

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 26643 of 2015 (E)

PETITIONER :

**SAKKEENA, AGED 35 YEARS,
W/O. ASSAIANR P.T., PAYYANADUTHODIKA, KOOMBARA P.O.
MARAMCHATTY, KUMARANELLUR, KOZHIKODE.**

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:-:

**1. PATHUMMA, D/O.RAHIM MUHAMMED,
KAARIKUZHYYIL HOUSE, KOOMBARA P.O.,
MARAMJATTY, KOZHIKODE - 673 604.**

**2. THE TAHSILDAR
KOZHIKODE - 673 020.**

**3. THE VILLAGE OFFICER
KUMARANELLUR, KOZHIKODE, PIN - 673 605.**

R2 & R3 BY GOVERNMENT PLEADER SMT. LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: COPY OF THE ORDER IN MC 16/13 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT II, THAMARASSERY DATED 11.10.2013.
- EXHIBIT P2: TRUE COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE DISTRICT AND SESSIONS JUDGE, KOZHIKODE.
- EXHIBIT P3: TRUE COPY OF THE AFFIDAVIT AND DELAY PETITION FILED BY THE PETITIONER DATED 22.06.15.
- EXHIBIT P4: COPY OF THE PETITION FILED ON 10.01.14 IN CMP 174/14 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT II, THAMARASSERY.
- EXHIBIT P5: COPY OF THE REPORT OF THE VILLAGE OFFICER DATED 03.06.15.
- EXHIBIT P6: COPY OF THE ORDER OF THE LEARNED MAGISTRATE IN MC 16/13.
- EXHIBIT P7: COPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE TAHSILDAR, KOZHIKODE DATED 18.12.14.
- EXHIBIT P8: COPY OF THE REPORT OF THE VILLAGE OFFICER GIVEN TO THE 2ND COUNTER PETITIONER DATED 18.06.2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 26643 of 2015

Dated this the 4th day of September, 2015

JUDGMENT

The petitioner, who is the daughter-in-law of the 1st respondent, who obtained an order against her son, the petitioner's husband, under the Protection of Women from Domestic Violence Act, for payment of an amount of Rs.750/- per month, is aggrieved by the revenue recovery steps that have been initiated against her husband and against her property for realisation of the said amount on behalf of the 1st respondent. It is the case of the petitioner in the writ petition that although Ext.P1 order of the Judicial First Class Magistrate's Court, Thamarasserry, which found the 1st respondent entitled for the amount that is now sought to be recovered from the petitioner, is dated 11.10.2013 and the petitioner has since preferred an appeal against the said order, the demand notice in connection with the revenue recovery proceedings is dated 18.12.2014. The petitioner would submit that between the two dates, the property that belonged to the husband of the petitioner was transferred in her name by her husband and hence, the revenue recovery proceedings initiated against the petitioner's property would be hit by the provisions of Section 44 of the Kerala Revenue Recovery Act. It is premised on the said contention that the petitioner has approached this Court impugning

Ext.P7 revenue recovery notice that seeks to attach the property of the petitioner for realisation of the dues therein, in favour of the 1st respondent.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the interpretation sought to be placed by the petitioner, on the provisions of Section 44 of the Kerala Revenue Recovery Act is a rather narrow one. The embargo under Section 44 of the Kerala Revenue Recovery Act is in respect of any engagement entered into by the defaulter with any one in respect of any immovable property after the service of a written demand on him. The provision makes it clear that, if the engagement is one that is entered into after the service of a written demand on the defaulter, then the said engagement shall not be binding upon the Government. The stand of the petitioner is that insofar as the revenue recovery notice was served on the petitioner only

subsequent to the transfer of property in her name by her husband, the property would be insulated from revenue recovery proceedings initiated by the official respondents for the benefit of the 1st respondent. I find, however, that the revenue recovery notice in this case was pursuant to the order of the Magistrate's Court, which is dated 11.10.2013, as also Ext.P6 order of the Magistrate's in M.C.No.16 of 2013, which is dated 04.02.2014, well before, the date of the transaction which vested rights in respect of the immovable property on the petitioner. In my view, the dates of these orders of the Magistrate, which form the very basis for the subsequent demand through Ext.P7 revenue recovery notice, would be material to determine whether the engagement in favour of the petitioner would be hit by the provisions of Section 44 or not. In my view, the transaction which vested rights over the immovable property in the petitioner, would be hit by the provisions of Section 44 and the petitioner cannot seek to insulate the said property from the proceedings under the Revenue Recovery Act. The writ petition, its challenge against Ext.P7 revenue recovery notice, therefore, fails and is accordingly dismissed.

Taking note of the plea of financial hardship urged on behalf of the petitioner, I grant the petitioner the facility of payment of the amounts mentioned in Ext.P7 notice in two equal successive monthly installments commencing from 30.09.2015. Save for this limited modification as regards the manner of payment of dues, the writ petition is otherwise, dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das