

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 30TH DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944

WA NO. 864 OF 2022

AGAINST ORDER/JUDGMENT DATED 9.8.2019 IN WP(C) 24799/2018

OF HIGH COURT OF KERALA

APPELLANTS/R1 TO R3

- 1 STATE OF KERALA REP. BY CHIEF SECRETARY
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 2 PRINCIPAL SECRETARY
REVENUE DEPARTMENT, 1ST FLOOR, MAIN BLOCK,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 3 DISTRICT COLLECTOR
COLLECTORATE, KANNUR, PIN - 670002
BY ADVS.
GOVERNMENT PLEADER
SHRI.S.RENJITH, SPL. G.P. TO A.A.G()
SHRI.K.P.JAYACHANDRAN, ADDL. ADVOCATE GENERAL()

RESPONDENTS/PETITIONER & R4-R6

- 1 HDFC BANK LIMITED REP. BY ITS AUTHORIZED OFFICER,
JOHN MATHEW
CHOICE TOWER, MANORAMA JUNCTION, ERNAKULAM, PIN -
682016
- 2 MOIDEENKUTTY K P
S/O KUTTIALI, SREEKANDAPURAM, THALIPARAMBA,
KANNUR, PIN - 670631
- 3 KADEEJA P.S.
W/O MOIDEENKUTTY K.P, SEERAKATH, SREEKANDAPURAM,
THALIPARAMBA, KANNUR, PIN - 670631

4 ANIZ K
 S/O MOIDEEN K.V., NOOR MAHAL, SYED NAGAR,
 THALIPARAMBA P O, KANNUR, PIN - 670631
 BY ADVS.
 SRI.T.RAJESH, SC, HDFC BANK LTD.
 V.T.MADHAVANUNNI
 SATHISAN P., SC FOR R1
 DONA AUGUSTINE (K/180/2016)
 V.A.SATHEESH
 ANAND V.S

OTHER PRESENT

S.RENJITH -SPL GP

 THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
30.09.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

WA No.864 of 2022

Dated : 30th September, 2022

JUDGMENT

Vinod Chandran, J.

The State is in appeal against a judgment of the learned Single Judge, which interfered with an order, issued by the Private Secretary to a Minister, granting installments in a recovery initiated under the Kerala Revenue Recovery Act (for brevity 'R.R. Act') . The order was challenged as totally without jurisdiction and the learned Single Judge came heavily down on the action, finding it to be totally illegal, arbitrary and unfair.

2. By Ext.P2 the recovery initiated was deferred on conditions of a lump sum payment of 10% of the demand and 50 subsequent monthly installments. Admittedly, there was default committed in complying with the installments granted at Ext.P2. Subsequently, by Annexure-IV dated 19.8.2018, revenue recovery proceedings were again kept in abeyance for one month and re-scheduled with 60 installments granted, to pay off the balance amounts, from 14.9.2018. Even now, the amounts have not been fully paid up as per the installments granted. Last time when we took up the matter, we directed the learned Government Pleader to inform

us as to the installments paid as per the order issued and also the authority under which such orders were issued by the Private Secretary of the Minister (Ext.P2) and the Additional Chief Secretary (Annexure-IV).

3. Learned Special Government Pleader, Sri.S.Renjith, appeared for the Government and produced before us the files, as also, a statement of the installments paid. We also heard learned Counsel Sri. P.Sathisan appearing for the respondent-Bank. Special Messenger was served on the petitioner in the writ petition on 24.9.2022, but there is no appearance. It is submitted that even in the writ petition, there was no appearance for the party respondents, who are the defaulters.

4. We have been shown a statement of deposits made as per the installments granted, as per the instructions supplied by the Deputy Collector (RR), Collectorate, Kannur dated 27.9.2022, which is as follows:

Date	Arrears Amount	Collection Charge	DNF	Receipt No.	Amount and date on which the same was remitted at HDFC, Taliparamba Branch
04/17/18	2647969	198598	150	14995/14995-454	2647969 Dt 17.4.2018
05/16/18	475774	35674		16437/1643689	475774 Dt

					17.5.2018
06/20/18	475774	35674		17514/175139 8	475774 Dt 20.6.2018
07/18/18	475774	35674		18566/185657 5 KL1301440069 5/ 2018 (cc)	475774 Dt 19.7.2018
09/17/18	304022	15201		18566/185658 7 KL1301440199 2/ 2018 (cc)	304022 Dt 18.9.2018
Total	43,79,313	3,20,821	150		

It is clear from the above that, after making four installments as per Ext.P2 order, again the defaulter approached the Additional Chief Secretary and obtained an order re-scheduling the payments. Then, after one single installment, there has been no payment made.

