THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.10571 OF 2017

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

Heard Sri B.V.Anjaneyulu, learned counsel for the petitioner and Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission.

The action of the second respondent in issuing warrant in Form 11 under Sections 48 and 49 of the Andhra Pradesh Revenue Recovery Act, 1864 ("the Act" for brevity), and in directing the third respondent to arrest the petitioner's son, is questioned in this Writ Petition as being arbitrary and illegal. By proceedings dated 14.03.2017, issued in Form 11 under Sections 48 and 49 of the Act, the Commercial Tax Officer was informed by the Deputy Commissioner, Commercial Taxes that a sum of Rs.50,55,524/- was due towards arrears of tax from the petitioner; and that he should arrest the defaulter for non-payment of Rs.50,55,524/-.

Facts, to the limited extent necessary, are that, against the assessment order passed by the assessing authority on 24.06.2015, the petitioner's son preferred an appeal to the Appellate Deputy Commissioner who dismissed the appeal by order dated 30.12.2015. Aggrieved thereby, the petitioner's son approached the VAT Tribunal under Section 33 of the A.P. VAT Act in AR.No.65 of 2016. It is stated, in the writ affidavit, that the I.A. filed seeking stay of operation of the order is still pending. The fact, however, remains that no interim order of stay has been passed therein.

Section 48 of the Act confers the powers of arrest in case of wilful or fraudulent non-payment of arrears and, thereunder, when arrears of revenue, with interest and other charges, cannot be liquidated by the sale of the property of the defaulter, or his surety, and the Collector has reasons to believe that the defaulter or his surety is wilfully withholding payment of the arrears, or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest and imprisonment of the defaulter, or his surety. The period of imprisonment, stipulated in the said Section, is of two years. Under Section 49 of the Act, the Collector shall issue his warrant for arrest of the defaulter, or his surety, or both, and should specify the name of the defaulter, the amount of revenue due and the date on which it becomes payable, and the warrant shall be signed and sealed by the authority by whom it was issued. The officer charged with the execution of the warrant shall, thereupon, arrest the defaulter, or his surety or both, and convey him to the district jail, and deliver the warrant to the Jailor.

As noted herein above, Section 48 can be invoked to arrest and imprison a defaulter only in cases where the arrears of revenue, with interest and other charges, cannot be liquidated by the sale of the property of the defaulter. It is only in such cases, and if the Collector has reason to believe that the defaulter was wilfully withholding payment of arrears, and has been guilty of fraudulent conduct in order to evade payment, can he be directed to be arrested. It is only if the aforesaid conditions are fulfilled can resort to arrest, under Section 48 of the Act, be made. The impugned order does not reflect either that (1) the arrears of tax cannot be recovered by the sale of the property of the defaulter and (a) the Collector was satisfied that the defaulter was wilfully withholding payment of arrears of tax or (b) that the defaulter was guilty of fraudulent conduct in evading payment of arrears of tax. The impugned order makes no reference to the Deputy Commissioner (Collector) having satisfied himself that the conditions stipulated in Section 48 of the Act are attracted in the facts and circumstances of the present case.

The primary requirement of Section 48 of the Act is that arrears of tax cannot be liquidated by the sale of the property of the defaulter. The petitioner's father, who filed the present Writ Petition, would contend that there are certain properties which his son owns. Sri S.Suri Babu, learned Special Standing Counsel for Commercial Taxes, would, however, point out that the writ affidavit is vague, and does not give particulars of properties which the petitioner's son (defaulter) owns. He would fairly state that no other order was passed by the Deputy Commissioner (CT), recording his satisfaction of the fulfilment of the ingredients of Section 48 of the Act, prior to the issuance of the warrant in Form 11.

While absence of availability of the properties of the defaulter, for liquidation of arrears of tax, may justify invocation of Section 48 of the Act, the impugned order, in the present case, does not even record the Deputy Commissioner's satisfaction of the defaulter not having any properties which could be brought to sale for recovery of arrears of tax. In addition thereto, Section 48 of the

Act also requires the Collector to satisfy himself that the defaulter is wilfully withholding payment of arrears of tax or is guilty of fraudulent conduct in order to evade such payment. It is only after arriving at such a satisfaction, can the Deputy Commissioner (CT), thereafter, cause arrest and imprison the defaulter. The impugned proceedings dated 14.03.2017 does not reflect the Deputy Commissioner's satisfaction in this regard.

In the absence of these basic particulars being reflected in the impugned order, the said order dated 14.03.2017 must be, and is accordingly, set aside. It is made clear that this order shall not disable the respondents from complying with the conditions stipulated in Section 48 of the Act; and, thereafter, from taking action in accordance with law.

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

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

3rd October 2018
RRB