IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER

AND

The Hon'ble MR.JUSTICE R.SURESH KUMAR

W.A. Nos.77 and 78 of 2017 against WP.34732 & 34733/16
and C.M.P.Nos.1325 to 1329 of 2017

1.The District Collector,
Kancheepuram District.

2.The Spl. Tahsildar (LA)
Unit-II, Mannur, Valarpuram,
Nemili Scheme, SIPCOT,
No.14/43, Govinda Medu Street,
Near Taluk Office,
Sriperumbudur - 602 105,
Kancheepuram District. .. Appellants in both WAs./2&3rd

-vs-

1.M/s.Jubilee Plot & Housing Pvt. Ltd.,
Rep. By its Managing Director,
Mr.R.P.Darrmalingam. .. 1st Resp. in WA.77/2017/
Petitioner

1.R.P.Darrmalingam .. 1st Resp. in WA.78/2017/
Petitioner

2.The Assistant Commissioner of
Income Tax, Central Circle 2(2),
Chennai 600 034. ..2nd Respondents in both WAs./
Ist Respondent

Appeals filed under Clause 15 of the Letters of Patent against the common order dated 13.09.2016 passed in W.P.Nos.34732 and 34733 of 2016 on the file of this Court.

WP Prayer:

Writ Petitions under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to (i)Issue of a writ of certiorafied mandamus to call for the records of the 1st respondent in the proceedings vide order dated 06.07.2016 initiated u/s 226(3) of the Income Tax Act, quash the same and direct the 2nd and 3rd respondents to forthwith pay the sum of Rs.8,25,46,285/- being 15% of the disputed demand for the assessment years 2008-09 to 2014-15 directly to the 1st respondent from out of the sum due to the petitioner under the Award Nos.1, 2 &3 / 2016 dated 29.04.2016 and 25.05.2016 and further forbear the 1st respondent from taking any other coercive steps for recovery of the tax pending disposal of the appeals filed before the Commissioner of Income Tax (Appeals-II), Chennai (in WP.No.34732/2016);

(ii)Issue a writ, order or direction more particularly a writ in the nature of writ of mandamus to direct the 1st and 2nd respondents to forthwith pay the sum of Rs.1,20,47,042/- being 15% of the disputed demand for the assessment years 2008-09 to 2014-15 directly to the 3rd respondent from out of the sum due to the petitioner under the Award Nos.1,2&3/2016 dated 29.04.2016 and 25.05.2016 and further forbear the 3rd respondent from taking any other coercive steps for recovery of the tax pending disposal of the appeals filed before the Commissioner of Income Tax (Appeals-II), Chennai (in WP.No.34732/2016);

For Appellants : Mr.V.Ayyathurai,
Addl. Adv. General, assisted by
Mr.T.N.Rajagopalan, Spl.G.P.

For Respondents : Mr.B.Kumar, Sr. Counsel
for M/s.M.Vivekanandan for R-1
in WA.77 of 2017 and
Mrs.Pushya Seetharaman,
Sr. Counsel
for M/s.M.Vivekanandan for R-1
in WA.78 of 2017
: Mr.T.Pramod Kumar Chopda
for R-2 in both WAs.

COMMON JUDGMENT

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

1. In these captioned appeals, challenge has been laid to the order dated 13.09.2016 passed by the learned Single Judge. The operative directions which have been passed by the learned Single Judge are contained in paragraph 3 of the said order.

2. Broadly, the record shows that the petitioners approached the learned Single Judge by way of writ petitions under Article 226 of the Constitution, for issuance of directions to the

official respondents, i.e. The District Collector and the Special Tahsildar (LA), for payment of 15% of the disputed demand qua Block Assessment Years, 2008-2009 to 2014-2015. This situation came about, as the Income Tax Department had issued a recovery notice under Section 226 (3) of the Income Tax Act, 1961 (in short 'the Act'). Since, the recovery was being initiated by the appellants, the writ petitioners approached the writ Court. The learned Single Judge, therefore, as indicated above, issued the following operative directions, which are contained in paragraph 3 of his order :

> ''3.The validity of the abovesaid notice has to be considered after the respondent-Assistant Commissioner of Income Tax files counter affidavit, and after hearing the District Collector, and if need be, the Government also. However, in order to secure the interest of the revenue, there will be a direction to the respondent / Special Tahsildar/Land Acquisition Officer, to deposit the amount of Rs.52,52,81,741/- (Rupees Fifty Two Crores Fifty Two Lakhs Eighty One Thousand Seven Hundred and Forty One only) to the credit of W.P.Nos.34732 and 34733 of 2016, in the Indian Bank, High Court Branch, within a period of three weeks from the date of receipt of a copy of this order. On such deposit, the amount shall be retained in an interest bearing account, and shall abide by the direction to be issued in these Writ Petitions at a later point of time. Notice to respondents 2 and 3 in W.P.Nos.34732 of 2016, returnable in four weeks. Private notice is also permitted.''

