THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.13951 OF 2017

ORDER :

This writ petition is filed assailing the notice dated 31-03-2017 issued by the 4th respondent-Deputy Commercial Tax Officer-I, Bapatla, Guntur District, directing the petitioner's husband to vacate the premises in question and handover the same within 15 days, as being illegal and arbitrary and for issuance of appropriate consequential directions.

2. The case of the petitioner is that 5th respondent purchased the land including the land in question bearing D.No.14-2-2/1 situated at Nethaji Nagar, Near Ansar Theatre, Ponnur, under a registered sale deed. The petitioner took on lease the land in question, which is part of the land purchased by the 5th respondent. It is stated that petitioner constructed a roofed shed for running timber business and after obtaining license from the concerned authorities, running the timber business by paying taxes to the Commercial Tax department. That 5th respondent borrowed an amount Rs.1,25,000/- from the petitioner and executed a registered mortgage deed dated

29-01-2001, but as 5th respondent failed to pay the amounts and defaulted, petitioner filed suit OS No.167 of 2012 on the file of I Addl. District Court, Guntur, for recovery of money and the said suit is pending.

3. While the matter stood thus, the 4th respondent issued the impugned notice dated 31-03-2017 directing the petitioner's husband to vacate the premises in question and handover the same to him on the ground that the 5th respondent is due and payable an amount of Rs.6,65,503/- towards entertainment tax for the years 2005-06 to 2012-12 under the Andhra Pradesh Entertainments Tax Act, 1939, (for short, 'the Act') and to recover the said arrears, it is proposed to sell the property in question in public auction.

4. Learned counsel for the petitioner contended that proceedings against the property which is already mortgaged by the 5th respondent under a registered deed to the petitioner is bad and the 4th respondent ought to have excluded the property in question which is in possession of the petitioner.

5. *Per contra,* learned standing counsel for the 4th respondent submitted that under Section 10-C of the Act, labiality to pay the taxes under provisions of the Act, is to be

the first charge and, therefore, the mortgage deed in respect of the land question, though being prior in time, in view of Section 10-C of the Act, the 4th respondent can proceed against the property in question.

6. It is seen that the impugned notice issued by the 4th respondent is for recovery of arrears of amounts towards entertainment tax under the provisions of the Act. For better understanding, Section 10-C is reproduced which is hereunder:-

> *"10-C Liability under the Act to be the first charge:--- Notwithstanding anything to the contrary contained in any Law for the time being in force any amount of tax, including deferred tax, including tax deferred in general or under any scheme, by what ever name called by the Government, penalty, interest and any other sum payable by the proprietor or any other person under the Act, shall be first charge on then property of such proprietor, or any other person as the case may be."*

7. Admittedly, 5th respondent executed registered mortgage deed in favour of the petitioner and when 5th respondent defaulted to pay the amounts, petitioner filed suit OS No.167 of 2012 and the same is pending. The 4th respondent initiated proceedings for recovery of entertainment tax under the Act and in view of the *non-obstante* clause *i.e.* Section 10-C,

wherein recovery of tax being the first charge, no exception can be taken to the notice issued by the 4th respondent.

8. In view of the same, I do not see any reason to entertain the writ petition and it is accordingly dismissed. However, if the petitioner is willing to pay the amounts in question, she is at liberty to make a representation to the 4th respondent in that behalf and on such a representation being made, the 4th respondent to consider the same pass appropriate orders thereon, in accordance with law. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

Dated: 25-04-2017
NRG

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.13951 of 2017

Date: 24-04-2017

NRG