

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 29422 of 2015 (C)

PETITIONER:

AJITH KUMAR, AGED 63 YEARS
S/O.PARAMESWARA PILLAI, PERUMPALLIL HOUSE
THODUPUZHA VILLAGE, THODUPUZHA EAST P.O.,
DIST. IDUKKI.

BY ADVS.SRI.K.REGHU KOTTAPPURAM
SRI.M.MUKESH
SRI.R.MAHESH (KOTTAPPURAM)
SRI.MURUKESH REGHU

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY (TAXES),
TAXES DEPARTMENT, THIRUVANANTHAPURAM - 695 001.
2. THE EXCISE COMMISSIONER
STATE OF KERALA, COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM - 695 001.
3. THE TAHASILDAR,
THODUPUZHA TALUK OFFICE, THODUPUZHA,
DIST. IDUKKY - 685 584.

R2 BY ADV. SRI. K.C. VINCENT, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1. A PHOTO COPY OF SALE NOTICE DATED 27.03.1993 WITH ENGLISH TRANSLATION.

EXHIBIT P2. A PHOTOCOPY OF CERTIFICATE DATED 20.10.93 ISSUED BY EXCISE INSPECTOR.

EXHIBIT P3. A PHOTOCOPY OF STATEMENT OF KIST COLLECTED DURING D.M.PERIOD.

EXHIBIT P4. A PHOTO COPY OF RECEIPT DATED 07.12.2011 OF REMITTANCE WITH ENGLISH TRANSLATION.

EXHIBIT P5. A PHOTOCOPY OF JUDGEMENT DATED 06.10.2005 IN O.P.11194/02.

EXHIBIT P6. A PHOTOCOPY OF JUDGMENT DATED 17.03.2006 IN W.A.153/06.

EXHIBIT P7. A PHOTO COPY OF JUDGMENT DATED 22.04.2008 OF SUPREME COURT.

EXHIBIT P8. A PHOTO COPY OF JUDGEMENT DATED 11.08.2000.

EXHIBIT P9. A PHOTOCOPY OF JUDGMENT DATED 14.11.09 IN W.P.(C)22928/08.

EXHIBIT P10. A PHOTO COPY OF PLAINT IN O.S.215/2013 ON THE FILE OF SUB COURT, KOTTAYAM.

EXHIBIT P11. A PHOTOCOPY OF JUDGMENT DATED 19.12.2014 IN O.S.215/2013 ON THE FILE OF SUB COURT, KOTTAYAM.

EXHIBIT P12. A PHOTO COPY OF STATEMENT FILED IN O.S.215/2013 ON THE FILE OF SUB COURT, KOTTAYAM.

EXHIBIT P13. A PHOTO COPY OF LAND TAX RECEIPT DATED 18.08.2015 WITH ENGLISH TRANSLATION.

EXHIBIT P14. A PHOTO COPY OF CHELLAN DATED 12.03.2015.

EXHIBIT P15. A PHOTOCOPY OF CERTIFICATE ISSUED BY CARITHAS HOSPITAL.

EXHIBIT P16. A PHOTO COPY OF APPLICATION DATED 06.04.2015 BEFORE EXCISE MINISTER WITH ENGLISH TRANSLATION.

EXHIBIT P17. A PHOTO COPY OF COMMUNICATION DATED 10.08.15 FROM EXCISE MINISTER WITH ENGLISH TRANSLATION.

RESPONDENTS' EXHIBITS:

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P.(C). No. 29422 of 2015 (C)

Dated this the 6th day of November, 2015.

JUDGMENT

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

2. The petitioner, in relation to a piece of his immovable property, seeks a 'No Liability Certificate' from the Excise Commissioner, the second respondent. Questioning what is said to be the delay on the second respondent's part in granting the so-called 'No Liability Certificate,' the petitioner has approached this Court.

3. As can be gathered from the submission of the learned counsel for the petitioner, the petitioner being an abkari licensee once had certain dues to the Government for the abkari year 1993-1994. In the civil litigation that ensued—in O.S. No. 215 of 2013 filed by the petitioner—a competent civil court passed Ext.P11 judgment and decree.

4. A perusal of Ext.P11 judgment reveals that the civil court has declared that the petitioner was liable to pay ₹ 11,76,064/- to the

Government. Having thus invited Ext.P11 judgment, the petitioner is said to have satisfied the debt, as can be seen from Ext.P14 challan.

5. In this context, the learned counsel for the petitioner has strenuously contended that the amount declared by the civil court in Ext.P11 judgment to be due to the Government has been satisfied by the petitioner; and, in fact, the Government accepted the amount through Ext.P14 challan. Under these circumstances, there is no statutory embargo, according to the learned counsel, on the second respondent to grant to the petitioner the 'No Liability Certificate'.

6. At this juncture, this Court queried with the learned counsel for the petitioner as regards under what statute compels the petitioner to have a 'No Liability Certificate.' In other words, whether any specific statutory provision mandates either the petitioner to obtain a 'No Liability Certificate' or the Government to grant one.

7. In response, the learned counsel has submitted that no law mandates that a person should obtain a 'No Liability Certificate' concerning his immovable property from the Government. Nor is the Government obligated to respond. He has, however, submitted that if at all the petitioner intends to sell his property, the prospective

purchaser may insist that he should produce a certificate from the Government that the property has not been encumbered. Hence, the recourse to the 'No Liability Certificate', contends the learned counsel.

8. The learned Government Pleader, on the other hand, has submitted, in tune with the statement filed on behalf of the second respondent, that the Government has already filed an appeal—a Regular First Appeal—before this Court. He has further submitted that the Government has been making all efforts to obtain an interim direction in the appeal because the actual amount demanded by the Government was about ₹ 3 crores, but the civil court declared the amount due from the petitioner to be a paltry sum of ₹ 11,76,064/–.

9. According to the learned Government Pleader, at this juncture, if the Government were to grant a 'No Liability Certificate', that would be to its prejudice. And, in that event, it could not subject the petitioner's property to any distraint to recover the amounts still due from the petitioner, notwithstanding the result of the appeal, contends the learned Government Pleader.

10. In reply, the learned counsel for the petitioner has submitted that Ext.P11 judgment by the civil court is in the wake of the

guidelines issued by the Hon'ble Supreme Court in Ext.P7 judgment.

11. Be that as it may, so long as no statute compels the petitioner to have a 'No Liability Certificate'; and, equally, so long as no law compels the Government to issue one, this Court cannot indulge in any extra-judicial adjudication. Put differently, unless there is a statutory obligation on the part of the Government, this Court is loath, justly so, to compel the Government through a mandamus to issue a certificate that has no legal recognition, much less sanctity.

12. It is axiomatic to observe that the sale of immovable property is governed by the relevant statutes, such as the Transfer of Property Act. The encumbrance is an ascertainable aspect of title verification by the prospective purchaser by taking recourse to a mechanism, say, under the Registration Act.

13. Under these circumstances, this Court intends only to make it clear that the petitioner requires no certificate of whatever description to sell his property, if he is otherwise legally entitled to. For the enjoyment of property signifies a bundle of rights, of which the vital one is the right to alienate. The courts have repeatedly declared that the right to properties is not only a constitutional right,

but also a human right.

14. I hasten, at the same time, to add that even if the Government were to give the so-called 'No Liability Certificate' in presenti, it would not affect the right of the Government to take any legally permissible steps, in the course of time, vis-à-vis the same property.

With the above observations, the Court disposes of the writ petition. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv