IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.4552 of 2018
and
W.M.P.No.5605 of 2018

A.Umasankar ... Petitioner

vs.

1. Tax Recovery Officer, (Central)
   Office of the Commissioner of Income Tax,
   Central, 5th Floor, Kandankulathi Towers,
   Opposite to Maharajas College Ground,
   MG Road, Cochin - 682011

2. The Tax Recovery Officer,
   Central-II,
   Government of India, Ministry of Finance,
   Income Tax Department, Room No.322,
   III Floor, No.46, Mahatma Gandhi Road,
   Chennai 600034.

3. K.B.Ganesh Kumar
   Executor, Srividya Estates,
   TN-H4, Tagore Nagar, J Lane
   Vazhuthacaud, Trivandrum 14 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned letter dated 6th February 2018 Ref.No.TRC No.70/CR-2/2013-14 issued by the 2nd respondent and quash the same and consequently direct the respondents not to disturb the petitioner's peaceful possession and enjoyment of the premises bearing Flat No.9, Swathy Apartment, D.No.41-A, Subramaniam Street, Abhiramapuram, Chennai 600 018 without following due process of law.

For Petitioner : Mr.P.R.Raman
Senior Counsel for Mr.C.Seethapathy

For Respondents : Mr.A.P.Srinivasan
Standing Counsel (Income Tax)
Mr.ANR.Jayayprathap
for R1 & R2
Mr.T.V. Vineeth Kumar for R3

O R D E R

This writ petition is filed challenging the order of the second respondent dated 06.02.2018, wherein and whereby, the petitioner was directed to vacate the property referred to in the impugned proceedings, on or before 06.03.2018.

2. This Court, while entertaining the writ petition on 01.03.2018, granted an order of interim injunction restraining the respondents from in any manner interfering with the petitioner's peaceful possession and enjoyment of the subject matter property. Thereafter, the matter is listed today for further hearing.

3. Mr.P.R. Raman, learned senior counsel for the petitioner submitted that the second respondent is not having any competency or jurisdiction over the petitioner's tenancy right on the subject matter property, by passing the impugned order directing the petitioner to vacate the same. He further submitted that if at all the said property is brought to sale by public auction, the auction purchaser is entitled to only symbolic possession and not actual possession during the continuance of the tenancy right of the petitioner.

4. On the other hand, the learned counsel appearing for the respondents submitted that the subject matter property is under attachment by the Department by order dated 24.04.2007 and for realisation of the tax due payable by the owner of the property, viz., Srividya, since deceased, the impugned proceedings are issued against the petitioner for vacating the property, so as to enable the Department to bring the property for public auction.

5. Heard both sides.



6. There is no dispute to the fact that the petitioner is not a defaulter and on the other hand, the owner of the property, viz., one Srividya, since deceased, was a defaulter at the hands of the respondents. It is also not in dispute that the petitioner is occupying the property as a tenant. No doubt, the Revenue wants to sell the property, by way of public auction, for realisation of the tax due. At the same time, the question that would arise in this case is whether the second

respondent is entitled to issue a direction to the petitioner to vacate the property, as a matter of any statutory right. When this Court has put such specific question to the learned counsel for the respondents and to show any power conferred on the second respondent to issue such direction, the learned counsel is not in a position to place his reliance on any provisions under the Income Tax Act empowering the second respondent to issue such direction on the tenant.

7. Needless to say that if the property is sought to be sold by way of public auction, the respondents 1 & 2 can do so and the auction purchaser would be entitled to only symbolic possession. If the auction purchaser seeks to vacate the petitioner, who is admittedly in occupation as the tenant, it is for him to work out for such relief in a manner known to law governing the rights and liabilities of the landlord and tenant. At any event, as the second respondent is not empowered to seek for eviction of the petitioner from the property in question as a matter of any statutory right, I do not think that the impugned order, directing the petitioner to vacate the property, can be sustained. At this juncture, it is useful to refer to the decision of the Division Bench of this Court made in (2003) 3 CTC 95 (A.Stephen Samuel, Proprietor, Industrial Security Agency vs. The Union of India) arising out of the proceedings initiated under Recovery of Debts due to Banks and Financial Institutions Act, 1993 wherein the Division Bench has found that only symbolic delivery and not actual delivery can be given to the auction purchaser. The Division Bench, thus, set aside the order of eviction passed by the Recovery Officer, in that case.

8. Considering the above stated facts and circumstances, this Writ Petition is allowed and the impugned proceedings is set aside. However, the order passed in this writ petition will not prevent either the Revenue from bringing the subject matter property for public auction or the auction purchaser from seeking eviction of the petitioner in a manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sni/vsi

To

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+1 cc to Mr.A.P.Srinivas, Senior Counsel(Income Tax), Sr.77151
+1 cc to Mr.T.V.Vineeth Kumar, Advocate Sr.No.77203
+1 cc to Mr.C.Seethapathy, Advocate Sr.No.77102

W.P.No.4552 of 2018

NMI(CO)
CSL/28.11.2018