

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

FRIDAY, THE 15TH DAY OF SEPTEMBER 2023 / 24TH BHADRA, 1945

WP(C) NO. 26073 OF 2023



PETITIONER/S:

SHAHEENA

BY ADVS.
ANSU VARGHESE
K.J. JOSEPH (ERNAKULAM)
KRISHNANUNNI G.B.
SUNIL G.P

RESPONDENT/S:

- 1 TAHSILDAR
TALUK OFFICE TIRURANGADI MALAPPURAM DISTRICT, PIN -
676306
- 2 VILLAGE OFFICER
VILLAGE OFFICE TENHIPALAM TENHIPALAM POST MALAPPURAM
DISTRICT, PIN - 673636
BY ADV GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner has purchased 4.58 Ares of property comprised in Sy. No. 226/6 of Thenhippalam Village from Sri. Ummerkoya, S/o Ponnachan Ahamed Kutty as per Ext. P1 sale deed of 2005. Pursuant to the purchase of the said land, mutation was effected and tax was paid up to 2011 as evident from Exts. P2 to P4. The petitioner had also constructed a house therein and is living with her family. When the petitioner attempted to remit the land tax for the subsequent period, the 2nd respondent village officer refused to accept the same. The 2nd respondent vide Ext.P6 communication informed the petitioner that there is an order of attachment against the property by the



Judicial First Class Magistrate Court, Parappanagadi in C.C No.476/1996 and the property was sold to the petitioner while the attachment was in force and hence land tax cannot be accepted. According to the petitioner, the 2nd respondent cannot refuse to accept land tax on the ground of an order of attachment by the criminal Court. Accordingly, this writ petition is filed to quash Ext. P6 communication and for direction to the 2nd respondent to accept the land tax.

2. This Court, by order dated 22.08.2023, called for a report from the Judicial First Class Magistrate Court, Parappanagadi as to whether there are any proceedings now pending in C.C No. 476/1996 before that Court. Pursuant to the said order, the Judicial First Class Magistrate Court, Parappanagadi



has reported as follows;

“I may submit that the above referred case (CC.476/1996) was registered by the Sub Inspector of Police Thenhipalam Police Station as Cr.No.192/1992 u/s 323, 324 r/w 34 of the IPC arraying (1) Ummer S/o. Ahammed Kutty, Kundolil House, Neerolpalam, Thenhipalam.PO., and (2) Ahammed Kutty, S/o Kunhali, Kundolil House, Neeropalram, Thenhipalam.P.O., as accused Nos.1 and 2 respectively. The above case was taken on file as CC. 34/1993 on the file of this Court and this Court vide judgment dated 04.07.1996 convicted accused No.2 (Ahammed Kutty, S/o Kunhali) and sentenced him to undergo simple imprisonment for one month and to pay a fine of Rs.500/- In default of payment of fine the accused shall undergo simple imprisonment for a period of seven days. He is acquitted for the offence u/s 324 of the IPC. Case against accused No.1



(Ummer S/o Ahammed Kutty) is split up and refiled as CC 476/1996 as he was absconding. Since the accused No.1 (Ummer S/o Ahammed Kutty) is absconding the case was transferred to LP register as LP No.37/2003. Subsequently the accused therein (Ummer S/o Ahammed Kutty) appears before this Court as per the direction of the Hon'ble High Court of Kerala in CrI. M.C. No.2659/2005. Consequently the case was again refiled as CC No.685/2005. Unfortunately the accused (Ummer S/o Ahammed Kutty) again absconded and the case against him was transferred to LP register as LP No.68/2008. Subsequently the accused appears before this Court and the case against him was refiled as CC. 1224/2014. On 21.04.2018 the accused (Ummer S/o Ahammed Kutty) was pleaded guilty to the charge and consequently this Court sentenced him to pay a fine of Rs.1000/- for the offence u/s



323 of the IPC and to pay a fine of Rs.2500/- for the offence u/s 324 of the IPC. In default of payment of fine the accused has to undergo simple imprisonment for a period of one month each. Out of the above fine amount, an amount of Rs.2500/- shall be given as compensation to CW1 (Defacto complainant).

Hence it is most respectfully submits that there is no pending proceedings in the above case.”

