

IN THE COURT OF THE SUBORDINATE JUDGE, PERUMBAVOOR

Present : Sri.Johnson M.I., Sub Judge

Wednesday, the 5th day of July, 2023 / 14th Ashadha 1945

E.A.No. 97/2023 in E.P.No. 42/2022 in L.A.R.No. 129/2010

Petitioner/ Decree Holder :-

Thomas Jose, aged 68 years, S/o Joseph,
Residing at Parekkattil, Mattappallil,
Elikulam P.O., Kottayam District

By Advs.M/s.R. Sudhir, V.K.Prasad & Deepesh E.S.

Respondents/Judgment Debtor:-

1. State of Kerala, represented by
District Collector,
Ernakulam - 682 030.
2. The Chief Executive Officer, Infopark,
Kusumagiri, Kakkanad, Ernakulam - 682 030.

JD1-By Adv.Sri.M.G.Sreekumar, Addl.Govt.Pleader.

JD2-By Adv. Sri.K.A. Abdul Salam(No vakalath seen filed).

This petition is filed under Order XXI Rule 43 R/w Section 151 of the Code of Civil Procedure to attach and call for an amount of Rs.2,90,305.42 for the amount due to the petitioner from the account of the Judgment Debtor in the Federal Bank, Infopark Branch, Vismaya Building,

Kakkanad, Saving Bank A/C.No.14640100034088 and is coming for final hearing on 13.06.2023 in the presence of the above counsels and the Court on 05.07.2023 passed the following:-

ORDER

This is a petition filed by decree holder for attachment of amount in an account maintained by 2nd respondent with Federal Bank, Info Park Branch.

2. 2nd respondent filed serious objection to this petition.
3. I heard the counsel for both sides and perused the case records.
4. Decree holder filed E.P. for realisation of amount awarded in LAR 129/2010. As per the calculation of the court, there is an amount of Rs.2,90,305.42 due from judgment debtors towards decree holder as on 12-12-2022. For realisation of that amount by attaching the account of 2nd judgment debtor, decree holder filed this petition.

5. According to decree holder, 2nd judgment debtor who is the requisitioning authority has maintained account No.14640100034088 with Federal Bank, Info Park Branch and there is sufficient amount in the same. With the said allegation, decree holder has filed this petition for attachment of Rs.2,90,305.42 from abovesaid account for realisation of the amount due to the decree holder in abovesaid LAR.

6. On the other hand, 2nd judgment debtor who is the requisitioning authority has contended that, for realisation of the amount awarded in the LAR, no property of the requisitioning authority can be attached. For substantiating the said contention, counsel for 2nd judgment debtor relied on the decision of Hon'ble High Court of Kerala in *State of Kerala v. T.R.Ramachandran Nair and Others (2017 KHC 32)* and *Corporation of Cochin v. Michael Luiz (1995 KHC 305)*.

7. In *Corporation of Cochin v. Michael Luiz (1995 KHC 305)*, it was held by the Hon'ble High Court of Kerala that:

“5. S.31 of the Act imposes the obligation on the Collector to tender payment of the Compensation awarded by him to the persons interested, or, to deposit the same in court for being disbursed among the claimants. In other words, the obligation to pay the compensation for a land acquired under the Act, is that of the Government notwithstanding the fact that the acquisition is made on behalf of a Company or of a local authority. The decree passed by the court on a reference for enhancement also casts the obligation to pay the additional compensation on the State. Thus, on the scheme of the Act, the obligation to pay compensation is that of the State and not that of the requisitioning authority. The claimant can only look to the State for recovery of the compensation awarded to him by the Collector or by the Court. There is nothing in the Act or the Rules which makes the local authority the requisitioning authority, primarily responsible to the owner of the land who is awarded the compensation.”

8. In *State of Kerala v. T.R.Ramachandran Nair and Others (2017 KHC 32)* it was held by the Hon’ble High Court of Kerala that, *“It is now well settled by a series of decisions of this Court that in execution of the award passed by the reference Court, the properties belonging to the requisitioning authority cannot be attached.”*

From abovesaid decisions, it can be seen that, property of requisitioning authority cannot be attached for realisation of the amount awarded in LAR.

9. On the other hand, counsel for decree holder relied on the decision of the Hon'ble High Court of Kerala in *Augustine Kuruvilla and Others v. State of Kerala and Others [2007 (3) KHC 516]* and argued that, 2nd judgment debtor herein is a corporation fully owned and controlled by the State and hence, the property of 2nd judgment debtor can be proceeded against by the decree holder. In abovesaid decision, it was held by the Hon'ble High Court of Kerala that, "*A reading of Ext.P12 shows that the Infopark is a corporation fully owned and controlled by the State.*" From that decision, it can be seen that, 2nd judgment debtor herein is a corporation fully owned and controlled by the State.

10. It was argued by the counsel for decree holder that, since 2nd judgment debtor is fully owned and controlled by the State, he is entitled to proceed against the account maintained by the 2nd judgment debtor. On the other hand, counsel for judgment debtor has contended that, evenif 2nd judgment debtor is a corporation fully owned and controlled by the State, its property cannot be proceeded against since, it is

only a requisitioning authority and not the Government.

11. It is significant to note that, in *Corporation of Cochin v. Michael Luiz*, it was categorically held by the Hon'ble High Court of Kerala that, *“In such a situation, it is clear that the decree holder can recover the amounts due under the decree only against the State and not by proceeding against the local authority on whose requisition, the acquisition is made. The contention that the local authority is also a State or is a limb of the State and consequently anything that is recoverable from the State can be recovered from the local authority, cannot be accepted in view of the dichotomy maintained in the Act conferring on the local authority only the status of a requisitioning authority and conferring on the State alone, the status of the acquiring authority. The argument advanced by counsel for the decree holder that since the local authority can be treated as a State, the amount can be recovered from that authority direct, cannot therefore be accepted.”*

12. From abovesaid decision, it is very much clear that, even if 2nd judgment debtor is a corporation fully owned and controlled by the State of Kerala, it can only be treated as a requisitioning authority and

prayer for attachment of account maintained by the 2nd judgment debtor cannot be allowed. Hence, this petition is only to be dismissed.

In the result, the petition is dismissed. No cost.

Dictated to the Confdl.Asst., transcribed and typed by her, corrected by me and pronounced in the Open court on this the 5th day of July, 2023.

JOHNSON M.I
SUB JUDGE

APPENDIX :- Nil.

Sub Judge

Laj.
Compd by.Pkm

E.A. 97/2023 in E.P. 42/2022 in
L.A.R No. 129/2010
ORDER
Dated :05.07.2023