

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.10154 of 2004
and
MP.No.11824 of 2004

M/s.Southern Alloy Foundries Private Limited,
A Company incorporated under
The Companies Act, 1956 having its
Registered Office at 1-B, JVL Towers,
117, Nelson Manickam Road,
Aminjikarai, Chennai - 600 029. ..Petitioner

vs

- 1.The Collector of Chennai,
Singaravelar Maligai,
Rajaji Salai, Chennai-600 001.
- 2.Tahsildar, Egmore-Nungambakkam Taluk,
Chetpet, Chennai - 600 031.
- 3.The Revenue Inspector II,
Office of the Tahsildar,
Egmore-Nungambakkam Taluk,
Chetpet, Chennai - 600 031.
4. The Government of Union
Territory of Pondicherry,
Rep. by its Chief Secretary, Pondicherry.
(R4 impleaded as per order dated 1/9/2017 by SVNJ
in WPMP 17010/16)
5. M/s. Pondicherry Industrial Promotion and
Investment Corporation,
Rep. by its Managing Director,
Puducherry.
(R5 impleaded as per order of SVNJ in WMP 25397/17
dated 6/9/17) .. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
forbearing the respondents from taking distraint action or

attachment of immovable properties at 1-B JVL towers, 117, Nelson Manickam Road, Aminjikarai, Chennai 600 029 pursuant to the notice No.C6/676/2004 dated 23.01.2004 of the 2nd respondent with copy to the 3rd respondent proposing to invoke the provisions of the Tamil Nadu Revenue Act,1864 including action of "Distrainment of the movable found in the premises" and "Attachment of the immovable properties" addressed to The Associated Ceramic Industries (P) Ltd at the premises No.1-B, JVL Towers, 117, Nelson Manickam Road, Aminjikarai, Chennai.

For Petitioner :Mr.T.R.Rajagopalan, Senior Counsel
for M/s.S.Murugaiyan

For Respondents : Mr.Akhil Akbar Ali
Government Advocate for R1 to R3

Mr.D.Ravichander
Government Pleader (Puducherry)
for R4 & R5

O R D E R

The relief sought for in the present writ petition is to forbear the respondents from taking distraint action or attachment of the immovable properties at 1-B JVL towers, 117, Nelson Manickam Road, Aminjikarai, Chennai 600 029, pursuant to the notice No.C6/676/2004 dated 23.01.2004 of the 2nd respondent with copy to the 3rd respondent proposing to invoke the provisions of the Tamil Nadu Revenue Act,1864 including action of "Distrainment of the movable found in the premises" and "Attachment of the immovable properties" addressed to The Associated Ceramic Industries (P) Ltd at the premises No.1-B, JVL Towers, 117, Nelson Manickam Road, Aminjikarai, Chennai.

2. The learned Senior counsel appearing on behalf of the writ petitioner made a submission that the notice impugned simply states that ACI(P) Ltd., Pondicherry is liable for a sum of Rs.1,18,67,668.89. The loan was due to Pondicherry Industrial Promotion Development & Investment Corporation Ltd.,. The petitioner company received the impugned notice dated 23.01.2004 on 05.04.2004. The petitioner sent a representation on 14.04.2004 to the 2nd respondent, stating that the properties at 1-B, JVL Towers, 117, N.M.Road belongs to the petitioner company. The present writ petition was filed on 15.04.2004 to forbear the respondent from taking any distraint proceedings against the petitioner company. The learned senior counsel states that no company by name Associated Ceramics Industries(P)

