

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 13837 of 2015 (D)

PETITIONER :

**DEVON FOOD LIMITED, 262/XV,
MARIATHURUTHU P.O., CHUNGOM
KOTTAYAM-682 027**

BY ADV. SRI.LIJI.J.VADAKEDOM

RESPONDENTS :

- 1. THE TAHSILDAR(R.R)
TALUK OFFICE, KOTTAYAM 686 001**
- 2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES,
OFFICE OF THE ASSISTANT COMMISSIONER,
COMMERCIAL TAXES SPECIAL CIRCLE, KOTTAYAM-686 001**
- 3. DISTRICT COLLECTOR, KOTTAYAM COLLECTORATE,
CIVIL STATION P.O.,KOTTAYAM - 686001**
- 4. DISTRICT COLLECTOR-IDUKKI, COLLECTORATE, IDUKKI-685 602**
- 5. DISTRICT COLLECTOR-KANNUR, KANNUR - 670001**
- 6. DISTRICT COLELCTOR- ERNAKULAM, COLLECTORATE,
KAKKANADU, ERNAKULAM 682 030**
- 7. DEPUTY TAHSILDAR(R.R)
TALUK OFFICE, KOTTAYAM 686 001**
- 8. VILLAGE OFFICER,KOTTAYAM VILLAGE,KOTTAYAM-686 001**
- 9. VILLAGE OFFICER,
ATHIRAMPUZHA VILLAGE, ATHIRAMPUZHA P.O
KOTTAYAM 686 562**
- 10. VILLAGE OFFICER, KUZHUPPALLY VILLAGE,
ERNAKULAM DISTRICT-682502**
- 11. TAHSILDAR,
TALUK OFFICE, THALASSERY-679 532**

12. VILLAGE OFFICER,
MUZHAPPILANGADU VILLAGE, MUZHAPPILANGADU P.O
KANNUR DISTRICT 670 662
13. T. ALI,
CRESCENT HOUSE, ATHIRAMPUZHA P.O.,
KOTTAYAM DISTRICT PIN 686 562
14. T.K. MYMOONATHU BEEVI,
W/O.TALI, CRESCENT HOUSE, ATHIRAMPUZHA P.O.,
KOTTAYAM DISTRICT PIN 686 562
15. RAJU DEVASSIA,
PADINJARE KALAYIL, MANNANAM KARA, ATHIRAMPUZHA P.O.,
KOTTAYAM DISTRICT 686 562
16. SOSAMMA DEVASSIA,
PADINJARE KALAYIL, MANNANAMKARA, ATHIRAMPUZHA P.O
KOTTAYAM DISTRICT-686 562
17. DR.RAJESH
S/O. VIJAYAN, POURAMI HEIGHTS, MANNANAM
KOTTAYAM 686 561
- R1 TO 12 BY GOVERNMENT PLEADER SMT.M.T. SHEEBA
R13 BY ADV. SRI.PHILIP T.VARGHESE
BY ADV. SRI.THOMAS T.VARGHESE
BY ADV. SMT.ACHU SUBHA ABRAHAM
BY ADV. SMT.K.R.MONISHA
R16 BY ADVS. SRI.P.SANJAY
SMT.A.PARVATHI MENON
BY ADV. SRI.S.ARUN RAJ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHBIIT P1:** THE COPY OF THE SALE DEED NO 180/2013 OF THE S.R.O ETTUMANOOR.
- EXHBIIT P2:** THE COPY OF THE SALE DEED NO 3602/1/12 OF THE S.R.O ETTUMANOOR.
- EXHBIIT P3:** THE COPY OF THE NOTICE DATED 18-2-2015.
- EXHBIIT P3(A):** THE COPY OF THE REQUISITION UNDER THE REVENUE RECOVERY ACT ISSUED BY THE 2ND RESPONDENT DATED 07-08-2013.
- EXHBIIT P4:** THE COPY OF THE INFORMATION DATED 13-3-2015 ISSUED BY THE VILLAGE OFFICER,MUZHUPPILANGADU TO THE EMPLOYEE OF THE PETITIONER.
- EXHBIIT P4(A):** THE COPY OF THE BTR REGISTER ISSUED FROM THE VILLAGE MUZHUPPILANGADU DATED 18-3-2015 TO THE PETITIONER.
- EXHBIIT P4(B):** THE COPY OF THE BTR REGISTER ISSUED FROM THE VILLAGE OFFICER,VATTAVADA SHOWING THE POSSESSION OF THE PROPERTY BY 14TH RESPONDENT.
- EXHBIIT P4(C):** THE COPY OF THE COMMUNICATION RECEIVED FROM THE OFFICE OF THE 2ND RESPONDENT DT 16-3-2015.
- EXHBIIT P4(D):** THE COPY OF THE BTR REGISTER KEPT AT THE KOTTAYAM VILLAGE WITH RESPECT TO 2.08 ARES IN THE NAME OF THE 14TH RESPONDENT.
- EXHBIIT P5:** THE COPY OF THE INTIMATION DATED 17-3-2015 FROM THE VILLAGE OFFICE,KUZHUPPALLY.
- EXHBIIT P5(A):** THE COPY OF THE BTR RECORDS KEPT AT THE OFFICE OF THE VATTAVADA VILLAGE OFFICE.
- EXHBIIT P6:** THE COPY OF THE THANDAPER ACCOUNT SHOWING THE TRANSFER OF REGISTRY FROM RESPONDENTS 13 AND 14 TO RESPONDENTS 15 AND 16.
- EXHBIIT P6(A):** THE COPY OF THE THANDAPER ACCOUNT SHOWING THE TRANSFER OF REGISTRY FROM RESPONDENTS 13 AND 14 TO RESPONDENT 17.
- EXHBIIT P7:** THE COPY OF THE REPRESENTATION DATED 16-3-2015 SUBMITTED TO THE OFFICE OF THE 3RD RESPONDENT.
- EXHBIIT P8:** THE COPY OF THE ADDITIONAL REPRESENTATION DATED 30-03-2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