3.Mr.Ayyathurai, learned Additional Advocate General, says that the direction issued by the learned Single Judge to deposit a sum of Rs.52,52,81,741/- to the credit of W.P.Nos.34732 and 34733 of 2016 is beyond the prayers made in the writ petition. According to the learned Additional Advocate General, the prayers sought for in the two writ petitions referred to above seek deposit of a sum of Rs.8,25,46,285/- and Rs.1,20,47,042/- only. This apart, learned Additional Advocate General says that the funds to secure the deposit have to be furnished by SIPCOT, who is, presently, in a weak financial position.

4.On the other hand, the learned Senior Counsels appearing for the writ petitioners submit that an interim award dated 29.04.2016, has been passed in their favour, which requires the State Government to pay a sum of nearly Rs.247 crores to them.

4.1. Furthermore, it has been brought to our notice by the learned counsels for the parties herein that an attempt was made by the State Government to de-notify the acquisition of the subject land, which was challenged by the wife of the Managing

Director of one of the writ petitioners, i.e. Jubilee Plot and Housing Pvt. Ltd., via W.P.No.28851 of 2016. In the said writ petition, the learned Single Judge of this Court vide order dated 13.08.2016, has injuncted, in effect, the State Government from taking any steps to withdraw or drop the acquisition proceedings.

5.We may also note that in the pending writ petitions, the learned Single Judge vide order dated 29.11.2016, (i.e., after impugned order), has made the following observations:

> ''It appears that between the petitioner and the respondents 2 and 3, there are certain discussions going on to bring about an amicable settlement to the problem. What is impugned in this writ petition is a notice issued by the Income Tax Department under Section 226 (3) of the Income Tax Act, 1961. This Court passed an interim order on 30.09.2016 on the premise that the said notice issued by the Income Tax Department is on account of the fact that the petitioner has received substantial sums of money from the SIPCOT by way of compensation for land acquisition.
>
> 2.Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel for the first respondent points out that the impugned notice does not in any manner relate to the money which are received or receivable by the petitioner on account of the land acquisition proceedings by SIPCOT.
>
> 3.List the matter on 15.12.2016. The first respondent is directed to file a counter clearly placing all the facts well before the next hearing date.''
>
> (emphasis is ours)

6.We have heard the learned counsel for the parties and perused the record. According to us, the learned Single Judge is still in seizin of the matter. A perusal of the order dated 29.11.2016, would show that the learned Single Judge had placed the matter for a closer scrutiny on 15.12.2016. Accordingly, the Income Tax Department was directed to file a counter in the matter.

6.1. In these circumstances, we have put to Mr.Ayyathurai as to whether he would like to approach the learned Single Judge by way of an application for clarification / review. Learned Additional Advocate General says that he will approach the learned Single Judge with an appropriate application qua the impugned order. Mr.Ayyathurai, however, says that pending such step being taken, the officials of the State Government should be protected at least for a short period of time.

7.Accordingly, the Writ Appeals are dismissed as withdrawn, according liberty to the appellants to approach the learned Single Judge by way of an appropriate application. Steps in this behalf will be taken within a period of two (2) weeks from the date of receipt of a copy of the order passed today.

8. At this stage, learned Senior Counsels for the writ petitioners, Mr.B.Kumar and Mrs.Pushya Seetharaman, state that they will not take steps for a period of two (2) weeks to enforce the impugned order. Mr.Chopda, who appears for the Income Tax Department, states likewise.

9.It is made clear, if no steps are taken within the period stipulated above, the undertaking given to the Court by the learned counsels for the writ petitioners will automatically dissolve.

10.Connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sra

To

1.The District Collector,
Kancheepuram District.

2.The Spl. Tahsildar (LA)
Unit-II, Mannur, Valarpuram,
Nemili Scheme, SIPCOT,
No.14/43, Govinda Medu Street,
Near Taluk Office,
Sriperumbudur - 602 105,
Kancheepuram District.

3.The Assistant Commissioner of
Income Tax, Central Circle 2(2),
Chennai 600 034.

+2ccs to Mr.M. Vivekandan, Advocate, S.R.No.15122 & 15122
+1cc to Mr.T. Pramodkumar, Advocate, S.R.No.15130

RJ(CO)
Eu 20.03.17

W.A. Nos.77 and 78 of 2017