IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

WP(C).No. 6569 of 2010 (U)

PETITIONER(S):

JYOTHI CHALY,AGED 58 YEARS,
W/O.LATE BABU CHALY, KANDATHIL HOUSE, PUNNAN ROAD
THIRUVANANTHAPURAM.

BY ADV. SMT.M.M.JASMIN

RESPONDENT(S):
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1. **STATE OF KERALA,REPRESENTED BY REVENUE SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT COLLECTOR,COLLECTORATE, THIRUVANANTHAPURAM.**

3. **THE AUTHORISED OFFICER,DEPUTY TAHSILDAR (RR), THIRUVANANTHAPURAM.**

4. **AIRPORTS AUTHORITY OF INDIA(IAD), THIRUVANANTHAPURAM INTERNATIONAL AIRPORT THIRUVANANTHAPURAM, REPRESENTED BY THE AIRPORT DIRECTOR.**

R,R4 BY ADV. SRI.V.SANTHARAM
R BY SRI.K.L.NARASIMHAN
R1 TO R3 BY SR. GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 6569 of 2010 (U)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**JUDGMENT IN A.R.24/2006 DT.30.04.09**
EXT.P2:	**DEMAND NOTICE ISSUED UNDER SECTION 7 OF THE REVENUE RECOVERY ACT DT.8.02.10.**
EXT. P3:	**DEMAND NOTICE ISSUED UNDER SECTION 34 OF THE REVENUE RECOVERY ACT DT.10.02.10.**

RESPONDENT'S EXHIBITS:

EXT. R4(a):	**TRUE COPY OF ORDER DATED 18.06.2008 PASSED BY THE ESTATE OFFICER.**
EXT.R4(b):	**TRUE COPY OF APPEAL C.M.A.69/08 DATED 3.7.08 FILED BY THE PETITIONER.**
EXT.R4(c):	**TRUE COPY OF INTERIM APPLICATION I.A.2301/08 DATED 3.7.08 IN CMA 69/08.**
EXT.R4(d):	**TRUE COPY OF COMMUNICATION DATED 26.5.09 ALONG WITH THE CERTIFICATE ISSUED BY ESTATE OFFICER.**
EXT.R4(e):	**TRUE COPY OF COMMUNICATION DATED 6.11.09 ISSUED BY DISTRICT COLLECTOR.**
EXT.R4(f):	**TRUE COPY OF COMMUNICATION DATED 4.12.09 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 2ND RESPONDENT ALONG WITH FORM NO.24.**
EXT.R4(g):	**TRUE COPY OF JUDGMENT DATED 3.2.2010 PASSED BY THE ADDL. DISTRICT JUDGE, TRIVANDRUM.**
EXT.R4(h):	**TRUE COPY OF THE JUDGMENT DATED 24.11.2010 IN C.M.A. NO.69/2008 PASSED BY THE ADDITIONAL DISTRICT JUDGE-1, TRIVANDRUM.**

//TRUE COPY//

PA TO JUDGE

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C.K.ABDUL REHIM, J.

W.P.(C) No.6569 of 2010

Dated this the 25th day of March, 2015

JUDGMENT

Revenue recovery proceedings initiated against the petitioner pursuant to Exhibit P2 and P3 demand notices issued under Section 7 and Section 34 of the Kerala Revenue Recovery Act, 1968, is under challenge in this writ petition. Contention of the petitioner is that, the amount sought to be recovered is the alleged arrears due to the 4th respondent, which is not an institution notified under Section 71 of the Kerala Revenue Recovery Act, and hence the respondents 2 and 3 has no authority to initiate the revenue recovery proceedings. Inter alia, the petitioner is contending that the revenue recovery steps initiated by the 4th respondent is not sustainable in view of Exhibit P1 judgment rendered by this Court, in which the petitioner along with her mother was permitted to raise a dispute before the Estate Officer designated under provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, and in view of the direction issued to the Estate Officer to adjudicate upon such dispute with respect to correctness of the amount demanded. It is also contended that the amount of interest claimed under the impugned revenue recovery steps is exorbitant and unconscionable.

