IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WA.No. 1867 of 2015 () IN WP(C).4017/2014

AGAINST THE JUDGMENT IN W.P.(C) NO.4017/2014 of HIGH COURT OF KERALA DATED 13-07-2015.

APPELLANT(S)/PETITIONER:

ABDUL VAHAB, AGED 42 YEARS,
S/O. IBRAHIM MUSLIAR, KUZHIMANNIL,
NEAR MANNUMMEL PALLI, THATTANCHERRYMALA,
VALIYORA AMSOM, KOORIYAD P.O., VENGARA,
THIRURANGADI TALUK, MALAPPURAM DISTRICT.

BY ADVS.SRI.T.G.RAJENDRAN
SRI.T.R.TARIN
SMT.ANN SUSAN GEORGE
SRI.V.A.VINOD

RESPONDENT(S)/RESPONDENTS:
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1. KERALA STATE ELECTRICITY BOARD,
   REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVAN,
   PATTOM, THIRUVANANTHAPURAM - 695 004.

2. THE SPECIAL OFFICER (REVENUE),
   VYDHUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM - 695 004.

3. THE ASSISTANT ENGINEER,
   ELECTRICAL SECTION, CHELARI, CALICUT UNIVERSITY P.O.,
   MALAPPURAM - 673 635.

4. SAROJINI, AGED 62 YEARS,
   D/O. KARIKUTTY, KOTTODY PARAMBIL, THENJIPALAM P.O.,
   THIRURANGADI, MALAPPURAM DISTRICT - 673 635.

R1-R3 BY ADV. SRI.RAJU JOSEPH (SR.)
SRI. K.T.PAULOSE, SC, K.S.E.B.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.

W.A. No.1867 of 2015

Dated this the 12th day of November, 2015

JUDGMENT

Surendra Mohan, J.

The petitioner in W.P.(C) No.4017 of 2014 is in appeal before us, challenging the judgment dated 13.07.2015 of the learned Single Judge dismissing his writ petition. The petitioner had filed the writ petition challenging Ext.P2 notice dated 17.01.2014 issued by the 3rd Respondent intimating him that, the property comprised in Re-survey No.88/11 of Thenhipalam Village in Malappuram District was liable to be proceeded against for recovery of an amount of Rs.71,40,597/- (Rupees Seventy One Lakhs, Forty Thousand, Five Hundred and Ninety Seven only). The amount represented electricity dues payable by the 4th Respondent. According to the petitioner, he had purchased the property from the 4th Respondent as per Ext.P1 Sale Deed dated 24.11.2010. From Ext.P2, it is clear that the 4th Respondent was a High Tension consumer, who was conducting a steel re-rolling mill. The amount of Rs.71,40,597/- demanded by the 3rd Respondent represents electricity charges for the period from 1996 to 2002.

2. The contention of the petitioner was that, the amount demanded being the dues for the period from 1996 to 2002 was time barred. Ext.P2 has been issued only on 13.01.2014. The appellant had not received any intimation other than Ext.P2, either informing him of the fact that the amounts were payable by the 4th Respondent or that proceedings for the recovery thereof were being initiated against the property held by him. The appellant further contended that, the recitals in the Sale Deed explicitly declared that there was no subsisting liability on the property. Therefore, the appellant sought for the issue of appropriate orders quashing Ext.P2.

3. The 4th Respondent remained *ex parte*. The writ petition was contested by the other Respondents. According to the Kerala State Electricity Board (K.S.E.B for short), there was a statutory charge on the property. The 4th Respondent who is the defaulter, had availed the electricity connection under the Electricity Supply Act, 1948 ('the Supply Act' for

short) and the Regulations Relating to the Conditions of Supply of Electrical Energy, 1990 ('the Regulations' for short) governed the terms and conditions subject to which, the supply was made. The 4th Respondent, according to the Respondents, had also entered into an agreement for supply of electrical energy in the Proforma prescribed by the Regulations. As per the terms of the agreement, a charge was created on the property of the 4th Respondent with respect to the amounts due to the 1st Respondent. Therefore, it was contended that there was no bar of limitation, as pleaded by the appellant.