3. Heard the learned counsel for the petitioner and the learned Government Pleader for respondents.

4. The Hon'ble Supreme Court, in **Vimalaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Others [2008 (2) KHC 396]**, while considering the scope of Section 82 of the Code of Criminal Procedure, held as follows:-



“32. The provisions contained in S.82 of the Code of Criminal Procedure were put on the statute book for certain purpose. It was enacted to secure the presence of the accused. Once the said purpose is achieved, the attachment shall be withdrawn. Even the property which was attached, should be restored. The provisions of the Code of Criminal Procedure do not warrant sale of the property despite the fact that the absconding accused had surrendered and obtained bail. Once he surrenders before the Court and the Standing Warrants cancelled, he is no longer an absconder. The purpose of attaching the property comes to an end. It is to be released subject to the provisions of the Code. Securing the attendance of an absconding accused, is a matter between the State and the accused. Complainant should not ordinarily derive any benefit therefrom. If the property is to be sold, it vests with the State subject to any order passed under S.85 of the Code. It cannot be a subject matter of execution of a decree, far less for executing the decree of a third party, who had no right, title or interest thereon.”

Referring to the said decision in **Vimalaben** (supra), and the statutory provisions, this Court in **Abdul Khadar v. State of Kerala [2015 (5) KHC 361]** held that, once the person, against whom the



proclamation was issued and whose property was attached, surrenders before the Court and the standing warrants are cancelled, he is no longer an absconder and therefore, the purpose of attachment of the property comes to an end. In paragraph 13, this Court held as follows:-

“13. S.85(3) of the Code does not say that a formal application is required to be filed for getting the attachment lifted or getting the property or the sale proceeds, as the case may be, delivered. Any application is not contemplated for the said purpose and therefore, the petitioner could not have been found fault with in not filing an application for the same. The said position is made clear in Babu M. C. v. State of Kerala and Another, 2011 (3) KHC 244 : 2011 (3) KLT 383 : 2011 (2) KLD 109: ILR 2011 (3) Ker. 561 : 2011 (3) KLJ 616. In such circumstances, it is the duty of the Court to take note of the fact whether there were sufficient grounds for believing that the said accused did not abscond or conceal himself for the purpose of avoiding execution of the warrant. Otherwise, a formal application would have been specified by the Statute. In the absence of any such application, in case of the



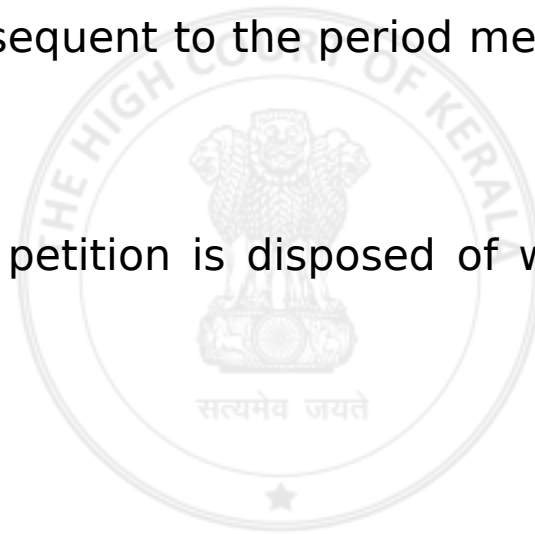
surrender of such an accused or arrest and production before Court within the period mentioned in S.85(3) CrPC, the Court has to consider whether there are materials to show that he had absconded or deliberately concealed himself for avoiding the execution of the warrant.”

4. From the report of the Judicial First Class Magistrate Court, Parappanagadi, it can be seen that the purpose for which the attachment was ordered has been achieved. The accused, Sri. Ummar, from whom the petitioner had purchased the property, surrendered before the Court and pleaded guilty and accepting his plea, he was sentenced to pay fine. The purpose of attachment has thus come to an end and the attachment is automatically lifted. It is pertinent to note that no sale of attached property was conducted under Section 85 of the Code. Accordingly, following the dictum in **Vimalaben**



(supra), it is declared that there is no attachment in force in respect of the property covered by Ext. P1 and the revenue authorities are directed to accept land tax from the petitioner in respect of the said property subsequent to the period mentioned in Ext. P4.

The writ petition is disposed of with the above direction.



MURALI PURUSHOTHAMAN
JUDGE



APPENDIX

PETITIONER'S EXHIBITS

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|------------|--|
| Exhibit P1 | TRUE COPY OF THE SALE DEED NO.4738/2005 OF SRO TEHNIPPALAM |
| Exhibit P2 | THE TAX RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 17.04.2006 |
| Exhibit P3 | THE TAX RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 11.02.2008 |
| Exhibit P4 | THE TAX RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 26.04.2011 |
| Exhibit P5 | THE TRUE COPY OF PETITION FILED BY THE PETITIONER BEFORE 2ND RESPONDENT DATED 10.06.2022 |
| Exhibit P6 | TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DATED 12.07.2022 |

THE HIGH COURT OF KERALA
CERTIFIED COPY