

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 31257 of 2015 (F)

PETITIONER(S):

**K. MARAKKAR, S/O.AHAMMED,
AGED 68 YEARS, PWD CONTRACTORS,
ATHAVANAD, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.SAMSUDIN,
SRI.K.C.ANTONY MATHEW,
SRI.JITHIN LUKOSE.**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
MALAPPURAM-676 505.**
- 2. THE DEPUTY TAHSILDAR,
REVENUE RECOVERY, TALUK OFFICE,
TIRUR-676 101, MALAPPURAM DISTRICT.**
- 3. THE EXECUTIVE ENGINEER LOCAL SELF
GOVERNMENT DEPARTMENT, MALAPPURAM DIVISION,
MALAPPURAM-676 505.**

BY GOVT. PLEADER SMT.LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE LETTER DATED 27/12/2011 ISSUED BY THE
THIRD RESPONDENT.
- EXT.P2 COPY OF THE REPRESENTATION DATED 27/05/2012 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P3 COPY OF THE DEMAND NOTICE DATED 24/06/2015 ISSUED TO
THE PETITIONER.
- EXT.P4 COPY OF THE REPRESENTATION DATED 17/09/2015 SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P5 COPY OF THE LIST OF MOVABLES ATTACHED BY THE
2ND RESPONDENT DATED 29/09/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.
.....
W.P.(C).No.31257 of 2015
.....
Dated this the 16th day of October, 2015

J U D G M E N T

The challenge in the writ petition is against Exts.P3 and P5 notices whereby the petitioner has been proceeded against under the Revenue Recovery Act for realisation of an amount of Rs.2,69,227/- together with interest and collection charges. The case of the petitioner in the writ petition is essentially that pursuant to a contract entered into with the 3rd respondent, the petitioner is entitled to substantial amounts by way of refund and in this connection, he has preferred Ext.P4 representation before the 3rd respondent. It is the case of the petitioner that inasmuch as the amount due to him by way of refund is approximately Rs.3,87,500/-, and the present demand against him is Rs.2,69,227/- the respondents ought not to have proceeded against him pursuant to Exts.P3 and P5 revenue recovery notices.

2. I have heard the learned counsel for the petitioner and 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, although the petitioner claims a refund amount of Rs.3,87,500/-, the same has not been determined as due to the petitioner by any adjudicating forum. Under the said circumstances, the only relief that can be granted by this Court in respect of the refund is to direct the 3rd respondents to consider and pass orders on Ext.P4 representation preferred by the petitioner expeditiously, at any rate, within a period of two months from the date of receipt of a copy of this judgment. The 3rd respondent shall pass orders as directed within the time stipulated in this judgment. As regards the liability of the petitioner pursuant to Exts.P3 and P5 notices, taking note of the plea of financial hardship urged on behalf of the petitioner as also the fact that his claim for refund is pending before the 3rd respondent, I direct that if the petitioner pays the amounts outstanding under Exts.P3 and P5 namely Rs.2,69,227/- together with accrued interest and collection charges in 10 equal and successive monthly instalments commencing from 02.11.2015, further proceedings for recovery pursuant to Exts.P3 and P5 notices shall be kept in abeyance.

It is made clear that, if the petitioner commits a default in respect of any of the instalments, he will lose the benefit of this

judgment and the respondents will be free to continue the recovery proceedings against him from the stage at which they presently stand.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/16.10.15