



2025:KER:5982

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

WA NO. 1413 OF 2024

AGAINST THE JUDGMENT DATED 13.08.2024 IN WP(C) NO.9607 OF
2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 3:

- 1 ASSISTANT COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, NORTH BLOCK, NEW ANNEXE BUILDING,
MANANCHIRA, KOZHIKODE, PIN - 673001.
- 2 PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL),
CENTRAL REVENUE BUILDING, IS PRESS ROAD, KOCHI,
PIN - 682018.
- 3 INCOME TAX DEPARTMENT,
REPRESENTED BY THE DEPUTY DIRECTOR OF -
INCOME TAX (INV) - II, 8TH FLOOR, AYAKAR BHAWAN,
KOZHIKODE, PIN - 673001.

BY ADVS.

NAVANEETH.N.NATH, CGC

SUSIE B VARGHESE

JOSE JOSEPH, SC, INCOME TAX DEPARTMENT, KERALA

RESPONDENTS/PETITIONERS/RESPONDENT 4,5,6:

- 1 MOHAMMED SALIH,
AGED 38 YEARS,
KARUVARAKKODE HOUSE, MUTHAMBALAM, MANIPURAM, KOZHIKODE,
PIN - 673572.



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- 2 SHABEER ALI,
AGED 37 YEARS,
S/O.IBRAHIM, ARANGODE HOUSE, VAZHEPOYIL, MANIPURAM,
CALICUT, PIN - 673572.
- 3 MANAGER, CANARA BANK,
KODUVALLY BRANCH, KODUVALLY CALICUT, PIN - 673572.
- 4 SUB TREASURY OFFICER,
OFFICE OF THE SUB TREASURY OFFICER, NILAMBUR,
PIN - 679323.
- 5 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,,HIGH COURT OF KERALA,
PIN - 682031.

BY ADVS.
GOPIKRISHNAN NAMBIAR M
K.JOHN MATHAI
JOSON MANAVALAN
KURRYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON 27.01.2025,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2025:KER:5982

C. R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

WA NO. 1435 OF 2024

AGAINST THE JUDGMENT DATED 13.08.2024 IN WP(C) NO.17460 OF
2024 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 3:

- 1 ASSISTANT COMMISSIONER OF INCOME TAX,
AAYAKAR BHAVAN, NORTH BLOCK, NEW ANNEXE BUILDING,
MANANCHIRA, KOZHIKODE, PIN - 673001.
- 2 PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL),
CENTRAL REVENUE BUILDING, IS PRESS ROAD, KOCHI,
PIN - 682018.
- 3 INCOME TAX DEPARTMENT,
REPRESENTED BY THE DEPUTY DIRECTOR OF -
INCOME TAX (INV) - II, 8TH FLOOR, AYAKAR BHAWAN,
KOZHIKODE, PIN - 673001.

BY ADVS.

NAVANEETH.N.NATH, CGC

SUSIE B VARGHESE

JOSE JOSEPH, SC, INCOME TAX DEPARTMENT, KERALA

RESPONDENTS/PETITIONERS/RESPONDENT 4 & 5:

- 1 MUHAMMED SHAMEER
AGED 32 YEARS
S/O.MAMMU, VATTOTH HOUSE, KALARANTHIRI, MANIPURAM P.O.,
VAVAD, KOZHIKODE, PIN - 673572.



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- 2 SABEENA
 AGED 50 YEARS,
 W/O.AZEEZ, THEKKAYIL HOUSE, CHETHUKADAVU,
 KUNNAMANGALAM, PERINGOLAM, KOZHIKODE, PIN - 673571.

- 3 MUHAMMED SUHAIB P.C,
 AGED 31 YEARS,
 S/O.ABDUL MAJEED, CHOLAKKARA HOUSE, PUTHUR, KOZHIKODE,
 PIN - 673572.

- 4 MUHAMMED FAIQUE,
 AGED 33 YEARS,
 S/O.MUHAMMED BASHEER, PUZHANKARA HOUSE, KOZHIKODE,
 PIN - 673572.

- 5 SUB TREASURY OFFICER,
 OFFICE OF THE SUB TREASURY OFFICER, NILAMBUR,
 PIN - 679323.

- 6 STATE OF KERALA,
 REPRESENTED BY GOVERNMENT PLEADER,
 HIGH COURT OF KERALA, PIN - 682031.

THIS WRIT APPEAL HAVING COME UP FOR HEARING ON 27.01.2025,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2025:KER:5982

C. R.

SATHISH NINAN &
SHOBA ANNAMMA EAPEN, JJ.

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W.A. Nos.1413, 1435 of 2024

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Dated this the 27th day of January, 2025

J U D G M E N T

Sathish Ninan, J.

