THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.27572 of 2007 & 5568 of 2008

COMMON ORDER:

W.P.No.27572 of 2007 is filed under Article 226 of the Constitution of India seeking verbatim the following relief:

> '…to issue a Writ, Order or Direction one more particularly in the nature of the Writ of Mandamus
>
> a) Declare the action of the Respondents 1 to 3 herein in issuing proceedings and insisting the petitioner to remit Rs.16,97,520/- from the FDRs of the petitioners institution to the Deputy Commercial Tax Officer, Rajahmundry in terms of the notice dt.17.05.2007 in G/21/88/B(10) of Respondent no.3 as illegal, arbitrary violative of article 14, 300-A of Constitution of India and also violative of the Section 52-B (6) of the Revenue Recovery Act, 1864 and
>
> b) Consequentially declare that the Respondents 1 to 3 have no authority to deal with the funds of the petitioner institution in any manner contrary and detrimental to the interests of the petitioner institution; and
>
> c) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

The very same writ petitioner filed W.P.No.5568 of 2008 under Article 226 of the Constitution of India seeking verbatim the following relief:

> '..to issue a Writ, order or direction one more particularly in the nature of Writ of Mandamus
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> a) declaring the action of the Respondent No.1 in freezing Account of the petitioner in letter No.100/11/650, dt.11.02.2008 as bad, illegal, arbitrary, unconstitutional and violative of Article 14 and 300A of Constitution of India and
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> b) Consequently direct the Respondent No.1 not to interfere with the Accounts of the Petitioner in any manner detrimental to the interest of the Petitioner institution, thereby permitting the Petitioner to operate its Accounts without any hindrances.
>
> c) and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.'

2. As the issue involved in both the writ petitions is one and the same, both the writ petitions are heard together and are being disposed of by this common order.

3. I have heard the submissions of *Sri W.B.Srinivas*, learned counsel representing *Ms. Usha N.Kiran*, learned counsel appearing for the petitioner-institution; of *Dr.K.L.Narasimha*, learned standing counsel appearing for the respondent-Andhra Bank in both the writ petitions; and of the learned Government Pleader for Commercial Taxes appearing for the CTO concerned in both the writ petitions. None appeared for the 1st respondent-The United Bank of India, Rajahmundry, in W.P.No.27572 of 2007. I have perused the material record.

4. From the pleadings of the parties and the submissions now made before this Court, the following facts are discernable:

The petitioner-institution, which is a Charitable Institution under the control of the Endowment Department, was the original owner of a site over which Sri Lakshmi Talkies was situated. The said site was originally leased out to one Nidamarthi Venkata Satyanarayana Murthy. He constructed a theatre, by name, Sri Lakshmi Talkies, and leased it out to one Bandaru Giribabu. There was a proposal for sale of the said property. The said Giribabu offered to purchase the property by paying the sale price. When the said proposal is under consideration, the original lessee approached the Court by filing a suit in O.S.no.302 of 1993 on the file of the Court of Additional Junior Civil Judge, Rajahmundry, stating that he has a preferential right to purchase the property. Later, the said suit was dismissed. In the meanwhile, Giribabu died; and, his son, Jayadev, stepped into the shoes of his father; Giribabu, and, eventually, he purchased Sri Lakshmi Talkies property under a regular registered sale deed from the petitioner-institution. Till the registered sale deed was executed by the petitioner-institution in favour of the said Jayadev in respect of Sri Lakshmi Talkies property, the petitioner-institution retained with it the advance consideration, which is part of the sale consideration, paid by the said purchaser to the petitioner-institution. In the meanwhile, Sri Lakshmi Talkies, which was originally run by Giribabu and later being run by his son, Jayadev, failed to pay the taxes payable to the Commercial Tax Department. Therefore, proceedings were initiated by the authorities of the Commercial Tax Department under the provisions of the Andhra Pradesh Entertainment Tax Act for attachment of the accounts/FDRs held by the petitioner-institution with its banks, namely, The United Bank of India, Rajahmundry, & Andhra Bank, Innispeta Branch, Rajahmundry [respondents 1 & 2 in W.P.no.27572 of 2007] and Andhra Bank, Danavaipet Branch, Rajahmundry [1st respondent in W.P.no.5568 of 2008] *inter alia* stating that the lease holder of Sri Lakshmi Talkies fell in arrears of tax and that since the petitioner institution, which is the owner of the property, is holding the advance sale consideration, which was paid by the leaseholder, Jayadev, the petitioner-institution is liable to pay the said tax dues from the said advance consideration received by it from the management of Sri Lakshmi Talkies, that is, the defaulter in payment of taxes. Aggrieved thereof, the petitioner institution approached this Court.