Limited is functioning at JVL Towers, Nelson Manickam Road, Chennai. The writ petitioner was forced to file the present writ petition as the 2nd respondent was not in a position to understand the legal stand taken by the writ petitioner. Admittedly, one Mr.Thiyagarajan and Mr.Kandaswamy stood as a guarantor for the Term Loan granted during the year 1984 & 1986. It is stated that the balance dues are to be collected from the guarantors. The 5th respondent, accepts that the petitioner company purchased the property under the sale deed dated 21.12.1988. Therefore, the writ petitioners are no way connected with the Term Loan granted by the 5th respondent and therefore, the writ petition deserves to be considered. The learned counsel for the 5th respondent / M/s. Pondicherry Industrial Promotion and Investment Corporation states that the writ petitioner had suppressed various material facts and obtained an order of interim stay during the year 2004 in the present writ petition and on account of the interim stay granted, State revenue to the tune of more than 1,17,00,000/- during the year 2004 itself is unable to be recovered from the borrowers and the guarantors as per the terms and conditions of the loan.

3. The learned counsel for the 5th respondent lamented that the 5th respondent is unable to recover the public revenue for the post 14 years on account of the misrepresentation and the suppression of fact made by the writ petitioner in the present writ petition, without even impleading necessary parties. It is contended that the Directors of the writ petitioner Company committed default in repayment of the loan amount during the year 2000 and the revenue recovery proceedings were initiated during the year 2004. Now even after a lapse of about 18 years, the 5th respondent is unable to recover the arrears of loan dues from the Directors of the writ petitioner company.

4. May that it be, the relief sought for in the present writ petition itself is innocuous. The relief sought for is to forbear the respondents from taking distraint action or attachment of immovable properties belonging to the writ petitioner. Undoubtedly, the revenue recovery proceedings were initiated by the 2nd respondent by issuing a notice in proceeding dated 23.01.2004. If at all there is any factual discrepancies, the writ petitioner ought to have adjudicated the matter before the 2nd respondent himself by way of submitting explanations / objections or by approaching the appropriate forum in the manner known to law. Contrarily, the present writ petition was filed as if the writ petitioner is unconnected with any of the borrowees. More specifically, from the 5th respondent and the writ petition is projected by stating that, such a recovery notice is no way connected with the writ petitioner and

the facts and details are not furnished to the writ petitioner. Such an attitude of the writ petitioner deserves to be deprecated and if such litigations are allowed to be continued, this Court is afraid that the recovery of public revenue itself is in peril.

5. The present writ petition is filed not even questioning the notice dated 23.01.2004 issued under the provisions of the Revenue Recovery Act 1864. Contrarily, the writ petition is filed to forbear the respondents from initiating distraint action or attachment of the immovable properties. Once the recovery proceedings are initiated under the Revenue Recovery Act, 1864, attachment and recovery of money is consequential and the provisions and the procedures has to be followed by the Competent Authorities.

6. The learned counsel for the 5th respondent further states that, M/s.Associated Ceramic Industries (P) Ltd, was a private limited company with a set of Promoters / Directors. As the unit was performing well, the company proposed to induct Mr.Thiagarajan and Mr.Kandasamy as its Directors for improving the performance and to repay the term loan dues to this Corporation. This proposal was accepted by this Corporation and approval was accorded for the induction of Mr.Thiagarajan and Mr.Kandasamy as Directors of the Company, with the condition that they should execute personal guarantee with this Corporation for the outstanding term loan dues payable. In compliance with this condition, Mr.Thiagarajan and Mr.Kandasamy, have executed personal guarantee with this Corporation. As submitted above, since the Unit's primary assets had already been sold in auction by this Corporation and only a part of the loan dues payable were realized, the remaining dues payable had to be collected from the persons who had guaranteed for the loan. As such, since Mr.Thiagarajan and Mr.Kandasamy had executed personal guarantee with the Corporation, they are liable to pay the outstanding dues to the Corporation.

7. In view of the fact that, the writ petitioner has not challenged any of the proceedings issued under the Revenue Recovery Act, to prayer to forbear the respondents from initiating action under the provisions of the Revenue Recovery Act is certainly not entertainable. It is brought to the notice of this Court that one Mr.Kandasamy and another Mr.Thiyagarajan, who were the Directors of the writ petitioner's Company had committed default in repayment of loan amount and they were the guarantors in the loan application. Thus, actions were initiated and order was passed and accordingly revenue recovery proceedings were initiated.

