

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

WP(C).No. 28705 of 2010 (K)

PETITIONER(S):

1. K.I.SULAIKHA, W/O.LATE SRI.M.M.ABDUL KAREEM, MULLAPPILLY HOUSE, NEDUMTHODU MUDICKAL P.O., PERUMBAVOOR.
2. M.A.SALEEM,S/O.LATE SRI.M.M.ABDUL KAREEM MULLAPPILLY HOUSE, NEDUMTHODU, MUDICKAL P.O. PERUMBAVOOR.

**BY ADVS.SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL**

RESPONDENT(S):

1. KERALA STATE ELECTRICITY BOARD, VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM 695004, REPRESENTED BY ITS SECRETARY.
2. SPECIAL OFFICER (RR), K.S.E.B., VYDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM-695004
3. DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION, KAKKANAD.
4. DEPUTY TAHSILDAR (RR), TALUK OFFICE, KUNNATHUNADU, PERUMBAVOOR.
5. VILLAGE OFFICER, VENGOLA.

**R3-T5 BY ADV. SOJAN JAMES, SENIOR GOVERNMENT PLEADER
R1-R2 BY ADV. SRI.P.SANTHALINGAM (SR.), STANDING COUNSEL, KSEB**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE NOTICE ON THE PETITIONERS TO THE 1ST
RESPONDENT
- P2 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS
TO THE 4TH RESPONDENT
- P3 : COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONERS
TO THE 3RD RESPONDENT

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRA, J.

W.P.(C) No.28705 of 2010

Dated this the 3rd day of July, 2015

JUDGMENT

The petitioners, who are the legal heirs of late Sri M.M.Abdul Kareem, who died on 30.10.2004, have approached this Court in this writ petition seeking a writ of certiorari to quash Ext.P1 demand notice dated 25.06.2009 issued by the 4th respondent under the provisions of Revenue Recovery Act and seeking a declaration that they are not liable to be proceeded against for the recovery of the amount demanded in Ext.P1.

2. Going by the averments in the writ petition, late M.M.Abdul Kareem was the Managing Director of a private limited company, namely, M/s.Galaxy Cements (P) Limited. The 4th respondent Deputy Tahsildar issued Ext.P1 notice on the petitioners demanding a sum of Rs.3,86,267/- towards arrears of electricity charges due from M/s.Galaxy Cements (P) Limited, which was a consumer of electricity under the 1st respondent Board. On receipt of Ext.P1 demand notice, the petitioners

submitted Ext.P2 representation before the 4th respondent, pointing out that no recovery proceedings can be initiated against them for recovering any amount due from M/s.Galaxy Cements (P) Limited and they have also relied on the judgment of this Court in **Joji Paul v. District Collector, Ernakulam and Others [2010 (3) KHC 463]**. As requested by the 4th respondent, the petitioners have also submitted Ext.P3 representation before the 3rd respondent raising similar contentions. It is aggrieved by the inaction on the part of the respondents 3 and 4 in taking appropriate action based on Exts.P2 and P3 representations, the petitioners have approached this Court in this writ petition seeking various reliefs.

3. By order dated 17.09.2010, the Standing Counsel for the 1st respondent Board was directed to get instruction and an order of 'Status quo' was ordered till 28.09.2010, which was extended from time to time. On 26.09.2011, the said interim order was extended until further orders.

4. A counter affidavit has been filed on behalf of respondents 1 and 2 contending that late M.M.Abdul Kareem as the Managing Director of M/s.Galaxy Cements (P) Limited has executed an agreement with the 1st respondent Board for

availing electricity connection to the industrial unit owned by the company. The licence and ownership certificates of the company issued by the Secretary, Edathala Grama Panchayath, produced at the time of execution of the aforesaid agreement proved that late M.M.Abdul Kareem is the Managing Director and owner of the company. The service connection to the industrial unit was dismantled on 16.11.2004 due to non-remittance of electricity arrears amounting to Rs.3,86,267/-. The 2nd respondent submitted a requisition in Form 24 for initiating revenue recovery proceedings against the defaulted consumer, through the District Collector, Ernakulam, on 28.12.2004, for realising the arrears of current charges outstanding against the company. While so, the 3rd respondent vide letter dated 25.02.2009, informed the 1st respondent Board that, Sri M.M.Abdul Kareem died and his wife and son, who are the petitioners in this writ petition, are his legal heirs. By the aforesaid letter, the 1st respondent Board was also informed that the legal heirs are living in Vengola Village and that late M.M.Abdul Kareem had 18 acres of wetland in Block No.21, Survey No.106/03, 15.34 acres of land in Block No.21, Survey No.108/01 and 28.70 acres of land in Block No.21 of Survey No.109/01 of Vengola Village.