Is cash in a Bank account 'property' liable to attachment under Section 281B of the Income Tax Act, 1961("the Act")? On the discussions in this judgment we hold, 'Yes'.

2. On 12.04.2022, the police seized a huge amount of cash (₹1,56,00,000/-) from a car in which respondents 1 and 2 in the writ appeal were riding. The seized amount was produced before the Judicial First Class Magistrate's Court.

3. On application by the Department under Section 132A of the Act, the Court directed release of the amount to the Department. Respondents 1 and 2 herein and others challenged the said order before this Court in Cr1.M.C. Nos.5605/2022 and 5591/2022. This Court as per



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order dated 21.12.2023, directed release of the cash to them on furnishing a bond for the amount. The amount was accordingly released.

4. Upon investigation and being satisfied that there was no explanation for the cash nor was it accounted, and after recording reason to believe that income chargeable to tax has escaped assessment, proceedings were initiated in relation to the same by the issuance of notice under Section 148 of the Act.

5. Finding that the expected demand on assessment including penalty would be a substantial amount exceeding two crores, the payment of which the assesseees would evade, the competent authority of the Department, ordered provisional attachment of the Bank accounts of the assesseees as per Exts.P7 and P8 orders of attachment under Section 281B of the Act. The said orders were challenged in the writ petition. The writ petition was



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allowed, against which the Department is in appeal.

6. We have heard Sri.A.R.L. Sundaresan, Additional Solicitor General assisted by Sri.Navaneeth N. Nath, Standing Counsel-IT, for the appellants and Sri.P. Reghunathan, learned counsel for the respondents.

7. Allowing the writ petition and quashing the provisional order of attachment, the learned Single Judge held: -

(i) Bank account is not a 'property' under Section 281B, which could be subjected to provisional attachment.

(ii) The interest of the revenue stood secured by the security furnished before the Judicial First Class Magistrate's Court.

(iii) The records do not reveal that the opinion of the assessing officer and the approval granted by the Principal Commissioner of Income Tax(PCIT) to order



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provisional attachment was on due application of mind.

8. Section 281B of the Act reads thus: -

“281B. (1) Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment or for imposition of penalty under section 271 AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds two crore rupees, the Assessing Officer is of the opinion that of the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1) :

***Provided** that the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.*

(3) Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached under sub-section (1), the Assessing Officer shall, by an order in writing, revoke such attachment :

Provided that where the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.



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(4) The Assessing Officer may, for the purposes of determining the value of the property provisionally attached under sub-section (1), make a reference to the Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of thirty days from the date of receipt of such reference.

(5) An order revoking the provisional attachment under sub-section (3) shall be made -

(i) within forty-five days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made under sub-section (4); or

(ii) within fifteen days from the date of receipt of guarantee in any other case.

(6) Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may invoke the guarantee furnished under sub-section (3), wholly or in part, to recover the amount.

(7) The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee referred to in sub-section (3), or fails to furnish a new guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of the guarantee referred to in sub-section (3)

(8) The amount realised by invoking the guarantee referred to in sub-section (3) shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sub-section (1) of section 45 of the Reserve Bank of India Act, 1934 (2 of 1934) at the place where the office of the Principal Commissioner or Commissioner is



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situate.

(9) Where the Assessing Officer is satisfied that the guarantee referred to in sub-section (3) is not required any more to protect the interests of the revenue, he shall release that guarantee forthwith."

Relying upon sub-sections 3 and 4 of Section 281B, the learned counsel Sri.P.Reghunathan would contend that, as is evident therefrom, the term 'property' mentioned in sub-section 1 can only relate to immovable property. Sub-sections 3 and 4 provide for the assessment of the market value of the property attached, by a Valuation Officer. The assessee has an opportunity to furnish a Bank guarantee for such value and get the attachment released. The provision for assessment of fair market value of the property and furnishing of Bank guarantee to get release of attachment, is a sufficient indicator that the term 'property' mentioned in sub-section (1) is only, immovable property. At any rate, the term cannot



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encompass Bank deposits, it is argued. The arguments found favour with the learned Single Judge.

9. 'Property' is a word of very wide connotation. In ***Jilubhai Nanbhai Khachar and Ors. v. State of Gujarat and Ors. AIR (1995 SC 142)***, the Apex Court held thus: -

*“42. Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it and to exclude every one else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property. The exclusive right of possessing, enjoying, and disposing of a thing is property in legal parameters. Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status. Property, therefore, within the constitutional protection, denotes group of rights inhering citizen's relation to physical thing, as right to possess, use and dispose of it in accordance with law. In Ramanatha Aiyar's *The Law Lexicon*, Reprint Ed. 1987 at p. 1031 it is stated that the property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have. The term property has a most extensive signification, and, according to its legal definition, consists in free use, enjoyment, and disposition by a person of all his acquisitions, without any control or diminution, save only by the laws of the land, in Dwarkadas Srinivas's case this Court gave extended meaning to the word property. Mines, minerals and quarries are property attracting Article 300A.”*



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It is relevant to note that Section 281B(1) provides for provisional attachment of “any property”. The prefix “any” to the word property has much significance. It indicates that the word ‘property’ occurring therein, is not to be comprehended in a restricted sense. Therefore, “any property” mentioned in Section 281B(1) would take within its sweep, money lying in Bank account also.

10. Section 281B(1) provides for provisional attachment of any property belonging to the assessee in the manner provided in the Second Schedule to the Act. The Second Schedule to the Act is titled, “Procedure for Recovery of Tax”. It provides the mode for recovery of Tax. Schedule-II clause 10 reads thus: -

“Property exempt from attachment.

*10. (1) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908) exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.
(2) The Tax Recovery officer's decision as to what property is so entitled to exemption shall be conclusive.”*



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Evidently, except for the property exempted from attachment under the Code of Civil Procedure, 1908(CPC), other properties are liable to attachment. Section 60 CPC provides the property liable to attachment. Noticeably, Section 60(1) CPC specifically states that money is an attachable property. Properties which are not liable to attachment have been specified in the proviso to the section. Therefore, money in Bank account is property liable to attachment.

11. There could be instances where the assessee does not own immovable property sufficient enough to secure the likely demand, but there are sufficient funds in the bank account. The power for provisional attachment is provided to protect the interest of the revenue. There is no warrant to hold that money lying in a Bank account is not liable to attachment.



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12. The mere fact that Bank account is not explicitly provided under Section 281B of the Act, unlike the GST Act, 2017 which specifically mentions the same, cannot lead to the conclusion that Bank account is not liable to be attached under Section 281 B of the Act.

13. On the above discussions we hold that money in Bank accounts is a property liable for provisional attachment under Section 281B of the Act. We are unable to concur with the finding of the learned Single Judge to the contrary.

14. Now we proceed to consider whether the security furnished before the Judicial First Class Magistrate's Court could be considered as sufficient security for the purposes of the Act. Section 451 of the Code of Criminal Procedure, 1973 which corresponds to Section 497 of the Bharathiya Nagarik Suraksha Samhitha, provides for



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interim release of property produced before any criminal Court. The interim order for custody in terms thereof is only regarding custody pending the conclusion of the criminal proceeding. The scope and effect of an order under Section 451 Cr.P.C was explained by the Apex Court in *V. Prakashan and K.P.Pankajakshan and Another (1985 CriLJ 951)* thus:

7.....S. 451 enables the Magistrate to provide for interim custody of such property pending conclusion of enquiry or trial. It is only a temporary arrangement and what is contemplated is only an interim provision to provide custody with a proper person as the Court thinks fit with liability to produce the property back as and when directed by the Court. The maximum duration of the arrangement is only till conclusion of the enquiry or trial. It follows that the arrangement is only temporary and the main object is to protect or preserve the property pending trial. Even if the person entrusted with interim custody is the owner, his possession or custody during the period of entrustment is only as representative of the Court and not in his independent right. He is bound by the terms of entrustment and the bond executed by him in favour of the Court. Any failure to comply with the terms will entail the necessary consequences also. His ownership or right to possession may not operate against his obligation to the Court. The entrustment or custody will not invest him with any preferential right to ownership or even possession. In the eye of law his possession or custody is only that of Court.

8. The arrangement once made is not even final till the conclusion of the inquiry or trial. Court is having the right to terminate the entrustment, get back the property from him and entrust it to somebody else whom the Court deems fit in appropriate cases even before the conclusion of the inquiry or trial. So much so, the person entrusted with



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the property may also be entitled to seek termination of the entrustment and surrender the property even before the conclusion of trial. Cases may arise where the person to whom interim custody was ordered may not care to undertake the obligation. In such cases the Court may have to make other arrangements for custody pending trial. After giving custody the Court may for reasons think that his custody may not be proper. In such cases the Court can terminate the arrangement and make other arrangements. Pending inquiry or trial more than one such arrangement could be made. The order is only of an interlocutory nature.

9. Even in cases of rival claims for interim custody, the preference made to one person does not settle any right to ownership or possession. Irrespective of defeat in a contest for interim custody, the defeated party can successfully enforce his claim for custody if ultimately he comes out with flying colours. The ultimate consideration is only who is the proper person considered by the Court for entrustment of the property. In doing so, the Court may have considerations like safety of the property, the possibility of getting it back without damage etc. The arrangement is being made by the Court only for preservation of property for being handed over to the person to whom custody has to be ordered under S. 452 after conclusion of trial or to be dealt with otherwise. ”.

