IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

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THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.1840 of 2011 and
M.P.No.2 of 2011

P.Senthil Kumar ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary,
Commercial Taxes and Registration (G) Department,
Fort St.George,
Chennai 600 009.

2.The Joint Registrar of Chits,
Nagapattinam, Nagapattinam District.

3.M/s.Nagai Sivasakthi Chits Funds (P) Ltd.,
Rep by its Managing Director,
20, Neela South Street,
Nagapattinam, Nagapattinam District. ... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the order of the first respondent dated 28.06.2010 in G.O.(D) No.218, Commercial Taxes and Registration (G) Department and the order of the 2nd respondent dated 17.11.2000 in ARC No.251/2000 and quash the same.

For Petitioner : Mr.K.Selvaraj

For Respondents: Mr.J.Ramesh,
Additional Government Pleader for R1&R2
Mr.Srinath Sridevan for R3

O R D E R

The present writ petition has been filed by the petitioner against the order of the first respondent dated 28.06.2010 in G.O.(D) No.218, Commercial Taxes and Registration (G) Department and the order of the 2nd respondent dated 17.11.2000 in ARC No.251 of 2000.

2. According to the petitioner, in the year 1997, he joined Chit Ticket No.26 for a value of Rs.50,000/- on 12.06.1997. He participated in the auction and became a successful bidder. On 12.07.1997, the petitioner executed a promissory note for a sum of Rs.46,250/- in favour of the third respondent. On 08.08.2000, a legal notice was issued to the petitioner for failing to pay the remaining installments. Thereafter, as there was no response from the petitioner, the third respondent has initiated the proceedings in ARC No.251 of 2000, before the second respondent on 23.08.2000.

3. Initially on behalf of the petitioner, the learned counsel appeared before the second respondent and the case was adjourned to 17.11.2000 for filing counter. On 17.11.2000, no counter has been filed and there was no appearance on behalf of the petitioner herein. Hence, an enquiry was held on that day and the petitioner having failed to utilise the opportunity, an ex-parte order was passed against the petitioner in ARC No.251 of 2000, directing him to pay the principal sum of Rs.21,250/- with interest.

4. Thereafter, the petitioner has filed an appeal on 19.08.2002 before the first respondent and the first respondent/appellate authority has also confirmed the order passed by the second respondent. Against which, a writ petition has been filed in W.P.No.39418 of 2002 on 25.10.2002, challenging the order passed by the first respondent. On 29.09.2003, the writ petition was disposed of by this Court by remitting the matter back to the first respondent to accord sufficient opportunity to the petitioner.

5. Thereafter, it appears that several letters have been issued by the first respondent to the petitioner on 08.05.2009, 02.06.2009 and 25.06.2009. Since there was no response from the petitioner, an enquiry was held as directed by this Court, on 18.08.2009. Even afterwards, two letters have been sent by the first respondent to the petitioner on 11.09.2009 and 13.10.2009. Once again an enquiry was held on 26.11.2009 and 06.01.2010 and further enquiry was also held on 11.02.2010. Since there was no proper response from the petitioner and he was also absent on the final date of enquiry on 11.02.2010, the first respondent passed the final orders on 28.06.2010, confirming the order passed by the second respondent dated 17.11.2000. Against which, the present writ petition has been filed.

6. The learned counsel for the petitioner would submit that he has not been given sufficient opportunity to put forth his case. According to him, he disputes the bid amount given.

7. On the other hand, the learned counsel for the third respondent would submit that despite enough opportunity given to

him, the petitioner failed to utilise the same and he did not come up with any case in support of his appeal and hence, both the first and second respondents have passed orders against the petitioner.

8. The learned counsel for the first and second respondents would also submit that despite being afforded opportunity to the petitioner, he did not utilise the same. Therefore, the first and second respondents passed order by directing the petitioner to make good the bid amount taken by him along with interest and the cost of litigation.

9. From the pleadings and materials as disclosed, it could be seen that the petitioner has been given more than sufficient opportunity by both the authorities viz., the first and second respondents herein. Despite, the opportunity being afforded to him, the petitioner has miserably failed to utilise the same. When sufficient opportunity being granted and the petitioner failed to response, it is not open to him to contest the orders passed by both the official respondents, before this Court under Article 226 of the Constitution of India. When the authority has sent number of letters to the petitioner for his appearance, having failed to response to the same, it is not more open to the petitioner to assail the claim of the third respondent on merits before this Court where this Court is expected only to exercise judicial review under Article 226 of the Constitution of India which jurisdiction cannot be invoked to settle disputed question of fact.

10. Both the official respondents have extended opportunity for the petitioner and only on the basis of the available materials, the official respondents came to the conclusion. Their conclusion does not require any interference of this Court. Even otherwise, on behalf of the petitioner, nothing has been stated in regard to the grounds raised in the writ petition, warranting interference of this Court.

11. For the above said reasons, this Court does not find any infirmity in the order passed by both the official respondents. Hence, the present writ petition lacks merits and substance and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

gsk

To

1.The Secretary,
Commercial Taxes and Registration (G) Department,
Fort St.George,
Chennai 600 009.

2.The Joint Registrar of Chits,
Nagapattinam, Nagapattinam District.

+2cc to Mr.K.Selvaraj, Advocate SR.No.16680

+1cc to Mr.Srinath, Advocate SR.No.17823

+1cc to Government Pleader SR.No.17004

W.P.No.1840 of 2011

VSN II(CO)
GMY(02/04/2019)