Accordingly, a revised requisition amounting to Rs.3,86,267/- towards arrears of electricity charges of M/s.Galaxy Cements (P) Limited for the period 01/04 to 08/04, with penal interest up to 31.03.2009, was sent to the legal heirs of late M.M.Abdul Kareem through the 3rd respondent. In addition to this, an amount of Rs.3,950/- per month has also to be recovered as interest till the realisation. Therefore, respondents 1 and 2 would contend that the recovery proceedings initiated pursuant to Ext.P1 demand is perfectly legal and no interference of this Court is called for.

5. A counter affidavit has also been filed by the 3rd respondent justifying the revenue recovery proceedings initiated against the petitioner.

6. I heard the arguments of the learned counsel for the petitioner, the learned Standing Counsel for respondents 1 and 2 and the learned Government Pleader appearing for respondents 3 to 5.

7. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of the recovery proceedings initiated against the petitioners, pursuant to Ext.P1 demand notice, in their capacity as the legal heirs of late

M.M.Abdul Kareem, who was the Managing Director of M/s.Galaxy Cements (P) Limited. A reading of the counter affidavit filed by the respondents 1 and 2 would make it explicitly clear that, it is for realizing the electricity dues of the aforesaid company, recovery proceedings are being initiated against the petitioner based on Ext.P1 demand notice. It is not in dispute that Sri M.M.Abdul Kareem died on 30.10.2004, who had executed an agreement with the 1st respondent Board for availing electricity connection to the company, in his capacity as the Managing Director of that company. The said agreement executed by late M.M.Abdul Kareem for availing electricity connection to the industrial unit established by the company was not an agreement executed in his personal capacity, but one executed in his capacity as the Managing Director of the company. Therefore, if there is any arrears towards electricity charges due from that company under that agreement, it is for the 1st respondent Board to proceed against the assets of the company.

8. In the case on hand, the 1st respondent Board has no case that, late M.M.Abdul Kareem had executed any agreement by which he can be personally proceeded against for recovering

the electricity dues of the company in question. The 1st respondent Board have also no case that, the petitioners who are legal heirs of late M.M.Abdul Kareem were the Directors of that company. Since electricity connection to the industrial unit was availed on the strength of an agreement executed by late M.M.Abdul Kareem in his capacity as the Managing Director of the company, no recovery proceedings can be initiated against his personal assets for recovery and electricity dues of that company. If that be so, no recovery proceedings can also be initiated against the legal heirs of the deceased Managing Director of that company as against any property inherited by them. This view, which I have taken is supported by judgment of this Court in **Joji Paul's case (supra)** in which, interpreting the provisions under the Kerala General Sales Tax Act, 1963, this Court has held that, a company has a distinct entity from its share-holders and Directors and no recovery proceedings can be taken against Directors for recovery of any amount whatsoever due from the company.

9. If the principle laid down by this Court in **Joji Paul's case (supra)** is applied to the facts of the present case, the conclusion is irresistible that, merely for the reason that late

M.M.Abdul Kareem had executed an agreement with the 1st respondent Board in his capacity as the Managing Director of the company, no recovery proceedings can be initiated against the petitioners or against any property inherited by the petitioners as the legal heirs of late M.M.Abdul Kareem. Therefore, the recovery sought to be made in Ext.P1 demand notice against the petitioners cannot be sustained.

In result, this writ petition is allowed setting aside Ext.P1 demand notice issued by the 4th respondent and declaring that the petitioners are not liable to be proceeded against for the recovery of the amount demanded in Ext.P1.

But it is made clear that this judgment will not stand in the way of the 1st respondent Board in initiating recovery proceedings against the assets of the company for recovering the amount demanded in Ext.P1.

JV

sd/-
ANIL K. NARENDRA,
JUDGE