

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WP(C).No. 26496 of 2005 (D)

OA.NO. 81/1999 OF DEBT RECOVERY TRIBUNAL, ERNAKULAM

PETITIONER(S):

**1. GOVERNMENT OF KERALA, REP. BY THE
PRINCIPAL SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**

**2. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, ERNAKULAM.**

**BY SR GOVERNMENT PLEADER SRI.C.S.MANILAL
BY SPL.GOV'T. PLEADER SRI.ANIL THOMAS**

RESPONDENT(S):

**1. THE DEBT RECOVERY TRIBUNAL,
OFFICE OF THE DEBT RECOVERY TRIBUNAL,
KSHB BUILDINGS, PANAMPILY NAGAR, ERNAKULAM.**

**2. INDUSTRIAL DEVELOPMENT BANK OF INDIA,
PANAMPILLY NAGAR, PB NO.4253, KOCHI-683 102.**

**3. ABN GRANITES LTD., INDUSTRIAL
DEVELOPMENT AREA, EDAYAR, ALWAYE-683 102.**

**4. K.S.NAIDU, 73/2 NANDIDURG ROAD,
BANGALORE-560 046.**

**5. M/S.PARAVOOR POWERLOOM, INDUSTRIAL
CO-OPERATIVE SOCIETY, INDUSTRIAL DEVELOPMENT AREA,
EDAYAR, KERALA-683 102.**

**6. THE RECOVERY OFFICER, OFFICE OF THE
DEBT RECOVERY TRIBUNAL, KSHB BUILDINGS,
PANAMPILLY NAGAR, KOCHI-36.**

**R2 BY SRI.M.PATHROSE MATTHAI, SENIOR ADVOCATE
ADVS. SRI. RONY J. PALLATH**

SRI. RADHIKA RAJASEKHARAN P.

R5 BY ADVS. SRI. K. K. GOPINATHAN NAIR

SRI. M. R. JAYAPRASAD

SRI. K. K. RAJEEV

SRI. T. K. KAMALJITH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE G.O(MS).NO.169/69/ID DATED 5/4/1969
- P2 COPY OF THE G.O(P) NO.5/92/ID DATED 10/01/1992
- P3 COPY OF THE G.O(P) NO.220/REV DATED 30/3/1964
- P4 COPY OF THE HIRE PURCHASE AGREEMENT DATED 31/12/1990
- P5 COPY OF THE HIRE PURCHASE AGREEMENT DATED 24/03/1992
- P6 COPY OF THE LETTER NO.B2/14716/90 DATED 28/10/1992 OF THE 2ND PETITIONER ADDRESSED TO THE MANAGING DIRECTOR OF M/S. ABN GRANITES, BANGALORE
- P7 COPY OF THE CERTIFICATE NO.B2/14716/90 DATED 28/10/1992 ISSUED BY THE 2ND PETITIONER.
- P8 COPY OF THE LETTER NO.B2/14716/90 DATED 6/11/1992 OF THE 2ND PETITIONER ADDRESSED TO THE GENERAL MANAGER IDBI, MADRAS.
- P9 COPY OF THE LETTER NO.B2/14716/90 DATED 9/9/1993 OF THE 2ND PETITIONER ADDRESSED TO THE IDBI, MADRAS
- P10 COPY OF THE LETTER NO.B2/14716/90 DATED 30/8/1995 OF THE 2ND PETITIONER ADDRESSED TO THE 3RD RESPONDENT
- P11 COPY OF THE LETTER NO.B2/14716/90 DATED 2/5/1996 OF THE 2ND PETITIONER ADDRESSED TO SRI.K.R.SHETTY, GENERAL MANAGER, ABN GRANITES LTD, BANGALORE
- P12 COPY OF THE PROCEEDINGS NO.B2/14716/90 DATED 12/08/1996 ISSUED BY THE 2ND PETITIONER.
- P13 COPY OF THE CALCULATION STATEMENT FOR RESUMPTION INTEREST AND REFUND PREPARED BY THE 2ND PETITIONER.
- P14 COPY OF THE PROCEEDINGS NO.B2/2747/97 DATED 1/3/1997 ISSUED BY THE 2ND PETITIONER.
- P15 COPY OF THE O.A.NO.K 81/99 FILED BEFORE THE 1ST RESPONDENT BY THE 2ND RESPONDENT
- P16 COPY OF THE I.A.525/1999 IN OA K 81/99 FILED BEFORE THE 1ST RESPONDENT BY THE 2ND RESPONDENT
- P17 COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND PETITIONER IN OA K 81/99
- P18 COPY OF THE AFFIDAVIT FILED BY THE 5TH RESPONDENT BEFORE THE 6TH RESPONDENT IN DRC NO.476 IN OA K 81/99
- P19 COPY OF THE REJOINDER FILED BY THE 2ND RESPONDENT BEFORE THE FIRST RESPONDENT IN OA K 81/99
- P20 COPY OF THE JUDGMENT DATED 24/1/2001 IN OA K 81/99 OF THE FIRST RESPONDENT

