IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

WP(C).No. 17324 of 2013 (M)

PETITIONER(S) :

SUHARA HASSAN, AGED 67 YEARS,
WIFE OF LATE K.HASSAN, KARUKUNNATH HOUSE, MOSQUE LANE,
S.R.M.ROAD, ERNAKULAM, COCHIN-682 018.

BY SRI.A.V.THOMAS(SENIOR ADVOCATE)
ADVS. SMT.M.M.JASMIN
SRI.NIDHI SAM JOHNS
SANJITH V.NAIR

RESPONDENT(S) :

1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY, REVENUE (R) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN-695 001.

2. COMMISSIONER OF LAND REVENUE, PUBLIC OFFICE BUILDING,
MUSEUM JUNCTION, THIRUVANANTHAPURAM, PIN-695 033.

3. THE DISTRICT COLLECTOR,
OFFICE OF THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD, ERNAKULAM, KOCHI- 682 030.

4. THE TAHSILDAR(RR),
KANAYANUR TALUK, ERNAKULAM, KOCHI- 682011.

5. SUPERINTENDENT OF CENTRAL EXCISE,
ERNAKULAM-1 RANGE, CENTRAL EXCISE BHAVAN,
KATHRIKKADAVU, KALOOR, KOCHI-682 017.

R1 TO R4 BY GOVERNMENT PLEADER SRI.P.V.LONACHAN
R5 BY ADV. SRI.JOSE JOSEPH, S.C

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 17324 of 2013 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE AGREEMENT DATED 30-10-2001 BETWEEN THE LEGAL HEIRS OF LATE K.HASSAN.

EXHIBIT P2: TRUE COPY OF THE POWER OF ATTORNEY DATED 28-05-2002 EXECUTED BY K.H.SHAKEEL IN FAVOUR POF SHAHEEN RAFI.

EXHIBIT P3: TRUE COPY OF RELEASE DEED NO.2972/2000 DATED 24-07-2002 OF ERNAKULAM SUB REGISTRY OFFICE.

EXHIBIT P4: TRUE COPY OF LAND TAX RECEIPT NO.4736676 DATED 30-08-2010 ISSUED BY THE VILLAGE OFFICER, ERNAKULAM.

EXHIBIT P5: TRUE COPY OF BUILDING TAX RECEIPT NO.EKM/100810/05/109681 DATED 10-08-2010 ISSUED BY CORPORATION OF COCHIN

EXHIBIT P6: TRUE COPY OF THE ORDER NO.20/2005 DATED 30-03-2005 AND WHICH WAS ISSUED ON 13-04-2005.

EXHIBIT P7: TRUE PHOTOCOPY OF NOTICE NO.E7-01/10-11/CE DATED 17-08-2010 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P8: TRUE PHOTOCOPY OF NOTICE NO.E7-01/10-11/CE DATED 17-08-2010 ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P9: TRUE COPY OF THE JUDGMENT DATED 29-09-2010 IN W.P.(C).NO.27996/2010 OF HIGH COURT OF KERALA.

EXHIBIT P10: TRUE COPY OF THE SAID CLAIM PETITION DATED 08-10-2010 FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT (WITHOUT EXHIBITS).

EXHIBIT P11: TRUE COPY OF ORDER DATED 20-10-2010 PASSED BY THE 4TH RESPONDENT.

EXHIBIT P12: TRUE COPY OF THE NOTICE NO.E7-01/10-1/CE DATED 18-11-2010 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXHIBIT P13: TRUE COPY OF EXPLANATION DATED 21-12-2010 SUBMITTED BY THE PETITIONER TO THE 4TH RESPONDENT (WITHOUT EXHIBITS).

EXHIBIT P14: TRUE COPY OF THE ORDER NO.E7-01/10-11/CE DATED 18-01-2011 PASSED BY THE 4TH RESPONDENT.

EXHIBIT P15: TRUE COPY OF THE JUDGMENT DATED 16-03-2011 OF THE HON'BLE COURT OF KERALA IN WRIT PETITION (C) NO.6887/2011.

EXHIBIT P16: TRUE COPY OF THE REVISION PETITION DATED 20-06-2011 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT (WITHOUT ANNEXURES).

WP(C).No. 17324 of 2013 (M)
--

EXHIBIT P17:	**TRUE PHOTOCOPY OF THE ORDER NO.LR-B7-24228/11 DATED 09-06-2012 PASSED BY THE 2ND RESPONDENT.**
EXHIBIT P18:	**TRUE COPY OF ORDER NO.E7-01/10-11/CE DATED 23-08-2012 ISSUED BY THE 4TH RESPONDENT.**
EXHIBIT P19:	**TRUE COPY OF THE REVISION PETITION DATED 17-09-2012 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT (WITHOUT ANNEXURES).**
EXHIBIT P20:	**TRUE COPY OF THE ORDER DATED 30-04-2013 PASSED BY THE 1ST RESPONDENT.**
EXHIBIT P21:	**TRUE COPY OF THE NOTICE NO.E7-01/10-11/CE DATED 08.01.2015 ISSUED BY THE 1ST RESPONDENT.**

RESPONDENT(S)' EXHIBITS
--

EXHIBIT R5(A):	**TRUE COPY OF THE SHOW CAUSE NOTICE DATED 26.04.2004 ISSUED BY THE DEPARTMENT.**
EXHIBIT R5(B):	**TRUE COPY OF THE ORDER-IN-ORIGINAL NO.20/2005 DATED 30.03.2005.**
EXHIBIT R5(C):	**TRUE COPY OF THE FINAL ORDER NO.1050/2008 DATED 28.08.2008.**
EXHIBIT R5(D):	**TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P.(C).NO.32574/2008 DATED 19.11.2008.**
EXHIBIT R5(E):	**TRUE COPY OF THE LETTER DATED 27.07.2010 ISSUED BY THE 5TH RESPONDENT OF THE 3RD RESPONDENT.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.17324 OF 2013

Dated this the 9th day of February, 2015

J U D G M E N T

The petitioner, who is the widow of late K.Hassan, came to inherit a share in 3.67 Ares of land in Survey No.98/11 of Ernakulam village, with a residential building therein. The petitioner inherited the said property, along with the other legal heirs of late K.Hassan, namely the two sons K.H.Shakeel and K.H.Shameer and daughter Shaheen Rafi. It would appear that there was an agreement entered into between the legal heirs of late K.Hassan, by which K.H.Shakeel and K.H.Shameer agreed to release their rights over the property in favour of the petitioner, who is their mother. Release Deed No.2972/2002, which was executed on 24.07.2002, is relied on for the purpose of this submission of the petitioner. The issue involved in the writ petition is with regard to the revenue recovery steps that have been initiated against the property in question, for realisation of the central excise dues that came to be fastened on K.H.Shakeel and K.H.Shameer, as per Ext.R5(b) order of the Commissioner of Central Excise, which is stated to have been confirmed in further proceedings under the Central Excise Act. It is the case of the petitioner that, in as much as the case of the respondents is that the release, by K.H.Shakeel and K.H.Shameer against whom there were proceedings by the central excise authorities, of their share in the property in favour of the petitioner would be hit by the provisions of Section 44 of the Kerala Revenue Recovery Act, the respondents would be within their rights to proceed only against the shares of the said K.H.Shakeel and K.H.Shameer in the property in question. In the writ petition, the petitioner, who is the mother and also the co-owner of the property in question, submits that she is ready and willing to pay the market value of the shares of Sri Shakeel and Shameer in the property, as assessed by the PWD authorities of the State, for discharging the liability of K.H.Shakeel and K.H.Shameer to the central excise authorities. It is pointed out that, in so far as K.H.Shakeel and K.H.Shameer jointly have ½ in the share in the property in question, which is attached as per Ext.P18 notice of attachment, she is ready and willing to pay the value of the said portion of the property so as to avoid the sale of the entire property pursuant to Ext.P21 sale notice.

2. I have heard learned Senior counsel Sri.A.V.Thomas for the

petitioner and Sri.Jose Joseph, the learned Standing counsel for the Central Excise Department and also the learned Government Pleader appearing on behalf of the respondents No.1, 3 and 4.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that insofar as the right of the 2nd respondent is to proceed against the properties of the assessees, against whom proceedings under the Central Excise Act had culminated, and the said assessees namely K.H.Shakeel and K.H.Shameer have only ½ share in the property in question, namely 3.67 Ares of land in Survey No.98/11 of Ernakulam village and a residential building therein, it would be in the interest of justice to permit the petitioner to pay to the respondents, the market value of the said share of K.H.Shakeel and K.H.Shameer in the property in question. To enable the petitioner to do this, I direct the 4th respondent Tahsildar to get a valuation report, in respect of the property in question, from the PWD authorities and compute the value attributable to the ½ share of K.H.Shakeel and K.H.Shameer therein. The 4th respondent shall thereafter intimate the said market value, supported by the report of the PWD authorities, to the petitioner and the 5th respondent herein. Thereafter, the 4th and 5th respondents shall permit the

petitioner to pay the value attributable to the share of K.H.Shakeel and K.H.Shameer in the property ie. 50% of the value of the property in question, in part discharge of the liability of the said K.H.Shakeel and K.H.Shameer to the Central Excise Department. On payment of the said amount by the petitioner the attachment over the property in question, as notified by Ext.P18 notice, shall be lifted and the property released from the charge of the 4th and 5th respondents. I make it clear that the payments effected by the petitioner shall not prevent the 5th respondent from continuing the proceedings for recovery of the balance amount due from K.H.Shakeel and K.H.Shameer through proceedings initiated under the Revenue Recovery Act against the said persons or against other properties owned by them. I also find that Ext.P14 order of the 4th respondent, that declares that the release deed executed by K.H.Shakeel and K.H.Shameer in favour of the petitioner is null and void, is without any jurisdiction. I therefore quash Ext.P14 order as illegal. The 4th respondent shall obtain the report from the PWD officials within a period of one month from the date of receipt of a copy of this judgment. The directions in this judgment as regards the receipt of payment from the petitioner, as well as the lifting of the attachment against the property in question, shall be complied within a period of two months thereafter. The proceedings against the property, as contemplated in Ext.21 notice shall stand deferred pending finalisation of the issue as directed in this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns