BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :25.04.2017
CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

W.P.(MD).No.17040 of 2016

T.Subramanian .. Petitioner

Vs.

1. The Tax Recovery Officer,
Ward1(3),
Income Tax Office,
North Cotton Road,
Tuticorin.

2. The Tax Recovery Officer-I,
Income Tax Department,
No.2, V.P.Rathinasamy Nadar Road,
Madurai - 625 002.

3. The Sub-Registrar,
Registration District,
Ottapidaram - 628 401,
Thoothukudi District. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the orders of attachment passed by the first respondent both dated 27.01.2003 and the consequential proceeding of the third respondent dated 31.12.2014 in Na.Ka.No.192/2014 and quash the same and consequently issue a direction to the third respondent to remove the encumbrance made thereon in respect of the petitioner's property in 316A, 316B, Vittalapuram Village, Ottapidaram Taluk on 28.01.2003 in Doc.No.L1 & L2 of 2003 on the file of Sub Registrar Ottapidaram.

For Petitioner : Mr.N.Dilip Kumar
For Respondent Nos. 1&2 : Mr.R.Krishnamoorthy
For Respondent No. 3 : Mr.V.Pandi,
Government Advocate

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O R D E R

The present Writ Petition has been filed for issuing a Writ of Certiorarified Mandamus, calling for records relating to the orders of attachment passed by the first respondent both dated 27.01.2003 and the consequential proceeding of the third respondent dated 31.12.2014 in Na.Ka.No.192/2014 and quash the same and consequently issue a direction to the third respondent to remove the encumbrance made thereon in respect of the petitioner's property in 316A, 316B, Vittalapuram Village, Ottapidaram Taluk on 28.01.2003 in Doc.No.L1 & L2 of 2003 on the file of Sub Registrar Ottapidaram.

2.Heard, Mr.N.Dilip Kumar, learned counsel for the petitioner, Mr.R.Krishnamoorthy, learned counsel for the respondents 2 and 3 and Mr.V.Pandi, learned Government Advocate for the third respondent.

3.The brief facts that are necessary for the purpose of disposing the above Writ Petition are as follows:-

3(i) The petitioner is an assessee and suffered an order of assessment for a sum of Rs.14,47,544/-, (Rupees Fourteen Lakh forty seven thousand five hundred and forty four) payable as income tax. However, this amount was reduced by the Appellate Authority to a sum of Rs.7,09,224, (Rupees seven lakh nine thousand two hundred and twenty four) vide proceedings dated 30.09.2004. The first respondent however by proceedings dated 27.01.2003, passed an order of attachment of immovable properties of the petitioner.

3(ii) This order of the first respondent was received by the third respondent on 27.01.2003 and registered as encumbrance on 28.01.2003 in Book No.1 Volume 133, vide documents L1/2003 and L2/2003. Since no sale was effected within three years, the petitioner submitted an application on 24.12.2014, to cancel the encumbrance and to issue a certificate to the effect that there is no encumbrance. This application was rejected by the third respondent on 31.12.2014. Hence the present Writ Petition has been filed by the petitioner.

4.The petitioner's case is that there was no order of stay or any other prohibitory orders restraining the Income Tax Department from proceeding under Section 222(2) r/w second schedule Part-III Rule 68-(B). The only ground on which the petitioner challenges the order of third respondent is by relying upon Sub Rule 1 and 4 of Rule 68-B of second schedule which reads as follows.

> "*(1) No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of Section 245 -I or, as the case may be, final in terms of the provisions of Chapter XX.*
>
> (4)*Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the*

expiry of the time of limitation specified under this rule."

