

## Isha Beevi on Behalf of the Minor Umaiben Beevi & Ors. v. The Tax Recovery Officer & Addl. P.A. to Collector, Quilon & Ors.

Civil Appeals Nos.1489-1499, 1159 and 1160 (NT) of 1970

[1976] 1 SCR 681 | 1975-09-05

**Whether mixed Travancore/1922 income-tax recovery through notices invoking the 1961 Second Schedule was wholly without jurisdiction and liable to immediate writ intervention before objections, including claimed third-party title and authority of the officer, were determined.**

2(44) (historical Tax Recovery Officer definition) | 222(1) (express recovery-certificate quotation) | Second Schedule rules 11 and 48 (objections and attachment) | Second Schedule rule 85 (recounted service on representatives) | 220(2) (interest in reproduced notice) | 297(2)(j) (Department's asserted recovery machinery)

Three-judge bench | H.R. Khanna, J. | M.H. Beg, J. | A.C. Gupta, J.

Assessment years: See the source-scope notes; no year inferred.

### **Historical attachment-stage jurisdiction; partial protection and source conflicts**

This mixed Travancore/1922/1961 recovery case concerns preliminary attachment under rule 48 with rule 11 objections still available. Dismissal did not revive the eleven post-death certificates already excluded by the High Court, decide property title or verify the officer's authorising notification; that objection remained open before him. The Court directed Travancore procedure so far as possible and left any additional burden from 1961 procedure undecided. The source conflicts on appeal count, section 221 versus the quoted section 222(1), and attachment dates; physical page 5 is printed 885. The 1968 official Schedule check is bounded and does not resolve those conflicts. Original PDF unchanged. Comprehensive later treatment, current law and 2025 mapping are not verified.

## 01 FACTS OF THE CASE

Thangal Kunj Musaliar, whose business included cashew-nut exports, died on 19 February 1966 with income-tax arrears under the Travancore Act and other income-tax enactments. His heirs and legal representatives challenged recovery against immovable properties they said he had gifted to them in 1947, 1953, 1954 and 1956. The Additional Personal Assistant to the District Collector, Quilon, acting as Tax Recovery Officer, invoked rule 48 of the 1961 Second Schedule to prohibit dealings with listed properties against twenty-two certificates totalling Rs.50,42,970.34. The narrative identifies an attachment order dated 10 June 1968. The reproduced specimen notice later has conflicting dates, preserved below (physical pages 2 and 5/SCR 682 D-H and physical page 5, printed 885).

The appellants questioned the officer's jurisdiction, use of the 1961 machinery for Travancore/1922 liabilities, certificates issued after the taxpayer's death, the aggregation of valid and allegedly invalid demands, and attachment of properties said to belong to them. The report ultimately identifies eleven of the twenty-two certificates as post-death. A 10 July 1957 settlement, binding on the deceased and T.K. Musaliar & Sons Ltd., and the Government's 25 September 1957 acceptance were relevant background. The latter directed demand for Rs.9,15,458 and necessary enforcement under the Travancore Act or other law. That settlement amount is distinct from the total of the twenty-two certificates. The Department relied on section 297(2)(j) for the settlement recovery machinery (physical pages 2-3/SCR 682 F-683 E).

The single Judge rejected the writ petitions, reasoning that a wrong statutory citation would not defeat an otherwise existing power and that rule 11 objections and property suits were available. The Division Bench substantially agreed but excluded the arrears covered by the eleven post-death certificates from the claims under the attachment order. The appellants then brought certificate appeals from the Kerala High Court's 30 September 1969 judgment. The printed High Court docket is Writ Appeals Nos.493-495, 497-500, 502-505, 492 and 501 of 1969. The docket prints Civil Appeals Nos.1489-1499, 1159 and 1160 (NT) of 1970, while the judicial opening calls them fifteen appeals. No missing docket numbers are supplied to reconcile that discrepancy (physical pages 2-4/SCR 682 B-D and 683 F-684 E).

Source: See the proposition-specific paragraph and PDF-page references below.

## 02 DISCUSSION BY THE HON'BLE COURT

The Supreme Court examined the challenged documents as preliminary commencement notices by attachment under rule 48, with objections yet to be considered under rule 11. In that posture, immediate quashing required an entire absence of jurisdiction; otherwise the application was premature. Mandamus required an identified mandatory obligation left unperformed. For the prohibition sought here, the appellants had to establish a total absence of power to proceed. An alternative remedy was not generally an absolute bar to prohibition, but citing a wrong provision did not establish want of jurisdiction if another provision actually supplied the power. This reasoning did not decide ownership of each property or validate each component of the demand (physical pages 4-5/SCR 684 E-685 A; physical page 5 is printed 885).

