THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

Writ Petition No.14690 of 2004

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This writ petition is filed questioning the action of respondents 1 and 2 in issuing the impugned auction notices in Form Nos.7 and 7-A dated 21.07.2004, proposing to auction the petitioner's agricultural land of an extent of Ac.6.38 cents in R.S.No.128 of Chandrala Village, Gudlavalleru Mandal, Krishna District for recovery of arrears of sales tax of the 3rd respondent-partnership firm for the period 1981-82 to 1985-86, as illegal and arbitrary.

It is the petitioner's case that, while he was initially admitted as a partner, he was expelled from the partnership firm in the year 1979 itself; the partnership firm was re-constituted in December, 1982; the 3rd respondent had intimated re-constitution of the partnership firm to respondents 1 and 2; as the petitioner was expelled from the partnership firm, he cannot be held liable for payment of the arrears of tax due from the partnership firm; in the legal notice, issued in the year 2004, the petitioner had informed the Department of all these facts; and the official respondents had erred in seeking to recover arrears of tax from the petitioner herein.

On the other hand Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would rely on Section 32 of the Partnership Act to submit that it is only if the fact, that the petitioner was no longer a partner of the partnership firm, was intimated to the Commercial Tax Department, would his liability cease from the date of intimation; there is no averment in the writ affidavit regarding the date or the mode in which such intimation was given to the Department; and the contention that the Department was intimated is now raised for the first time before this Court by filing certain papers, even without a specific averment in this regard in the writ affidavit.

It would be wholly inappropriate for us to examine the question, whether or not the petitioner was expelled from the partnership firm in the year 1979, as it is not even the petitioner's case that he had intimated the Department of his being expelled from the partnership soon thereafter. We see no reason, therefore, to interfere with the action of respondents 1 and 2 in seeking to recover arrears of sales tax from the petitioner for the year 1981-82, and for a part of the year 1982-83 i.e till December 1982, when the partnership firm is said to have been re-constituted.

While Sri V.Bhaskar Reddy, learned counsel for the petitioner, contends that the re-constituted partnership firm had intimated the Department of its re-constitution, and had carried on business without the petitioner being a partner in the firm, these are all factual aspects which the official respondents are required to examine.

As the petitioner has had the benefit of an interim order of stay ever since 19.08.2004, for the past nearly 13 years, we consider it appropriate to permit him to submit a representation furnishing, among others, details of the date on which the firm was re-constituted; documentary evidence to show that he was, thereafter, not a partner of the firm; and the mode, manner and date on which re-constitution of the firm was intimated to the Commercial Tax Department.

As the petitioner claims that the 3rd respondent continued to carry on business even after December 1982, it was obligatory on their part to inform the Commercial Tax Department, that the firm had been re-constituted in December, 1982, soon thereafter. Intimation if any, after the end of the assessment year 1985-86, would not disable the Commercial Tax Department from seeking to recover arrears of tax from the petitioner; and it is only if the petitioner is able to produce documentary evidence to show that intimation, of re-constitution of the partnership firm, was conveyed to the Commercial Tax Department much prior to the end of the assessment year 1985-86, can the arrears of tax, for the period subsequent to the intimation, not be recoverable from the petitioner herein.

The petitioner shall at the earliest and, in any event, within four weeks from today submit a representation to the 1st respondent along with documentary evidence to show that the partnership firm was re-constituted in December, 1982 wherein he was no longer a partner; and the date, mode and manner in which re-constitution of the partnership firm was intimated to the Department. In case the petitioner furnishes such information, the 1st respondent shall consider the same, pass a reasoned order thereupon, communicate the same to the petitioner and, thereafter, take action in accordance with law. In case the petitioner fails to submit such a representation within the aforesaid period of four weeks, furnishing the details mentioned hereinabove, it is open to the 1st respondent to proceed and recover the arrears of tax in accordance with law.

The Writ Petition is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

12th June, 2017
Note: Issue C.C. in three days.
JSU

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Date: 12.06.2017

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