

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 4214 of 2010 (B)

PETITIONER(S):

**SMT.ANGEL VALSALA, W/O.LATE D.PADMJAN,
THZHATHU GREEN HOUSE, KILIKOLLOR P.O., KOLLAM.**

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S):

- 1. THE REGIONAL PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE, OLD MUNICIPAL BUILDING,
CHINNAKKADA, KOLLAM.**
- 2. THE ENFORCEMENT OFFICER,
OFFICE OF THE REGIONAL PROVIDENT FUND COMMISSIONER,
SUB REGIONAL OFFICE.**
- 3. SRI.SIYAVUDEEN K.,
NAJARAVILLA VEEDU, AIKA NAGAR NO.207, VADAKKEVILA P.O.,
KOLLAM.**

**R1 & R2 BY ADVS. SRI.V.V.SURESH, SC
SRI.PIRAPPANCODE V.S.SUDHIR, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 4214 of 2010 (B)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF LEASE AGREEMENT DTD.5.1.2007.

**EXT.P2: TRUE COPY OF THE RENEWAL/TRANSFER/AMENDMENT OF CASHEW
FACTORY LICENCE REG. NO. CHW/KUR/11/173/88 ISSUED TO THE
PETITIONER.**

EXT.P3: TRUE COPY OF THE MAHAZER DTD.10.12.2009 ISSUED TO THE PETITIONER.

EXT.P4: TRUE COPY OF THE REPLY DTD.22.12.2009 SUBMITTED BY THE PETITIONER.

EXT.P5: TRUE COPY OF THE NOTICE DTD.1.2.2010 ISSUED TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Ms^v/

K. Vinod Chandran, J.

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W.P.(C)No.4214 of 2010

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Dated this the 18th day of February, 2015.

JUDGMENT

1. Petitioner is aggrieved with Exts.P3 and P5 attachment orders, by which Employees Provident Funds Organization had sought for recovery of contributions due under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the “Act”) for the period 1/2007 to 5/2008. Petitioner filed the above writ petition, specifically challenging the said demand, on the ground that, the petitioner had not been conducting the cashew factory at that point of time and it was transferred in the name of the third respondent, which was not a transfer simplicitor by lease, but the licence itself was obtained in favour of the third respondent.
2. Learned standing counsel for the respondent, however, relies on Section 17B of the Act, to contend that, the transferor and transferee

can be proceeded against, since the liability is joint and several. The protection, if any granted, is to the transferee, which alone is limited to the value of the assets obtained by the transferee on such transfer, for the dues of the transferor.

3. Learned counsel for the petitioner's attempt to draw a distinction, insofar as the licence itself was taken in the name of the third respondent. Definitely, when an establishment is transferred in the name of another by lease or otherwise, the licence would have to be taken in the name of the transferee and it cannot be continued in the name of the transferor. Section 17B also takes into account transfer of an establishment "in whole or in part, by sale, gift, lease or licence or in any other manner whatsoever". Hence, the distinction, drawn by the petitioner's counsel, is not at all relevant.
4. Any transferor would be liable for the contribution to be paid by the transferee for the period during which the transferee operated the establishment. The transferor could of course take their remedies

before a civil forum for recovery of the amounts satisfied on behalf of the transferee. That, however, cannot interdict the organization from proceeding against, either of the said persons, who has charge over the establishment. It is also to be noticed that the assessment itself is not challenged and the challenge in the writ petition is only with respect to the attachment.

Writ petition is devoid of merit and is dismissed.

K. Vinod Chandran, Judge.

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