IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.11671 of 2008

Muthukumuran ... Petitioner

Vs.

The Thasildar
(Revenue Recovery)
Puducherry. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in proc. No. Nil issued under Form No.8 sale notice under Section 36 of the Pondicherry Revenue Recovery Act dated 14.03.2008 and quash the same as illegal, incompetent and without Jurisdiction.

For Petitioner: Mr.Avinash
For Mr.V.Raghavachari
For Respondent: Mr.J.Kumaran
Government Advocate

ORDER

This Writ Petition has been filed to call for the records on the file of the respondent in proc. No. Nil issued under Form No.8 sale notice under Section 36 of the Pondicherry Revenue Recovery Act dated 14.03.2008 and to quash the same as illegal, incompetent and without Jurisdiction.

2. The case of the petitioner is that he has taken Arrack Shop No.8(B) on lease at Manapet, for the period from 01.07.2004 to 30.06.2005 for a sum of Rs.2,00,500/- per month by mortgaging the Document Nos.655/1981, 750/1985 and 1938/1970, to which, the petitioner has also paid a sum of Rs.1,82,500/- towards Earnest Money Deposit. Afterwards, due to the sale of illicit liquor in his area, he was unable to carry on the business and hence, he surrendered the licence to the Government and shifted his business to Tamil Nadu. While that being so, on 14.03.2008, the respondent has issued a notice to the petitioner, alleging that he has to pay the due amount of Rs.9,91,050/- along with interest for the loss caused to the Government and hence, the petitioner has come before this Court by filing the above Writ Petition, challenging the said notice dated 14.03.2008, on the following grounds:

i) That the action of the Revenue Recovery Officer in issuing the sale notice in the absence of any assessment proceedings is bad in law.

ii) That the action of the respondent is against all cannons of natural justice and fair play.

iii) That there cannot be a recovery proceeding in the absence of an assessment.

iv) That the respondent is not the assessing authority and legally not competent to engage in distress proceedings.

v) That the petitioner disputes the quantum demanded from him and consequently the summary procedure under the provisions of Excise laws and Revenue Recovery Act is unavailable to them.

vi) The proceedings of the respondent exfacie show its non-application of mind.

3. The respondent has also filed a counter and stated that since the petitioner has not paid the arrears amount, notice of attachment and notices of sale of Lands were issued on 14.03.2008, fixing the date of auction on 08.05.2008, and the petitioner, in order to escape from the auction proceedings, approached this court by way of filing this Writ Petition. The respondent has also stated that as per provision of Section 58 of the Pondicherry Revenue Recovery Act, 1970, no Court shall take cognizance of suits unless it is instituted within six months from the date on which the cause of action arose as given below:-

> Section 58: No Civil Court shall have authority to take into consideration or decide any question as to the rate of land revenue payable to the Government or as to the amount of assessment fixed or to be hereafter fixed on the portions of a divided estate.
>
> Section 59: Nothing contained in the Act shall prevent the parties deeming themselves aggrieved by any proceedings under this Act, except as herein before contained in Section 58 from applying to the Civil Courts for redress:
>
> Provided that no Court shall take cognizance of such suit unless it is instituted within six months from the date on which the cause of action arose.

Therefore, the respondent would contend that on the face of it the suit is not maintainable and hence, it has to be dismissed.

4. Heard learned counsel for the petitioner and learned counsel for the respondent, and perused the materials available on record.

5. This Court has directed the learned Government Pleader, to get instructions regarding the actual loss which was caused to the Government by the petitioner and accordingly, the learned Government Advocate Mr.J.Kumaran, has produced a letter of the Government of Puducherry, Office of the Deputy Commissioner (Excise), Puducherry, before this Court, wherein, it has been stated that the petitioner has remitted the entire arrears amount of Rs.9,41,050/- vide Challan Nos.06479 and 06475 along with the accrued interest of Rs.8,36,052/- dated 28.09.2012 and thereby, the original title deeds mortgaged by him, were released by the respondent on 22.10.2012 on acknowledgment. It could be further seen that the petitioner himself has agreed to withdraw this Writ Petition by his letter dated 11.10.2012 addressed to the Tahsildar, Puducherry.

6. In view of the remittance of the entire arrears of amount with interest by the petitioner and the subsequent release of original title deeds to the petitioner, nothing survives in this Writ Petition and accordingly, the Writ Petition is dismissed as infructuous. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

raja

To

The Thasildar
Revenue Recovery,
Puducherry.

+1cc to Mr.Raghavachari, Advocate, S.R.No. 41103
+1cc to the Government Pleader, S.R.No. 41022

W.P.No.11671 of 2008

MG(CO)
GN(03/09/2018)