IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:30.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19635 of 2015 and

M.P.Nos.1 & 2 of 2015

G.Ganesan .. Petitioner

Vs.

The Assistant Commissioner [CT],
Villupuram, Villupuram District. .. Respondent

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings made in Na.Ka.A3/353/2014 dated 27.04.2015 and consequential issue of Form I-Section 8-Distraint order quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.Manokaran Sundaram
Additional Government Pleader

ORDER

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent and with their consent, the writ petition is taken up for final disposal.

2.The petitioner is one G.Ganesan and he has filed this writ petition challenging a notice dated 27.04.2015. In fact, the said notice is issued not only to the petitioner herein but also his son G.Gurumurthy stating that the petitioner is an arrears of sales tax to the Department from the assessment years 2006-2007 to 2010-2011 and the total amount payable is Rs.12089484/-.

3.The petitioner's case is that the property which is sought to be proceeded against is the property which has been settled by the petitioner in favour of his son by Dhana Settlement Deed dated 29.10.2010. The case of the petitioner is that the

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settlement was done much prior to any proceedings being issued to the petitioner nor any demand having been made. It is his further case that no notice was issued by the Department at any earlier point of time and no orders have been communicated. Though this submission is highly unbelievable, yet, this Court is of the view that the petitioner may be afforded an opportunity to put forth his objections. However, until then the property which is the subject matter of the deed of settlement dated 29.10.2010 shall remain attached to secure the dues to the Department. Conveniently, the petitioner alone has filed this writ petition, though his son G.Gurumurthy has also been served with the impugned notice. This once again prima facie shows that the petitioner is trying to deceive the Department. The other aspect to be noted is that within a period of two months, the business has also been closed down. All these facts probablises that the intention of executing the settlement deed was to defeat the interest of revenue.

4.Be that as it may, this Court is inclined to give one more opportunity to the petitioner subject to the following condition:-

[i] The property which is the subject matter of the Settlement Deed dated 27.10.2010 shall remain attached to recover the dues to the Department and the respondent is directed to address the same to the concerned Sub Registrar and make necessary entry in the records maintained by the Sub Registrar of Registration.

[ii] Since the petitioner's son G.Gurumurthy is not a party in this case, but he has been served with the impugned notice, he shall execute an affidavit in favour of the Department agreeing that the property shall continue to remain attached. This condition is imposed because prima facie this Court is satisfied that the Settlement Deed was executed to defeat the interest of the revenue.

[iii] If the above two conditions are complied with, then the respondent shall forward copies of all the assessment orders passed during the assessment years 2006-2007 to 2010-2011. On receipt of the same, the petitioner is directed to treat the orders as show cause notices and submit their objections.

[iv] On receipt of the objections, the respondent shall afford an opportunity of personal hearing and thereafter, proceed to re-do the assessments in accordance with law.

[v] The order of attachment shall abide by the fresh orders to be passed by the respondent.

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5.In the result, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner(CT)
Villupuram, Villupuram District

+1 cc to the Special Government Pleader(Taxes)
High Court Madras-104

+1 cc to R.Hemalatha Advocate sr.31023

W.P.No.19635 of 2015

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