

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.40103 of 2016 and
WMP.Nos.34152 and 34153 of 2016

G.Saravanan

... Petitioner

Vs.

1. Union of India,
rep. by the Chief Secretary to the Government
of Union Territory of Puducherry
having Office at the Secretariat Buildings,
Goubert Avenue, Puducherry-605 001.
2. The Deputy Commissioner (Excise),
Office of the Deputy Commissioner (Excise),
Thattanchavady, Puducherry-605 009.
3. The Tahsildar (Revenue Recovery),
Office of the Deputy Commissioner (Excise),
Thattanchavady, Puducherry-605 009.
4. S.D.Segar
5. S.D.Santhi
6. R.Seenuvasan

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Notification dated 04.08.2016 issued by the 3rd respondent in the Gazette of Puducherry Part-I Extraordinary, dated 12.10.2016 for attachment and sale of the share of immovable property of the petitioner and the consequential Notification No.DC(E)/E.A/2015-16 dated 18.10.2016 issued by the 2nd respondent published in Tamil Daily Newspaper 'Daily Thanthi' of Puducherry Edition dated 20.10.2016 for sale by e-auction of the share of immovable property of the petitioner and quash the same to the extent it infringes the lawful rights and interests of 1/3rd undivided share of the property of the petitioner.

For Petitioner : M/s.Babu Rangasamy Associates
For Respondents : Mrs.Reena Ishwariya,
Additional Government Pleader

O R D E R

Heard Mr.Babu Rangasamy, the learned Counsel for the petitioner and Mrs.Reena Ishwariya, the learned Additional Government Pleader appearing for the respondents.

2. The petitioner in this Writ Petition challenges the auction Notification published in Puducherry Government Gazetted bringing the petitioner property for auction for recovery of the excise arrears payable by the 5th respondent.

3. The property-in-question is jointly owned by the petitioner, 4th and 6th respondents, having purchased it by a Sale Deed dated 04.09.2008, registered as Document No.5010 of 2008 before the Villianur Sub-Registrar's Office, Puducherry, all the three purchasers are stated to have 1/3rd share in the said property. The 4th respondent who is one of the co-owners was granted a licence for an arrack shop by Puducherry Excise Department and to secure the transactions, it appears that the original document pertaining to the property was given as collateral by the 4th respondent to the 2nd respondent. The petitioner nor the 6th respondent were unaware of the same. It appears that the 4th respondent committed default in payment and action was initiated by the respondents 2 and 3 which ultimately resulted in bringing the property for auction. At this stage, the petitioner rushed to this Court and filed this Writ Petition.

4. When the matter came up for hearing on 15.11.2016, this Court passed the following Order :

''The petitioner's case is that he is the owner of the property which is sought to be brought for auction along with the respondents 4 and 6. The property is said to have been mortgaged in favour of the Excise Department of Puducherry Government to secure the license granted for sale of arrack in favour of the 4th respondent.

2.Mrs.Reena Ishwariya, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 to 3 would submit that neither the petitioner nor the 6th respondent who is the co-owner of the property are signatories to the mortgage deed.

3.Considering the fact that already auction has been notified, this Court is not inclined to stay the auction but the confirmation shall remain stayed and the auction can go on. It is open to the petitioner and the 6th respondent to be present at the auction to watch the proceedings though they will not be entitled to bid at the

auction. This Court will consider as to the further orders to be passed after the learned Additional Government Pleader gets instructions as to the amount of offer which has been received by them. The third respondent, before commencement of the auction, shall inform all the participants about the pendency of this writ petition and this order. A copy of this order shall also be made available to the proposed bidders.'

5. The learned Additional Government Pleader appearing for the respondents 1 to 3 fairly submits that though the auction was conducted in the presence of the parties as directed, there were no bidders. Thus, the impugned auction notice can no longer be enforced as it has outlived its purpose. The learned Additional Government Pleader further submits that the petitioner is entitled to 1/3rd interest in the said property. Therefore, if any future auction is done that cannot be done without proper enquiry with the petitioner, the 4th and 6th respondents.

6. Accordingly, the Writ Petition is allowed and the impugned notice is set aside and if the respondents 2 and 3 seek to proceed against the property-in-question, they shall issue fresh notice to the petitioner, 4th and 6th respondents and conduct an enquiry and thereafter, proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. Chief Secretary to the Government,
Union of India,
Union Territory of Puducherry
having Office at the Secretariat Buildings,
Goubert Avenue, Puducherry-605 001.

2. The Deputy Commissioner (Excise),
Office of the Deputy Commissioner (Excise),
Thattanchavady, Puducherry-605 009.

3. The Tahsildar (Revenue Recovery),
Office of the Deputy Commissioner (Excise),
Thattanchavady, Puducherry-605 009.

+1cc to the Government Pleader, S.R.No.71586,71591

W.P.No.40103 of 2016

NRI (CO)
MA(29/12/2016)



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