IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

WA.No. 1173 of 2014 (N) IN WP(C).9931/2012

AGAINST THE ORDER/JUDGMENT IN WP(C) 9931/2012 of HIGH COURT OF KERALA
DATED 02-06-2014

APPELLANT(S)/RESPONDENTS 1 & 2:
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1. THE EXECUTIVE ENGINEER,
WATER SUPPLY SUB DIVISION, KERALA WATER AUTHORITY
ALUVA - 683 101.

2. THE ASSISTANT EXECUTIVE ENGINEER
WATER SUPPLY SUB DIVISION, K.W.A
KALAMASSERY - 683 104.

BY ADV. SRI.GEORGE MATHEW, SC, KERALA WATER AUTH

RESPONDENT(S)/PETITIONER & 3RD RESPONDENT:
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1. THE HILL VALLEY HIGHER SECONDARY SCHOOL
CHANGAMPUZHA NAGAR P.O., THRIKKAKARA, KOCHI
REPRESENTED BY ITS PRINCIPAL
MRS. LILLY KURIAN - 682 033.

2. THE TAHSILDAR
KANAYANNUR TALUK, KOCHI - 682 011.

R1 BY SRI.DEVAN RAMACHANDRAN
R2 BY SRVGOVERNMENT PLEADER SRI.P.FAZIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

W.A.No.1173 of 2014

Dated this the 3rd day of December, 2015

JUDGMENT

Antony Dominic, J.

1. This writ appeal is filed by respondents 1 and 2 in W.P(C).9931/12, challenging the judgment of the learned single Judge allowing the writ petition filed by the first respondent.

2. We heard learned counsel for the appellants, learned counsel for the first respondent and Government Pleader appearing for the second respondent.

3. Briefly stated facts of the case are that the first respondent is a recognised school, which, in 1991, availed of supply of water from the appellants. It was the case of the first respondent that though it availed the water connection, there was no water supply and that bills were also not issued to them. Be that as it may, on 23.2.2006, by Ext.P2, appellants served a demand for ₹6,73,689/- on the first respondent. On receipt of this demand, the first respondent disputed the liability in Ext.P3

reply, contending that there was no water supply. However, the demand was reiterated in Ext.P4, where, the appellants demanded payment of ₹7,95,098/-.

4. According to the appellants, in 2007, a Revenue Adalath was convened by them, to which, the first respondent was invited. It is stated that in the said Adalath, the disputes between the parties were settled extending to the first respondent the benefit of a One Time Settlement scheme. Ext.P10 is shown as the settlement, whereby the first respondent, represented by its Principal, had agreed to pay ₹85,962/- in full and final settlement of the demand. The amount mentioned in Ext.P10 was not paid and that led to further demands being served on the fist respondent. It was in such circumstances that the first respondent filed Ext.P11 appeal before the Executive Engineer, the first appellant. In Ext.P11, the contention raised by the first respondent, in so far as Ext.P10 is concerned, was that she was made to sign a blank paper and that the same was signed under the impression that it was the attendance sheet of

the Revenue Adalath. Despite the settlement, since the amount was not paid, revenue recovery proceedings were initiated at the instance of the appellants and Ext.P12 is the notice issued under section 7 of the Revenue Recovery Act demanding a sum of ₹2,72,100/-, along with other charges. This was challenged by the first respondent in W.A.20419/09 before this Court and the writ petition was disposed of by Ext.P14 judgment, where, this Court directed consideration of ExT.P11 appeal and on provisional basis, it was ordered that the first respondent shall deposit an amount of ₹85,962/-. Though the first respondent challenged the judgment in W.A.1944/09, the same was dismissed by Ext.R1(A) judgment dated 28.8.2009. In compliance with the directions in Ext.P14 judgment, the appeal was considered and Ext.P15 order was passed, recommending to the Managing Director to reconsider the claim of the first respondent under the OTS scheme. Accordingly, the Managing Director considered the matter and in Ext.R11(c) proceedings, ordered additional remittance of ₹36,349/-, together with revenue recovery charges of 1%. It was in this background, the writ petition was filed seeking to quash Ext.P8, P10, P12, P13 and P15.

5. By the judgment under appeal, learned single Judge allowed the writ petition and ordered refund of the amount remitted by the first respondent. It is this judgment which is under challenge.

6. The main grievance urged before us by the appellants is regarding the direction of the learned single Judge to refund the amounts already remitted by the appellant pursuant to the direction in Ext.P14 judgment. According to the appellants, this was the amount due from the first respondent in terms of Ext.P10, the settlement arrived at in the Revenue Adalath. Though the agreed amount was not remitted within time, the appellants are still willing to accept such remittance in full and final settlement of the liability due from the first respondent. However, this contention of the appellants is disputed by the learned counsel appearing for the first respondent, pointing out that Ext.P10 is not a

settlement as contended by the appellants but was one fabricated by the appellants on a blank paper which was got signed by the first respondent representing it to be the attendance sheet of the Revenue Adalath.

7. The submissions made before us show that the real dispute is in regard to Ext.P10 and if Ext.P10 is sustained, the remittance made by the first respondent in pursuance of the directions in Ext.P15 judgment, though provisional, has to be treated as regular and the direction for its refund will have to be set aside. As we have already seen, the first respondent does not have a case that there was no Adalath held in 2007. The first respondent does not say that she was not invited for the Adalath nor has she got a dispute regarding the signature that she put on the paper on which the settlement was drawn up. Instead, the contention raised by the first respondent is that her signature was obtained on a blank paper representing it to be the attendance sheet and that the settlement was drawn up by the appellants without her consent or knowledge. It is

on that basis, she prayed to quash Ext.P10 in the writ petition.

8. As we have already stated, this contention of the first respondent is answered by the appellants in the counter affidavit filed by them by contending that in the Revenue Adalath conducted to which the first respondent was invited, she had agreed for the settlement as recorded in Ext.P10. According to the appellants, it was after drawing up the settlement that the first respondent affixed her signature on the document.

9. As we have already stated what is required to be resolved within the nature of the controversy that is raised before us is whether Ext.P10 is a valid settlement or not. From the submissions made by both sides, it is obvious that the dispute concerning validity of the settlement is a pure disputed factual question. It is trite that disputed factual questions cannot be resolved in a proceedings under Article 226 of the Constitution of India. Therefore,

according to us, if at all the first respondent has a case that Ext.P10 is one created as claimed by her, the forum available to the first respondent to challenge that document is not the High Court in a proceedings under Article 226 of the Constitution of India. If that be so, the order passed by the learned single Judge directing refund of the amount remitted by the first respondent pursuant to the directions in Ext.P14 judgment cannot be sustained.

In the result, the appeal is allowed and the judgment of the learned single Judge is set aside making it clear that the payment made by the first respondent shall be treated as made in full and final settlement of the entire liability, for which, recovery proceedings were initiated by the appellants.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

kkb.

/True copy/

PS to Judge