

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 22412 of 2008 (R)

PETITIONER(S):

**BAHULEYAN M.K., AGED 47 YEARS
S/O KRISHNAN,
MANGATTU HOUSE, MUVATTUPUZHA P.O,
MUVATTUPUZHA, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.RENJITH B.MARAR
SMT.LAKSHMI.N.KAIMAL
SRI.C.V.MANUVILSAN
SRI.P.G.SURESH**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY, EXCISE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.**
- 2. THE ASSISTANT EXCISE COMMISSIONER,
ERNAKULAM.**
- 3. THE DISTRICT COLLECTOR, ERNAKULAM.**
- 4. THE TAHSILDAR (R.R), MUVATTUPUZHA.**
- 5. THE WELFARE FUND INSPECTOR, TODDY
WORKERS WELFARE FUND, THODUPUZHA.**
- 6. THE CIRCLE INSPECTOR OF EXCISE,
MUVATTUPUZHA.**

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7. THE VILLAGE OFFICER, MUVATTUPUZHA
VILLAGE, ERNAKULAM DISTRICT.
8. VARKEY, S/O.ULAHANNAN,
KAROTUPPAZHAKKATTU, VELIYANNUR VILLAGE.
9. RAJAN, S/O.PAPPA, PUTHENPURAYIL,
ENANALLOOR.
10. RAJAPPAN.T.N., THURUTHIPPILLIL,
MARADI, MUVATTUPUZHA.
11. M.G.VINOD, S/O.GOPALAN, MONIPILLILKUNNEL
HOUSE, AVOLY, VAZHAKKULAM.P.O
MUVATTUPUZHA.
12. BABU, S/O.NARAYANAN, KUNNATHEL VEEDU,
ARIKKUZHA.
13. KUMARI GOPALAN, KUMARI KARAKKATHU VEEDU,
ELANJI VILLAGE, ELANJI KARA.
14. P.G.RAJU, S/O.GEORGE, PEEDIKAYIL VEEDU,
ERATHALLITHARA VILLAGE, MALAKKA KARA
THALAPPILLY TALUK.
15. M.I.PAVITHRAN, S/O.KUNJE, MUNDAPLAKKAL
VEEDU, PALAKKUZHA.
16. M.N.MOHANAN, S/O.NARAYANAN,
THURUTHIPPILLIL HOUSE, VALAKOM VILLAGE, MEKKADAMPU.P.O
MEKKADAMPU KARA, MUVATTUPUZHA TALUK.
17. SMT.BEENA, W/O.MOHANAN, THURUTHIPPILLIL
HOUSE, VALAKOM VILLAGE, MEKKADAMPU.P.O
MEKKADAMPU KARA, MUVATTUPUZHA TALUK.
18. SAROJINI MOHAN, W/O.MOHANAN,
PARAKANDATHIL, ETHANALLOOR.
19. G.THAMPI, S/O.KUMARI GOPALAN,
NIRAVATHU HOUSE, ELANJIKKARA, ELANJI.P.O
MUVATTUPUZHA.

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20. N.M.DILEEPKUMAR, S/O.MADHAVAN,
NELLIKUNNIL HOUSE, PALAKKUZHA, KARAMALA.P.O
MUVATTUPUZHA.

21. P.K.APPU, S/O.KUNJAPPAN,
KAKKADAMKULAM VEEDU, MUVATTUPUZHA.

22. ALEYKUTTY, W/O.EBRAHAM, PUTHUR VEEDU,
KUMARAMANGALAM, MUVATTUPUZHA.

23. GOPALAN, MONIPILLILKUNNEL, VANNAPPURAM,
THODUPUZHA VILLAGE.

R, BY ADV. SRI.RENIL ANTO
R,R9 & 10 BY ADV. SRI.P.SANTHOSH (PODUVAL)
R,R9 & 10 BY ADV. SMT.R.RAJITHA
R,R12 BY ADV. SRI.S.RAJEEV
R,R15 BY ADV. SRI.GIGIMON ISSAC
R,R15 BY ADV. SRI.A.K.JAYAPRAKASH
R,R15 BY ADV. SRI.BABY THOMAS
R. BY ADV. GOVERNMENT PLEADER SRI. R. RANJITH
R5 BY ADV. SRI.RENIL ANTO,SC,KTWWF BOARD (TODDY WO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1** COPY OF THE ORDER BEARING NO.E4-4005/97 DATED 3.6.97 ISSUED BY THE 2ND RESPONDENT TRANSFERRING THE SHOP NOS. 87,88, 89 107, 108 AND 109 FROM THE JOINT NAME OF THE PETITIONER AND RESPONDENT NOS. 8 TO 12 TO THE NAME OF THE 23RD RESPONDENT.
- EXT.P2** COPY OF THE ORDER BEARING NO.E4-4004/97 DTD.3.6.97 BY WHICH THE TODDY SHOP NOS. 82, 83 AND 84 WAS TRANSFERRED TO THE NAME OF THE PETITIONER ALONE.
- EXT.P3** COPY OF THE ORDER BEARING NO. E4-4013/97 DATED 3.6.97 BY WHICH THE TODDY SHOP NOS. 124, 125, 126, 127, 128 AND 129 WAS TRANSFERRED TO THE NAME OF RESPONDENT NO.13.
- EXT.P4** COPY OF THE ORDER BEARING NO.E4-4002/97 DTD. 3.6.97 BY WHICH THE TODDY SHOP NOS. 76, 77 AND 78 WAS TRANSFERRED TO THE NAME RESPONDENT NO.14.
- EXT.P5** COPY OF THE ORDER BEARING NO. E4-4010/97 DTD.3.6.97 BY WHICH THE TODDY SHOP NOS. 114, 115 AND 116 WAS TRANSFERRED TO THE NAME OF RESPONDENT. NO.15.
- EXT.P6** COPY OF THE ORDER BEARING NO. E4-4008/97 DTD.3.6.97 BY WHICH THE TODDY SHOP NOS. 98, 99 AND 100 WAS TRANSFERRED TO THE NAME RESPONDENT NO. 16 AND 17.
- EXT.P7(a)** RECEIPTS OF THE ADVANCE CONTRIBUTION PAID BY RESPONDENT O.15 IN RESPECT OF THEIR TODDY SHOPS FOR THE YEAR 97-98.
- EXT.P7(b)** RECEIPTS OF THE ADVANCE CONTRIBUTION PAID BY RESPONDENT NO.20 IN RESPECT OF THEIR TODDY SHOPS FOR THE YEAR 97-98.
- EXT.P7(c)** RECEIPTS OF THE ADVANCE CONTRIBUTION PAID BY RESPONDENT NO.10 IN RESPECT OF THEIR TODDY SHOPS FOR THE YEAR 97-98.
- EXT.P7(d)** RECEIPTS OF THE ADVANCE CONTRIBUTION PAID BY RESPONDENT NO.16 IN RESPECT OF THEIR TODDY SHOPS FOR THE YEAR 97-98.

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- EXT.P7(e) RECEIPTS OF THE ADVANCE CONTRIBUTION PAID BY PETITIONER IN RESPECT OF THEIR TODDY SHOPS FOR THE YEAR 97-98.
- EXT.P7(f) RECEIPTS OF THE ADVANCE CONTRIBUTION PAID BY RESPONDENT NO.9 IN RESPECT OF THEIR TODDY SHOPS FOR THE YEAR 97-98.
- EXT.P7(g) RECEIPTS OF THE ADVANCE CONTRIBUTION PAID BY RESPONDENT NO.14 IN RESPECT OF THEIR TODDY SHOPS FOR THE YEAR 97-98.
- EXT.P8 COPY OF THE APPLICATION PREFERRED BY THE PETITIONER ALONG WITH RESPONDENT NOS. 8 TO 13.
- EXT.P9 COPY OF THE ASSESSMENT ORDER PASSED BY THE 5TH RESPONDENT WITH REGARD TO TODDY SHOP NO.92, 93 AND 94.
- EXT.P10 COPY OF THE ORDER DTD.29.3.99 PASSED BY THE 5TH RESPONDENT.
- EXT.P11 COPY OF THE ORDER DTD. 31.1.02.
- EXT.P12 COPY OF THE ORDER DTD.23.10.98.
- EXT.P13 COPY OF THE INTIMATION ISSUED BY THE 5TH RESPONDENT DTD.6.3.08 TO THE PETITIONER.
- EXT.P14 COPY OF THE RECEIPT DTD.22.3.08 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
- EXT.P15 COPY OF THE NOTICE DATED 25.6.08 ISSUED TO THE 1ST PETITIONER.

RESPONDENTS EXHIBITS: NIL

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PA TO JUDGE.

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K. VINOD CHANDRAN, J.

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W.P.(C) No.22412 of 2008 - R

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Dated this the 13th day of February, 2015

J U D G M E N T

The petitioner admittedly was the licensee along with respondents 8,9,10,11 and 12 of Toddy shop Nos. 65 to 135 and 140 to 143 in the Muvattupuzha Excise Range for the year 1997-98. The petitioner in the aforesaid writ petition, challenges Ext.P15 recovery notice issued under the Kerala Revenue Recovery Act, 1968 for satisfaction of the Welfare fund dues under the Kerala Toddy Workers' Welfare Fund Act, 1969. The petitioner's contention is that there was transfer of privilege insofar as the various Toddy shops having been entrusted to different persons amongst the respondents 8 to 23 and the petitioner too.

2. It is contended that except the 13th respondent, all others got orders from the Assistant Commissioner to transfer their licence in their respective names. To evidence

the same, the petitioner has also produced Exts.P1 to P6 orders of the 2nd respondent. Ext.P7 series of documents is said to be the advance contributions made by the respective persons in whose name, the transfer was effected. The petitioner claims to have conducted only shop Nos. 82, 83 and 84 of the Muvattupuzha Excise Range and hence, contends that he cannot be mulcted with the liability of the other shops.

3. At the out set, it is to be noticed that the recovery notices have been issued on the basis of the determination orders passed against the petitioner and the respondents 8 to 12, which are not seen challenged in the writ petition and nothing is stated as to whether the statutory remedy available against such determination orders was availed. The recovery alone stands challenged herein.

4. The Board specifically contends that Exts.P1 to P6 are orders sanctioning the transfer of privilege, but, do

not at all evidence the transfer as such; which can be done only after payment of requisite 'kist' under the Kerala Abkari Act. To substantiate such contention, the Board has also produced a communication issued, by the 2nd respondent dated 31.07.2001, to the Welfare Fund Inspector of the Board. The said communication indicates that the transfer as indicated in Exts.P1 to P6 though sanctioned, the same was subject to remittance of the 'kist' for transfer of privilege. For reason of the 'kist' having not been paid, the transfer of privilege has not come into effect, is the categorical statement of the Department.

5. In such circumstance, the transfer of privilege alleged by the petitioner cannot be acted upon by this Court. The determination orders as has been noticed above, was in the name of the petitioner and the respondents 8 to 12. They having admittedly taken out the shops on licence under the Abkari Act and Rules, necessarily, the liability under the Kerala Toddy Workers' Welfare Fund Act, would

also be mulcted on them jointly and severally. The challenge against the revenue recovery proceedings hence is not maintainable on the contentions raised by the petitioner.

The writ petition is devoid of merit and would stand dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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P.A to Judge