IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 15164 of 2015 (U)

PETITIONER:

K.B.GANESH KUMAR, AGED 48 YEARS,
S/O.R.BALAKRISHNA PILLAI, GANESH NIVAS,
T.N.H.4, TAGORE NAGAR, VAZHUTHACAUD,
THIRUVANANTHAPURAM, (CHAIRMAN,
SMT. SRIVIDYA CHARITABLE SOCIETY,
THIRUVANANTHAPURAM)

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENT(S):
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1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
CULTURAL DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.

2. SECRETARY, KERALA CHALACHITHRA ACADEMY,
THIRUVANANTHAPURAM - 695010.

3. THE COMMISSIOENER OF INCOME TAX (APPEALS),
AYAKARA BHAVAN, KOWDIAR,
THIRUVANANTHAPURAM - 695003.

4. THE TAX RECOVERY OFFICER,
OFFICE OF THE TAX RECOVERY OFFICER,
AAYAKAR BHAVAN, KOWDIAR,
THIRUVANANTHAPURAM - 695003.

R1 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R2 BY ADV. SRI.SUDHI VASUDEVAN, SC ACADEMY
R3 & R4 BY SRI.K.M.V.PANDALAI, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 15164 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1: TRUE COPY OF THE WILL EXECUTED IN THE NAME OF THE PETITIONER.

P2: COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT DATED 08.08.2012.

P3: TRUE COPY OF THE LETTER DATED 22.02.2012.

P4: TRUE COPY OF THE REPRESENTATION DATED 26.12.2012 SUBMITTED BEFORE THE 3RD RESPONDENT.

P5: TRUE COPY OF THE COMMUNICATION DATED 03.09.2013 ISSUED BY THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT. R1(A) : A TRUE COPY OF THE LETTER DATED 28.2.2011.

EXT.R1(B) : TRUE COPY OF THE LETTER DATED 14.7.2011.

EXT.R1(C) : TRUE COPY OF THE LETTER DATED 31.3.2012.

EXT.R1(D) : A TRUE COPY OF THE LETTER DATED 5.5.2015.

//TRUE COPY//

P.S. TO JUDGE

mbr/

K. VINOD CHANDRAN, J.

W.P(C). No.15164 of 2015

Dated this the 30th day of June, 2015.

<u>JUDGMENT</u>

The petitioner has approached this Court with the following prayers:

> *"i) issue a writ of mandamus directing the 1st and 2nd respondents to complete the proceedings in pursuance of Exhibit P2 order and to take over the assets of Smt. Srividya by Kerala Chalachithra Academy;*
>
> *ii) issue a writ of mandamus or direction, directing the respondents 3 and 4 to take action on Ext.P4 and conduct sale of the property situated in Chennai to satisfy the arrears due towards the income tax assessment and so as to comply with the terms of Will;*
>
> *iii) issue a direction to the 2nd respondent to take over the assets of Smt. Srividya (Late) to satisfy the last Will."*

2. Admittedly, the petitioner is the executor of a Will, executed by the deceased Smt. Srividya, who was an acclaimed cine artist. The deceased artist had two landed properties and two Bank Accounts, which the petitioner claims, have to be taken over by the State Government to make an endowment in the name of the deceased person as also to preserve her memory.

3. The learned counsel relies on Exts.P2 and P3 to contend that the State Government had an intention to take over the said properties and has also appointed a valuer to value the properties. In such circumstances, the petitioner seeks for a mandamus to direct the State and the 2nd respondent Academy coming under the State, to take over the properties of the deceased person.

4. On a reading of Exts.P2 and P3, this Court does not find any concrete proposal to take over the properties and preserve it, in memory of the artist. Ext.P3 is a communication, pursuant to a request made by the petitioner himself, to take over the said property. There is only a request to give the details and there is no concrete proposal to take over the properties as such. The 2nd respondent, also had appointed a valuer to value the property, but however the 2nd respondent could not on its own take over the properties, unless with prior sanction of the Government.

5. The State has also filed a Counter Affidavit, in which though the above facts are admitted, it is stated that on a further scrutiny, it was found that the disposal of the properties

mentioned in the Will can be carried out only with the leave of a competent Court. Hence, the petitioner was informed by letter dated 05.05.2015 that he could relinquish the charge as executor of the Will only by getting orders from a competent Civil Court.

6. The Government in fact has specifically indicated that they are not willing to take over the assets and left behind by the deceased, having found that the petitioner had no right under the Will to transfer the assets of late Srividya in favour of the Academy. The learned Additional Advocate General also appeared and submitted that, the Government does not intend to take over the said properties. In such circumstances, there could be no mandamus issued for the simple reason that there is no legal right on the petitioner to demand taking over of the properties.

7. The second prayer is with respect to satisfaction of the income tax dues. Sri. K.M.V. Pandalai, the learned Standing Counsel, was heard on behalf of respondents 3 and 4. The learned Standing Counsel for the Income Tax Department submits on instructions that two appeals were filed before the Commissioner of Appeals by the petitioner herein, as executor of

the deceased person's properties and the same were dismissed by orders dated 23.02.2015. According to their records, no appeal has been filed as of now. The learned counsel for the petitioner also contends that no appeals have been filed from the said orders and the petitioner does not intend to take up the matter in further appeal.

In such circumstances, if the petitioner approaches the Deputy Commissioner of Income Tax, Income Tax Department, Central Circle, Trivandrum, along with the documents specified in Ext.P5 and files an undertaking before the said Officer that no appeals are intended to be filed against the orders of the Commissioner of Appeals, then necessarily expeditious steps will be taken to compute the amounts due from the deceased person and to effect recovery from the properties.

The writ petition is closed with the above observation.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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