

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 24891 of 2015 (J)

PETITIONERS:

1. THOMAS GEORGE, AGED 56, S/O.GEORGE,
KALATHIL HOUSE, THEKKANARYATTU KARA,
ARYATTU SOUTH VILLAGE, AMBALAPPUZHA TALUK,
ALAPPUZHA DISTRICT.
2. LYSI THOMAS, AGED 45, WO.THOMAS GEORGE,
KALATHIL HOUSE, THEKKANARYATTU KARA,
ARYATTU SOUTH VILLAGE, AMBALAPPUZHA TALUK,
ALAPPUZHA DISTRICT.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S

RESPONDENTS:

1. DISTRICT COLLECTOR, KOTTAYAM,
COLLECTORATE.P.O., KOTTAYAM - 686 001.
2. THE TAHASILDAR, CHANGANACHERRY TALUK,
CHENGANACHERRY, KOTTAYAM DISTRICT - 686 101.
3. THE TAHASILDAR (REVENUE RECOVERY),
CHANGANACHERRY, KOTTAYAM DISTRICT - 686 101.
4. THE VILLAGE OFFICER, VAZHAPPALLY,
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT - 686 103.
5. THE DEPUTY EXCISE COMMISSIONER,
EXCISE DIVISIONAL OFFICE, KOTTAYAM - 686 011.
6. THE EXCISE CIRCLE INSPECTOR,
CHANGANACHERRY - 686 101.

BY GOVERNMENT PLEADER SRI.A.J.JOSE AEDAIDI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 24891 of 2015 (J)

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE SALE DEED NO.3358/1998 DATED 23/12/1998 OF THE SUB-REGISTRY, CHANGANACHERRY.

EXT.P2: TRUE COPY OF THE LETTER DATED 20/07/2015 ADDRESSED TO THE 1ST RESPONDENT BY THE 2ND RESPONDENT.

EXT.P3: TRUE COPY OF THE REQUISITION DATED 31/08/2006 MADE BY THE 6TH RESPONDENT TO THE 1ST RESPONDENT IS PRODUCED.

EXT.P4: TRUE COPY OF THE BOND DATED 26/11/1996.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.24891 of 2015 J

Dated this the 14th day of October, 2015

JUDGMENT

One Mr.Mathew Thomas, the petitioners' vendor, owned an Ambassador Car, which on 04.10.1996 was seized by the authorities from another person, one Mr.Joseph Thomas. The seizure was on the allegation that the vehicle was used for committing an abkari offence.

2. As part of the prosecution, when the authorities seized the vehicle, the owner of the vehicle, Mr.Mathew Thomas, filed an application for interim custody of the vehicle. In fact, on 22.11.1996 the Joint Commissioner of Excise ordered interim custody of the vehicle on the condition of the petitioner executing a personal bond as well as depositing an amount of ₹ 30,000/-. Mr.Mathew Thomas, on fulfilling both the conditions, obtained interim custody of the vehicle. Later, on 10.11.2000, in terms of

Section 67B of the Abkari Act, the authorities confiscated the vehicle and directed Mr.Mathew Thomas to surrender it; he has, however, failed to surrender the vehicle.

3. In the wake of the failure of Mr.Mathew Thomas to comply with the directions of the authorities to surrender the vehicle; the said authorities, having forfeited the deposit of ₹ 30,000/-, further initiated revenue recovery proceedings to recover the balance amount of ₹ 32,000/-, for the vehicle had been valued at ₹ 62,000/-. In the interregnum; that is, between the date of the initial seizure and the final confiscation, on 23.12.1998, the petitioners purchased a piece of immovable property from Mr.Mathew Thomas, the owner of the vehicle. Evidently, the revenue recovery proceedings were initiated through Exhibit P3 dated 31.08.2006.

4. In the course of time, the petitioners, being the purchasers of the property, decided to obtain a loan on the strength of the said property. At that juncture, they are said

to have come to know, for the first time, about the revenue recovery proceedings. In that context, the petitioners had realized that the revenue recovery proceedings were a hurdle to their beneficial enjoyment of the property—say for raising a loan. Ostensibly, left with no other option, the petitioners wanted to take advantage of the Amnesty Scheme offered by the department to the abkari defaulters.

5. Accordingly, the first petitioner submitted Exhibit R5(a) application before the Deputy Commissioner of Excise expressing his readiness to pay the amount due from Mr. Mathew Thomas, his vendor, provided he be extended the benefit of the Amnesty Scheme. As the record reveals, the said authority, however, rejected the first petitioner's offer on the premise that the Amnesty Scheme would not extend to the amounts realisable on account of the failure of the owner to produce the confiscated vehicle: It is, in other words, not an abkari due.

6. Under these circumstances, the petitioners filed the present writ petition, inter alia, questioning Exhibit P3 and also seeking a direction to the fourth respondent, the Village Officer, Vazhappally, to issue a possession certificate and site map without any remarks thereon regarding the revenue recovery proceedings. The petitioners have also sought an additional direction to the respondents not to recover the balance market value of the confiscated vehicle either from the petitioners in person or through the sale of their property.

7. The learned counsel for the petitioners has submitted that the amount due from the petitioners' vendor cannot be called an abkari due in terms of either Section 3 of the Revenue Recovery Act or Section 28 of the Abkari Act. He has, however, to his credit, submitted that it can be treated, if at all, as revenue due to the Government under Section 68 of the Revenue Recovery Act.

8. In elaboration of his submissions, the learned counsel has contended that the authorities initiated the recovery process by issuing Exhibit P3 notice on 31.08.2006 under the Revenue Recovery Act. But, much prior to that; i.e. on 23.12.1998 the petitioners purchased the property. Even in terms of Section 3 of the Revenue Recovery Act, the statutory charge on an immovable property could be said to have been laid only from the date of initiation of the proceedings—in this case, from 31.08.2006.

9. It is the singular contention of the learned counsel for the petitioners that the property in question, by the time the petitioners purchased it, was totally unencumbered.

10. Concerning the petitioners' offer to clear the dues of their vendor by taking advantage of the Amnesty Scheme, the learned counsel would contend that, first, the petitioners had no manner of obligation to discharge the debt of their vendor since the very liability was subsequent to the purchase of the property. Second, Exhibit R5(a)

application, at best, could be treated as an offer on the petitioners' part, which was not, at any rate, accepted by the department. According to him, no valid or enforceable contract has come into existence to be enforced in the face of the rejection of the petitioners' offer.

11. The learned Government Pleader, on the contrary, has submitted that the respondents have been trying to recover the dues from the petitioners' vendor. According to him, the department has got every right to charge the property of the defaulter and realise the amount by subjecting the property to sale or otherwise.

12. The learned Government Pleader has laid frontal thrust on the point that the first petitioner himself volunteered to clear the dues and accordingly sought the benefit of the Amnesty Scheme to be extended to him. In the words of the learned Government Pleader, now the petitioners are estopped from wriggling themselves out of the undertaking given by them.

13. Heard the learned counsel for the petitioners and the learned Government Pleader, apart from perusing the record.

14. Indeed, the issue runs in a narrow compass; this Court, thus, finds the following issues to be decided:

I. Whether the property purchased by the petitioners from their vendor, admittedly a defaulter, could be subjected to revenue recovery proceedings?

In other words, whether the petitioners' property can be subjected to any charge either under the provisions of the Revenue Recovery Act or the Abkari Act?

II. Whether the petitioners' offer in Exhibit R5(a) can act as an estoppel against their later claim that they are not liable to clear the dues of their vendor, for the entire liability was subsequent to the purchase of the property?

Discussion:

Issue No.I:

15. Though the learned counsel for the petitioners has made an elaborate reference to various provisions of both the Revenue Recovery Act and the Abkari Act, the fact

remains, as has been admitted by him, that under Section 68 of the Revenue Recovery Act the amount due from the petitioners' vendor has to be treated as the revenue recoverable through the provisions of the Revenue Recovery Act.

