



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2015

CORAM:

THE HONOURABLE Mr.V.RAMASUBRAMANIAN
and
THE HONOURABLE Mr. JUSTICE N.KIRUBAKARAN

W.A.(MD)No.113 of 2015
and
M.P.(MD)No.1 of 2015

- 1.The Assistant Commissioner (Exercise),
Sivagangai.
- 2.The Regional Exercise Officer,
Sivagangai.
- 3.The District Collector, Sivagangai. ... Appellants

Vs.

S.Velayutham ... Respondent

PRAYER: The Writ Appeal is filed under Section 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.7529 of 2008 dated 31.01.2014.

Prayer in WP(MD)7529/2008:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the Ist respondent dated 29/07/2008 made in the proceedings No.109 /3/44754/06 and quash the same and consequently pass a suitable direction, directing the respondents to re-convey my the petitioner's lands bearing patta no.109, S.Nos.68/2,82/5 and 89/5 North Santhanoor, Manamadurai and in pursuance of the petitioners various representations sent to the Respondents dated 27/06/2008, 30/06/2008 and 28/07/2008.

For Appellants : Mr.B.Pugalendhi, Spl.G.P.

For Respondent : Mr.G.R.Swaminathan for
Mr.T.Antony Arul Raj

JUDGMENT

<https://hcservices.judgesoft.in/hcservices> (e-Judgment) this Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal is by the State challenging an order of the



Learned Judge, directing the appellants to reconvey the land belonging to the respondent, that was appropriated by the State towards recovery of a notional loss suffered by the State.

2. Heard Mr. B. Pugalendhi, learned Special Government Pleader for the appellants and Mr. G. R. Swaminathan, learned counsel for the respondent.

3. The respondent became the successful bidder in respect of an Arrack shop for the year 1981 - 1982. But he could not pay the initial amount within 7 months and he could not also pay the rent for more than 2 months. Therefore, the auction was cancelled and the shop was put up for re-auction.

4. The successful bidder in the re-auction offered only a rate that was a little over one third of the bid amount offered by the respondent in the first auction. Therefore, the department calculated the notional loss and fixed the responsibility upon the respondent to pay the notional loss calculated as Rs. 2,04,375/-.

5. Since the respondent did not pay the notional loss, his agricultural lands were brought to sale under the provisions of the Tamil Nadu Revenue Recovery Act. In the auction there were no bidders. Therefore, the State appropriated the lands to itself for a nominal consideration of Rs. 1/-.

6. However, the respondent subsequently, made payment of the amount of Rs. 2,04,375/-. The Government could have refused to accept the payment. But the Government accepted the payment, even after having appropriated the lands of the respondent.

7. Therefore, the respondent made a request for reconveyance of the land on the ground that the State cannot have his lands as well as the money. But the State refused to part with the land forcing the respondent to come up with a Writ petition in W.P. (MD) No. 7529 of 2008. The Writ petition was allowed partly by the Learned Judge, directing the respondent to pay interest on the amount already paid by him for the period from 01.07.1984, which was the date of determination of notional loss upto 22.10.1991 which was the date of appropriation of the land. Upon such payment the Learned Judge directed re-conveyance of the land. It is against the said order, the State has come up with the above appeal.

8. We do not think that the order of the Learned Judge is in any way incorrect. The respondent did not depute his liability to pay the notional loss. He was unable to pay the notional loss as demanded by the appellants. Therefore, proceedings were initiated under the Tamil Nadu Revenue Recovery Act and his lands were attached and brought to sale. Since there were no takers in the auction, the appellant appropriated the lands to the Government. Once this is

done, the chapter should have been closed at that.

9. But the appellants received the entire notional loss from the respondent, as and when he paid the same, with the fond hope of retrieving those lands. After completing the payment of the notional loss as demanded, the respondent made a request for the return of the land. Though the Exercise Officer recommended the return of the land after collection of the interest, the Assistant Commissioner passed an order dated 29.07.2008 merely for recovery of an additional amount of Rs.3,84,716/- towards interest for the belated payment of the notional loss. That is why the Learned Judge came to the conclusion that there cannot be a dispute about the entitlement of the respondent to take back his land. Hence, on the question as to whether the respondent is entitled to take back his land, there cannot be any dispute any more.

10. Though Mr. B. Pugalandhi, learned Special Government Pleader contended that there is no provision for the return of the land under the Revenue Recovery Act, we do not think that such a contention can be raised. Such a contention should have been contemplated by the appellants even before receiving the payments made by the respondent. Once the entire notional loss is collected and once a demand for interest is also made, the appellants cannot retain the benefits of both, on the principles of unjust enrichment.

11. On the question about the liability of the respondent to pay interest, the Learned Judge found that from the date of determination of loss upto the date of appropriation of the lands to the Government, the respondent was liable to pay interest. But, from the date of appropriation of the land to the Government, the Learned Judge thought that there was no liability to pay interest.

12. The above conclusion of the Learned Judge is based upon sound logic. Even in the case of usufructuary mortgage, there is no liability to pay interest, if possession of the property is with the mortgagee, unless there are express terms to the contrary provided in the deed of mortgage itself. Once a property of a defaulter is attached and also appropriated to the Government, the very liability to pay the principal seizes. If the liability to pay the principal seizes, interest cannot run independent of the liability to pay principal. Therefore, the Learned Judge was right in holding that the respondent is not liable to pay interest beyond the period of appropriation of the land to the Government. Therefore, we find no reason to interfere with the order of the Learned Judge. The respondent is granted time to pay the interest as per the order of the Learned Judge within 8 weeks. Upon such payment, the lands of the respondent will stand automatically restored to the respondent and the registering officer of the registration department as well as the Revenue Department shall carry out necessary entries in the records.



13. Accordingly, the Writ Appeal is dismissed. No costs.
Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar(AS)

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/TRUE COPY/

Sub Assistant Registrar

nbj
To

1 The Assistant Commissioner(Excise),
Sivagangai

2 The Regional Excise Offices,
Sivagangai

3 The District Collector,
Sivagangai

4 MR.S.Velayutham,
S/O Subbiah Servai,
North Santhanoor, S.Karaikudi Post,
Manamadurai Taluk,
Sivagangai District.

+1cc TO MR.T.ANTONY ARULRAJ, ADVOCATE, SR NO:68080

+1 CC TO M/S THE SPECIAL GOVERNMENT PLEADER, SR NO:67957

JAM/11.12.15/AAL-MPA/4P-7C

W.A. (MD) No.113 of 2015
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