

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 8777 of 2009 (N)

PETITIONER(S) :

OUSEPH MANUEL ALIAS BABU JOSE,
KOOTTAPPILLIL HOUSE, POTHANICADU P.O., KOTHAMANGALAM
ERNAKULAM DISTRICT.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENT(S) :

1. RESERVE BANK OF INDIA,
REPRESENTED BY THE ASST.GENRAL MANAGER
RURAL PLANNING AND CREDIT DEPARTMENT
BAKERY JUNCTION, P.B.NO.6507, THIRUVANANTHAPURAM.
PIN - 695 001

2. THE FEDERAL BANK LTD.,
REPRESENTED BY ITS MANAGER, KOTHAMANGALAM BRANCH
ERNAKULAM DISTRICT. PIN - 686 691

3. THE GENERAL MANAGER (CREDIT) AND
GRIEVANCE REDRESSAL OFFICER, THE FEDERAL BANK LTD.
REGIONAL OFFICER, ERNAKULAM. PIN- 682 016

4. UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE
NEW DELHI. PIN - 110 001

5. THE VILLAGE OFFICER, VILLAGE OFFICE,
POTHANICADU, ERNAKULAM - PIN - 686 671

R2 & 3 BY ADV. SRI.A.ANTONY& ADV. SMT. LEELAMMA ANTONY
BY ASG STI. N. NAGARESH ASST.SOLICITOREF FOR R4
BY GOVERNMENT PLEADERSRI. P.K. ABDUL RAHMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE AGRICULTURAL DEBT
WAIVER AND DEBT RELIEF SCHEME 2008 NOTICED BY
THE RESERVE BANK OF INDIA

EXT.P2: TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE PETITIONER BEFORE THE
ASSISTANT GENERAL MANAGER, FEDERAL BANK
LIMITED, HEAD OFFICE ALUVA ON 26-09-2008

EXT.P3: THE CERTIFICATE NO. 3292/08 DATED
25-09-2008 ISSUED BY THE VILLAGE OFFICER,
POTHANICAD

EXT.P4: TRUE COPY OF THE AWARD PASSED IN LAC
NO. 266/95

EXT.P5: TRUE COPY OF THE AWARD PASSED IN LAC
NO. 267/95 BY THE TAHSILDAR (LA) MVIP,
KALLOORKKAD

EXT.P6: TRUE COPY OF THE SALE DEED NO.
705/71 DATED 15-2-1971 OF SRO, KOTHAMANGALAM

EXT.P7: TRUE COPY OF THE SALE DEED NO.
4624/79 DATED 10-12-1979 OF SRO, KOTHAMANGALAM

EXT.P8: TRUE COPY OF THE SALE DEED NO. 229/95
DATED 19-1-95 OF SRO, POTHANICAD

EXT.P9: TRUE COPY OF THE SALE DEED NO.
16571/99 DATED 16-09-99 OF SRO POTHANICAD

EXT.P10: TRUE COPY OF THE SALE DEED NO.
2560/05 DATED 12-12-2005 OF SRO, POTHANICADU

EXT.P11: TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE PETITIONER DATED 26-09-2008
BEFORE THE 1ST RESPONDENT

EXT.P12: TRUE COPY OF THE FORWARDING LETTER
NO. RPCD (T) NO. POL/02.03.14-08-20 DATED 27-
11-2008 ISSUED BY THE 1ST RESPONDENT

EXT.P13: TRUE COPY OF THE COMMUNICATION NO.
SMEACD/S-36/g-70/1950-08 dated 21-10-2008

INFORMING THE PETITIOENR BH THE 3RD
RESPONDENT

EXT.P14: TRUE COPY OF THE LETTER NO. RPCD(T)
NO. POL/362/02-03-14/2008-2009 DATED 12-11-
2008 ISSUED BY THE IST RESPONDENT TO THE
PETITIONER