4. The learned Single Judge considered the respective contentions, found that a charge had been created by the agreement entered into by the 4th Respondent under the Regulations. In view of the above, finding that the proceedings were not barred by limitation, the learned Single Judge has dismissed the writ petition. The appellant is aggrieved by the said judgment.

5. According to Sri. T.G. Rajendran, who appears for the appellant, the Electricity Act, 2003 has already come into force. Sec.185 of the said Act repeals all the previous

enactments. Therefore, any recovery is permissible only under the provisions of the new Act. Sec.56 of the new Act prescribes a period of limitation. The said period having expired in the present case, the proceedings are barred, according to the learned counsel. Further, the remedy prescribed by the 2003 Act is by filing a suit. It is further contended that, the dues sought to be recovered relate to the period 1996 to 2001. The said dues do not represent arrears of public revenue due on land. Therefore, according to the learned counsel, the present dues are not recoverable by taking resort to the provisions of the Kerala Revenue Recovery Act, 1968. The arrears in the present case fell due in the year 1996 itself. The same is not a composite amount due for the period from 1996 to 2001 as sought to be made out. Therefore, the said amounts are time barred. The above aspect was omitted to be taken note of by the learned Single Judge.

6. Sri. Raju Joseph, learned Senior Counsel representing Respondents 1 to 3 stoutly refutes the contentions advanced on behalf of the appellant. According to the learned Senior Counsel, this Court has held that despite

the coming into force of the Electricity Act of 2003, proceedings initiated for recovery of the dues under the old Act and Regulations could be continued. It is the further contention of the learned Senior Counsel that, in the present case, the 4th Respondent having entered into an agreement and created a charge over the property, Respondents 1 to 3 were perfectly within their rights in proceeding against the property. It is pointed out by the learned Senior Counsel that, no action has been initiated against the petitioner, since he is not a defaulter to the 1st Respondent and he is also not a consumer. However, the property is liable to be proceeded against, having been purchased by him subject to the charge that was created on it. The remedy of the appellant for any loss sustained due to non-disclosure of the liability or charge by the 4th Respondent, is against such Respondent herself. According to the learned Senior Counsel, though efforts have been made to ascertain the whereabouts of the 4th Respondent, they had not succeeded. It was in the said circumstances, the property was proceeded with for recovery of amounts. According to the learned Senior Counsel, the learned Single Judge has addressed the issues correctly and the judgment appealed against does not call for any interference.

7. Heard. It is not in dispute that the 4th Respondent from whom the appellant had purchased the property in question, was a High Tension consumer of the 1st Respondent. She had been conducting a Steel Re-rolling mill in the property. The property had been sold to the appellant, after dismantling the industrial facility. The dues that are sought to be recovered represents the electricity charges payable by the 4th Respondent for the period from 1996 to 2001. Ext.R1(a) shows that the requisition for recovery of the amount had been issued on 19.12.2002. The requisition was accompanied by Ext.R1(b) covering letter requesting the District Collector, Malappuram to initiate revenue recovery proceedings. The District Collector, Malappuram had however returned the requisition, taking the view that it was the District Collector, Thiruvananthapuram who had to take steps. The Special Officer (Revenue) thereupon addressed the District Collector, Thiruvananthapuram by Ext.R1(c) letter to do the needful. A confusion regarding the identity of the authority who was actually empowered to initiate action appears to have been

cause for the delay in completing the recovery proceedings. Therefore, the question that arises for consideration is whether the limitation applies to the requisition, Ext.R1(a) that was issued on 19.12.2002.

8. As rightly held by the learned Single Judge, Clause 15(d) of the Regulations provides that all dues to the Board from a consumer shall be the first charge on the consumer. It also provides that all dues including penalty shall be realised as public revenue due on land.