2. From the facts revealed it is evident that, the petitioner's mother had entered into an agreement of lease with the 4th respondent for occupation of certain immovable property at the Airport, Thiruvananthapuram, for running a petrol retail outlet, for an annual rental amount fixed. During the year 1994, the 4th respondent demanded vacant possession of the land as the premises is required for development of the Airport. Action initiated in this regard was challenged by the petitioner in a writ petition filed before this Court as O.P. No.9593/1994. This Court directed to resolve the dispute through arbitration, in view of the specific clause contained in the lease agreement. Subsequently an

arbitrator was appointed and an Award was passed in the matter. The Award of the arbitrator was challenged before the appellate court in O.P. (Arb) No.144/2003. During pendency of the said appeal, steps were initiated to recover arrears of rent due from the petitioner's mother, which was resisted by the petitioner by filing another writ petition before this Court as W.P.(C) No.31381/2003. Based on an interim order passed by this Court in the said writ petition, part payment of arrears to the tune of Rs.7,00,000/- was made. The said writ petition was disposed of by directing the appellate court to dispose of the arbitration appeal expeditiously and the petitioner was directed to furnish Bank Guarantee for the balance amount. According to the 4th respondent, no such Bank Guarantee was furnished. Subsequently, the arbitration appeal was dismissed. In the meantime, the petitioner alongwith her mother again approached this Court in an arbitration request, A.R.24/2006 raising dispute with respect to enhancement of the license fee. This Court in Exhibit P1 judgment declined to refer the matter for arbitration. It was observed that the petitioner can dispute the correctness of the amount demanded, before the Estate Officer. Thereafter, the petitioner was vacated from the premises in question on 31.3.2008. The Estate Officer, authorised under Section 7(2) of the Public Premises (Eviction of Unuthorised Occupants) Act had adjudicated the dispute pertaining to the quantum of the arrears of lease amount. Under Exhibit R4(a) communication, the Estate Officer demanded the petitioner to make payment of a sum of Rs.32,02,487.44/- along with interest at the rate of 18% per annum, due from 1.4.2008 onwards. The decision of the Estate Officer was challenged in an appeal filed before the District Court, Thiruvananthapuram as CMA 69/2008. It is pointed out that the appeal was dismissed by the District Court on 24.11.2010, as evidenced from Exhibit R4 (h). According to the 4th respondent, the amount now sought to be realised through the impugned revenue recovery steps is the amount quantified by the Estate Officer under Section 7(2), alongwith interest.

3. Issue mooted for decision is only with respect to sustainability of the revenue recovery steps. Crux of the contention raised by the petitioner is that, the 4th respondent cannot resort to recovery under the Kerala Revenue Recovery Act, because it is not an institution notified under Section 71 of the said Act. Section 71 of the Act empowers the Government to declare through notification that the provisions of the Act shall be applicable to recovery of amounts due from any person or class of persons to any specified institution or to any class or classes of institutions. It provides that any such notification if issued, all provisions of the Act shall be applicable to recovery of such institutions. Admittedly, with respect to the 4th respondent there is no notification issued under Section 71 of the Act. But learned standing counsel appearing for the 4th respondent had drawn attention of this Court to Section 14 of the Public Premises (Eviction of Unauthorised Occupants) Act , 1971. It provides that, if any person refuses or fails to pay the arrears of rent payable under Sub Section (1) of

