



2024:KER:62576

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

FRIDAY, THE 16TH DAY OF AUGUST 2024 / 25TH SRAVANA, 1946

WP(C) NO. 35389 OF 2023

PETITIONER:

BENZY MARTIN
AGED 49 YEARS
W/O MARTIN SEBASTIAN 2/766,
CITADEL HOUSE C NAGAR,
APSARA GARDEN NADATHARA,
THRISSUR, PIN - 680751

BY ADVS.
ALBIN A. JOSEPH
SIDHARTH O.
SUSANTH SHAJI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY,
DEPARTMENT OF REVENUE SECRETARIAT,
TRIVANDRUM
- 2 THE DISTRICT COLLECTOR
THRISSUR DISTRICT, 1 ST FLOOR,
CIVIL STATION CIVIL LINES RD,
KALYAN NAGAR, AYYANTHOLE,
THRISSUR, PIN - 680003
- 3 THE SPECIAL DEPUTY TAHSILDAR (RR)
KSFE, THRISSUR, 2ND FLOOR,
SIVA SHATHI BUILDING,
COCHIN DEVASOM BOARD, ROAD NORTH,
THRISSUR, PIN - 680001



2024:KER:62576

W.P.(C) No.35389/2023 & connected cases

: 2 :

4 THE KERALA STATE FINANCIAL ENTERPRISES LTD.
REPRESENTED BY ITS MANAGER ST NAGAR BRANCH,
2ND FLOOR, SIVASAKTHI BUILDING,
COCHIN DEVASWOM BOARD,
ROUND NORTH, THRISSUR,
PIN - 680001

BY ADV

SMT.BINDU MOHAN-R4

SMT.RESMI THOMAS-GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 09.07.2024, ALONG WITH WP(C).17839/2024,
17840/2024 AND THE COURT ON 16.08.2024 DELIVERED THE
FOLLOWING:



2024:KER:62576

W.P.(C) No.35389/2023 & connected cases
: 3 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 16TH DAY OF AUGUST 2024 / 25TH SRAVANA, 1946

WP(C) NO. 17839 OF 2024

PETITIONER:

SHINAMMA VARKEY
AGED 60 YEARS
WIFE OF KOCHUMON M. KURIAN,
CHIRAKKATTU HOUSE, MANARCAD,
KOTTAYAM DISTRICT, KERALA,
PIN - 686019

BY ADV LUKE J CHIRAYIL

RESPONDENTS:

- 1 KERALA STATE FINANCIAL ENTERPRISES LIMITED
REPRESENTED BY ITS MANAGER,
MADUKANI CENTRE, MUTTAMBALAM P.O.,
KOTTAYAM DISTRICT, KERALA,
PIN - 686004
- 2 SPECIAL DEPUTY TAHASILDAR (RR)
KERALA STATE FINANCIAL ENTERPRISES LIMITED
MADUKANI CENTRE,
MUTTAMBALAM P.O. KOTTAYAM DISTRICT,
KERALA, PIN - 686004

BY ADVS
SMT.BINDU MOHAN-R1
SMT.RESMI THOMAS-GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 09.07.2024 ALONG WITH WP(C).35389/2023 AND
CONNECTED CASES AND THE COURT ON 16.08.2024 DELIVERED THE
FOLLOWING:



2024:KER:62576

W.P.(C) No.35389/2023 & connected cases
: 4 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

FRIDAY, THE 16TH DAY OF AUGUST 2024 / 25TH SRAVANA, 1946

WP(C) NO. 17840 OF 2024

PETITIONER:

TOM KURIAKOSE
AGED 40 YEARS
SON OF KURIAKOSE, ERUPPAKKATTU HOUSE,
ELAMGULAM, CHENGALAM EAST,
KANJIRAPPALLY, KOTTAYAM DISTRICT,
KERALA, PIN - 686585

BY ADV LUKE J CHIRAYIL

RESPONDENTS:

- 1 KERALA STATE FINANCIAL ENTERPRISES LIMITED
REPRESENTED BY ITS MANAGER,
MADUKANI CENTRE, MUTTAMBALAM P.O.
KOTTAYAM DISTRICT, KERALA,
PIN - 686004
- 2 SPECIAL DEPUTY TAHASILDAR (RR)
KERALA STATE FINANCIAL ENTERPRISES LIMITED
MADUKANI CENTRE,
MUTTAMBALAM P.O. KOTTAYAM DISTRICT,
KERALA, PIN - 686004

BY ADVS
SMT.BINDU MOHAN
SMT.SHEEJA C.S-SR.GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 09.07.2024, ALONG WITH WP(C).35389/2023 AND
CONNECTED CASES, THE COURT ON 16.08.2024 DELIVERED THE
FOLLOWING:



W.P.(C) No.35389/2023 & connected cases
: 5 :

CR

N. NAGARESH, J.

.....
W.P.(C) Nos.35389 of 2023
and 17839 and 17840 of 2024
.....

