

(2004) 06 KL CK 0069

High Court Of Kerala

Case No: W.A. No. 1197 of 2002 (E) and W.P. (C) No. 9677 of 2004

Kerala Motor Transport Workers
Welfare Fund Board

APPELLANT

Vs

William Raynold

RESPONDENT

Date of Decision: June 29, 2004

Acts Referred:

- Kerala Motor Transport Workers Welfare Fund Board Act, 1985 - Section 10
- Revenue Recovery Act, 1890 - Section 2, 2(j)

Citation: (2004) 3 ILR (Ker) 172 : (2004) 3 KLT 1083

Hon'ble Judges: Nauvdip Kumar Sodhi, C.J; P.R. Raman, J

Bench: Division Bench

Advocate: P. Ramakrishnan, Mohamed Mustaque and M.K. Sumod, for the Appellant; T. Ravikumar and Sahijan C.George and C.K. Abdul Rahim, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

N.K. Sodhi, C.J.

This order will dispose of W.A. No. 1197 of 2002 arising out of O.P. No. 1213 of 1998 and also W.P.(C) No. 9677 of 2004 which has been referred to be heard by a Division Bench along with the Writ Appeal as common questions of law- and fact arise in both the cases. While allowing O.P. No. 1213 of 1998 (William Raynold v. Kerala Motor Transport Workers" Welfare Fund Board 2002 (3) KLT 377 the learned Single Judge has held that the amount due from an employer in pursuance of the provisions of the Kerala Motor Transport Workers" Welfare Fund Act, 1985 (for short "the Act") is not "public revenue due on land" within the meaning of Cl.(j) of Section 2 of the Kerala Revenue Recovery Act, 1968 (hereinafter called "the Revenue Recovery Act"), and therefore the same could not be recovered by arrest of the defaulter and his detention in prison u/s 65 of the latter Act. The correctness of this view has been doubted by a learned Single Judge in W.P.(C) No. 9677 of 2004 and

that is why it was ordered to be heard along with the Writ Appeal.

2. The short question that arises for consideration in these two cases is - whether the view taken by the learned Single Judge in William Raynold's case (supra) is correct?

3. Since the question involved in these cases is purely legal, it is not necessary to refer to the facts in detail. Respondent No. 1 in the Writ Appeal and the petitioner in the Writ Petition are the employers who are in arrears of the amount due from them under the provisions of the Act and in one case a notice u/s 65 of the Revenue Recovery Act has been issued to the employer to recover the arrears by issue of a warrant of arrest and in the other case a demand notice has been issued for the recovery of arrears by attachment and sale of immovable property. It is urged on behalf of the employers that the amount due from them is not "public revenue due on land" and therefore the same cannot be recovered under the provisions of the Revenue Recovery Act. Before we deal with this issue, it is necessary to refer to the relevant provisions of the Act and also those of the Revenue Recovery Act.

4. The Act has been enacted to provide for the constitution of a fund to promote the welfare of the motor transport workers in the State of Kerala. The State Government has framed a scheme u/s 3 of the Act called the "Motor Transport Workers' Welfare Fund Scheme" whereunder a fund has been established which vests in and is administered by the Kerala Motor Transport Workers' Welfare Fund Board (hereinafter called "the Board") constituted u/s 6 of the Act. An employer and his employees have both to make contributions to the fund and it is the employer who, in the first instance, has to pay the contributions payable both by him and by the persons employed by him. Section 10 of the Act provides that if any amount due from an employer in pursuance of the provisions of the Act or the scheme is in arrear, the same shall be recovered together with interest thereon at the rate of 9 per cent per annum in the same manner as an arrear of public revenue due on land. Section 10 of the Act which is relevant for our purpose is reproduced hereunder for facility of reference.

"10. Mode of recovery of moneys due from employers.- Any amount due from the employer in pursuance of the provisions of this Act or the Scheme, other than an amount payable under Sub-section (1) of Section 9, may, if the amount is in arrear, be recovered together with interest thereon at the rate of nine per cent per annum in the same manner as an arrear of public revenue due on land."