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- P21 COPY OF THE DEMAND NOTICE DRC.476/IDBI/EKM DATED 15/3/2002 ISSUED BY THE 6TH RESPONDENT TO THE 2ND PETITIONER.
- P22 COPY OF THE ORDER OF APPOINTMENT OF THE RECEIVER ISSUED BY THE 6TH RESPONDENT ON 21/08/2003
- P23 COPY OF THE ORDER OF ATTACHMENT OF MOVABLE PROPERTIES ISSUED BY THE 6TH RESPONDENT ON 7/8/2003
- P24 COPY OF THE NOTICE NO.DRC/476/IDBI/EKM DATED 15/3/2004 ISSUED BY THE 6TH RESPONDENT
- P25 COPY OF THE LETTER NO.B2/902/00 DATED 25/3/2004 ISSUED BY THE 2ND PETITIONER TO THE 6TH RESPONDENT
- P26 COPY OF THE OBJECTION FILED BY THE 5TH RESPONDENT BEFORE THE 6TH RESPONDENT IN DRC.NO.476/IDBI/EKM
- P27 COPY OF THE PROCEEDINGS IN OA K 81/99 ISSUED BY THE FIRST RESPONDENT

RESPONDENT'S EXHIBITS:

- R2(1) COPY OF THE CERTIFICATE DATED 6/11/1992 ISSUED BY THE DISTRICT INDUSTRIES CENTRE ERNAKULAM
- R2(2) COPY OF THE LETTER DATED 17/11/95 ISSUED BY THE GENERAL MANAGER DISTRICT INDUSTRIES CENTRE

/TRUE COPY/

P.A.TO JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 26496 of 2005

Dated this the 12th day of October, 2015

JUDGMENT

This is a writ petition filed by the State of Kerala, challenging Ext.P20 judgment and decree of the Debt Recovery Tribunal, Ernakulam, in OA No.K-81 of 1999. The brief facts leading to Ext.P20 judgment are as follows:

2. The State Government had allotted an industrial plot to the 3rd and 4th respondents in the year 1990 for establishing a granite polishing unit. The allotment was pursuant to two agreements namely, Ext.P4 agreement dated 31.12.1990 and Ext.P5 agreement dated 24.03.1992, the latter agreement being in respect of additional land that was allotted to the aforesaid respondents pursuant to the initial allotment. The 3rd and 4th respondents were also permitted to construct factory buildings on the land allotted to them by Exts.P4 and P5 agreements. By a separate order, Ext.P6 dated 28.10.1992, the said respondents were granted permission to mortgage the building and machinery, that was put up by them, for the purposes of obtaining loan from banks and financial institutions for the purposes of their industry. It would appear that, based on the said permission granted to the 3rd and 4th respondents, the said respondents approached the 2nd

respondent Bank and obtained financial assistance on the strength of a mortgage executed with the 2nd respondent bank. The 2nd respondent bank apparently made enquiries with the petitioner as regards the possibility of the 3rd and 4th respondents obtaining a Patta over the land, that was allotted to them. By Ext.P7 certificate dated 28.10.1992, the General Manager, District Industries Centre, certified that the land had been allotted to the 3rd respondent and, while they had taken steps to establish the granite polishing unit, the said respondent would also be eligible to get Patta in respect of the land that was allotted to them, on establishment of the proposed industrial unit. It was also stated in the said certificate that the case of the 3rd respondent for obtaining Patta over the land would be recommended to the Director of Industries and Commerce for onward transmission to the Government for the issue of orders for granting Patta on establishment of the proposed industrial unit. By way of abundant caution, however, in Ext.P7 certificate it was made clear that the certificate did not purport to be a guarantee that a Patta of the land would be given to the Unit. The assurance in the said certificate was reiterated by the General Manager, District Industries Centre, to the General Manager of the 2nd respondent

through Ext.P8 letter, wherein, an assurance was given that the matter regarding assignment of the land to the 3rd respondent Unit would be recommended to the Government through the Director of Industries and Commerce, Thiruvananthapuram, as soon as the Unit started production. It would appear that, pursuant to the said assurance, and with the hope of getting the land assigned to them, the 3rd and 4th respondents paid the entire value of the land to the petitioner as evidenced by Ext.R2(1). They thereafter, appear to have mortgaged even the land with the 2nd respondent bank for obtaining financial assistance from the bank. The industrial production in the Unit established by the 3rd and 4th respondents, however, came to a standstill, and pursuant to this, the petitioner by Ext.P12 order dated 12.08.1996 directed a resumption of the land that was allotted to the 3rd and 4th respondents, but not formally assigned to them, in accordance with the scheme for assignment of land.

3. In the year 1999, the 2nd respondent bank filed an OA before the Debt Recovery Tribunal, Ernakulam. The stand taken by the 2nd respondent bank in the OA was that the 3rd and 4th respondents had mortgaged the land allotted to them by the

petitioner together with the Factory building and machinery that was put up by the 3rd and 4th respondents to the 2nd respondent bank, as security for the financial assistance availed from the bank. In the OA, the bank was taking recourse to its rights under the Recovery of Debts due to Banks and Financial Institutions Act, and proceeding against the properties that had been mortgaged to the 2nd respondent bank by the 3rd and 4th respondents. When the petitioner got intimation regarding the filing of the OA by the 2nd respondent bank, it got itself impleaded in the said OA and filed a written statement before the DRT, Ernakulam and contested the matter. Ext.P20 is the judgment and decree of the DRT, in the said OA, wherein the contentions of the petitioner with regard to the rights of the 2nd respondent bank to proceed against the land allotted to the 3rd and 4th respondents by Exts.P4 and P5 agreements, have been rejected by the Debt Recovery Tribunal.

4. I have heard Sri. Manilal, the learned Senior Government Pleader appearing for the petitioner as also Smt. Mariyam, the learned Standing Counsel appearing for the 2nd respondent bank. There is no representation for 3rd and 4th respondents, despite notice.

5. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that the allotment of land to the 3rd and 4th respondents in 1990 was pursuant to Exts.P4 and P5 agreements dated 31.12.1990 and 24.03.1992 respectively. A perusal of the said agreements indicates that the allotment of the land was in accordance with the Kerala Allotment of Government land in Development Areas on Hire Purchase for Industrial Purposes Rules, and that the 3rd and 4th respondents were to pay an amount of 20% of the total value of the plot allotted, excluding any improvements, immediately on allotment and the balance value of the plot in ten years, in equal installments with 6.5% interest. It is made clear in the agreements that during the period of the hire, the plot shall not be used by the hirer, for any purpose other than for which it is hired. There are specific clauses in the agreements, which indicate that until the entire value of the plot together with the interest as mentioned in the agreement is paid in full, the plot will remain the property of the Government and the hirer shall not have any right or title over the plot. A perusal of Ext.P1 Rules, pursuant to which Exts.P4 and P5 agreements were entered into, would indicate that the

Government was to have complete title and ownership of the land till such time as the land was assigned to the allottee. Further, as per Rule 9 of the said Rules, the land allotted under the rules was not to be alienated or encumbered in any manner without the prior sanction in writing of the Director of Industries & Commerce. Rule 11 stipulated that the Director of Industries & Commerce shall have the power to resume the land, if the allottees contravene any of the provisions of the rules or any of the provisions of the agreement executed by the allottees or in the event of the concern belonging to the industrialist being wound up or transferred to any other person, company or group of persons or in the opinion of the Director of Industries & Commerce, there was a misuse of the land. Rule 28 stipulated that, on completion of payment to Government by paying the full cost of the plot of land allotted to the allottee, arrangements would be made by the Director of Industries & Commerce to get the land assigned to the allottee through the authorities concerned. It is apparent from a reading of Ext.P1 Rules and Exts.P4 and P5 agreements that, although an allotment of an industrial plot was contemplated in favour of the 3rd and 4th respondents, there had to be a formal order of assignment of the land that was allotted to the 3rd and 4th

respondents before the title over the land could be said to have passed in favour of the 3rd and 4th respondents. This position becomes clear, on a reading of Ext.P3 Rules of Assignment of Government Land for Industrial Purposes, where, a perusal of Rule 6, 11, 14, 16 and 23 would indicate that there had to be a positive act of assignment of the land that was initially allotted to the 3rd and 4th respondents before the title over the land allotted could be said to have passed to the 3rd and 4th respondents.

6. It is in the backdrop of the aforesaid legal arrangement between the parties that, one has to examine the correctness of Ext.P20 judgment and decree of the DRT, Ernakulam. When so analysed, I find that the specific contention of the petitioner in the written statement filed in the OA that was decided by the DRT in Ext.P20 judgment, that the petitioner had not assigned the land to the 3rd and 4th respondents, for them to mortgage the said land to the 2nd respondent bank, did not engage the attention of the DRT, while passing Ext.P20 judgment and decree. The DRT, while considering the said submission, and holding in favour of the 2nd respondent bank with regard to its right to proceed against the land covered by Exts.P4 and P5 agreements, for recovery of its

dues from the 3rd and 4th respondents, does not enter any specific finding as to whether or not the 3rd and 4th respondents had a mortgageable interest over the land covered by Exts.P4 and P5 agreements. This is relevant inasmuch as the petitioner had in its written statement filed before the DRT in the pending OA specifically taken a stand that without a formal assignment of the land to the 3rd and 4th respondents and in view of the express permission granted to the 3rd and 4th respondents by Ext.P6 order, which excluded the allotted land from the permission granted to the 3rd and 4th respondents to mortgage property with the 2nd respondent bank, the 3rd and 4th respondents could not have mortgaged the said land, over which they had not mortgageable interest, to the 2nd respondent as security for the loans availed by them from the 2nd respondent. In my view, while considering the entitlement of the 2nd respondent bank, to proceed against the mortgaged property, that was mortgaged in their favour by the 3rd and 4th respondents, it was incumbent upon the DRT to first ensure that the property, in respect of which the 3rd and 4th respondents had executed the mortgage in favour of the 2nd respondent bank, was one, over which the 3rd and 4th respondents had a mortgageable right, before proceeding to hold in favour of the 2nd

respondent bank. Inasmuch as, I don't see this exercise having been done in Ext.P20 judgment and decree, I quash the same and direct the Debt Recovery Tribunal, Ernakulam to reconsider the matter after due notice to the petitioner as well as the 2nd respondent as also the 3rd and 4th respondents, who are the defendants in the OA, before the DRT, Ernakulam.

The writ petition is allowed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE