

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

RSA.No. 278 of 2015 ()

AGAINST THE DECREE AND JUDGMENT IN A.S.NO. 72/2013 of SUB COURT,
PERUMBAVOOR DATED 31-10-2014

AGAINST THE DECREE AND JUDGMENT IN O.S.NO. 205/2010 of MUNSIF COURT,
PERUMBAVOOR DATED 30-08-2013

APPELLANT(S)/APPELLANT/PLAINTIFF:

E.K.RAMACHANDRAN, AGED 55 YEARS, S/O.KUTTAPPAN,
IDAYATH HOUSE, PULLUVAZHY KARA, RAYAMANGALAM VILLAGE,
KUNNATHUNADU TALUK.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENT(S)/RESPONDENTS/DEFENDANT:

1. KERALA WATER AUTHORITY, REP. BY ITS MANAGING DIRECTOR,
JALABHAVAN, THIRUVANANTHAPURAM-695503.
2. ASSISTANT EXECUTIVE ENGINEER, KERALA WATER AUTHORITY
P.H.SUB DIVISION, PERUMBAVOOR-683567.

R1 & R2 BY SRI.GEORGE MATHEW, STANDING COUNSEL, KERALA WATER
AUTHORITY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

R.S.A. No.278 of 2015

Dated this the 31st day of March, 2015

JUDGMENT

Appellant is the plaintiff in a suit for setting aside a provisional assessment notice issued by the Officers of Kerala Water Authority and also for a mandatory injunction directing the defendants to restore the water connection to his premises. The suit and the appeal were dismissed by the trial court as well as by the first appellate court. Plaintiff contended that he is a consumer of water supplied by the Water Authority. He remitted amounts as water charges for a period upto December, 2010. It is his grievance that meanwhile, the 2nd defendant issued a notice on 11.06.2009 and he remitted the amount shown in the notice towards water charges. Plaintiff is conducting a plywood processing unit. He purchased a property to which a water connection is already provided. It is the case of the plaintiff that he did not commit any wrong and the defendants have no manner of right to serve him with an excessive bill and disconnect the water supply.

2. Defendants 1 and 2 filed a written statement disputing the plaintiff's claim and contending that the plaintiff misused the domestic water connection for commercial purpose. Around 40 labourers of the plaintiff are

allowed to reside in a building. He also used the water supplied by the defendants for industrial purposes. Anti Water Theft Squad under the 1st defendant conducted an inspection at the premises of the plaintiff on 12.03.2010 and detected various illegal activities committed by him. Thereafter, in compliance with the provisions in the Kerala Water Supply and Sewerage Act, 1986 (in short, “the Act”) the impugned notice was served on the plaintiff. The plaintiff is not entitled to get any relief claimed in the suit.

3. Heard the learned counsel for the appellant/plaintiff and the learned Standing Counsel for the respondents/defendants.

4. The courts below found that Ext.A6 impugned in the suit was only a provisional assessment notice issued by the authorities under Section 46D(1) of the Act. The above said Section deals with assessment of water charges in case of detection of unauthorised use. It says that if on inspection of any place or premises or water meters or any other devices, or any record maintained by any person, the authorised officer of the Authority comes to the conclusion that any consumer is indulging in unauthorised use of water, he shall, notwithstanding any criminal proceedings that may be taken against the consumer, provisionally assess to the best of his judgment the water charges payable on account of such unauthorised use of water. Sub-section (3) of the above Section deals with

the right of the consumer to file objection to the provisional assessment made by the authorised officer. Thereafter, the authorised officer, after affording reasonable opportunity of hearing to the consumer, shall pass a final order of assessment of the water charges payable by such consumer. Section 46E of the Act deals with appeals in respect of such orders. Sub-section (1) of that Section says that any person aggrieved by the final order passed under Section 46D of the Act, may within 30 days of the said order prefer an appeal to the Superintending Engineer of the Water Authority, having jurisdiction over the area. Without resorting to that remedy, the plaintiff had approached the court below challenging correctness of the provisional assessment made by the 1st defendant. Courts below, therefore, found that the plaintiff should have pursued the remedies provided in the statute itself. I am of the view that the finding of the courts below in this regard cannot be faulted. That apart, Section 58 of the Act gives protection to the Officers of the 1st defendant for acts done in good faith. Courts below are justified in finding that there are efficacious remedies provided in the statute itself, which were not exhausted by the plaintiff before rushing to the court with the suit. Therefore, there is no irregularity or illegality in dismissing the suit by the courts below. No substantial question of law arises for consideration in this appeal by this Court, by invoking power under Section 100 of the Code of Civil Procedure.

5. Learned counsel for the appellant submitted that the right of the appellant/plaintiff to move the appropriate authority after passing a final order by the Officers of the 1st defendant may be reserved. It goes without saying that the plaintiff is entitled to take recourse to the provisions in the Act and also to challenge correctness of the final order within the parameters permitted by law.

With these observations, the appeal is dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

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