5. In this context, we have examined the R.R.Act as to the source of power, to keep the revenue recovery initiated, in abeyance. Insofar as the revenue recovery proceedings, the visitorial jurisdiction is conferred on the Commissioner of Land Revenue and the Government under Section 83 of the Kerala Revenue Recovery Act, 1968. The power conferred under sub-section (1) can be invoked by the Commissioner of Land Revenue *suo motu* or on an application by an interested person. The power of the Government, again either *suo motu* or on an application, is to call for the report of any proceeding before the Commissioner of Land Revenue passed under sub-section

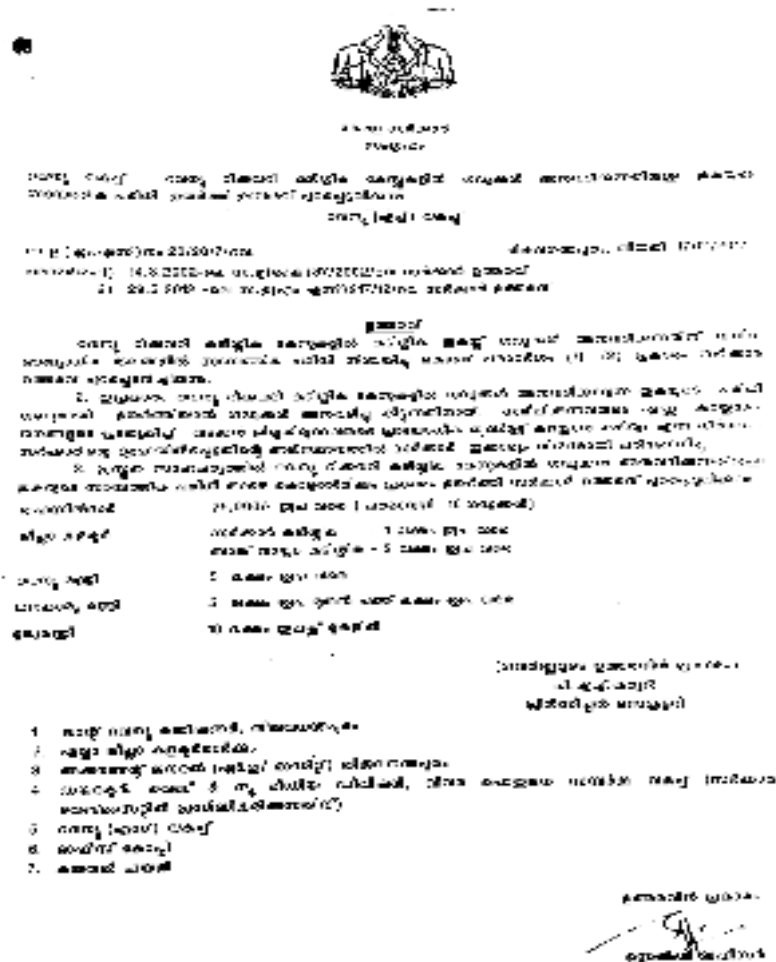
(1). The provisos under both sub-Sections (1) and (2) specifically speak of the mandate of a notice to the affected party before making such an order.

6. In the present case, we see that Ext.P2 is an order made by the Private Secretary of the Revenue Minister; obviously without any notice to the Bank. The counter affidavit filed before the learned Single Judge indicates that the same was approved by the Revenue Minister, the Finance Minister and the Chief Minister. We also notice that the order has been issued by the Private Secretary on condition of the same being approved by the Finance Minister and the Chief Minister. There is no such procedure as per the R.R Act. Neither the Private Secretary nor the Ministers, made mention of in the order, have any authority, insofar as the proceedings initiated under the Act. There is a specific power of revision conferred on the Land Revenue Commissioner and on an order being passed by the said authority, the Government has also been conferred with such power of revision. In the above circumstances, we are of the opinion that there is absolutely no provision under the R.R Act conferring power on the Private Secretary to the Minister or on the Ministers or even the Additional Chief Secretary to make such an order deferring revenue recovery and also granting further installments.

7. The Legislature having brought out an act enabling recovery and also brought within its ambit the defaults made by

persons availing loans from financial institutions by way of a notification, the officers under the Government cannot cause interference to such proceedings sanctioned by the statute.

8. The learned Special Government Pleader has produced before us a Government Order which we extract hereunder:



9. The Executive Government has been conferred with no such authority under the enactment ; nor does the Rules confer any such power on the Government to designate Officers or the Ministers

of the Government to interfere with the revenue recovery proceedings initiated under the R.R Act.

10. Having said that, we have to look at whether the revenue recovery proceedings could have been initiated at all, insofar as the instant default is concerned. The learned counsel for the respondent/Bank has produced before us the loan application which indicates that the loan is availed for agricultural purposes and the total sanctioned amount is Rs.3 Crores. The recovery sought for was of an amount of Rs.2,23,16,583/-. The defaulted amounts in loans for agricultural purposes, is enabled recovery under the R.R Act, by SRO No.797/79 dated 26th June 1979 notified under Section 71 of the Kerala Revenue Recovery Act empowering the Government to declare the Act applicable to any institution or class of institutions for amounts due from any person or class of persons.

11. Unique Butyle Tube Industries v. U.P.Financial Corporation (2003) 2 SCC 455, was a case in which recovery was attempted under the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972. The Hon'ble Supreme Court considered the effect of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDB Act) on the modes of recovery enabled under the UP Act and also the State Financial Corporations Act. The learned Judges found that Section 17 confers jurisdictional powers and authority on the Tribunal constituted under the enactment to entertain and decide

applications from the Banks and Financial Institutions for recovery of debts due to such Banks and Financial Institutions. Section 18 of the RDB Act bars jurisdiction of any other Court or authority exercising any such jurisdiction, except the Supreme Court or the High Court, in relation to the matters specified in Section 17. More importantly, Section 34 gives over-riding effect to the RDB Act and sub-section (2) provides specific exemptions to the specified enactments. It was the finding of the learned Judges of the Hon'ble Supreme Court that Section 34 takes away the enabling power of recovery under the UP Act, which is akin to the Kerala Revenue Recovery Act. However, sub-section (2) retains such powers to be exercised under the enactments specified therein. In such circumstances, the RR Act cannot be invoked for recovery of debts above Rs.10 Lakhs as on the enactment of the RDB Act and from 2016, those exceeding Rs.20 Lakhs; as later notified by the Central Government.

12. The validity of the recovery is not a subject matter arising in the above case, and hence, we do not say anything further on that aspect. But we cannot but hold that the impugned order in the writ petition could not have been issued by the Private Secretary, even with the approval of the Ministers; which would frustrate the legislative mandate furthered by notifications issued by the executive government. Be that as it may, we have to caution the State from initiating any recovery of debts due under Section 17 of the RDB Act,

which exceeds Rs.20 Lakhs, going by the binding precedent in Unique Butyle Tube Industries (supra).

13. The learned counsel for the Bank points out that sub-section (2) of S.69 of the RR Act speaks of a requisition from the person seeking recovery and sub-section (3) speaks of the satisfaction of the District Collector that the demand is recoverable under the Act. According to him, the satisfaction is dependent only on; whether the amounts are recoverable under the Act which specifically is with regard to a notification under Section 71, enabling such recovery. It is also asserted that the defaulter never disputed the amounts demanded and on the other hand, admitted it by seeking installments. We are unable to accede and restrict the meaning of the words employed in sub-section (3); especially in the teeth of a binding decision of the Hon'ble Supreme Court to the effect that the debts recoverable under the RDB Act cannot be attempted to be recovered under any enactment not specifically exempted under Section 34(2) of the RDB Act. This would be *de hors* any dispute raised by the defaulter. The District Collector would be bound by such declaration; for which we notice Article 141 of the Constitution of India. While cautioning the Government and its officers from causing such illegal interference to the statutorily permissible recovery proceedings, we also express a caution from initiating recovery which are not permissible.

14. The amounts recovered from the defaulter has been apportioned to the dues and the collection charges, on which there shall be no interference caused as of now. We, all the same, find no reason to interfere with the findings of the learned Single Judge and hence the Appeal would stand dismissed.

Sd/-
K.VINOD CHANDRAN
JUDGE

Sd/-
C.JAYACHANDRAN
JUDGE

jg/Mrcs xxx

APPENDIX OF WA 864/2022

PETITIONER ANNEXURES

- ANNEXURE I TRUE COPY OF THE REPRESENTATION DATED 15.03.2018 OF MOIDEENKUTTY BEFORE THE REVENUE MINISTER OF KERALA ALONG WITH ENGLISH TRANSLATION.
- ANNEXURE II TRUE COPY OF THE ORDER NO. 513/RR/2018/M(REV) DATED 16.03.2018 OF THE OFFICE OF THE MINISTER FOR REVENUE, THIRUVANANTHAPURAM ALONG WITH ENGLISH TRANSLATION.
- ANNEXURE III TRUE COPY OF THE REPRESENTATION DATED 04.07.2018 OF MOIDEENKUTTY TO THE REVENUE MINISTER ALONG WITH ENGLISH TRANSLATION.
- ANNEXURE IV TRUE COPY OF THE ORDER NO. REV-H3/25/2018-REV DATED 19.08.2018 OF ADDITIONAL CHIEF SECRETARY, REVENUE DEPARTMENT TO DISTRICT COLLECTOR, KANNUR ALONG WITH ENGLISH TRANSLATION.

RESPONDENT ANNEXURES

- Annexure R1(a) TRUE COPY OF THE LOAN APPLICATION DATED 01.04.2014.