5. The Revenue Recovery Act has been enacted by the State Legislature to consolidate and amend the laws relating to the recovery of arrears of public revenue in the State of Kerala. It provides that public revenue due on any land shall be the first charge on that land, the buildings upon it and on the produce thereof. Section 4 provides that every landholder shall pay to the Collector or any Officer authorized by him the public revenue due on any land held by him on or before the day on which it

falls due. S .5 then provides for the manner in which arrears of public revenue due on land are to be recovered. It provides for four different methods to recover such arrears, namely, (a) by attachment and sale of the defaulter's movable property, (b) by attachment and sale of defaulter's immovable property, (c) by appointing an agent for the management of the defaulter's immovable property and (d) by arrest of the defaulter and his detention in prison. Chapter II of the Revenue Recovery Act provides a detailed procedure to be followed when the arrears are to be recovered by attachment and sale of movable property. Similarly, Chapter III deals with the procedure to be followed for the recovery of arrears by attachment and sale of immovable property Section 65 provides that when arrears of public revenue due on land with interest thereon are not paid after the service of the written demand u/s 34, the same can be recovered by the Collector by issuing a warrant for the arrest of the defaulter. Chapter IV of the Revenue Recovery Act deals with miscellaneous matters and Section 68 therein provides that this Act can be made applicable for the recovery of certain other dues to the Government. Section 71 then deals with the power of the State Government to declare that this Act would be applicable to any institution for the recovery of amounts due from any person or class of persons to any specified institution or any class of institutions and upon such a declaration being made, the provisions of this Act would apply to such recovery. The relevant provisions of the Revenue Recovery Act which concern us read as under:

"2 (a) "arrear of public revenue due on land" means the whole or any portion of any kist or instalment of such revenue not paid on the day on which it falls due according to the kistbandy or any engagement or usage;

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2(j) "public revenue due on land" means the land revenue charged on the land and includes all other taxes, fees and cesses on land, whether charged on land or not, and all cesses or other dues payable to the Government on account of water used for purposes of irrigation."

"65. Arrest in case of wilful and fraudulent non payment of arrears.- (1) When arrears of public revenue due on land, with interest thereon and cost of process, are not paid after the service of the written demand under S .34 and the District Collector is satisfied that the defaulter or his surety is wilfully withholding payment of the arrears, or has dishonestly transferred any part of his property, or has been guilty of fraudulent conduct in order to evade payment, or that the defaulter has the means to pay the arrears or some substantial part thereof and refuses or neglects to pay the same, or the proceeds of the sale of the property of the defaulter and his surety are not sufficient to liquidate the arrears with interest thereon and cost of process, he may issue a warrant for the arrest of the defaulter. No such warrant shall be issued before serving a notice upon the defaulter calling upon him to appear before the District Collector at the time and place specified in the notice and

to show cause why he should not be committed to the civil prison. The District Collector shall, on the appearance of the defaulter, hear him and consider such other evidence as may be produced by him. Upon the conclusion of the enquiry, the District Collector may, if he is convinced that such course is necessary, make an order for the detention of the defaulter in the civil prison and shall, in that event, cause him to be arrested:

Provided that, in order to give the defaulter an opportunity to clear the arrears, the District Collector may, before making the order of detention, grant him time not exceeding thirty days on his furnishing security to the satisfaction of the District Collector for his appearance at the expiration of the specified period. If the arrears are not paid by that date, the District Collector shall pass orders for the arrest and the detention of the defaulter in the civil prison of his district, or, if there is no suitable accommodation in that civil prison, in the civil prison of any neighbouring district."

"68. Application of the Act for the recovery of certain other dues to Government.-

(1) All sums due to the Government on account of quit rent or revenue other than public revenue due on land:

all moneys due from any person to the Government which a written agreement executed by such person are recoverable as arrears of public revenue due on land or land revenue, and all specific pecuniary penalties to which such person renders himself liable under such agreement or contract;

all sums declared by any other law for the time being in force to be recoverable as arrear of public revenue due on land or land revenue; and all fees and other dues payable by any person to the Government, may be recovered under the provisions of this Act."

"71. Power of Government to declare the Act applicable to any institution.-The

Government may, by notification in the Gazette, declare, if they are satisfied that it is necessary to do so in public interest, that the provisions of this Act shall be applicable to the recovery of amounts due from any person or class of persons to any specified institution or any class or classes of institutions, and thereupon all the provisions of this Act shall be applicable to such recovery."

It is common case of the parties that S.R.O. No. 691 of 1988 was issued on 7th June, 1988 under S .71 of the Revenue Recovery Act declaring that the provisions of the said Act shall be applicable to the recovery of amounts due from any person or class of persons to the Board.