8. This being the fatum of the case, this Court is of an opinion that the present writ petition is absolutely misconceived and filed with incorrect facts and this Court would like to place on record that certain suppressions are also made by the writ petitioner with reference to the facts and circumstances. This being the nature of the case on hand, this Court has no hesitation in holding that the relief as such sought for in the present writ petition deserves no merit consideration.

9. It is needless to state that the respondents 1 and 2 has to pursue the proceedings initiated under Revenue Recovery Act and conclude the same within a period of 6 months from the date of receipt of a copy of this order.

10. With these directions, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pkn/kak
To

1.The Collector of Chennai,
Singaravelar Maligai,
Rajaji Salai, Chennai-600 001.

2.Tahsildar, Egmore-Nungambakkam Taluk,
Chetpet, Chennai - 600 031.

3.The Revenue Inspector II,
Office of the Tahsildar,
Egmore-Nungambakkam Taluk,
Chetpet, Chennai - 600 031.

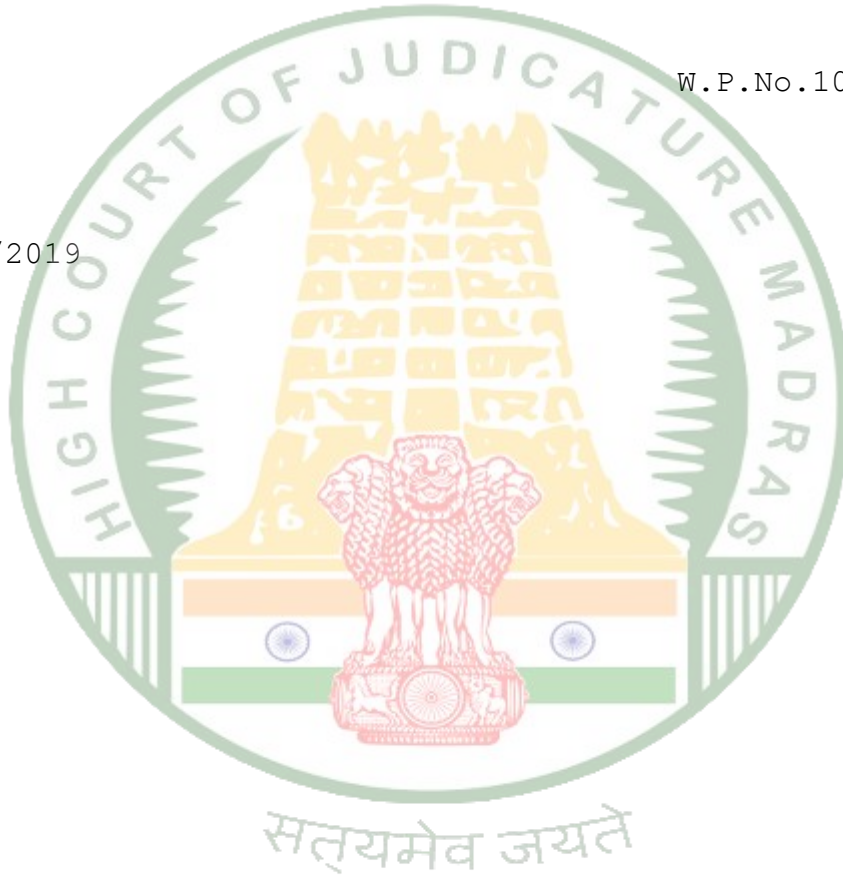
4. The Chief Secretary,
Government of Union
Territory of Pondicherry,
Pondicherry.

5. The Managing Director,
M/s. Pondicherry Industrial Promotion and
Investment Corporation,
Puducherry.

+lcc to Mr.S.Murugaian, Advocate sr.6820
+lcc to the Government Pleader sr.7604
+lcc to the Government Pleader (Pondicherry) Sr.6474

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