

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8369 of 2015

and

M.P.No.1 of 2015

Shanmugavel

Petitioner

vs.

1. The Tahsildar,
Uthukuli Taluk,
Tiruppur District.

2. The Senior Zonal Manager,
Tamil Nadu Civil Supplies Corporation,
38-A/10, TN Housing Board,
Nasiyanur Road,
Manickampalayam, Erode - 11.

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned order dated 20.02.2015 made in Na.Ka.No.1252/2014/A3 passed by the 1st respondent, quash the same and consequently direct the respondents to furnish the breakup figure for their demand and to comply with the provisions of the Tamil Nadu Revenue Recovery Act.

For Petitioner : Mr.N.Manokaran

For R1 : Mrs.M.E.Rani Selvam, AGP

For 2 : Mr.L.P.Shanmugasundaram,
Standing Counsel

ORDER

Petitioner has come forward with the aforesaid prayer.

2. According to the petitioner, the property has devolved upon him by means of a registered Will dated 15.7.1996 executed by C.M.Rackiya Gounder, the grandfather of the petitioner. According to the petitioner, the Will is not in dispute and he has got a share in the property in terms of the said Will. The petitioner submitted that the respondents have initiated action in terms of section 25 of the Tamil Nadu Revenue Recovery Act which is extracted below:-

"Demand to be served prior to attachment of land -- Mode of service.-- Before a Collector, or other officer empowered by the Collector in that behalf, proceeds to attach the land of the defaulter or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be fixed with reference to the distance from the land on which the arrear is due to the place at which the money is to be paid. Such demand shall be served by delivering a copy to the defaulter; or to some adult male member of his family at his usual place of abode, or to his authorised agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached."

3. According to the petitioner, there should be a notice of demand before attachment and admittedly, in this case, the petitioner was not given any notice demanding payment of tax arrears to the tune of Rs.2,89,761/=. According to the petitioner, it is not in dispute that the amount shall be payable to the respondent but, there is no notice and there is no calculation as to how they have arrived at the figure of Rs.2,89,761/= payable by the petitioner. According to the petitioner, he has also made a representation under Right to Information Act and is awaiting reply.

4. Per contra, learned Additional Government Pleader appearing for the first respondent would submit that when the property has devolved upon the petitioner, the petitioner will have to pay the amount demanded by the respondent in terms of the notice and the petitioner cannot claim that they would enjoy the property, but, would not pay the amount due to the respondents. She further contended that it is open to the petitioner to give a reply which would be considered by the respondent in accordance with law.

5. Heard the learned counsel for both the parties.

6. Admittedly, much water has flown and it is a demand notice issued prior to the attachment of the land. According to the respondents, the petitioner is a defaulter and he has to pay approximately Rs.3,00,000/= to the respondents. Since the petitioner submits that the petitioner is vested with the property in terms of the registered Will and this court is not going to decide about the Will in this writ petition and since no opportunity was given to the petitioner demanding the amount payable by the petitioner and it has been stated that notice has been issued to the owner Selvavinayaka

Rice Mill and admittedly, the said property has been vested with the petitioner in terms of the said Will (unless it is disputed by any of the legal heirs of the deceased), the petitioner shall treat the demand notice as a notice and submit his explanation to the same. On receipt of reply, it is open to the respondents to give break up details to the petitioner as to how they arrive the amount and on receipt of the same, if it is in accordance with law, the petitioner shall pay the same within a period of one month from the date of receipt of the order.

7. The petitioner shall give a reply to the notice within a period of fifteen days from the date of receipt and on such receipt, the respondents shall give an opportunity of personal hearing to the petitioner and consider the objections, if any, given by the petitioner on the break up details furnished by the respondents and pass appropriate orders. The petitioner shall appear before the authority concerned on 30.4.2015 and before that the petitioner shall give reply and deposit a sum of Rs.1,00,000/= as against the demand made by the respondents, without prejudice to the rights of both the parties.

8. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

ssk.

-s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Tahsildar,
Uthukuli Taluk,
Tiruppur District.
2. The Senior Zonal Manager,
Tamil Nadu Civil Supplies Corporation,
38-A/10, TN Housing Board,
Nasiyanur Road,
Manickampalayam, Erode - 11.

+ 1 cc to the Government Pleader, High Court, Madras SR 16647

+ 1 cc to M/s.L.P.Shanmugasundaram, Advocate SR 16439

ppa (co)
prk13/4

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