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EXHBIIT P9: THE COPY OF THE REPRESENTATION DATED 24-06-2013 SUBMITTED
BY THE 13TH RESPONDENT BEFORE THE 2ND RESPONDENT.

EXHBITI P10: THE COPY OF THE LETTER DATED 20-02-2015 SUBMITTED BY
RESPONDENT NO 10 BEFORE 1ST RESPONDENT

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

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Dated this the 9th day of July, 2015

JUDGMENT

The petitioner claims to be a *bona fide* purchaser from the assignee of defaulter, the public arrears. The arrears is a sales tax dues. Ext.P3 is the requisition for recovery of the amount from the defaulters. Party respondents 15 and 16 also appears to have purchased the property from the assignees of the defaulters. According to the petitioner and party respondents 15 to 17, they have purchased the property much before the assessment and demand were issued under the KGST Act. Therefore, they submit that the property should be spared from the revenue recovery proceedings to recover the dues from respondents 13 and 14.

2. Learned counsel for the petitioner would submit that the defaulters are having sufficient immovable property to satisfy the liability. The petitioner highlighted the property belongs to the defaulter in Ext.P7. He relies on the details obtained under Right to Information Act as to the property owned by respondents 13 and 14.

3. I am of the view, before proceeding further to recover the loan amount, the Tahsildar shall advert to Exts.P7 and P8. If the defaulters are having the properties, necessarily, the Tahsildar shall make every endeavour to recover the liability from the property presently owned by the defaulters. Therefore, a decision shall be taken based on Ext.P7 after hearing the petitioner and respondents 15 and 16 and the defaulters. The issue relating to whether the petitioner is entitled for protection from proceeding against the property owned by them in view of the right created to them prior to the assessment and demand are left open. Needful shall be done by the Tahsildar within a period of six weeks.

In view of the above, respondents 13 and 14 are restrained from alienating or transferring the property, if any, owned in their name till the disposal of Ext.P7 by the Tahsildar.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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