Section 7 or the damages payable under Sub Section (2) or the interest determined under Sub Section 2(a) or any portion of such rent or damages, within the time specified in the order relating thereto, the Estate Officer may issue a certificate for the amount due to the Collector who shall proceed to recover the same as an arrear of land revenue. Admittedly, the Estate Officer had determined the arrears due from the petitioner in exercise of power vested under Section 7. It is also evident that such determination was challenged by the petitioner in appeal by invoking Section 9 of the said Act. Therefore it cannot be disputed that the amount now sought to be recovered is the amount determined by the Estate Officer in exercise of powers vested under Section 7 of the Act. Section 14 enables the Estate Officer to issue a 'Certificate' for recovery of the said amount to the Collector. It further provides that the Collector shall proceed to recover the same as if it is arrear of land revenue. It is contended on behalf of the 4th respondent that, when the Public Premises Act had declared the amount recoverable as an arrear of land revenue, section 68 of the Kerala Revenue Recovery Act will apply. It is pointed out that, by virtue of Section 68, all sums declared by any other law for the time being in force to be recoverable as arrears of public revenue due on land or as land revenue may be recovered under the provisions of the KRR Act. Since it is evident that, Section 14 of the Public Premises (Eviction of Unauthorised Occupants) Act had declared that the Estate Officer can issue 'certificate' to the Collector and the Collector can proceed to recover the arrears as an arrear of land revenue, it will fall within the purview of Section 68 of the KRR Act.

4. Learned counsel for the petitioner contended that, since the 4th respondent is not an institution notified under Section 71 the provisions of Section 68 would not enables such recovery, because the arrears is an amount due to the 4th respondent institution. But it is evident from Section 68 that when an arrear is declared by virtue of any law in force to be recoverable as land revenue, it can be recovered by recourse to provisions of the KRR

Act, despite whether it is due to any institution which is notified or not under Section 71 of the Act.

5. Further contention raised is that, since the 4th respondent is an institution coming under the institutions formed and controlled by the Central Government, provisions of the KRR Act, which is a law relating to recovery of public revenue in the State of Kerala, cannot be made applicable. In this regard, attention is drawn to the preamble of the Kerala Revenue Recovery Act, 1968. Wherein it is mentioned that, the Act is intended to consolidate and amend the laws relating to the recovery of arrears of public revenue in the state of Kerala. But it is pertinent to note that, the objective of the Act is not restricted to recovery of arrears of public revenue due to the State of Kerala. But it is intended as a law relating to recovery of arrears of public revenue in the State of Kerala. Therefore, on a consideration of Section 68 as well as Section 71, it is evident that the Act is intended not only to recover public revenue due to the State of Kerala, but also with respect to recovery of amounts due

to the institutions which are notified under Section 71, as well as amounts which are declared through other statutes in force to be recoverable as arrears of public revenue due on land or as land revenue. In the case at hand, since Section 14 of the Public Premises Eviction Act enables recovery as an arrear of land revenue Section 68 would enable recovery of such amount under the provisions of the KRR Act.

6. In the decision of this Court reported in 1978 KLT SN47 (case No.108) this court had occasion to consider an identical provision as that of Section 14 of the Public Premises Eviction Act, contained in Section 28(1) and 142(1) of the Customs Act. Referring to provisions of the Customs Act it is held that, the Assistant Collector is competent to issue a certificate of recovery under Section 68 of the KRR Act. The sum is recoverable and arrears of public revenue due on land. In another decision in **Varkey** v. **Tahsildar**, **Muvattupuzha Taluk (1974 ILR** (**Kerala) 249)** this court had occasion to decide as to whether amounts due to the Government of Madhya

Pradesh are recoverable under the KRR Act, 1968 (Central Act). Referring to Section 5 of the Revenue Recovery (Central Act), 1890 and provisions of the Madhya Pradesh Land Revenue Court, it is observed that when the District Collector in the Madhya Pradesh Government had issued a certificate of recovery, the Collector under Section 31 of the Revenue Recovery (Central Act) is bound to proceed against the immovable properties situated within the State of Kerala. By virtue of Section 3 and 5 of the Revenue Recovery (Central) Act those amount can be recovered as arrears of land revenue. And the Collector is entitled to take steps either by himself and to resort to Section 3 of Act and sent a certificate to the Collector of the District within which the person under the contractual obligation may have grounds.

