2024:KER:21159

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

TUESDAY, THE 19TH DAY OF MARCH 2024 / 29TH PHALGUNA, 1945

WA NO. 262 OF 2024

AGAINST THE JUDGMENT DATED 6.2.2024 IN WP(C) NO.2634 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

1. N. SATHEESH KUMAR,
   AGED 62 YEARS
   PROPRIETOR, KUMAR CASHEW EXPORTS, PUNALUR, KOLLAM DISTRICT, PIN - 691305
2. RANI SATHEESH KUMAR,
   AGED 50 YEARS
   WIFE OF N. SATHEESH KUMAR,ROHINI, VETTIPUZHA SOUTH, PUNALUR, PIN - 691305

   BY ADVS.
   V.DEVANANDA NARASIMHAM
   SHEEJA D.K.

RESPONDENTS/RESPONDENTS:

1. THE ASSISTANT COMMISSIONER,
   KSGST DEPARTMENT, MINI CIVIL STATION, KOTTARAKKARA, KOLLAM, PIN - 691506
2. THE TAHSILDAR,
   TALUK OFFICE, PUNALUR, KOLLAM DISTRICT, PIN - 691305

   SR GP-V.K.SHAMSUDHEEN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Dr. Kauser Edappagath, J.

The 1st appellant is a registered dealer under the KVAT/KGST Act on the rolls of the 1st respondent. He is engaged in processing of imported and local raw cashew nuts and exporting interstate and intra-state sales of cashew kernels and cashew shells. He is also running a bar-attached hotel at Punalur in Kollam District. The 2nd appellant is the wife of the 1st appellant.

2. The 1st appellant is in arrears of KVAT to the tune of ₹1,38,73,601/- for the period from 2010-2011 to 2016-2017. Revenue recovery proceedings were initiated against him to realise the said tax due, and Ext.P2 demand notice was issued. The appeals filed against the assessment order before the statutory appellate authority are pending. In the meanwhile, the 2nd respondent attached the residential property jointly owned by the appellants situated in Re.Sy.No.379/15K, measuring 14.16

Ares, to recover the tax dues of the 1st appellant. The 1st appellant gave Exts.P1 and P3 requests to the 2nd respondent to shift the attachment of residential property mentioned above co-owned by the 2nd appellant to his own landed properties. Since the 2nd respondent did not consider those requests, the above writ petition was filed. The learned Single Judge dismissed the writ petition. It is challenging the said judgment; the appellants are before us.

3. We have heard Smt.Devananda Narasimham, the learned counsel for the appellants and Sri.V.K.Shamsudheen, the learned Senior Government Pleader.

4. The property attached by the 2nd respondent is the residential property owned by the appellants. The total amount due to the revenue towards tax arrears would come to ₹1,38,73,601/-. The 1st appellant offered three properties owned by him to substitute the property under attachment. When the appeal came up for hearing, we directed the counsel for the appellants to produce the valuation certificate of the properties sought to be substituted to ascertain its value. Accordingly, on

the last hearing date, counsel for the appellants handed over to us a valuation certificate in respect of the property owned by the 1st appellant situated in Sy.Nos.599/1/287/A, 599/1/58A, 599/1/89 of Valacodu Village having an extent of 0.08.49 hectares and a building thereon in Valacodu Village in Punalur Municipality. The certificates were issued by the Village Officer, Valacodu, and the Assistant Executive Engineer, Local Self Government Department, Kozhikode, respectively. The certificates indicate that the value of the land would come to ₹72,56,403/- and the value of the building would come to ₹1,03,17,323/-. The valuation is much more than the amount allegedly due to revenue. The learned Government Pleader sought time to verify these facts with the Government.

5. The learned Government Pleader today, on instructions submitted, that the value of the building would come to ₹59,00,000/- and the value of the property would come to ₹65,00,000/-. Taking into account the said submission as well as the valuation certificates furnished by the learned counsel for the appellants, we are of the view that the property now offered as

security is sufficient to satisfy the tax amount due from the 1st appellant. Hence, the 2nd respondent is directed to release the attached residential property of the appellants situated in Re.Sy.No.379/15K having an extent of 14.16 Ares by accepting the property owned by the 1st appellant measuring 0.08.49 hectares and a building situated therein comprised in Sy.Nos.599/1/287/A, 599/1/58/A, 599/1/89 of Valacodu Village as security for the amount due from the 1st appellant to the revenue towards tax arrears.

Writ appeal is disposed of as above.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp

APPENDIX OF WA 262/2024

PETITIONER ANNEXURES

Annexure- A	**TRUE COPY OF THE ORIGINAL SALE DEED NO.1877/2010 DTD 21-05-2010 OF 8-49 ARES OWNED BY 1ST APPELLANT.**
Annexure- A1	**TRUE COPY OF ENCUMBRANCE CERTIFICATE NO.1852/24 DATED 23-02-2024 OF ANNEXURE - A**
Annexure- A2	**TRUE COPY OF LAND TAX PAID RECEIPT KL02061507196/2023 DATED 17-10-2023 OF ANNEXURE-A**
Annexure-B	**TRUE COPY OF THE ORIGINAL SALE DEED NO.3095/2007 DTD 31-08-2007 OF 2-43 ARES OWNED BY 1ST APPELLANT**
Annexure-B1	**TRUE COPY OF ENCUMBRANCE CERTIFICATE NO.1853/24 DATED 23-02-2024 OF ANNEXURE-B.**
Annexure -B2	**TRUE COPY OF LAND TAX PAID RECEIPT KL02061507197/2023 DATED 17-10-2023 OF ANNEXURE-B.**
Annexure -C	**TRUE COPY OF LOCATION SKETCH NO.367/16(3) AND LOCATION CERTIFICATE NO. 367/16(4) DATED 16-04-2016 OF 10-92 ARES LAND STATED IN ANNEXURE-A AND ANNEXURE-B.**
Annexure-D	**TRUE COPY OF THE ORIGINAL GIFT DEED NO.572/2006 DATED 14-02-2006 OF 7-69 ARES OWNED BY 1ST APPELLANT.**
Annexure-D1	**TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO.1854/24 DATED 23-02-2024 OF ANNEXURE-D.**
Annexure-D2	**TRUE COPY OF LAND TAX PAID RECEIPT KL02061508097/2023 DATED 17-11-2023 OF ANNEXURE-D.**