

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 586 of 2014 (W)

PETITIONERS:

1. SMT.KANAKAMMA, AGED 48 YEARS
W/O.LATE THULASEEDHARAN , RESIDING AT VATTAKKATTU THEKKATHIL
THATTARKONAM P O, KOLLAM DISTRICT.
2. AMMUKUTTY AMMA, AGED 80 YEARS
M/O.LATE THULASEEDHARAN , RESIDING AT VATTAKKATTU THEKKATHIL
THATTARKONAM P O, KOLLAM DISTRICT.
3. SAJEEV, AGED 26 YEARS
S/O.LATE THULASEEDHARAN , RESIDING AT VATTAKKATTU THEKKATHIL
THATTARKONAM P O, KOLLAM DISTRICT.
4. SAJITH, AGED 24 YEARS
S/O.LATE THULASEEDHARAN , RESIDING AT VATTAKKATTU THEKKATHIL
THATTARKONAM P O, KOLLAM DISTRICT.

**BY ADVS.SRI.O.V.MANIPRASAD
SRI.SAJU J PANICKER**

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. THE DISTRICT COLLECTOR, KOLLAM-691001.
3. THE TAHSILDAR (RR), TALUK OFFICE, KOLLAM-691001.
4. THE COMMISSIONER FOR WORKMEN'S COMPENSATION &
DEPUTY LABOUR COMMISSIONER, KOLLAM-691001.
5. SRI.BAIJU,
AMBALAKKARA, KOTTARAKKARA P O, KOLLAM-691506.

**R1-4 BY GOVERNMENT PLEADER SRI.R.RENJITH
R5 BY ADVS. SRI.PRAVEEN K. JOY
SRI.T.A.JOY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE JUDGMENT DTD 29/6/2011 IN WCC NO 50/2005 OF THE 4TH RESPONDENT**
- P2:- TRUE COPY OF THE INTIMATION OF JUDGMENT BY THE 4TH RESPONDENT DTD 29/6/2011 TO THE 5TH RESPONDENT**
- P3:- TRUE COPY OF THE APPLICATION DTD 31/7/2013 SENT UNDER THE RIGHT TO INFORMATION ACT**
- P4:- TRUE COPY OF THE REPLY DTD 3/8/2013 GIVEN BY THE 4TH RESPONDENT**
- P5:- TRUE COPY OF THE REQUEST FILED BEFORE THE CHIEF MINISTER OF KERALA BY THE PETITIONERS**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K.VINOD CHANDRAN, J

W.P.(C).No. 586 of 2014

Dated 3rd February, 2015

JUDGMENT

The petitioners are aggrieved with the non recovery of the amounts as specified in the judgment of the Commissioner For Workmen's Compensation at Ext.P1. Admittedly, at present, the Industrial Tribunals are notified as the Employees Compensation Commissioner and in the present case, the Industrial Tribunal, Kollam.

2. The petitioners are the legal heirs of a deceased workman who was employed under the 5th respondent. The predecessor of the petitioners having died pursuant to an employment injury, claimants were before the Workmen's Compensation Commissioner which claim was allowed as per Ext.P1 and an amount of Rs.2,80,350/- was directed to be paid together with simple interest at the rate of 12% from 20.11.2004. In fact, the petitioners had

sought for recovery proceedings under the Revenue Recovery Act, 1968 (Kerala), since the Employees Compensation Act, 1923, by Section 31 provides for recovery of the amounts awarded by way of revenue recovery.

3. The petitioners had immediately after the Award, proceedings, initiated recovery proceedings which is evident from the communication addressed to the petitioners under the Right To Information Act produced at Ext.P4. The said communication is dated 03.08.2013. To a specific query, the Public Information Officer had informed the petitioners that as part of the revenue recovery proceedings, show cause notice was issued to the 5th respondent herein and that the 5th respondent had informed the Office that an appeal has been filed before the High Court of Kerala against the order of the Workmen's Compensation Commissioner, Kollam. It was also clarified that no amount has been deposited before

the Office of the Regional Joint Labour Commissioner who was the then Workmen's Compensation Commissioner. Hence, the revenue recovery proceedings were issued by the Workmen's Compensation Commissioner within three years of the Award.

4. Specifically when the Industrial Tribunal was notified, the petitioners were again before the Tribunal for initiation of revenue recovery proceedings which the Tribunal has initiated by order dated 29.08.2014. This Court had asked for a report from the Tribunal and it has been stated that in pursuance to the Execution Petition filed by the applicants in W.C.C.50 of 2005 steps have been taken for recovery on 29.08.2011. That was necessitated only since the Industrial Tribunals are now notified as the Employees Compensation Commissioner.

5. The learned counsel appearing for the 5th respondent would submit that the claim is barred by limitation and no proceedings under the Revenue Recovery Act, 1968 could be taken against the 5th respondent. The 5th respondent specifically relies on a Full Bench decision of this Court reported in **Perumbavoor Municipality v. Assistant Engineer (2015 (1) KLT 95)**. The only issue considered in the aforesaid decision was whether on a notification being issued under Section 71 of the Revenue Recovery Act, 1968, the amounts recoverable would get the character of public revenue due on land or not. It was declared that such notification would only enable recovery under the Revenue Recovery Act and the dues would not get the character of public revenue due on land. Hence, the limitation applicable would be governed by the terms of the specific statute, under which the amounts are levied. The said decision would not be applicable in the present case, since the petitioners seek

recovery as a 'public revenue due on land' not in form, avoiding the laws of limitation; but only by procedure sanctioned under the Revenue Recovery Act.

6. The further contention raised by the learned counsel is that the order sought to be executed, not being a decree of a Civil Court, what would apply is Article 137 of the Limitation Act, 1963 and only three years would be provided for making such an application. It is to be noticed that the petitioners had prior to Ext.P4, initiated recovery proceedings, ie, prior to 03.08.2013. the Award was dated 27.09.2011. In such circumstances, no ground of limitation could be urged against the claimant to interdict recovery under the Revenue Recovery Act. On a specific query made, it is submitted by the learned counsel appearing for the 5th respondent that though an appeal against Ext.P1 order was filed as early as in 2011, the same is not numbered till date since it is defective for

want of deposit of the Award amounts. In such circumstances, it is very evident that the 5th respondent is evading recovery on the ground of a defective appeal. Respondents 2 and 3 shall expedite the recovery proceedings and conclude it, at any rate, within a period of three months from today.

With the above observation, the writ petition is disposed of.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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