9. The learned Single Judge has quoted the relevant clauses from the Proforma of the agreement for supply of electrical energy creating a charge over the property of the consumer. Clauses 11 and 19 of the Proforma are the relevant clauses. Nobody has a case that an agreement in accordance with the Proforma prescribed by the Regulations was not entered into by the 4th Respondent. Therefore, the learned Single Judge was perfectly justified in proceeding on the premise that a charge had been created over the property, in terms of the clauses contained in the Proforma of the agreement prescribed by the Regulations. Hence, the conclusion of the learned Single Judge that a statutory charge

was created over the property of the consumer is upheld.

10. Since a charge was created over the immovable property by the agreement, Article 62 of the Limitation Act, 1963 applies. The period of limitation prescribed by the said Article is 12 years. The requisition Ext.R1(a) for recovery of the amounts was issued on 19.12.2002. It has been held in '***State of Kerala v. V.R.Kalliyanikutty***' [1999 (2) KLT 146 (SC)] regarding the commencement of the period of limitation as follows:

> *"Under the Kerala Revenue Recovery Act such process of recovery would start with a written requisition issued in the prescribed form by the creditor to the Collector of the District as prescribed under S.69 (2) OF the said Act. Therefore, all claims which are legally recoverable and are not time barred on that date can be recovered under the Kerala Revenue Recovery Act."*

11. In view of the above authoritative pronouncement, it has been held that the proceedings for recovery had commenced before expiry of the period of limitation prescribed by Article 62 of the Limitation Act, the issue of Ext.R1(a).

12. The learned counsel for the appellant has placed reliance on the decision of a Full Bench of this Court in

'***Perumbavoor Municipality*** *v*. ***Assistant Engineer***' [2005 (1) KLT 95 F.B.] to contend that the dues in the present case could not be treated as public revenue due on land. There cannot be any dispute regarding the above proposition. The dues in the present case are only made recoverable as arrears of public revenue due on land. They are not actually arrears of public revenue due on land. Since there is no dispute regarding the fact that the dues in the present case are recoverable as arrears of public revenue, such issue need not detain us any longer.

13. The learned Senior Counsel appearing for the Respondents 1 to 3 has placed reliance on the decision of a Division Bench of this Court in '***Abdul Nazar v. K.S.E.B***' [2006(1) KLT 811], where after considering the question as to whether dues that became payable under the enactments that were repealed could be recovered after the coming into force of Electricity Act, 2003, this Court has held as follows:

> *"5. x x x x x x x x*
> *x x x x x x x x*
>
> *Under such circumstance Board is right in its contention that the amount due from the consumer prior to the coming into force of the Electricity Act, 2003 could be recovered by revenue recovery*

> *proceedings since no time limit has been prescribed. S.56(2) of the Act states that no sum due from any consumer under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. S.56(2) in our view is applicable only to amounts due after commencement of this Act. Under such circumstance, we find no infirmity in Ext.P7 order."*

14. The learned Senior Counsel has also placed reliance on the decision in '***Delhi Development Authority v. Skipper Construction Co. (P) Ltd. and others***' [AIR 2000 SC 573]. In the said case, the Supreme Court was considering the question of Sec.55(6)(b) of the Transfer of Property Act. It has been held that, Article 62 of the Limitation Act was applicable to enforce payment of money secured by a mortgagee or otherwise charged upon immovable property and that time runs from the date when money becomes due.

15. In the present case also, as already found above, a charge has been created over the property by the agreement executed by the 4th Respondent under the Regulations. Therefore, this is a case in which Article 62 of the Limitation

Act squarely applies.

16. We find that, the learned Single Judge has considered the issues in the proper perspective. Therefore, the judgment of the learned Single Judge is confirmed. Accordingly, this writ appeal is dismissed.

17. However, considering the fact that the appellant is a purchaser of the property and not the defaulter, Respondents 1 to 3 shall extend to him the benefits of all Schemes that are available for one time settlement of the dues or if no such scheme is available, grant a suitable remission in the interest demanded, in the interests of justice.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
12.11.2015