The Travancore recovery-authority argument was that the Peshkar, corresponding to the Collector, alone could act under old section 66(3). The Court examined the proviso to Finance Act 1950 section 13(1), which treated references to old officers and authorities as references to their corresponding 1922-Act counterparts, together with General Clauses Act section 8(1) on statutory references after repeal and re-enactment. It then set out old section 46(2), the historical section 2(44) Tax Recovery Officer definition, and section 222(1) of the 1961 Act. Those provisions supported devolution of the relevant recovery duties upon the Collector, Additional Collector or properly empowered officer, rather than exclusive survival of the original office-name (physical pages 5-7/SCR 685 H-687 H).

That legal conclusion did not establish the factual existence of the particular officer's authorising notification. The appellants had not previously disputed his appointment or proper empowerment. They could not raise that factual point for the first time in the Supreme Court appeal, when timely objection might have produced the notification. The Court expressly left them free to raise it before the Tax Recovery Officer himself (physical page 8/SCR 688 A-B).

The High Court had already held eleven post-death certificates invalid. Their inclusion with other demands did not destroy all recovery jurisdiction at this attachment stage: no property had been sold and no coercive action against the person of any appellant had occurred. Authorities concerning completed sales for excessive sums or arrest of judgment-debtors were therefore distinguishable. Whether particular property had been illegally or unjustifiably attached could still be examined through rule 11. The judgment preserves the existing eleven-certificate exclusion; it does not reinstate those certificates or authorize recovery of the entire original aggregate (physical page 8/SCR 688 C-E).

Finally, the Department conceded that the Travancore procedure could be used for dues recoverable from the deceased's assets. The Court therefore did not decide whether the 1961 procedure placed an additional burden or disadvantage on the appellants. It directed the Tax Recovery Officer to use the Travancore procedure so far as possible. That express direction and reserved comparative-procedure question are part of the result, rather than a free-standing approval to use whichever enforcement regime the Department prefers

## **02 DISCUSSION BY THE HON'BLE COURT**

(physical page 8/SCR 688 E-F).

Source: See the proposition-specific paragraph and PDF-page references below.

## **03 JUDICIAL DECISION**

The Supreme Court dismissed the appeals, leaving the High Court's eleven-certificate exclusion in place and the appellants' rule 11 objections available. The officer-authorisation objection was expressly left open before the Tax Recovery Officer, who was directed to use Travancore procedure so far as possible in light of the Department's concession. The parties were to bear their own costs in the Supreme Court. No sale, property-title adjudication, restored post-death certificate, fresh quantified demand or general personal-liability order was made (physical page 8/SCR 688 A-G).

Source: See the proposition-specific paragraph and PDF-page references below.

## **04 OUTCOME / IN WHOSE FAVOUR**

In whose favour: Respondents on immediate writ challenge; appellants retain the High Court's partial protection and objection remedies

Appeals dismissed; parties bear own Supreme Court costs; Travancore procedure to be used so far as possible

Final determination of the immediate jurisdictional writ challenge, not final adjudication of title, individual attachment objections or authorising-notification facts

Historical mixed-statute recovery at the attachment stage. Eleven post-death certificates remain excluded; no completed sale or arrest had occurred; additional burden under 1961 procedure was expressly not decided.

Source: See the proposition-specific paragraph and PDF-page references below.

## 05 AKHB REVIEW POINT

Distinguish power to begin recovery from validity of each certificate and attachability of each asset. A preliminary attachment challenge may require the claimant to use the statutory objection process, while a real absence of officer authority remains a jurisdictional question requiring evidence. A wrong section number cannot create power, but neither does it extinguish power that another applicable provision supplies. Here the Court preserved objections and the High Court's partial exclusion; dismissal should not be reported as validating every demand or treating all alleged gifts as ineffective.

Bounded statutory check: the Income Tax Department's year-labelled 1968 Second Schedule separately identifies rule 11 as the property-claim investigation provision, rule 48 as prohibitory attachment of immovable property and rule 85 as continuation following a defaulter's death after issue of a certificate. That contemporaneous-version HTML comparison helps preserve the printed rule numbers and the distinction between an existing certificate's continuation and the disputed post-death issue of certificates. It does not establish this officer's notification, resolve the judgment's printed section-221/222 discrepancy, or certify later/current law.

Source: See the proposition-specific paragraph and PDF-page references below.

## PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

**Topic:** Caption, actual date, bench and compressed headnote

**Source url:** [Open cited source](#)

**Pdf pages:** 1

**Paragraphs:** SCR 681 heading and D

**Source role:** reported metadata and headnote

2.

**Topic:** Full printed docket, author, conflicting appeal count, certificates and amount

**Source url:** [Open cited source](#)

**Pdf pages:** 2

**Paragraphs:** SCR 682 B-H

**Source role:** reported metadata and judicial text

3.

**Topic:** Settlement amount and section 297(2)(j) as Department position

**Source url:** [Open cited source](#)

**Pdf pages:** 3

**Paragraphs:** SCR 683 B-E

**Source role:** judicial text

4.

**Topic:** High Court history, printed rule 85 and eleven-certificate exclusion

**Source url:** [Open cited source](#)

**Pdf pages:** 3; 4

**Paragraphs:** SCR 683 F-684 E

**Source role:** judicial recounting of high court

5.

**Topic:** Preliminary attachment, rule 11, mandamus and prohibition limits

**Source url:** [Open cited source](#)

**Pdf pages:** 4; 5

**Paragraphs:** SCR 684 E-685 A (physical page 5 printed 885)

**Source role:** judicial text

6.

**Topic:** Specimen rule 48 notice, conflicting printed dates and interest

**Source url:** [Open cited source](#)

**Pdf pages:** 5

**Paragraphs:** Physical page 5 printed 885 B-G; sequential SCR 685

**Source role:** reproduced notice

7.

**Topic:** Travancore years, statutory succession and historic definition/recovery provisions

**Source url:** [Open cited source](#)

**Pdf pages:** 5; 6; 7

**Paragraphs:** SCR 685 H-687 H (physical page 5 printed 885)

**Source role:** judicial text

8.

**Topic:** Authorisation-notification question expressly open before TRO

**Source url:** [Open cited source](#)

**Pdf pages:** 8

**Paragraphs:** SCR 688 A-B

**Source role:** judicial text

9.

**Topic:** Eleven certificates, no sale/arrest and rule 11 remedy

**Source url:** [Open cited source](#)

**Pdf pages:** 8

**Paragraphs:** SCR 688 C-E

**Source role:** judicial text

10.

**Topic:** Department concession, Travancore procedure, reserved issue, dismissal and costs

**Source url:** [Open cited source](#)

**Pdf pages:** 8

**Paragraphs:** SCR 688 E-G

**Source role:** judicial text

### ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

The notices actually invoked Second Schedule rule 48 of the 1961 Act, and the Court decided the availability of rule 11 objections, historical section 2(44)/222 recovery authority and the effect of the older statutory framework. It retained the High Court's exclusion of eleven post-death certificates and directed Travancore procedure so far as possible after a Department concession. Section 297(2)(j) is presented as the Department's position, not a general holding validating all demands.

### JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

M.H. Beg, J.

### ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961 (actual recovery and jurisdiction machinery); Indian Income-tax Act, 1922 and Travancore Income-tax Act, 1121 ME (underlying dues and transition)

### OTHER STATUTORY PROVISIONS AND THEIR SEPARATE SCOPE

Indian Income-tax Act, 1922: section 46(2) and section 18A (settlement interest); Travancore Income-tax Act, 1121 ME: section 66(3); Finance Act, 1950: section 13(1) and proviso; General Clauses Act, 1897: section 8(1); Travancore Taxation on Income (Investigation Commission) Act, 1124: section 9(2), as described in the settlement history; Travancore-Cochin Revenue Recovery Act 7 of 1951; Opium and Revenue Laws (Extension of Application) Act 33 of 1950, section 3, as recounted in the High Court history; The report also repeatedly prints section 221 for certificates/authority at SCR 682 and 686; SCR 687 expressly quotes section 222(1). The printed discrepancy is not silently resolved.

### SPECIFIED PRIMARY-SOURCE CHECKS AND THEIR LIMITS

1.

**Kind:** historical statutory comparison

**Status:** bounded verified

**Source url:** [Open cited source](#)

**Finding:** The labelled 1968 text identifies rule 11 property-claim investigation, rule 48 prohibitory immovable-property attachment, and rule 85 continuation after death following issue of the certificate.

