

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 38357 of 2015 (T)

PETITIONER :

**V.SANTHOSH KUMAR,
PROPRIETOR, JAI VINAYAKA THEATRE,
KATTAKADA.**

**BY ADVS.SRI.M.BALAGOVINDAN
SRI.T.KANANDA PADMANABHAN**

RESPONDENT(S):

- 1. PRINCIPAL SECRETARY,
DEPARTMENT OF CULTURAL AFFAIRS, SECRETARIAT,
THIRUVANANTHAPURAM-695 801.**
- 2. COMMISSIONER OF LAND REVENUE,
PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM-695 033.**
- 3. MANAGING DIRECTOR,
KERALA STATE FILM DEVELOPMENT CORPORATION LTD.,
CHALACHITRA KALABHAVAN, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695 014.**
- 4. THE DISTRICT COLLECTOR,
OFFICE OF THE DISTRICT COLLECTOR, CIVIL STATION,
THIRUVANANTHAPURAM-695 001**
- 5. DEPUTY TAHASILDAR,
REVENUE RECOVERY, NEYYATTINKARA-695 121.**

**R1,R2,R4 & R5 BY GOVERNMENT PLEADER SRI.R.RANJITH
R3 BY SRI.A.SUDHI VASUDEVAN, SENIOR ADVOCATE
ADV. SRI.JOSE JONES JOSEPH, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. A TRUE COPY OF THE LETTER DATED 8/7/2005 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER
- EXT.P2. A TRUE COPY OF THE CERTIFICATE ISSUED BY THE 2ND RESPONDENT DATED 14/11/2005.
- EXT.P3. A TRUE COPY OF THE LETTER DATED 24/12/2005 ISSUED BY THE 3RD RESPONDENT
- EXT.P4. A TRUE COPY OF THE REPLY DATED 25/1/2006 ISSUED BY THE PETITIONER TO THE 3RD RESPONDENT
- EXT.P5. A TRUE COPY OF THE REPRESENTATION/APPEAL DATED 23/2/2006 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT
- EXT.P6. A TRUE COPY OF THE DEMAND NOTICE ISSUED UNDER SECTION 7 OF THE REVENUE RECOVERY ACT
- EXT.P7. A TRUE COPY OF THE DEMAND NOTICE ISSUED UNDER SECTION 34 DATED 15/12/2012.
- EXT.P8. A TRUE COPY OF THE LETTER DATED 4/1/2013.
- EXT.P9. A TRUE COPY OF THE REVISION PETITION DATED 19/3/2013.
- EXT.P10. A TRUE COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DATED 21/11/2015.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No. 38357 of 2015

Dated this the 17th day of December 2015

JUDGMENT

Aggrieved by an order enhancing the service charge on Cinema tickets, that was imposed by a Government Order, the petitioner approached the appellate authority, through Ext.P5 appeal. It is stated that the said appeal is pending consideration before the 1st respondent. In the meanwhile, the respondents initiated recovery steps against the petitioner for recovery of the amounts confirmed against the petitioner by way of enhanced service charges. The petitioner, therefore, preferred an objection before the 4th respondent in terms Section 34 of the Kerala Revenue Recovery Act. When no action was forthcoming from the 4th respondent in response to the objections so filed by the petitioner, the petitioner preferred an application before the 2nd respondent in terms of Section 83(1) of the Kerala Revenue Recovery Act. The 2nd respondent by Ext.P10 order, rejected the application preferred by the petitioner on the ground that there was no stay that was granted to the petitioner in the appeal that was filed by the petitioner before the 1st respondent. In the writ petition Ext.P10

order is impugned by the petitioner.

2. I have heard the learned counsel for the petitioner, learned Government Pleader for respondent 1,2,4 and 5 and Sri.Jose Jones Joseph, the leaned standing counsel for the 3rd respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that in as much as in the substantive proceedings in relation to the enhancement of service charge, the petitioner has not moved an application for stay, in the appeal that is currently pending before the 1st respondent, the finding of the 2nd respondent in Ext.P10 order cannot be said to be erroneous. Counsel for petitioner would submit that he can file a stay application in the pending appeal before the 1st respondent, if granted some time to do so. Taking note of the said submission of counsel for the petitioner, I direct that recovery proceedings against the petitioner, pursuant to Exts.P6 and P7 demand notices, shall be kept in abeyance for a period of two months, so as to enable the petitioner to approach the 1st respondent through a stay application in the pending appeal preferred by the petitioner. If the petitioner files the stay application before 1st respondent, in the pending appeal, within a period of two weeks from today, the 1st respondent shall proceed to hear and pass

orders in the stay application within a period of one month, thereafter.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/