5. During the course of hearing, it is brought to the notice of this Court that vide reference no.B13/21/88, dated 15.09.2003, a notice under Section 52-B of the Revenue Recovery Act was issued by the Deputy Commercial Tax Officer, Danavaipet, Rajahmundry, to the Branch Manager, Indian Bank, Chandralok Hotel, Rajahmundry, informing to take notice that Bandaru Giribabu, lessee of Sri Lakshmi Talkies fell in arrears of entertainment tax and show tax to an extent of Rs.7,15,968/- to the Commercial Tax Department as stated in the said notice and that out of the amount of Rs.7,21,342/-, an amount of Rs.2,99,430/- has been kept with Principal Senior Civil Court,

Rajahmundry as per the orders of interim stay granted by this Court, on 04.01.2002, in CMP No.24870 of 2001 and that the said exhibitor has to pay the remaining amount of Rs.4,16,538/- for the years 1992-93 and 2000-01 as mentioned in the said notice and that the said Giribabu had expired; and, his son, Jayadev, is liable to pay the said balance tax dues and that he has not paid the same to the Department and that he is having an account with the said Bank and that he deposited Rs.6,50,000/- in his account and as such, the amount held in the account of the said Jayadev, on 13.09.2003, is attached and the Branch Manager of the Bank is requested to pay an amount of Rs.4,16,538/- to the Department towards arrears of taxes out of the deposits in the name of the said Jayadev. In the said notice, it was also requested to withhold the cheque no.197361 dated 10.09.2003 or any other cheque issued by Jayadev till the above arrear is cleared. Further, the then Deputy Commercial Tax Officer addressed a letter, dated 15.09.2003, *vide* reference no.B 13-21/88, to the Branch Manager, Indian Bank, Innispeta Branch, Rajahmundry, informing that the management of Sri Lakshmi Talkies, Rajamundry, paid certain amounts towards entertainment tax. The said letter reflects that the said payment was made by the defaulter, i.e., Jayadev, the purchaser of the said Talkies. It is further stated in the said letter as follows:

> 'I am in receipt of your Bank Bankers Cheque No.7666318, dt.15-09-2003 issued for Rs.4,16,538=00 (Rupees four lakhs, sixteen thousand five hundred and thirty eight only) in favour of the Deputy Commercial Tax Officer, Danavaipet, Rajahmundry towards the following Entertainment Tax arrears of Sri Lakshmi Talkies, Rajahmundry Management of late Sri Bandaru Giri Babu towards the following Entertainment Tax arrears.

1992-93	:	Rs.3,15,941=00
2000-01	:	Rs.1,00,597=00
Total	:	Rs.4,16,538=00

> I further clarify that the payment made under the authority of the defaulter (Sri B.Jayadev, S/o late Bandaru Giribabu on behalf of Sri

Lakshmi Talkies, Rajahmundry) and the receipt of the undersigned authority shall constitute a good and sufficient discharge of liability of such person to the extent of the amount, i.e., Rs.4,16,538=00 referred to in this receipt.

Hence, I am herewith revoking the notice issued under Section 52-B of Revenue Recovery Act, dated 15.09.2003.'

6. Thus, from the material record referred to above and the submissions made, it is noticeable that a sum of Rs.4,16,538/- was paid by Jayadev, and that the notice issued under Section 52-B of the Revenue Recovery Act was revoked by the Commercial Tax Department in respect of the monies lying in the Bank account of the said Jayadev. In that view of the matter, it is fairly stated that the Commercial Tax Department will now proceed against Jayadev, who is running the Sri Lakshmi Talkies, for further dues, if any, recoverable from the said Talkies that is being run by said Jayadev, and that, therefore, no further orders are required to be passed in these writ petitions and that the writ petitions may be allowed reserving liberty to the Commercial Tax Department to proceed against the said Sri Lakshmi Talkies being managed by Jayadev. It is rightly stated that when the notices against the defaulter are withdrawn any orders against the petitioner institution, which is in the position of a garnishee, need not be continued and the prohibitory orders against the amounts of the petitioner institution lying with its Banks in its Bank accounts and FDRs shall stand vacated enabling the petitioner institution to deal with its monies in its accounts and FDRs with its Banks.

7. Accordingly, both the writ petitions are allowed reserving liberty as sought for by the Commercial Tax Department to proceed against the management of Sri Lakshmi Talkies being represented and managed by the said Jayadev. As a sequel to these orders, the monies in the accounts/FDRs of the petitioner-institution with the United Bank of India, Rajahmundry, & the Innispeta Branch of Andhra Bank, Rajahmundry, [respondents 1 & 2 in

W.P.no.27572 of 2007] and the Danavaipet Branch of Andhra Bank, Rajahmundry [1st respondent in W.P.no.5568 of 2008] shall stand released from attachments sought for by the Commercial Tax Department and the prohibitory orders passed by the officers of the said Department. Accordingly, the Managements of the above stated Bank Branches shall permit the petitioner institution to deal with its accounts and FDRs in its own right by releasing forthwith, its amounts in the accounts & FDRs with the Banks, which were earlier withheld, on account of either attachment/s sought for by the Commercial Tax Department or prohibitory orders of the officers of the said Department by restoring the *status quo* anterior to the attachments sought for and prohibitory orders issued by the officers of the Commercial Tax Department. The exercise in the above regard shall be completed by the officers concerned of the Branches of the above said Banks within four (4) weeks from the date of receipt of a copy of this order to facilitate the petitioner institution to deal with its Bank accounts and FDRs.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

04.09.2018
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