5.The learned Counsel for the petitioner further relied upon the judgment of this Court in the case of ***Noorudin*** Vs. ***Tax Recovery Officer,*** reported in ***2001 (171) CTR 78,*** wherein, it has been categorically held that if the sale is not held within the period specified in Rule 68B after excluding the period specified in Rule 68 B (2), the sale cannot be held after expiry of that period of limitation specified therein and any order of attachment contravening shall be deemed to have been vacated. This court has further held as follows:

"The rule appears to be a rigid one. The reason for the rigidity apparently is the need to ensure prompt recovery of the Revenue, by requiring the authorities concerned to take action within the period prescribed and not to tarry or be dilatory. The rule is not one which can be waived by the defaulter. The rule is not one which provides an option to the defaulter or to the Revenue. All parties are bound by the rule. Any sale of immovable property after the limitation prescribed therein would be clearly illegal and void.

A provision which requires the Revenue to act within the period prescribed by law cannot be construed in a manner which would enable the Revenue to act beyond the period unless the Act specifically so provides, especially where, as a result of such inaction on the part of the Revenue, the assessee or the defaulter is entitled to a benefit."

In view of Rule 68(B), the judgment of the Hon'ble Division Bench cannot be assailed and this Court is bound to follow the Division Bench judgment.

6.The learned counsel for the respondent filed a detailed counter affidavit. In the counter affidavit, the facts that were narrated in the affidavit filed in support of the writ Petition are not disputed. It is the case of the respondents that the property in question was earlier mortgaged by the petitioner to the Tamil Nadu Mercantile Bank Limited, Tuticorin and that the petitioner was prohibited from dealing with the property mortgaged in favour of the Tamil Nadu Mercantile Bank Limited. Hence, the respondent could not proceed with the same. Since, the respondents were prohibited by law from proceeding with the sale, the respondents are entitled to exclude the time during which the respondent could not proceed with the sale of the property.

7.Only on this premise, the respondents wanted this Court to dismiss the writ petition. The perusal of the records discloses that the facts narrated by the petitioner with regard to the dates are admitted. The assessment order though passed on 28.09.1998 and the amount was determined long back, the property was attached in the year 2003. Despite the fact that there was an order of attachment even in the year 2003, there was no attempt to bring the property for sale. The period that can be excluded is also enumerated in Rule 68 (B) (2). The reason for the delay cannot be accepted as the property can also be sold subject to any mortgage. Further, it is not a ground to extend the period of limitation.

8.Rule 68 (B) as extracted above give a clear indication that no sale of immovable property shall be made after the expiry of three years from the end of the financial year, in which the order giving rise to a demand of any tax, interest, fine or penalty. The provision has been clarified by the judgment of this Court in a number of cases.

9.In view of the precedent referred to above, this Court has no hesitation to allow the writ petition with the following direction.

9(i) The impugned order of attachment passed by the first respondent dated 27.01.2003 and the consequential proceeding of the third respondent dated 31.12.2014 are quashed. Consequently the third respondent is directed to remove the endorsement of encumbrance made in respect of the petitioner's property in Door No.316A, 316B, Vittalapuram Village, Ottapidaram Taluk. Though, the respondents are not permitted to bring the property for sale in view of the limitation standing in the way, it is the duty of the petitioner to pay the tax due to the respondent.

10.The right of the respondents to recover the tax from the petitioner by any other modes cannot be curtailed. The third respondent is directed to remove the endorsement for recording of encumbrance in the relevant books within a period of four weeks from the date of receipt of a copy of this order.

11.Accordingly, this Writ Petition is allowed with the above directions. No costs.

Sd/-
Assistant Registrar (AD-II)

/True copy/

Sub Assistant Registrar

To
1. The Tax Recovery Officer, Ward1(3),
   Income Tax Office, North Cotton Road,
   Tuticorin.

2. The Tax Recovery Officer-I, Income Tax Department,
   No.2, V.P.Rathinasamy Nadar Road,
   Madurai - 625 002.

3. The Sub-Registrar,
   Registration District,
   Ottapidaram - 628 401,
   Thoothukudi District.

+1 CC to M/s.N.DILIPKUMAR, Advocate, SR No. 53902.
+1 CC to M/s.R.KRISHNAMOORTHY, Advocate, SR No. 54266.

KM/MR
PSM/SKN-RSK/SAR4/04.07.2017/5P/6C

ORDER MADE IN
W.P.(MD).No.17040 of 2016
25.04.2017