7. Learned counsel for the petitioner contended that, even if it is assumed that Section 14 of the Public Premises Eviction Act enables the Estate Officer to issue a certificate to the Collector, the Collector can proceed

only under provisions of the Revenue Recovery (Central) Act. Hence it is contended that notices issued under Section 7 and 34 of the KRR Act, is not sustainable. The certificate issued by the estate officer in the case at hand is produced as Exhibit R4 (d), appended to the covering letter through which it was forwarded by the 4th respondent to the 2nd respondent (District Collector). The certificate is issued in form No.1 prescribed under the Public Premises Eviction Act. It is further evident that on receipt of the said certificate the 2nd respondent insisted for issuance of a requisition in form No.24 under the KRR Act, as provided under Section 69 (2) of the KRR Act. Accordingly the 4th respondent had forwarded a requisition in form No.24 as evidenced from Exhibit R4(f). It is pertinent to note that under Section 5 of the Revenue Recovery (Central) Act, it is provided that when any sum is recoverable as arrears of land revenue by any public officer other than a Collector or by any local authority, the Collector of the District in which the office of that authority is situated shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which had accrued in his own District. Section 5 of the Central Act is a provision enabling the District Collector to proceed to recover the arrears as if it is a public revenue became due or accrued in his District itself, as and when the requisition is received from any other authority for the purpose of recovery of any sum which is declared recoverable as arrear of land revenue. In the case at hand, the amount in question is declared by virtue of Section 14 of the Public Premises Eviction Act, recoverable as arrear of land revenue. That be so, when the requisition is received from the authority under that Act, the District Collector is bound to take steps to recover the amount as if it is an arrear of land revenue, which had accrued in his own District. There is no specific procedure with respect to such recovery contemplated under the Central Act. Therefore, the District Collector had to follow the procedure under the KRR Act to realise or recover such amounts. It is held in different decisions of various High

Courts like, **M/s.Mahalaxmi Fibres and Industries Ltd**. v. **The State of Bihar (AIR 1976 Patna 355)**, **The Khadi & Village Industries Commission** v. **M.S.Srivastava (AIR 1974 Patna 313)** and in **Somasudarshan Goud** v. **The District Collector**, **Hyderbad (AIR 1978 Andra Pradesh 420)** that in such situations the District Collector should act on the basis of Section 5 of the Central Act to recover the arrears as if those arrears of land revenue accrued within the Districts concerned itself.

8. Under the above mentioned circumstances, this Court is of the considered opinion that, it makes no difference whether the 4th respondent is an institution owned or controlled by the Central Government. The requisition made by the competent authority under Section 14 of the Public Premises Eviction Act need to be construed as a requisition received by the 2nd respondent under Section 5 of the Revenue Recovery (Central) Act, 1890. Hence the proceedings initiated by following the procedure prescribed under the KRR Act and issuance of

Exhibit P2 and P3 notices are to be held as legal and sustainable. Therefore, contentions raised for impugning the revenue recovery in question cannot be sustained.

9. Contentions of the petitioner disputing correctness of the amount under demand cannot be adjudicated in this writ petition. Learned counsel for the respondent pointed out that the interest is calculated based on the order passed by the Estate Officer, which is confirmed by the District Court in appeal. However, if the petitioner has got any genuine dispute regarding correctness of the amount, it is left open to her to raise such objections before the 2nd respondent. Further, contentions raised based on Exhibit P1 judgment also cannot be considered in view of the fact that the Estate Officer had adjudicated the matter based on the directions contained in Exhibit P1 and an order was issued in this regard, which was confirmed by the appellate court.

Under the above mentioned circumstances, the writ petition fails and the same is hereby dismissed subject to the observations contained herein above.

C.K.ABDUL REHIM,
JUDGE

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