The mere fact that pursuant to the orders of this Court in Cr1.MC No.5605/2022, the Judicial First Class Magistrate's Court released the money to the assessee on furnishing security cannot have any significance in relation to the proceeding of the Income Tax Department under Section 281B of the Income Tax Act. Furnishing security before the Magistrate's Court is to ensure



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compliance with production of the property on being ordered. The security so furnished before the Magistrate's Court in relation to the proceedings before the Court cannot be construed as enuring to secure a likely demand on assessment under Section 147 of the Act. Section 226(4) of the Act authorises the Department to apply to a Court in whose custody there is money belonging to the assessee, to meet the tax due from the assessee. However, at the stage when the criminal proceedings have not culminated, it cannot be said that the security furnished before the Magistrate's Court for interim release of property is sufficient security. Moreover, Section 226(4) would apply only when assessment is completed. And even coming to the final disposal of property under Section 452 Cr.P.C, there could arise rival claims of title, priority etc. Thus, we are unable to concur with the learned Single Judge that



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the security furnished before the Magistrate's Court sufficiently secures the possible demand by the Department.

15. With regard to the opinion formed by the assessing authority and the approval granted by PCIT for provisional attachment, it is the contention that the document does not reflect the formation of such opinion on tangible material or information. The Apex Court in *Radha Krishnan Industries v. State of Himachal Pradesh [2021 (6) SCC 771]*, while considering provisional attachment under the GST Act, 2017, held that provisional attachment of Bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of power must be strictly fulfilled. It was also held that the formation of opinion to order provisional attachment must be on the basis of tangible material that the assessee is likely to defeat the demand, and that the



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provisional attachment is necessary to protect the interest of the revenue. During the course of arguments both sides submitted that the assessment proceedings have since been completed. In terms of Section 281B(2) and the proviso thereto, provisional attachment could be in force for a period of only six months from the date of order, which could be extended for a further period of not exceeding sixty days after the date of assessment or re-assessment. Assessment having been completed, the life of the provisional attachment is short. The learned counsel for the assessee submits that an appeal has already been preferred challenging the assessment. The Department has, along with the memo dated 09.01.2025, placed on record the proposal and the approval of the authorities as required under Section 281B(1). It is seen that there has been a detailed consideration by the authority while



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granting approval for provisional attachment. At any rate, at this stage, when assessment has been completed and even an appeal has been filed, we do not think that the sufficiency or otherwise of the satisfaction arrived at by the authority while provisional attachment was ordered needs to be delved into.

16. For the reasons stated above, we are unable to agree with the conclusions arrived at by the learned single Judge.

17. Incidentally there arises a question as to what could be the expanse of the property over which attachment could be ordered. In *Gandhi Trading v. Assistant Commissioner of Income-Tax and others* (1999 SCC Online 967), a Division Bench of Bombay High Court held that the power of attachment under Section 281B of the Income Tax Act is a drastic power to be exercised with extreme care and caution, and that it should not be exercised as a tool



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to harass the assessee. It was also held that the attachment should, as far as possible, be of immovable properties, and that attachment of Bank accounts and trading assets should be as a last resort. The Court noticed the distinction between an attachment under Section 281B of the Act and an attachment in the course of recovery proceedings. The following observations in the judgment are apposite.

“... One thing is clear that this power should be exercised by the Assessing Officer only if there is a reasonable apprehension that the assessee may thwart the ultimate collection of the demand that is likely to be raised on completion of the assessment. The power of attachment under this section is in the nature of attachment before judgment under the Code of Civil Procedure. It is drastic power. It should, therefore, be exercised with extreme care and caution. It should not be exercised unless there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of the whole or any part of his property with a view to thwart the ultimate collection of the demand. Moreover, attachment should be made of the properties and to the extent it is required to achieve the above object. It should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee. Attachment should be made as far as possible of immovable properties if that can protect the Revenue. Attachment of bank accounts and trading assets should be resorted to only as a last resort. In any event, attachment under section 281B should not be equated with attachment in the course of recovery proceedings.”



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18. As Section 281B(1) stipulates, to consider whether a provisional order of attachment is to be issued, the assessing officer must be satisfied that the possible demand and penalty would exceed Rupees Two Crores. Therefore, evidently, the authorities need to form an opinion with regard to the probable demand, which of course could not be stated with exactitude at that stage. However, the extent of the property attached, including attachment of the money in the Bank accounts, should be commensurate with the probable demand including the penalty. The proviso to Section 281B(3) indicates that the security required need only be to the extent sufficient to protect the interest of the revenue. Therefore, orders of provisional attachment under Section 281B should be commensurate with the probable demand including penalty, and should not be blanket orders attaching properties, the value of which



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would be much higher than the probable demand.

Resultantly, the writ appeals are allowed. The judgments impugned are set aside and the writ petitions will stand dismissed. No costs.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
SHOBA ANNAMMA EAPEN
JUDGE

kns/-

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P.S. To Judge