Dated this the 16th day of August, 2024

J U D G M E N T

~ ~ ~ ~ ~

The petitioners are persons against whom the Kerala State Financial Enterprises Limited has issued notice under the Kerala Revenue Recovery Act, 1968 for recovery of alleged dues from the petitioners. The petitioners seek to declare that the KSFE Limited is not entitled to take recourse to the provisions of the Kerala Revenue Recovery Act, 1968 for recovering amounts covered under Exts.P1 and P2 notices through the machinery of respondents 2 and 3 as it is hit by the provisions of the Chit Funds Act, 1982.



W.P.(C) No.35389/2023 & connected cases

: 6 :

2. The petitioner in W.P.(C) No.35389/2023 has been issued with notice of attachment under Section 36 of the Kerala Revenue Recovery Act, 1968. The notice indicated that an amount of ₹40,77,403/- along with interest of 12%, and 5% processing fee / collection fee is payable by the petitioner. The KSFE is the Requisitioning Authority under the Revenue Recovery Act. The petitioners in W.P.(C) Nos.17839 and 17840 of 2024 are also persons upon whom notices have been issued by the KSFE Limited invoking the provisions of the Kerala Revenue Recovery Act, 1968.

3. The petitioners state that the notice issued at the instance of the KSFE Limited under Section 36 of the Kerala Revenue Recovery Act is not legally maintainable. According to the petitioners, the 4th respondent being engaged in the business of chitty, is governed by the Chit Funds Act, 1982. Chapter 12 of the Chit Funds Act deals with the disputes and arbitration. Section 64 of the Chit Funds Act states that notwithstanding anything contained in any other law for the time being in force, any dispute touching the



W.P.(C) No.35389/2023 & connected cases

: 7 :

management of a chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration. Section 64(3) provides that no Civil Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

4. According to the petitioners, it is clear from Section 64 that the remedy available for the 4th respondent is to approach the Registrar and refer the matter for arbitration. An adjudication with respect to any dispute relating to chit fund business can only be done by the Registrar through arbitration and not by the District Collector under the Revenue Recovery Act.

5. Relying on the judgment of the Hon'ble Apex Court in ***M/s. Sriram Chits and Investments Private Limited v. Union of India and others*** [1993 Supp (4) SCC 226], the counsel for the petitioners pointed out that the Chit Fund Act in pith and substance deals with special contract and consequently falls within Entry 7 of List III of Schedule 7 to the Constitution of India.



6. According to the petitioners, this Court has held in the judgment in ***State of Kerala and others v. M/s. Mar Appraem Kuri Company Limited and another*** [(2012) 7 SCC 106] that the intention of the Parliament in enacting Chit Funds Act was clearly to occupy the entire field falling in Entry 7 of List III. The 1982 Act was enacted as a Central Legislation to ensure uniformity in the provisions applicable to chit fund institutions throughout the country.

7. The Kerala State Financial Enterprises Limited filed counter affidavits in the writ petitions. The KSFE Limited stated that when the petitioners failed to repay the amounts due to the KSFE Limited, the matter was referred to the Special Deputy Tahsildar under Section 69(2) of the Revenue Recovery Act. The petitioners were served with Sections 7 and 34 notices. The petitioners did not raise any grievance then. It is much later when the Section 36 notice was issued that the petitioners have challenged the proceedings.



8. The Kerala State Financial Enterprises Limited stated that Section 64 of the Chit Funds Act only prescribes the method of resolving disputes relating to conduct of chit business. If the subscriber or anyone claiming under him has got any grievance regarding the conduct of the chit, he / she can make a reference to the Arbitrator for resolving the dispute by arbitration. Though the dues to the Kerala State Financial Enterprises Limited is not a public revenue due on land, by a deeming fiction, it is considered so by application of Section 71 of the Revenue Recovery Act and recovery of amounts from any person or class of persons to any specified institution or classes of institution can be considered so. Invoking the provisions of the Revenue Recovery Act, the said amount can be recovered. The writ petitions are therefore only to be dismissed.

9. I have heard the learned counsel for the petitioners and the learned Standing Counsel representing the Kerala State Financial Enterprises Limited.



10. Section 64 of the Chit Funds Act, 1982 provides for resolution of disputes relating to chit business.

Section 64 of the Chit Funds Act, 1982 reads as follows:-

64. Disputes relating to chit business.

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of a chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the following, namely:-

(a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deceased subscriber to a chit;

(b) a surety of a subscriber, past subscriber, or a deceased subscriber.

Explanation:-For the purposes of this sub-section, a dispute touching the management of a chit business shall include-

(i) a claim by or against a foreman for any debt or demand due to him from a subscriber, or due from him to a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber whether such debt or demand is admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a foreman and recovered from the surety owing to the default of the principal borrower, whether such sum or demand is admitted or not; and

(iii) a refusal or failure by a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber to deliver possession to a foreman of land or any other asset resumed by him for breach of conditions of the assignment.

(2) Where any question arises as to whether any matter referred to for the award of the Registrar is a dispute or not for the purposes of sub-section (1), the same shall be decided by the Registrar whose decision thereon shall be final.



