

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WA.No. 1229 of 2014 IN WP(C).29216/2009

AGAINST THE JUDGMENT IN WP(C) 29216/2009 of HIGH COURT OF KERALA,
DATED 17-07-2014

APPELLANT/PETITIONER:

SAINABA KUNJU
PUTHENPURACKAL, CHEPPAD P.O, ALAPUZHA.

BY ADV. SRI.L.MOHANAN

RESPONDENT/RESPONDENT:

KERALA WATER AUTHORITY
REPRESENTED BY ITS MANAGING DIRECTOR
THIRUVANANTHAPURAM 695 001.

R1 BY ADV. SRI.MILLU DANDAPANI, SC, KERALA WATER AUTHORITY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

W.A.No.1229 of 2014

Dated this the 27th day of October, 2015

JUDGMENT

Antony Dominic, J.

1.Appellant is the wife of late Ibrahim Kutty who expired on 24.6.1998. Being a contractor, Sri.Ibrahim Kutty had undertaken the work of Thelliyoor-valakuzhy-Exhumattoor distribution system. The contract was ultimately terminated and Ext.P1 shows that the contractor was exempted from the responsibility of carrying out the balance work. Subsequently, revenue recovery proceedings were initiated against the appellant being the wife of the deceased contractor. That was challenged before this Court in OP.2757/02. Pursuant to the directions contained in Ext.P2 judgment in that OP, the Managing Director of the first respondent passed Ext.P3 order, fixing liability of the appellant at ₹6,27,357/- and directing her to remit the amount in two months. It was challenging that order, the writ petition was filed. By the judgment under appeal, learned single Judge disposed of the writ petition declining to

interfere with Ext.P3, however, leaving it open to the appellant to challenge the fixation of liability in appropriate proceedings before the civil court. It is this judgment which is under challenge before us.

2.First contention raised by the counsel for the appellant is that the termination of contract was on account of the failure of the respondent themselves in supplying materials and that therefore, the liability for breach thereof cannot be fastened on the appellant. In our view, such a dispute involving disputed questions of law, as found by the learned single Judge, cannot be resolved in a proceedings under Article 226 of the Constitution of India. Therefore, learned single Judge was fully justified in relegating the appellant to pursue her remedies before the civil court and we confirm that view of the learned single Judge.

3.Second contention raised by the counsel for the appellant is that the termination by Ext.P1 was as

early as on 7.4.1992 and that therefore, fixation of liability and the consequent recovery proceedings at this distance of time is clearly barred by law of limitation. Here again, there is total dearth of materials.

4.As we have already stated, recovery proceedings were already initiated against the appellant and that came to be challenged before this Court in OP.2757/02 which was disposed of by Ext.P2 judgment. Therefore, if, as a matter of fact, a requisition under section 69(2) of the Revenue Recovery Act was issued within the period of limitation, this plea cannot be raised by the appellant now. However, as already stated by us, there is total dearth of materials and therefore, we do not think it prudent to go into that issue. Instead, we feel that in the circumstances of the case, ends of justice would be met if the contentions available to the appellant in this behalf are left open to be agitated by her as and when recovery proceedings, if any, pursuant to Ext.P3, are initiated against her for realisation of the dues.

Therefore, reserving that liberty, we dispose of this writ appeal.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge