

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

WA.No. 1272 of 2015 () IN WP(C).7976/2015

AGAINST THE JUDGMENT IN WP(C) 7976/2015 DATED 20.5.2015

APPELLANT(S)/1ST RESPONDENT :-

THE HOUSING AND URBAN DEVELOPMENT CORPORATION LTD.,
REGIONAL OFFICE, "SAPHALYAM COMPLEX", 3RD FLOOR,
PALAYAM, THIRUVANANTHAPURAM-695 034
REPRESENTED BY ITS DEPUTY GENERAL MANAGER (LAW),
AJAY MENON.

BY ADV.SRI.M.A.ABDUL HAKHIM

RESPONDENT(S)/PETITIONER & RESPONDENTS 2 & 3 :-

1. BOARD OF DIRECTORS OF THE IRINJALAKUDA CO-OPERATIVE
HOSPITAL LTD.No.R 954, KOLATHUMPADY, NADAVARAMBA P.O.,
THRISSUR - 680 661 REPRESENTED BY ITS PRESIDENT.
2. THE RECOVERY OFFICER, DEBTS RECOVERY TRIBUNAL,
8TH FLOOR, K.S.H.B. BUILDING,
PANAMPILLY NAGAR, ERNAKULAM - 682 036.
3. STATE OF KERALA REP. BY THE SECRETARY TO GOVERNMENT,
CO-OPERATION © DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

R1 BY SRI.V.G.ARUN

R2 & R3 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.No. 1272 of 2015

Dated this the 19th June, 2015

JUDGMENT

Shaffique, J.

Appellant is the first respondent in the Writ Petition. This appeal is filed challenging the judgment dated 20.5.2015 in W.P(C).No.7976 of 2015. The Writ Petition was filed by the first respondent herein seeking for a direction to the appellant/first respondent to consider the request for one time settlement and to take a decision thereon and for a further direction to the third respondent State of Kerala to interact with the first respondent for the purpose of effecting a settlement between the petitioner and the first respondent.

2. The respondents objected to the above request by filing a statement inter alia stating that the petitioner was a chronic defaulter and the first respondent/appellant was

constrained to file O.A.No.298 of 2001. A final order has been passed by the Debt Recovery Tribunal directing the writ petitioner to pay an amount of ₹8,10,27,327/- with interest and other costs. Though the writ petitioner filed appeal against the final order of the Debt Recovery Tribunal, on account of non payment of the pre-deposit, the appeal was not entertained.

3. The learned Single Judge by the aforesaid judgment issued certain directions and granted the writ petitioner four months time to settle the liability and till such time, the appellant was directed not to take further steps in the matter. The direction issued by the learned Single Judge is in paragraph 4 of the judgment, which reads as under:

“4. I am of the view that if the petitioner wants to wipe off the entire liability by obtaining credit facility for taking over the loan by Co-operative Banks or any other agencies, they are free to do so. The petitioner submits that they have already approached the Government seeking help for ways and means to get over financial distress faced by the Hospital. Considering the facts and

circumstances, the following directions are issued:

i. If the petitioner is able to obtain any credit facility from any other Co-operative Banks for taking over the loan, that shall be done within a period of three months.

ii. The third respondent shall address the grievances of the petitioner and if it is possible, they shall extend help to the petitioner to tide over such financial distress and appropriate decision shall be taken in this regard by the third respondent within a period of two months.

iii. To facilitate the petitioner for repayment of the liability, proceedings for sale or dispossession shall be kept in abeyance for a period of four months.

iv. It is open to the petitioner to approach the Board of Directors of the first respondent to avail the benefit of One Time Settlement. If the petitioner approaches the Board of Directors within two weeks from the date of receipt of a copy of this judgment, the Board of Directors shall consider the request within a period of two months."

4. Learned counsel for the appellant submits that even on an earlier occasion the writ petitioner preferred Writ Petition before this Court seeking time for payment and despite the fact that steps had been taken for recovery of the amount by sale of property, the same was adjourned by time to time. Even though this Court had

granted sufficient time, no steps were taken by the writ petitioner to settle the liability.

5. It is argued that as the matter stands now, there is no scheme of one time settlement and therefore, the direction of the learned Single Judge to consider the one time settlement is totally out of place. It is submitted by learned counsel for the appellant that there was no reason for granting time for the writ petitioner for settling the liability.

6. On the other hand, learned counsel for the respondent would submit that being a running hospital, the present situation warrants interference by the Government. They are also trying to obtain a loan from another Co-operative Bank for payment of the liabilities to the appellant. Further, they have also taken up the issue for one time settlement to avoid any sale or distress of the property involved in the matter.

7. Having heard learned counsel appearing on either side and after perusing the records, we do not think that

the learned Single Judge was justified in issuing the directions in the aforesaid judgment. First of all, the State Government has nothing to do with the contractual obligations between the parties. If at all the writ petitioner wants to approach the third respondent, it is open for them to do so. But, there was no reason that the directions in that regard. Secondly, whether the writ petitioner should obtain the loan facility from other Co-operative Banks are all matters to be taken into consideration by the writ petitioner for settling the liability. The learned Single Judge also directed that further proceedings for sale or dispossession shall be kept in abeyance for a period of four months.

8. Taking into consideration the entire facts involved in the case and especially in a case where substantial amount is due to the appellant, there is no reason to stall further proceedings. It is submitted by either side that though sale notice has been issued earlier, there were no bidders. Learned counsel for the appellant submits that

the sale publication is to be issued by reducing the minimum bid amount. We are of the view the said process need not be stalled during the time when the writ petitioner tries their level best to settle the liability either by taking loan from other institutions or by way of one time settlement by interference by the State Government as the case may be. We are, therefore, of the view that the appellant should be permitted to proceed with the sale in accordance with law. It is made clear that the first respondent is entitled to take necessary steps to settle the liability as early as possible.

The Writ Appeal is partly allowed setting aside the direction at paragraph 4(iii) of the judgment of the learned Single Judge.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs19/6/15