W.P.(C) No.35389/2023 & connected cases

: 11 :

(3) No Civil Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

It is evident from Section 64 of the Chit Funds Act that a claim by or against a foreman for any debt or demand due to him from a subscriber will be a dispute touching the management of business, squarely falling within Section 64 of the Act.

11. The issue arising for consideration is whether the Kerala State Financial Enterprises Limited can resort to revenue recovery proceedings for recovery of any amount from subscribers when the Chit Funds Act makes a specific provision under Section 64 for resolution of disputes.

12. The State of Kerala has enacted the Kerala Revenue Recovery Act, 1968 to consolidate and amend the law relating to the recovery of public revenue in the State of Kerala. The Revenue Recovery Act, 1968 makes elaborate provisions for attachment and sale of movable and immovable properties in order to recover public revenue.

13. Section 71 of the Revenue Recovery Act, 1968 empowers the Government to declare the Act applicable



W.P.(C) No.35389/2023 & connected cases

: 12 :

to any institution. Section 71 provides that 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 the Kerala Revenue Recovery 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 thereon, all the provisions of the Act shall be applicable to such recovery.

14. The Government of Kerala has issued Notification SRO No.250/70 dated 16.06.1970 whereby the Kerala State Financial Enterprises Limited has been declared as an institution to which the provisions of the Revenue Recovery Act, 1968 shall be applicable. Once the institution is declared under Section 71, then the amounts due to such institution from any person or class of persons can be recovered as public revenue by a legally deeming fiction.

15. Any mechanism for recovery of public revenue is distinct and different from any law relating to dispute resolution. Section 64 of the Chit Funds Act defines



the term dispute and makes provision for resolution of dispute through arbitration. The Revenue Recovery Act, 1968 and the proceedings thereunder are intended to recover public revenue in larger public interest. By a deeming provision under the Revenue Recovery Act, the amounts due to the Kerala State Financial Enterprises Limited is treated as public revenue. Resolution of disputes under Section 64 of the Chit Funds Act and recovery of public revenue under the Revenue Recovery Act, 1968 operate in two different fields.

16. As the Chit Funds Act and Revenue Recovery Act, 1968 play in two different and distinct fields, the non obstante clause in Section 64 of the Chit Funds Act will not nullify the notification under Section 71 of the Revenue Recovery Act and consequences flowing therefrom. The Kerala State Financial Enterprises Limited would therefore be justified in recovering amounts due to it invoking the provisions of the Revenue Recovery Act, 1968, treating the dues as public revenue.



W.P.(C) No.35389/2023 & connected cases
: 14 :

17. The interplay between the Chit Funds Act, 1982 and the Kerala Revenue Recovery Act, 1968 was considered by a Division Bench of this Court in ***Premanandan v. State of Kerala*** [2020 (3) KLT OnLine 1027 = 2020 (6) KLT SN 46 (C. No.41)]. The Division Bench considered whether when the subject matter is challenged by the Principal Debtor before the Arbitrator, whether the appellant can be proceeded against. The Division Bench held that in the absence of any interim order by the Arbitrator, creditor will be free to proceed against the guarantors. The Division Bench held that the Kerala Revenue Recovery Act is a self contained statute aimed at recovery amounts due to the Government, statutory bodies and Corporations and other notified institutions.

The writ petitions filed by the petitioners are therefore without any merit. The writ petitions are therefore dismissed.

Sd/-

N. NAGARESH, JUDGE

aks/14.08.2024



2024:KER:62576

W.P.(C) No.35389/2023 & connected cases

: 15 :

APPENDIX OF WP(C) 35389/2023

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE PHOTOCOPY OF THE NOTICE DATED
18/09/2023 ISSUED BY THE 3 RD
RESPONDENT
- Exhibit P2 TRUE PHOTOCOPY OF THE LETTER DATED
03/10/2023 ISSUED BY THE 3RD
RESPONDENT
- Exhibit P3 TRUE PHOTOSTAT COPY OF THE APPLICATION
DATED 24/10/2023 SUBMITTED BEFORE THE
2ND RESPONDENT
- Exhibit P4 TRUE PHOTOSTAT COPY OF THE SLIP ISSUED
BY THE INDIA POST



2024:KER:62576

W.P.(C) No.35389/2023 & connected cases

: 16 :

APPENDIX OF WP(C) 17839/2024

PETITIONER'S EXHIBITS

Exhibit P1 TRUE COPY OF THE NOTICE DATED
24.02.2024 HAVING F. NO.
152/500P/2022-23 ISSUED BY THE 2ND
RESPONDENT IN THE NAME OF THE
PETITIONER HEREIN.



2024:KER:62576

W.P.(C) No.35389/2023 & connected cases

: 17 :

APPENDIX OF WP(C) 17840/2024

PETITIONER'S EXHIBITS

Exhibit P1

TRUE COPY OF THE NOTICE DATED
13.03.2024 HAVING NO.
SDT/KTM/13373,13374,13375,13376,13377
ISSUED BY THE 2ND RESPONDENT IN THE
NAME OF THE PETITIONER HEREIN.



2024:KER:62576

W.P.(C) No.35389/2023 & connected cases

: 18 :