IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(C).No. 9624 of 2012 (C)

PETITIONER(S):
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1. MARTIN BABY,
   S/O. BABY CHERIAN,
   VELLAMKANDATHIL HOUSE,
   KOTHAMANGALAM, ERNAKULAM DISTRICT.

2. E.K. SHAMEER,
   S/O. KUNJUMUHAMMED, ELAVANGATT HOUSE,
   KALAMASSERY, ERNAKULAM DISTRICT.

3. ABDUL SAMAD,
   S/O. PAREEKUTTY, GAFOOR MANZIL, EDAPALLY,
   ERNAKULAM DISTRICT.

BY ADVS.SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI.MAHESH V.MENON

RESPONDENT(S):
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1. SPL.TAHSILDAR (RR)
   ALUVA - 683 101.

2. COMMISSIONER OF LAND REVENUE,
   THIRUVANANTHAPURAM - 695 001.

3. THE SECRETARY TO GOVERNMENT,
   REVENUE (H) DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SRI.R.RENJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-08-2015, ALONG WITH WPC NO. 9625/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P-1: TRUE COPY OF THE SALE DEED NO.4570/1/2007 OF ALUVA SUB REGISTRY.

EXT.P-2: TRUE COPY OF THE PROCEEDINGS ISSUED BY THE 2ND RESPONDENT.

EXT.P-3: TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT.

EXT.P-4: TRUE COPY OF REVISION PETITION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P-5: TRUE COPY OF ORDER ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 9624 & 9625 of 2012

Dated this the 17th day of August, 2015

JUDGMENT

These writ petitions are filed challenging revenue recovery steps to recover the amount due under penalty proceedings from the writ petitioner in W.P.(C) No.9625/2012 (hereinafter referred as 'the company') .

2. The essential issue in this writ petition, is in respect of the recovery initiated against the immovable property owned by the writ petitioner in the company and transferred in the name of the writ petitioner in W.P.(C) No.9624/2012 on 26.07.2007.

3. The Revenue Officials would contend that sale deed executed in favour of W.P.(C)No.9624/2012 is void and hit by provision under Section 44 of the Revenue Recovery Act.

4. The writ petitioner in the company is a dealer under the KVAT Act. The inspection was conducted at the premises of the company on 06.06.2007 and certain records were seized. Based on the seizure, proceedings were initiated under Section 67(1) of the KVAT Act. The orders were passed on 28.11.2008 and 30.09.2009.

5. The revenue recovery proceedings are initiated to recover the amount due from the Company. It was sought to be required from the assets owned by the company and transferred in favour of the W.P.(C)No.9624/2012. The revenue recovery is resisted stating that they were no proceedings at the time of transfer in favour of transferee and transferee is a bonafide purchaser, therefore, the revenue recovery is unsustainable. The matter attained the finality through the proceedings of the Government in the second revision under Section 83(2) of Revenue Recovery Act. Ext.P5 is the Order of the Government dated

31.01.2012 and produced in the company. It is held in all these proceedings that sale in favour of the transferee is void in as much as it is hit by Section 44 of the Act.

6. Therefore, the question is whether the transfer in favour of the transferee is void. It is appropriate to refer under Section 44 of the Revenue Recovery Act. Section 44 provides as follows:

> ***Effect of engagements and transfers by the defaulter*** *- (1) Any engagement entered into by the defaulter with any one in respect of any immovable property after the service of the written demand on him shall not be binding upon the Government.*
>
> *(2) Any transfer of immovable property made by a defaulter after public revenue due on any land from him has fallen in arrear, with intent to defeat or delay the recovery of such arrear, shall not be binding upon the Government.*
>
> *(3) Where a defaulter transfers immovable property to a near relative or for grossly inadequate consideration after public revenue due on any land from him has fallen in arrear, it shall be presumed until the contrary is proved, that such transfer is made with intent*

to defeat or delay the recovery of such arrear, and the Collector or the authorised officer may, subject to the order of a competent Court, proceed to recover such arrear of public revenue by attachment and sale of the property so transferred, as if such transfer has not taken place:

Provided that, before proceeding to attach such property, the Collector or the authorised officer shall -

(i) give the defaulter an opportunity of being heard; and

(ii) record his reasons therefore in writing.

***Explanation** - For the purposes of this section, "near relative" includes husband, wife, father, mother, brother, sister, son, daughter, step son, step daughter, uncle, aunt, son-in-law, daughter-in-law, brother-in-law, nephew or niece of the transferor.*

The reading of the Section 44 makes it clear that any engagement by the defaulter after service of return demand could not bind on the Government. The demand as contemplated under Revenue Recovery Act could only be understood with reference to the demand notice issued under Section

7 as well 34 of the Act. Further, Revenue Recovery Act also refers to Section 2(e) defines “defaulter” is as follows :

> “defaulter” means a person from whom an arrear of public revenue due on land is due, and includes a person who is responsible as surety for the payment of any such arrear;

The conjoint reading of Section 2(e) with Section 44(i) makes it clear that there must be public revenue due on land and there must a determination of liability. It is that liability is demanded through notices issued under Section 7 as well 44 of the Act. In this case, admittedly, the transfer was effected much before the liability is determined. In that sense, this Court is of the view that Section 44 of the Act would not apply to declare the transaction as void.

7. However, in the impugning order, it can be seen that Government also considered the petitioners claim under Section 37 of the KVAT Act as well. However, without answering the question, the

Government answered issue as follows :

> “The Land Revenue Commissioner is not justified in not rendering any finding on the main contention raised that the proceedings under the VAT Act did not commence from 06-06-2007, the date of inspection, and so much so the sale of property on 26-07-2007 is perfectly legal. Even though this contention is specifically raised and recorded, no finding is rendered by the Commissioner.”

In fact, the question that would arose in the context of Section 37 is whether the transfer in question is to be concluded as void as same was done during pendency of the proceedings under the Act. Section 37 provides as follows :

> ***“Certain transfers to be void*** *- Where, during the pendency of any proceedings under this Act or after the completion thereof, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee*

under this Act."

8. The learned counsel strenuously argued with reference to the judgment of the Division Bench of this Court challenging penalty order in writ appeal No.385/2009 and it is argued that the date of search cannot be reckoned as a commencement of the proceedings and only the date on which the proposal was issued in terms of Section 67(1) of the Act could be reckoned as commencement of the proceedings.

9. The learned Government Pleader submits that when the search itself could be referred as the pendency of the proceedings and therefore, any transaction after the search would be void.

10. Thus the question is whether the date of search could be treated as a pendency of any proceedings or any other date. This actually has to be considered with reference to the facts of each case. The Primary Authority and Revisional Authority did not answer this issue.

This court is of the view that the Government shall re-consider the matter after adverting to the impact of Section 37 of the Act after hearing the petitioner. Accordingly, impugned order is set aside, the Government is directed to re-consider the matter within a period of four months after issuing notice to the petitioner.

The writ petition is disposed of as above.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

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