**Limit:** Bounded historical HTML comparison only. It neither authenticates the particular recovery notification nor resolves printed judgment dates/section numbers; no full amendment history, Gazette authentication, current-law certification or 2025 mapping. No hash or byte count invented for the live HTML.

## DATED OFFICIAL STATUTORY HTML COMPARISONS AND READING LIMITS

1.

**Kind:** official statutory html

**Url:** [Open cited source](#)

**Title:** Income Tax Department Second Schedule, year-labelled 1968

**Version label:** 1968

**Accessed on:** 2026-10-05

**Read bounds:** Identity and year lines 38-67; rule 11 lines 148-161; rule 48 and immediate service context lines 354-363; rules 84-85 lines 559-564. Other returned surrounding lines were not substantively relied on.

**Finding:** The labelled 1968 text identifies rule 11 property-claim investigation, rule 48 prohibitory immovable-property attachment, and rule 85 continuation after death following issue of the certificate.

**Limit:** Bounded historical HTML comparison only. It neither authenticates the particular recovery notification nor resolves printed judgment dates/section numbers; no full amendment history, Gazette authentication, current-law certification or 2025 mapping. No hash or byte count invented for the live HTML.

## SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 8 PDF pages; SHA-256

3f1d53122959dd6090ad8dbe9c9f48dcab0e41dc7883d2f10a6ca2c5ebc77df8. Original bytes preserved.

Judicial body begins physical page 2/SCR 682 C-D (Beg, J.) and ends physical page 8/SCR 688 G with dismissal and parties bearing own costs. Page 1 and upper page 2 are reporter material, appellate metadata and appearances. Physical page 5 is printed 885, despite its sequential position at SCR 685. No neighbouring judgment.

[Open cited source rendition](#)

full primary text read: True; all primary page images reviewed: True; source integrity verified: True; actual statutory scope verified: True; later treatment comprehensive: not\_verified; current law status: not\_verified; statutory mapping 2025: not\_verified

The judgment was delivered on 5 September 1975; 1976 is the SCR report year.

The judgment date is 5 September 1975; the report year is 1976. The printed cause is retained, including representative capacity.; The printed Supreme Court docket lists Nos.1489-1499, 1159 and 1160 (NT), thirteen numbers; the judicial opening says fifteen Civil Appeals. The High Court docket prints Writ Appeals Nos.493-495, 497-500, 502-505, 492 and 501 of 1969; it is retained without supplying additional numbers by inference.; The narrative dates the attachment 10 June 1968 (SCR 682 and 684). The specimen notice heading prints 10 May 1958 and its execution line prints 10 May 1968. Physical page 5 prints page number 885 instead of the sequential SCR 685. No date or pagination is silently corrected.; The report prints section 221 in its certificate/authority narrative at SCR 682 and 686, while SCR 687 expressly quotes section 222(1). Section 220(2) appears in the specimen interest demand; these are separate printed references.; The headnote compresses the High Court result. The judicial text records that its Division Bench excluded eleven post-death certificates; the Supreme Court's dismissal does not revive them.; The officer's authorisation notification was not proved or disproved. Its existence remained a factual objection available before the Tax Recovery Officer.; The question of added burden under the 1961 procedure was expressly unnecessary to decide after the Department's concession; Travancore procedure was directed so far as possible.; Rs.9,15,458 is the settlement demand, distinct from the Rs.50,42,970.34 certificate aggregate. The complete AY list is unstated; Travancore years 1119-1125 ME are not converted.; The old section 2(44) definition and certificate transmission language are historical. The bounded 1968 official HTML comparison is not a current-law or officer-appointment certification.

No complete assessment-year list is stated. Physical pages 5-6 identify Travancore dues for years 1119-1125 ME; these are preserved as source-period labels without conversion into Gregorian assessment years.

## STATUTORY SCOPE

No automatic mapping to the Income-tax Act, 2025 or certification of present law. Actual historical statutory versions and transition limits remain controlling for this note.

## LATER TREATMENT

Source checked 2026-10-05. not\_verified. Targeted official-domain searches did not produce a later Supreme Court decision suitable for a bounded direct check. A separate 1968 official statutory HTML comparison was made; it is not later judicial treatment. No comprehensive citator, full amendment chain, current-law certification or 2025 mapping.

## IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 8](#)

SHA-256: 3f1d53122959dd6090ad8dbe9c9f48dcab0e41dc7883d2f10a6ca2c5ebc77df8

[Income Tax Department Second Schedule, year-labelled 1968](#)

## AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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