16. On appreciation of Section 68 of the Act, this Court is of the opinion that the respondent authorities could take every step to realise the dues provided the defaulter has left any property available. In the present instance, the owner failed to surrender the vehicle when it had been confiscated on 10.11.2000 under Section 67B of the Abkari Act. At the request of the department, respondents 1 and 3 initiated revenue recovery proceedings through Exhibit P3 on 31.08.2006.

17. In terms of Section 68 read with Section 3 of the Revenue Recovery Act, if there were to be a charge on the property, it should be from 31.08.2006. Even if one were to assume that there should be a charge from 10.11.2000, the

date when the petitioners' vendor had failed to produce the confiscated vehicle, it could not be disputed that the petitioners did purchase the property on 23.12.1998, much before either the order of confiscation or the date of Exhibit P3 proceedings.

18. In the above facts and circumstances, I am of the considered opinion that the property purchased by the petitioners, though from the very defaulter, could not be subjected to any statutory charge or restraint, much less sale.

Issue No.II:

19. The fulcrum of the submissions on the part of the learned Government Pleader is that the petitioners themselves volunteered to clear the dues by submitting Exhibit R5(a) application, initially. There is, according to him, no gainsaying the fact that the first petitioner wanted to take advantage of the Amnesty Scheme. Under these circumstances, the petitioners are estopped from resiling

from their very own undertaking is the contention.

20. Attractive as the submission appears to be, it nevertheless fails to pass the judicial muster. On a deeper scrutiny, it emerges that the first petitioner had initially been constrained to submit Exhibit R5(a) application since the authorities charged the property and thereby prevented the petitioners from making the best use of their property. As has been contended by the learned counsel for the petitioners, when the petitioners wanted to obtain some loan on the property, they came to know that it was not possible in the face of the revenue recovery proceedings initiated by the department.

21. In the alternative, even if we were to conclude that Exhibit R5(a) would bind the petitioners, it can, at best, be an offer on the petitioners' part. Evidently, the Commissioner of Excise rejected the offer as is clear from the counter affidavit filed by the department. The rejection was on the premise that the amount due from the

petitioners' vendor could not be categorised as an abkari due; therefore, the question of extending the benefit of the Amnesty Scheme did not arise. The net result is that the petitioners' offer stood comprehensively rejected.

22. Guenter Treitel in his treatise, *The Law of Contract*, defines 'offer' as an expression of willingness to contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed. Under the objective test of agreement, an apparent intention to be bound may suffice, i.e. the alleged offeror may be bound if his words or conduct are such as to induce a reasonable person to believe that he intends to be bound, even though in fact he has no such intention.

23. As to the 'acceptance', the learned author would say that acceptance is a final and unqualified expression of assent to the terms of an offer. The objective test of agreement applies to an acceptance no less than to an offer.

On this test, a mere acknowledgment of an offer would not, according to the learned author, be an acceptance.

24. On the issue of rejection, Trietel has opined that rejection terminates the offer. An attempt to accept an offer on new terms, not contained in the offer, may be a rejection of the offer accompanied by a counter-offer. An offeree who makes such an attempt cannot later accept the original offer. A communication from the offeree may be construed as a counter-offer (and hence as a rejection) even though it takes the form of a question as to the offeror's willingness to vary the terms of the offer.

25. In the present instance, the rejection of the first petitioner's request by the Commissioner of Excise that the Amnesty Scheme was not available for discharging his vendor's debt implies that he should pay the entire amount due. It, therefore, amounts, perhaps, to a counter offer by way of modification of the condition.

26. Viewed in that perspective, I am of the considered opinion that Exhibit R5(a) is spent and is devoid of any enforceability. Thus, I am afraid, the contention of the learned Government Pleader that the petitioners have been estopped from acting contrary to their commitment cannot be countenanced.

27. In the facts and circumstances, Exhibit P3 is set aside with a consequential direction to the fourth respondent to issue to the petitioners a possession certificate, provided they are otherwise entitled to have the said certificate.

With the above observation, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'