EXT.P15: TRUE COPY OF THE LETTER NO. RPCD
(T) NO. POL/2/05/02-03-14/2008-09 DATED 16-1-
2009 ISSUED BY THE IST RESPONDENT TO THE
PETITIONER

EXT.P16: TRUE COPY OF THE LETTER DATED 26-2-
2009 ISSUED BY THE 2ND RESPONDENT TO THE
PETITIONER

EXT.P17: TRUE COPY OF THE LETTER DATED 12-2-
2009 ISSUED BY THE 2ND RESPONDENT DIRECTING
THE PETITIONER TO REMIT LOAN AMOUNT IN THREE
EQUAL INSTALMENTS.

/TRUE COPY/

P.S.TO JUDGE

A.M. SHAFFIQUE, J.

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W.P.C. No. 8777 of 2009 - N
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Dated : 25 - 02 - 2015

JUDGMENT

Petitioner has approached this Court, inter alia, seeking to quash Exts. P13 to P15 and P17 and for a direction to the 2nd respondent to refund to the petitioner an amount of Rs. 2,51,761/- with interest at the rate of 13% from 27-6-2009.

2. Petitioner also seeks a declaration that he is a "small farmer" entitled to the benefits under the Agricultural Debt Waiver and Debt Relief Scheme, 2008 (hereinafter referred to as "2008 Scheme") which was not granted by the respondents.

3. The short facts involved in the above Writ Petition would disclose that the petitioner had availed certain loan from the 2nd respondent Bank and when 2008 Scheme came into force, the petitioner applied for the benefits under the above

Scheme available to “small farmer” on the ground that he was holding and cultivating only an extent of land which is less than 5 acres.

4. The respondent Bank did not provide the benefit observing that when the petitioner submitted the application for loan, he has indicated that he is holding cultivating land more than 5 acres as evidenced from Exts. R2 (b) and (c). Though the petitioner had taken up the matter before the Grievance Redressal Officer, the claim of the petitioner was rejected.

5. According the petitioner, sufficient materials were produced to indicate that as on the date the petitioner submitted the application for loan, he was not in possession of land having an extent of more than 5 acres. The application form and tax receipts which were produced of course indicates that land holding was more than 5 acres on account of the fact that proper mutation entries were not made in the Revenue Records. What

was available in the Revenue records were shown along with the application form whereas large extent of land possessed by the petitioner had been acquired/assigned and mutation entries were not effected.

6. A counter affidavit has been filed by the respondent Bank indicating that the petitioner is not entitled for the benefit of “small farmer” as he was holding more than 5 acres of land. Further it is stated that the petitioner was given other benefits which were due to “other farmers” under the Scheme and, therefore, the petitioner is not entitled to claim the benefit of Scheme for “small farmer”.

7. Learned counsel for the petitioner submitted that the petitioner was forced to avail of the Scheme for “other farmer “ as the Bank insisted to close the loan account. Accordingly, another loan was taken by availing the benefit for “Other farmers”, the payment was made and the former loan account

was closed. According to the petitioner, it was only at the instance of the Bank that such an arrangement was made and the loan account was closed. Hence, the request is for refund of the amount deposited.

8. The learned counsel for the petitioner points out that sufficient materials are available to indicate that the petitioner was not having 5 acres of land at the relevant time. This fact is disputed based on the documents produced before the bank. Apparently, this is a disputed question of fact which cannot be decided by this Court in a petition under Article 226 of the Constitution of India.

9. It is submitted by the learned counsel appearing for the Bank that the Grievance Redressal Office is not functioning presently as the Scheme has already been lapsed. Under such circumstances, there cannot be a reconsideration of the issue raised by the petitioner at this point of time. Having regard to

the factual situation, I do not think that the petitioner will be entitled to seek the relief as sought for. The remedy, if any, of the petitioner is to approach the Civil Court for appropriate directions.

With this observation, this Writ Petition is dismissed.

Sd/- A.M. SHAFFIQUE
(Judge)

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P.S. to Judge