

(1995) 09 KL CK 0052**High Court Of Kerala****Case No:** O.P. No. 1389 of 1990

Janardana Saralaya and Others

APPELLANT

Vs

Spl. Deputy Tahsildar and Others

RESPONDENT

Date of Decision: Sept. 12, 1995**Acts Referred:**

- Kerala Revenue Recovery Act, 1968 - Section 12, 9, 9(d)

Hon'ble Judges: B.N. Patnaik, J**Bench:** Single Bench**Advocate:** U.P. Kunikullaya, for the Appellant; V.K. Muhammed Youseff), for the Respondent**Final Decision:** Allowed

Judgement

B.N. Patnaik, J.

The petitioners, who are agriculturists, pray for a direction to quash Exts. P4 to P8 notices issued u/s 12 of the Kerala Revenue Recovery Act, by which the respondent - Tahsildar has notified that the P.V.C. pipes and the arecanuts attached on 31-10-1989 shall be sold in public auction. The petitioners had borrowed loans from the Agricultural Land Development Bank, Hosdurg, to purchase some agricultural equipments. Their only source of livelihood is the income derived from the agricultural operations. They defaulted in the repayment of loan. They intimated the concerned authorities by Exts. P1 to P3 that on account of failure of crops due to vagaries of monsoon and cyclonic weather, they were not in a position to repay, the same. But, the respondent - Tahsildar attached the properties and decided to sell them to recover the loan amount.

2. It is contended by the petitioners that the articles sought to be sold as per the notices Exts. P4 to P8 are implements of husbandry and they are essential for the irrigation of their lands. The P.V.C. pipes are used for the purpose of channelising water from the main water pump to the agricultural fields. They are therefore

exempted from attachment and sale u/s 9(d) of the Kerala Revenue Recovery Act, 1968, hereinafter referred to as the Act. Further, the petitioners filed a petition before the respondent on 9-2-1990 (Ext. P9) to release the same from attachment. But, the respondent did not pass any orders. Hence the petitioners have prayed that the sale notices may be quashed and the respondent may be directed to dispose of Ext. P9 representation.

3. The learned Government Pleader contended that the P.V.C. pipes were not being used for channelising water at the time of attachment. They were stored in the houses of the petitioners and as such the same cannot be treated as implements of husbandry. It is also contended that the third item of the seized articles being arecanuts are not the implements of husbandry and as such the same may not be directed to be released from attachment.

4. The learned counsel for the petitioners has fairly conceded that the arecanuts being not implements of husbandry may not be released from attachment and he has no objection to the same being sold in public auction. But, he has strongly urged that the P.V.C. pipes being agricultural implements are not at all liable to be attached.

5. The short point that arises for consideration, therefore, is whether the P.V.C. pipes belonging to the petitioners, who are admittedly agriculturists, can be said to be implements of husbandry and if so whether the attachment of the same is justified.

6. Section 9 of the Act contemplates *inter alia* that the implements of husbandry shall not be attached. It lays down as follows:

9. Attachment not to be excessive and certain articles not to be attached - The attachment shall not be excessive, that is to say, the property attached shall, as nearly as possible, be proportionate to the amount of the arrear; and it shall not include

.....

(d) implements of husbandry and one-fourth the number of ploughing cattle, subject to a minimum of one pair.

7. The words "implements of husbandry" mean apparatus, instruments and other implements used for the purposes of farming or cultivation or for agricultural operation. Irrigation of fields is absolutely essential for better cultivation and therefore, it can be said that any implement which is an instrument or an apparatus for channelising the water for irrigating the field is an implement of husbandry.

8. In *Kuttiali v. Agri. Income tax Officer, Ponnani & Others* (1974 KLT 137) this court observed that a pump set used by an agriculturist for watering his fields would be an "implement of husbandry". Therefore the pump set attached falls under clause (d) of section 9 of the Act and is not therefore, attachable. Similarly, a Full

Bench of the Madhya Pradesh High Court in Nar Singh Vs. Kamandas and Another, observed thus:

....the attached electric motor pump belonging to the judgment - debtor, who is an agriculturist, which has been fitted in his well situated in agricultural field for irrigating the fields is an implement of husbandry of the judgment debtor and is liable to be released from the attachment.

9. It is common knowledge that without the help of P.V.C. pipes no water can be channelised from a water pump for the purpose of irrigation. It is an integral part of a water pump. Since there can be no doubt that without the use of the pipes, the pump set cannot be utilised for irrigation purposes, I am of the opinion that the P.V.C. pipes used for irrigation are implements of husbandry. No case is made out by the respondent that the seized pipes were not used for agricultural purposes or that they were kept for some purposes other than the purpose of using it for agriculture. The words used in Section 9(d) of the Act are "implements of husbandry". If an instrument is capable of being used as an implement of husbandry, it comes within the purview of section 9(d) of the Act whether or not at the time of attachment it has been put to actual use. The seized P.V.C. pipes being the implements of husbandry are not liable to be attached even if they were stored elsewhere for its use as and when necessary.

10. As has been found above, the legality of attachment of arecanuts cannot be questioned as admittedly they are not implements of husbandry.

11. For the reasons stated above, I find that item Nos. 1 and 2 mentioned in Exts. P1 to P4, viz. the P.V.C. pipes used by the petitioners as agriculturists for watering their fields are not liable to be attached, as they come under clause (d) of section 9 of the Act. But, the attachment of item No. 3 viz. the arecanuts, being valid, are liable to be sold. The respondent is directed to dispose of the representation Ext. P9 after giving an opportunity of being heard to the affected parties within three months from the date of receipt of a copy of this judgment, if not already disposed of, in the light of the observations made above.

Original Petition is allowed in part. No costs.