IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 32220 of 2007 (I)

PETITIONER(S):

1. V.L.LALITHA, W/O. A.GOURISANKAR,
LAKSHMI NIVAS, H.P.O. COLLEGE ROAD, PALAKKAD DISTRICT.

2. G.SUBHALAKSHMI, W/O. SATISH RAGHAVAN,
LAKSHMI NIVAS, H.P.O. COLLEGE ROAD, PALAKKAD DISTRICT
REPRESENTED BY POWER OF, ATTORNEY HOLDER V.L.LALITHA
W/O. A.GOURISANKAR, LAKSHMI NIVAS, H.P.O.COLLEGE ROAD
PALAKKAD DISTRICT.

BY ADVS.SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW

RESPONDENT(S):

1. STATE BANK OF TRAVANCORE,
REPRESENTED BY ITS BRANCH MANAGER, WALAYAR BRANCH
WALAYAR, PALAKKAD DISTRICT.

2. RESERVE BANK OF INDIA, REPRESENTED BY
ITS EXECUTIVE DIRECTOR, CENTRAL OFFICE
MUMBAI-400 001.

R,R.1 BY ADV. SRI.R.S.KALKURA
R BY SRI.R.S.KALKURA, SC FOR SBT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 32220/2007

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE AGREEMENT DT.28.12.94 FOR THE PURPOSE OF TREATING THE CONSOLIDATED FARMS AS ONE UNIT BY NAME 'EASO GARDENS'

EXT.P2: -DO- OF THE LAND TAX DT.11.12.06 IN THE NAME OF THE 1ST PETITIONER

EXT.P2A: -DO- POSSESSION CERTIFICATE DT.11.122006 IN THE NAME OF 1ST PETITIONER

EXT.P2B: -DO- LAND TAX DT.11.12.06 AND 4.12.06 IN THE NAME OF THE 2ND PETITIONER

EXT.P2C: -DO- POSSESSION CERTIFICATE DT.11.12.06 IN THE NAME OF 2ND PETITIONER

EXT.P2D: -DO- LAND TAX DT.4.12.06 IN THE NAME OF ANANTHAKRISHNAN

EXT.P2E: -DO- POSSESSION CERTIFICATE DT.4.12.06 IN THE NAME OF -DO-

EXT.P2F: -DO- OF LAND TAX DT.4.12.06 IN THE NAME OF SATISH RAGHAVAN

EXT.P2G: -DO- OF POSSESSION CERTIFICATE DT.4.12.06 IN THE NAME OF -DO-

EXT.P3 SERIES: -DO- OF NEWSPAPER CUTTINGS DT.19.2.07 IN KERALA KAUMUDI, DESABHIMANI & THE HINDU DAILIES AND THE NEWS ITEM DT.20.2.97 IN MALAYALA MANORAMA DAILY

EXT.P4: -DO- OF THE GUIDELINES ISSUED BY 2ND RESPONDENT DT.18.10.06

EXT.P5: -DO- OF THE APPLICATION DT.13.7.07 SENT BY 1ST PETITIONER TO 1ST RESPONDENT

EXT.P6: -DO- REPLY LETTER SENT BY THE 1ST RESPONDENT TO THE 1ST PETITIONER

EXT.P7: -DO- DT.26.9.07 ISSUED BY 2ND RESPONDENT TO 1ST RESPONDENT

RESPONDENTS' EXTS:

EXT.R1A: TRUE COPY OF THE LETTER DT.21.1.2004 AGREED TO SETTLE THE ACCOUNT UNDER THE COMPROMISE

EXT.R1B: -DO- DT.26.9.2007 ISSUED BY THE 2ND RESPONDENT TO THE 1ST RESPONDENT BANK

EXT.R1C: -DO- PARTNERSHIP DEED DT.7.7.1997

EXTR.R1D: -DO- ACKNOWLEDGEMENT OF REGISTRATION OF FIRM INDICATING THAT THE FIRM M/S.EASO GARDENS WAS REGISTERED WITH THE REGISTRAR OF FIRMS DT.20.10.1997

EXT.R1E: -DO- OF THE ACCOUNT OPENING FORM SUBMITTED BY THE PETITIONERS AND OTHERS FOR OPENING THE ACCOUNT

EXT.R1F: -DO- OF THE PARTNERSHIP LETTER EXECUTED BY ALL THE PARTNERS DECLARING THAT THEY WERE PARTNERS OF THE FIRM M/S. EASO GARDENS

EXT.R1G: -DO- OF THE ACCOUNT OPENING FORM ALONG WITH THE LETTER OF PARNTERSHIP DT.9.1.2007

EXT.R1H: -DO- LETTER OF SANCTION OF THE LOAN DT.12.11.1997 DULY ENDORSED BY THE PARTNERS WITH THEIR OFFICIAL SEALS.

