HONOURABLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO: 808 OF 2007

O R D E R :

This writ petition is filed challenging the Proceedings of the first respondent – Deputy Collector and Mandal Revenue Officer, Hayathnagar, Ranga Reddy district, dated 30/12/2006 and the Distraint Order dated 09/09/2006 issued under section 8 of the A.P. Revenue Recovery Act, [11 of 1864], proceeding to attach and auction the agricultural land bearing survey No.10/AA [0-36], 10/AA/1 [0-36], 10/AA/2 [0-36], 12/AA [0-36], 14/AA [0-05], 14-E [0-26], 15/A [0-11], 15/AA [0-13] 16/AA [0-13] and 16/E [0-23] of Bandaravirala village, Hayathnagar Mandal, Ranga Reddy district, as arbitrary and illegal.

2. The brief facts of the case, for the disposal of the present writ petition are as follows :

The petitioner No.1 is the wife of Late Kotha Dass and petitioners 2 to 4 are the sons of late Kotha Dass; the husband of the first petitioner and father of petitioners 2 to 4, was the Excise Contractor during the year 1988-89 in respect of Arrack and Toddy Shops of Malakpet, Hyderabad; the first respondent issued a demand notice, vide Lr.No.B/1146/2003, dated 03/2/2004 for attachment of land and the same was questioned by way of a writ petition in W.P.No. 4326 of 2004 on 14/7/2004 and obtained stay orders on the same day; in spite of the stay granted, the present impugned proceedings dated 09/09/2006 were issued; the second petitioner came to know through the first petitioner that his late father has cleared off the excise dues for the Excise year 1988-89; the husband of the first petitioner died two years prior to the filing of the writ petition; during the life time of late Kotha Dass, no notice has been issued; in fact the first petitioner's husband surrendered Excise license within two weeks from the date of obtaining licence i.e., on 01/10/1988 and requested the District Collector to re-auction the Arrack shop for the remaining period of the Excise year 1988-89; the District Collector and the Inspector of Prohibition and Excise [SHO], Kachiguda Circle at Amberpet, Hyderabad ran the shop departmentally and no account is furnished to them; Government is not entitled to collect any arrears without furnishing accounts, which is required under Rule 16 to 20 of A.P. Excise [Lease of Right to sell liquor in Retail] Rules, 1969; late Kotha Dass deposited E.M.D. and one and half month privilege fees in addition to the credits [Plastic Containers] deposits and he ran the Arrack shop only for two weeks and thereafter surrendered the licence as well as arrack shop to the second respondent ; the first petitioner's parents have given agricultural land at the time of her marriage and after the death of late Kotha Dass, the said lands were mutated in the name of the petitioners 2 to 4 herein; by ignoring the same, the impugned proceedings were issued; the father of the petitioners 2 to 4 does not have any self acquired properties during his life-time; the properties proposed to be attached are agricultural lands, admeasuring Ac:1-23 guntas and an old house bearing Nos. 2-14 and 2-15 situated at Bandaravirala village of Hayathnagar Mandal, Ranga Reddy district, mentioned in the distraint order issued by the first respondent, which is ancestral property and as such the respondents have no right to attach the property of the first petitioner herein; the limitation for collection of the alleged arrears is three years and as the issue pertains to the Excise year 1988-89, the respondents cannot demand the same.

3. Counter-affidavit has been filed by the respondents stating ***inter alia*** that the husband of the first petitioner obtained contract of the toddy shop and toddy group of shops of Malakpet during the year 1988-89 and defaulted in payment of privilege fees during the year 1988-89; at the time of contract of arrack and toddy shops, late Kotha Dass declared himself as absolute owner of the properties i.e., H.Nos.2-17 and 2-18, Bandaravirala village, Hayathnagar Mandal, Ranga Reddy district and the agricultural land admeasuring an extent of Acs:3-09 in survey Nos.305, 365, 366, 367 and 377 situated at Bandaravirala village valued at Rs. 4,09,000/-; since the husband of first petitioner has not cleared the Excise arrear; Mandal Revenue Officer, Hayathnagar Mandal, issued notice in Form No.24 under Section 25 of the Revenue Recovery Act directing the defaulter to pay the excise arrears ; the second petitioner, who is the son of defaulter, filed W.P.No. 4839 of 2003 to declare the Proceedings in Cr.No.A-4/10262/88, dated 24/12/2002, issued for one time settlement; this Court disposed of

the said writ petition by orders dated 02/5/2003 holding that the demand is not barred by limitation, but the petitioner is not personally liable to pay the excise arrears under the impugned notice and directed the respondents to proceed against the property/estate of the defaulter, if any, left behind by him for the recovery of the excise arrears.

4. Heard the learned counsel for the petitioners and the learned Government Pleader for the respondents.

5. The learned counsel for the petitioners and the learned Government Pleader for the respondents agreed for the disposal of this writ petition in terms of the order dated 11/6/2018 passed by this Court in W.P.No.4326 of 2004.

6. In similar circumstances, this Court by an order dated 11/6/2018 has disposed of W.P.No. 4326 of 2004 by observing as follows :

> 7. "*In the facts of the present case, whether the property is the petitioner's self-acquired property or ancestral property to the notice, dated 13/2/2004, the petitioner shall submit his explanation within three [3] weeks from today and thereafter, the same shall be considered and after passing a reasoned order, the respondents shall be entitled to proceed further in accordance with law.*
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> *8. Subject to the above, the writ petition is disposed of. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.*"

7. In view of the submissions made by both the counsel, the writ petition is disposed of permitting the petitioners to submit their explanation to the second respondent within two months from the date of receipt of a copy of this order and the first and

second respondents shall consider all the aspects raised by the petitioners including the issue of ownership of the property mentioned in the distraint order and pass appropriate orders on merits and in accordance with law, within a period of eight weeks thereafter. It is made clear that the respondents are at liberty to proceed in accordance with law after passing appropriate orders if need be.

8. The writ petition is accordingly disposed of.

9. As a sequel, miscellaneous petitions if any, pending in this writ petition shall stand closed.

JUSTICE KONGARA VIJAYA LAKSHMI

11/07/2018
I s L

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(D I S P O S E D)

Circulation No. 2 4 5
Date:11/07/2018
Court Master : I s L