forwarded to the appellant and on receipt thereof, the appellant filed Ext.P4 objection dated 16/7/03.

5. Without dealing with that objection, on 15/1/2004, notices under Section 7 and 34 of the Revenue Recovery Act were issued to the appellant demanding ₹3.5 lakhs together with interest and cost. Thereupon, the appellant filed WP(C) No.5185/2004, which was disposed of by Ext.P7 judgment dated 12/2/2004 directing consideration of Ext.P4 objection mentioned above. Records show that, when the matter was considered in pursuance of Ext.P7, respondents called the appellant for clarification of his doubts on 25/6/04, but, however, the appellant did not avail of that opportunity.

6. The matter was considered and his objection was rejected by Ext.P8 order dated 5/8/2004. Ext.P8 was challenged in WP(C) 32013/04 filed by the appellant. That writ petition was disposed of by Ext.P10 judgment of the learned single Judge of this Court. In Ext.P10 judgment, taking note of the fact that the appellant himself admitted that the work was not completed by him and at the same time that the respondents themselves had estimated the value of the work done by him at ₹1,66,778/-, this Court ordered that respondents can recover only the balance

amount. Accordingly, this Court quantified the liability of the appellant at ₹1,83,222/- and directed that the same be paid along with 15% interest.

7. Aggrieved by the judgment, the appellant filed WA No.772/05. That appeal was disposed of by Ext.P11 judgment without interfering with the finding of the learned single Judge and accepting the submission that appeal filed by the appellant against Ext.P8 order was pending consideration of the Government, this Court directed the Government to consider and dispose of the appeal. Accordingly, the Government heard the appellant and rejected Ext.P9 appeal by Ext.P12 order. It was challenging Ext.P12 order and seeking consequential reliefs, the writ petition was filed. In the judgment under appeal, the learned single Judge found that there was no scope for interference with Ext.P12, but however, reduced the rate of interest from 15% as ordered in Ext.P10 to 12%. It is this judgment, which is challenged before us.

8. The first contention raised by the appellant is that he is not liable to pay any amount. In so far as this contention is

concerned, as we have already noticed from the facts stated above, in Ext.P10 judgment, this Court upheld the liability of the appellant for an amount of ₹1,83,222/-. Though the appellant filed WA No.772/05, it was without disturbing the findings of the learned single Judge that the appeal was disposed of by Ext.P11 judgment directing consideration of the appeal filed by him against Ext.P8 order. It is accordingly that Ext.P12 order was passed where the Government have declined to interfere with the quantification already done. This, therefore, shows that the findings of fact arrived at by this Court in Ext.P10 judgment upholding the liability of the appellant at ₹1,83,222/- has attained finality. If that be so, it is not now open to the appellant to dispute that liability which has become final.

9. Learned counsel for the appellant then contended that the Revenue Recovery Act cannot be initiated in the absence of an enabling provision to that effect in Ext.P1 agreement. It is true that Ext.P1 agreement does not contain a provision enabling the Government to initiate revenue recovery proceedings for recovery of any sum due from the appellant. It is also true that in view of

Section 68(1) of the Revenue Recovery Act, 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, may be recovered under the provisions of the Revenue Recovery Act. Though it is true that in the absence of an agreement between the Government and the appellant, provisions of the Revenue Recovery Act cannot be initiated, section 68(2) applies to the factual situation. This provision reads thus;

> "68(2) Any person who has received from the Government a free grant of money for any agricultural or other purpose, on default to refund the same consequent on his failure to observe any of the conditions of the grant, shall be liable to be proceeded against under the provisions of this Act for the recovery of the amount granted to him together with interest thereon and cost of process."

10. In so far as the work mentioned in Ext.P1 agreement is concerned, the payment mentioned therein was received from the Government as a free grant and the liability for refund thereof arose only because of the default in complying with the condition

of completing the work. Such amounts received by the appellant are recoverable under Section 68(2). Therefore, the appellant cannot now contend that the Revenue Recovery Act is inapplicable.

11. Though the appellant is disputing his liability for payment of the money demanded by the respondents, the appellant has not produced anything to prove the value of the work he has done nor has he produced any material to indicate that the valuation of the work by the respondents is incorrect. It is in such circumstances that we are unable to accept the contention now raised by the appellant disputing his liability.

12. Learned counsel lastly contended that since there is a dispute on the breach of the contract, the question of breach should be decided by a civil court and in the absence of such an adjudication, revenue recovery action now initiated cannot be sustained. Though this contention would appear to be attractive, from the facts, what we notice is that, it is the admitted position that the work was not completed in all respects. Instead, the case set up by the appellant in the previous rounds of litigation was

that the work could not be completed for reasons which were beyond his control. When a contractor contends that the work undertaken by him could not be completed for reasons which were beyond his control and that therefore he is to be absolved from the liability arising out of the default, it is for the person concerned to urge that plea before the civil court and resist the recovery proceedings initiated against him. If that be so, the appellant cannot contend that the respondents should have moved the civil court and obtained decree against him before initiating recovery proceedings. Therefore, this contention raised by the appellant also cannot be accepted. None of the contentions raised by the appellant deserve acceptance. We, therefore, do not find any merit in this appeal.

13. Appeal is, accordingly, dismissed.

14. However, having regard to the facts, we deem it appropriate to reduce the liability for interest. Therefore, we fix it at 9% instead of 12% as ordered.

At this stage, learned counsel for the appellant sought an instalment facility to pay the amounts due. On this request, we heard the learned Government Pleader also. Taking note of the circumstances, we direct that the appellant will be permitted to pay the amount due from him in 5 equal monthly instalments. The first instalment will be paid on or before 31/1/15 and the subsequent instalments will be paid on or before 25th of every succeeding month without default. In case, payment is made as above, recovery proceedings would not be initiated and in the event of default, respondents will be free to continue the recovery proceedings.

Sd/-
**ANTONY DOMINIC**
**JUDGE**

Sd/-
**ALEXANDER THOMAS**
**JUDGE**

Rp

//True Copy//

PA to Judge