IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2018

CORAM

THE HONOURABLE MRs.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.16532 of 2008
and
M.P.No.2 of 2008

1.Semathammal

2.K.Samu

3.K.Natarajan

4.K.Nagappan

5.K.Mariappan ... Petitioners

Vs.

1.The Managing Director,
Madras Metropolitan Development Authority,
Thalamuthu Natarajar Maligai,
Egmore, Chennai - 600 008.

2.The Thasildar III,
(Land Acquisition III),
Office of the Tamil Nadu Housing Board Schemes,
Tamil Nadu Housing Board Building,
Nandanam, Chennai - 600 035.

3.The Income Tax Officer,
Income Tax Office,
Ayyakar Bhavan,
Nungambakkam.
Chennai-600 034 ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent and to quash the letter reference D1/11748/94 dated 11.09.2007 and the challan of remitted enclosed which has been issued by the second respondent and direct the respondents to refund Rs.54,441/- towards income tax remittance on 17.05.2007 vide BSR.No.261238 to the petitioner.

For Petitioners : Mr.David Tyagaraj

For R1 : No appearance

For R2 : Mr.R.S.Selvam
Government Advocate

For R3 : Mr.Rajkumar Jhabakh, Senior Counsel
for Mr.J.Narayana Swamy

O R D E R

This Writ Petition is filed praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent and to quash the letter reference D1/11748/94 dated 11.09.2007 and the challan of remitted enclosed which has been issued by the second respondent and direct the respondents to refund Rs.54,441/- towards income tax remittance on 17.05.2007 vide BSR.No.261238 to the petitioner.

2.The case of the petitioners are that the petitioners are wife and sons of deceased Kannappa Reddy. The petitioners' father deceased Kannappa Reddy owned lands in survey No.187/1B measuring 1.41 acres at Koyambedu Village, Egmore, Nungambakkam Taluk. The said land were acquired by the first respondent namely the Managing Director, MMDA, Egmore, Chennai. The award was received by the father of the petitioners. The father has invoked the benevolent provision as amended under the amended Act and claimed compensation under Section 28A of the Land Acquisition Act. Since the first and second respondents had not deposited the enhanced compensation as per the Land Acquisition Act, the petitioner's father has filed W.P.No.14898 of 1994 for relief under Section 28A of the Land Acquisition Act 68 of 1984, which was awarded by this Court. Even thereafter, since the respondents had not deposited the amount, the contempt of the case was filed by the petitioners, who were impleaded in the contempt application, due to the death of Kannappa Reddy. The petitioners inherited the property and succeeded the estate of Kannappa Reddy, as there are the only surviving legal heirs.

3. Pursuant to the contempt application, the 2nd respondent deposited Rs.6,45,000/- out of which Rs.54,441 was deducted by the second respondent under the clause of capital gains. It is the contention of the petitioner that the said lands acquired were agricultural lands and hence, the capital gains which falls under Section 2(14) and 45(5) of the Income Tax Act 1965 will not be attracted. Moreover, the Tahsildar in his report dated 12.08.1982 had communicated that the lands are only agricultural lands, while treating the loan as subsidy. The petitioners have sent a representation to the respondents on 21.01.2008. The

respondents one and two acknowledged the representation and third respondent has referred to acknowledge the same. Since, there is no proper reply, this Writ Petition has been filed.

4.When the matter was taken up today, the counsel for the respondent/Income Tax Department, Mr.Rajkumar Jhabakh would submit that the petitioners have not registered for the income tax Pan Card and not obtained the pan card and only if there is a pan card, they can process the said representation and the request for the petitioner can be considered only after obtaining the necessary particulars from the petitioners and necessary orders would be passed.

5.In view of the above submission of the learned counsel for the third respondent, this Writ Petition is disposed of and the petitioners are directed to obtain pan card in their favour within a period of 2 months from the date of receipt of copy of this order and the petitioner to send a representation to the third respondent enclosing a copy of the Pan Card within a period of 2 weeks thereafter. The Chief Commissioner of Income Tax Department is directed to process the said representation within a period of 4 weeks after receipt of such representation.

6. If the petitioners receive the Pan Card before the period of two months, the petitioners are at liberty to send the representation to the third respondent. On receipt of the said representation, the third respondent is directed to consider the same within a period of four weeks thereafter. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Managing Director,
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Thalamuthu Natarajar Maligai,
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(Land Acquisition III),
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Nandanam, Chennai - 600 035.

3.The Income Tax Officer,
Income Tax Office,
Ayyakar Bhavan,
Nungambakkam.
Chennai.

+2cc to Mr.David Tyagaraj, Advocate sr.no.40320
+1cc to Mr.Rajkumar Jhabakh, Advocate sr.no.40751
+1cc to Government Pleader sr.no.40972

W.P.No.16532 of 2008
and
M.P.No.2 of 2008

mr(co)
nr 30/08/2018