6. The argument of the learned Counsel for the appellant is that in view of the provisions of Section 10 of the Act read with Section 68 of the Revenue Recovery Act, arrears of the amount due from the employer to the Board together with interest

thereon is recoverable in the same manner as an arrear of public revenue due on land and therefore all the provisions of the Revenue Recovery Act would apply and the appellant would be entitled to recover the amount by issuing a warrant for the arrest of the defaulter which is one of the modes of recovery. The learned Counsel for the employer, on the other hand, contended that Section 10 only provides that any amount due from an employer under the Act could be recovered in the same manner as an arrear of public revenue due on land and that it does not declare the arrears under the Act as arrears of public revenue due on land and therefore the provisions of the Revenue Recovery Act would not be applicable. The argument is that if the arrears under the Act were to become arrears of public revenue due on land, the provisions of Cl.(j) of S,2 of the Revenue Recovery Act ought to have been amended to include the arrears due from an employer under the Act. Since this has not been done, it is urged that the arrears due under the Act cannot be recovered under the Revenue Recovery Act.

7. We have given our thoughtful consideration to the rival contentions of the parties and are of the view that there is merit in what is contended on behalf of the appellant in the Writ Appeal. Section 10 of the Act provides that the arrears due from an employer under the Act could be recovered together with interest thereon "in the same manner as an arrear of public revenue due on land". The words "in the same manner" clearly suggest that the authorities seeking to recover the arrears would follow the same procedure which they would follow while recovering the arrears of public revenue due on land as provided in the Revenue Recovery Act. In other words, the Act has declared that the arrears recoverable thereunder could be recovered by the procedure followed under the Revenue Recovery Act. It is true that the term "public revenue due on land" has been defined in Cl.(j) of Section 2 of the Revenue Recovery Act and that the amounts due under the Act do not fall within this definition but that does not mean that the amount due under the Act cannot be recovered under the Revenue Recovery Act. When Section 10 of the Act declares that the arrears due from the employer under the Act could be recovered in the same manner as arrears of public revenue due on land, it follows that all the provisions of the Revenue Recovery Act would become applicable. The Revenue Recovery Act has been enacted not only to recover "arrears of public revenue due on land" but also "all sums declared by any other law for the time being in force to be recoverable as arrears of public revenue due on land or land revenue". Section 10 having made this declaration would make the provisions of the Revenue Recovery Act automatically applicable. Moreover, u/s 71 of the Revenue Recovery Act, the State Government issued S.R.O. No. 691 of 1988 dated 7th June 1988 declaring that the provisions of the Revenue Recovery Act shall be applicable to the recovery of amounts due from any person or class of persons to the Board under the Act. With the issuance of this notification, all amounts due under the Act can be recovered by following the procedure prescribed under the Revenue Recovery Act because Section 71 of the Revenue Recovery Act provides that upon a declaration being made under this

provision, "all the provisions of this Act shall be applicable to such recovery". The words "all the provisions of this Act shall be applicable to such recovery" were inserted only to obviate the necessity of amending the other provisions of the Revenue Recovery Act to recover the amounts declared to be recoverable under the Revenue Recovery Act. It would follow that Cl.(j) of Section 2 of the Revenue Recovery Act would not require any amendment and that this clause will be deemed to include the arrears due from the employer under the Act and such arrears will partake the character of "arrears of public revenue due on land" because of the declaration u/s 71 of the Revenue Recovery Act. If the argument of the employer was to be accepted that even after the declarations made u/s 10 of the Act and u/s 71 of the Revenue Recovery Act, Cl.(j) of Section 2 of the Revenue Recovery Act had to be amended to include the amounts due from an employer under the Act before the same could be recovered under the Revenue Recovery Act, then the declarations made will have no meaning. This could not be the intention of the Legislature. We have, therefore, no hesitation in holding that the arrears due from the employer under the provisions of the Act are arrears of public revenue due on land which could be recovered by resorting to the provisions of the Revenue Recovery Act. The view that we have taken finds support from a Division Bench Judgment of this Court in Subhadra v. State of Kerala (1995 (1) KLT 32) and also by a Single Bench judgment of this Court in Baby v. State of Kerala and Ors. 1981 KLT 510.

For the reasons recorded above, the Writ Appeal succeeds and the same is allowed. The order of the learned Single Judge taking a contrary view is set aside and O.P. No. 1213 of 1998 dismissed. W.P.(C) No. 9677 of 2004 in which the notice issued under the Revenue Recovery Act for the recovery of arrears due from the employer in pursuance of the provisions of the Act is under challenge is also dismissed leaving the parties to bear their own costs in both the cases.