JJ /TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO.32220 OF 2007

Dated this the 11th February, 2015.

JUDGMENT

The petitioners have filed this writ petition complaining that they have not been given the benefit of Ext.P4 package of relief sanctioned by the Government of India to ameliorate the conditions of the farmers in certain districts of Kerala as well as other states affected by natural disasters. Palakkad is one of the districts mentioned in Ext.P4. The petitioners, mother and daughter along with others had entered into Ext.P1 agreement to manage their individual properties jointly, to conduct joint agricultural operations and to share the benefits thereof among themselves. For the purpose, they had availed financial assistance from the first respondent bank. However, their agricultural activities failed to generate profits. The re-payment of the loans fell into default. The bank initiated action for recovery of the amounts that were outstanding. Finally, the petitioners availed the benefit of a one time settlement scheme and paid off the entire amount due to the bank. According to the counsel for the petitioner, the required amount was raised by selling off their agricultural properties.

2. After payment of the amount, the petitioners came to know that the Union Government had formulated Ext.P4 distress package for farmers. Therefore, they approached the first respondent bank seeking the benefits of the distress package. When there was no response, they have filed this writ petition seeking the issue of appropriate directions, inter alia, for return of the excess amounts paid by them. The claim of the petitioners is that, they are agriculturists who were engaged in agricultural operations in Palakkad district. They were entitled to the benefits of the distress package Ext.P4 since Palakkad district is one of the areas specified therein. They seek the issue of appropriate directions for

refund of the excess amounts paid by them.

3. A counter affidavit has been filed on behalf of the first respondent. According to the counter affidavit, the petitioners are not agriculturists. It is true that they owned agricultural properties but they had formed themselves into a partnership firm for the purpose of carrying on various commercial activities. According to the second respondent loans were availed by them not for conducting agricultural operations but for undertaking commercial activities. The investment in the firm exceeds Rs.1 crore and the loan availed was more than Rs.50 lakhs. Since the activities engaged by them were commercial in nature, they were not agriculturists entitled to the benefits of Ext.P4. They had taken the benefit of the one time settlement scheme that was in force and had paid off the entire amount. In order to facilitate such payment, the bank had also written off a substantial amount of money. Since the petitioners are not agriculturists, it is contended that they are not entitled to the benefit of Ext.P4.

4. According to Mr.O.Ramachandran Nambiar who appears for the petitioners a perusal of Ext.R1(c) deed of partnership would show that, though a partnership was formed none of the partners had parted with their rights over their individual properties. Consequently, the properties continued to remain the individual properties of the partners, with the partnership firm acquiring no property of its own. Therefore, it is contended that Ext.R1(c) was not a partnership in the normal sense of the term, but was of a peculiar kind where the partners had only undertaken joint agricultural operations for their common benefit. Consequently, they are individual farmers entitled to the benefits of Ext.P4 package. Strong exception is taken by the counsel to the statement in Ext.R1(d) letter of the Reserve Bank of India excluding firms and companies from the benefits of Ext.P4 package. It is contended that exclusion of the petitioners from the benefits of the package would be discriminatory and violative of Art.14 of the Constitution. The counsel places reliance on Section

14 of the Indian Partnership Act, 1932 to point out that it is permissible for partners to retain title over their properties. Decisions reported in Sujan Suresh Sawant v. Kamalakant Shantaram Desa [AIR 2004 Bom. 446] and B.N.Murthy & Sons v. V.V.Suguna [AIR 1978 AP 257] are relied upon in support of the above contention. According to the learned counsel, the petitioners are entitled to refund of the excess amounts paid by them, under distress.

5. Adv.R.S.Kalkura who appears for the respondent on the other hand disputes the contentions of the counsel for the petitioner and points out that, the financial assistance was sanctioned to the partnership firm by name Messrs. Easo Gardens. Accordingly an agricultural term loan and an agricultural cash credit facility were sanctioned. They were for the business of the firm. The total amount of facility so granted is Rs.53,51,000/-. The amount was paid on 11.11.1997, among other things also for setting up a dairy unit. An immovable property having an extent of 21.41 acres

was given as security. Reliance is placed on Ext.R1(c) deed of partnership to point out that the objects of the firm were mainly commercial though relating to agriculture. The partnership was registered and the loan was sanctioned to the partnership firm for purchase of animals, vehicles, machinery etc.

