

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 2196 of 2014 (Y)

PETITIONER:-:

**SREEKUMAR,
S/O.SADANANDAN, SUMANGALA SADANAM, NEDUVATHOOR VILLAGE
ANAKOTTOOR, KOTTARAKKARA, KOLLAM DISTRICT.**

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:-:

- 1. THE DISTRICT COLLECTOR,
COLLECTORATE, CUTCHERY P.O., KOLLAM - 691 013.**
- 2. THE TAHSILDAR,
TALUK OFFICE, KOTTARAKKARA, KOTTARAKARA P.O.
KOLLAM.**
- 3. THE VILLAGE OFFICER,
KOTTARAKKARA VILLAGE, KOTTARAKKARA P.O., KOLLAM.**
- 4. SMT.RADHABHAI,
W/O.LATE GOPINATHAN, GOPU SADANAM, NEDUVATHOOR,
NEELESWARAM P.O., KOTTARAKKARA, KOLLAM.**
- 5. SRI.RAJEEV G.R.,
S/O.LATE GOPINATHAN, GOPU SADANAM, NEDUVATHOOR
NEELESWARAM P.O., KOTTARAKKARA, KOLLAM.**
- 6. SMT.RAJI MOL,
D/O.LATE GOPINATHAN, VRINDAVAN, MARUTHANKUZHI,
KANJIRAMPARA P.O., SASTHAMANGALAM,
THIRUVANANTHAPURAM - 695 030.**

**R1-R3 BY GOVERNMENT PLEADER SRI.S.JAMAL
R4-R6 BY ADV. SRI.A.SANIL KUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. THE TRUE COPY OF THE SALE DEED NO.849/2013 DATED 13.03.2013 OF KOTTARAKKARA SUB REGISTRY EXECUTED IN FAVOUR OF THE PETITIONER.**
- EXHIBIT P2. THE TRUE COPY OF THE REPORT SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT RELATING TO THE MUTATION OF THE PETITIONER'S PROPERTY.**
- EXHIBIT P3. THE TRUE COPY OF THE ORDER NO.64424/S2/2011/RD DATED 21.12.2011 ISSUED BY THE GOVERNMENT TO THE 4TH RESPONDENT.**
- EXHIBIT P4. THE TRUE COPY FO THE ORDER NO.2634/RR/2011/MR DATED 28.11.2011 ISSUED BY THE GOVERNMENT TO THE 4TH RESPONDENT.**
- EXHIBIT P5. THE TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT UNDER SECTION 36 OF THE KERALA REVENUE RECOVERY ACT DATED 12.08.2013 TO THE 4TH RESPONDENT.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. Vinod Chandran, J

W.P.(C).No.2196 of 2014-Y

Dated this the 22nd day of July, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the mutation applied for has not been considered because of the report at Exhibit P2, which speaks of a number of proceedings under the Kerala Revenue Recovery Act, 1968 [for brevity “RR Act”] against the property for realisation of dues to the Government and non-governmental institutions, including sales tax arrears, of the predecessor-in-interest of the property.

2. The learned counsel for the petitioner would submit that the respondents 4 to 6, the legal heirs of the predecessor-in-interest, who have conveyed the property to the petitioner by Exhibit P1. The learned Government Pleader would contend that there are a number of revenue recovery proceedings pending against the property and the petitioner is attempting to delay such recovery.

3. If mutation is sought for and granted, recovery proceedings if initiated prior to the transfer, necessarily the Government can proceed against the property *dehors* the transfer as provided in sub-section (2) of Section 44 of the RR Act. Sub-section (2) of Section 44 provides that the such property can be proceeded with and the subsequent conveyance will not be binding on the Government. If a mere attachment of property was made, then the issue would be covered by the decision of this Court in ***Thulasibhai v. State of Kerala* [2010 (4) KLT 215]**.

4. However, in the present case the issue admittedly is with respect to sales tax arrears. The respondents are said to have moved the appellate authority under the Kerala General Sales Tax Act, 1963 [for brevity “KGST Act”]. However, Section 26A of the KGST Act, under which the dues are said to be pending, specifically renders void any transactions of the assets of a defaulter during the pendency of the proceedings under the KGST Act. Under Section 26B of the KGST Act, the tax payable will also be first charge on the property. In the circumstance of the specific provision that the transfer would be void, during the

pendency of a proceeding under the KGST Act and admittedly since there are proceedings pending under the said Act and there are arrears under the KGST Act, it may not be proper for this Court to direct mutation to be effected.

The writ petition would stand dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]