THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

W.P.Nos.17118 of 2006 & 42433 of 2015

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

W.P.No.17118 of 2006 is filed by the owner of the subject property questioning the action of the respondents in putting the said property to sale for recovery of the sales tax arrears of a partnership firm in which her husband was a partner. W.P.No.42433 of 2015 is filed by the auction purchaser to declare the action of respondents 1 and 2 in not causing registration of the property auctioned as per attachment notice in Form No.5 dated 30.05.2006 published in Chittoor District Gazette on 17.07.2006 for a sale price of Rs.16,66,000/- towards the recovery of arrears under the A.P.General Sales Tax Act, 1957 (for short "the APGST Act") by invoking the provisions of A.P.Revenue Recovery Act, 1864 (for short "the Act"), though the petitioner was the successful bidder and had paid the entire sale consideration within the time stipulated under the terms of auction, as being illegal, arbitrary, violative of principles of natural justice, and in violation of Article 19 of the Constitution of India.

Facts, to the extent relevant, are that the husband of Smt. M.Sarala (the petitioner in W.P.No.17118 of 2006) i.e Sri M.Prabhakar Naidu was a partner in two firms viz., M/s. Narasimhulu Naidu & Co. and M/s.Suresh Traders, both of which fell in arrears of sales tax, for the period 1986-87 to 1994-95, for a sum of Rs.9,56,000/-. On the ground that the petitioner's husband had failed to pay sales tax arrears, and his liability as a partner of the firm was joint and several, proceedings were initiated under the Act for bringing the subject property to sale by way of auction. A notice of attachment in Form No.5 was issued on 30.05.2006, and a notice for bringing the subject property to sale in Form No.7 was issued on the very same day fixing the date of auction as 19.08.2006.

M/s. Jain Irrigation System Pvt. Ltd. (the petitioner in W.P.No.42433 of 2015) was the highest bidder in the auction, and paid 15% of the bid amount of Rs.16,66,000/- on the date of the auction. The conditions of auction required the highest bidder to pay entire bid amount within four weeks. On Smt. M.Sarala (the petitioner in W.P.No.17118 of 2006) invoking the jurisdiction of this Court, interim stay of confirmation of sale was granted by order in W.P.M.P.No.21462 of 2006 dated 18.08.2006 on condition that the petitioner deposited the principal amount of Rs.9,60,000/- within a period of six weeks. On the ground that Smt. M.Sarala failed to deposit the amount, within the time stipulated by this Court, M/s. Jain Irrigation System Pvt. Ltd. paid the balance 85% of the bid amount thereafter. However, on an application filed by Smt. M.Sarala along with a petition to condone the delay in depositing the amount pursuant to the interim order passed earlier, this Court allowed the application as the petitioner had, by then, deposited Rs.9,56,000/-.

While the affidavit filed in support of W.P.No.17118 of 2006 is silent on the question of the petitioner not having been put on notice both prior to and after the order of attachment, the petitioner filed W.P.M.P.No.32425 of 2006 seeking amendment of the prayer to include a challenge to the attachment notice in Form No.5 dated 30.05.2006, Form No.5 notice published in the Gazette on 17.07.2006, the auction notices dated 30.05.2006 in Form Nos.7&7A and its notification published in the Chittoor Gazette dated 17.07.2006. They sought a declaration that the auction conducted on 19.08.2006 was illegal and unconstitutional. The notices, issued in Form Nos.7 and 7A, are under challenge in W.P.No.17118 of 2006 mainly on the ground that a copy of the said notices were not served on the petitioner. The notice of demand, required to be served prior to attachment of land, is stipulated under Section 25 of the Act and, thereunder, the demand is required to 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 know residence, or on some conspicuous part of the land about to be attached. It is evident from the counter affidavit filed on behalf of the respondents that, in the present case, the notice was neither delivered to the petitioner (the widow of a partner of the defaulter), nor to any male member of her family at her usual place of abode or even to her authorised agent.

While the counter affidavit refers to service of notice by affixture, the record placed before this Court does not contain any material to show the manner in which the notice was served by affixture, or the persons who witnessed such a mode of service of notice. In the absence of even the notice being served, as stipulated under Section 25 of the Act, the petitioner cannot be faulted for not paying the demanded amount and, consequently, all subsequent proceedings, including auction of the said property, are rendered illegal.

As it is not in dispute that the two firms, in which the petitioner's husband was a partner, had defaulted in payment of tax arrears and the subject property, which was sought to be put to auction, belonged to the deceased, we see no reason to direct the attachment order to be lifted notwithstanding failure to issue a notice prior thereto. It would suffice if the notice in Form Nos.7 and 7A, and its publication in the Gazette, are alone set aside. The order of attachment shall continue to remain in force and shall be lifted in case the petitioner in W.P.No.17118 of 2006 pays the amounts due within one month from today. In case the petitioner fails to do so, it would then be open to the respondents to thereafter initiate proceedings afresh to put the subject property to sale by way of auction in accordance with the procedure prescribed under the Act.

As the interest, which may be charged under Section 16(3) of the APGST Act, is 36% per annum, for tax arrears due beyond one year, the interest levied on the sales tax arrears due from the petitioner's husband cannot be said to be disproportionate necessitating interference in proceedings under Article 226 of the Constitution of India. While a feeble attempt is made by Sri Challa Gunaranjan, learned counsel for the petitioner in W.P.No.17118 of 2006, to contend that, on deposit of Rs.9,56,000/- by the petitioner therein, the sales tax authorities are not entitled to levy any interest thereafter in terms of Section 16(3) of the APGST Act, the manner in which the amount of Rs.9,56,000/- should be appropriated, whether towards principal or towards interest, is in the discretion of the creditor which, in this case, is the Revenue. The mere fact that the petitioner had deposited Rs.9,56,000/- would not obligate the respondents to appropriate the said amount only towards the principal. As to how the said amount should be appropriated, whether towards the principal or accrued interest, are matters for the respondents to consider and not for this Court to prescribe.

Suffice it if the petitioner in W.P.No.17118 of 2006 is granted liberty to make an application to the respondent-authorities seeking reduction of the rate of interest and, on any such application being made, it is open to the respondent-authorities to consider the said application in accordance with law.

M/s. Jain Irrigation System Pvt. Ltd. (the petitioner in W.P.No.42433 of 2015) deposited the sale consideration pursuant to the auction conducted by the respondents earlier. The amount, so deposited, shall be refunded to them forthwith. It is open to M/s. Jain Irrigation System Pvt. Ltd. (the petitioner in W.P.No.42433 of 2015) to initiate appropriate legal proceedings for recovery of the interest, which they are entitled to receive for the sale consideration deposited by them pursuant to the auction held by the respondents.

Both the writ petitions are, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

SURESH KUMAR KAIT, J

Date: 12.04.2016

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<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT</u>

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