6. After the repayment of the loan became irregular, the petitioners had approached the first respondent bank with an offer to avail the benefit of a one time settlement scheme. The offer was accepted. An amount of Rs.24,00,000/- was written off and the balance amount was remitted by the petitioners on 21.12.2006. It was only thereafter that the petitioners have raised the present contention that they are entitled to the benefit of Ext.P4 distress package. The claim according to the learned counsel is unsustainable and liable to be rejected.

7. Heard. I notice that Ext.R1(c) partnership deed was not produced along with the writ petition. It is also not stated

that, there was such a partnership in existence. The partnership deed has been produced along with the counter affidavit by the first respondent. A perusal of Ext.R1(c) shows that, the objects of the firm include not merely agricultural activities but also manufacture and commercial pursuits. One of the objects is to acquire lands and to develop them into agricultural and and industrial holdings. Another object is to develop agro based industries for extraction and sale of oils, edible, industrial, aromatic and perfumes. To develop dairy farms, poultry farms, to develop better breeds of cattle, etc. The objects even include conduct of charitable homes. The total capital of the firm contributed by the partners was initially Rs.1,08,30,000/-. Ext.R1(d) is the registration certificate of the firm. Therefore, it was the registered partnership firm represented by the Managing Partner that had approached the first respondent bank for the financial assistance that was availed. Ext.R1(e) is the application for opening a current account submitted by the Managing Partner, the first petitioner herein. The loan has been sanctioned by Ext.R1(h). A perusal of Ext.R1(h) shows that the loans had been availed for various purposes which included purchase of a Tata Sumo car, digging wells, construction of buildings. An amount of Rs.16,10,000/- has been sanctioned for construction of buildings, Rs.3,90,000/- for machines and equipments. Therefore, it is clear that the loans were availed not merely for agricultural operations but for other purposes as well which are commercial transactions. In view of the above, it cannot be said that there is any infirmity in the stand adopted by the first respondent that the petitioners are not entitled to the benefit of Ext.P4 distress package that is meant for agriculturists alone.

8. It is further worth noticing that the petitioners had remitted the entire amount on 21.12.2006 availing the benefit of one time settlement scheme. After having remitted the entire amount, there is no justification for the present contention that they are entitled to be treated as agriculturists.

Any how, I have already found that they are not entitled to the said benefits.

9. The contention that the properties continued to be the individual properties of the owners, despite the formation of the partnership firm cannot be accepted for the reason that it is not necessary in law, for a partnership firm to own the properties of the individual partners. Nor is it necessary that the partners should transfer their properties to the name of the partnership firm. Section 14 of the Partnership Act,1932 only provides that subject to the contract between the partners, the property of the firm includes all properties and rights and interests in property originally brought into the stock of the firm or acquired by purchase or otherwise, etc. Therefore, the said provision saves contracts which are permissible to be made to the contrary. In the present case, the parties did not transfer their titles in their properties to the partnership firm. That does not affect the existence of the partnership firm. The parties agreed to share the profits.

The principle of agency is also evident from Ext.R1(c) partnership deed where the Managing Partner has been authorised to represent the firm as well as the other partners. Therefore, it has to be held that there was a valid partnership firm in existence.

10. The other contention that is canvassed before me is that, making partnership firms and companies ineligible to claim the benefits of the distress package Ext.P4 is discriminatory. According to the learned counsel for the petitioner, the partnership firm in the present case is one formed by individual partners and therefore, they should not be held disentitled to the benefits of the package for the only reason that they had formed themselves into a partnership firm. The said contention is also unsustainable for the reason that the classification that has been made is one into individual farmers and artificial entities like partnerships and companies. It is common knowledge that partnerships and companies are formed by persons engaged in commercial

enterprises. The benefits of Ext.P4 package are intended to ameliorate the conditions of individual farmers who were badly affected by natural disasters. Firms like that of the petitioners herein engaged not merely in agricultural activities but also in other commercial enterprises cannot be held entitled to the benefits of such a scheme. The classification made is reasonable. The individual farmers holding small extents of land cannot be equated with large firms or companies holding large extents of land. It is therefore held that the classification is reasonable.

For the above reasons this writ petition fails and is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

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