

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.11053 of 2019
and W.M.P.Nos.11491 & 11493 of 2019

Balraj Vasudevan

..Petitioner

Vs.

Tax Recovery Officer-5,
Office of the Tax Recovery Officer-5,
Room No.505, [5th Floor],
Wanaparthi Block, 121, M.G.Road,
Chennai - 600 034.

..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records of the impugned notice of attachment in T.R.No.73-R/2014-15 dated 15.03.2019, with respect to item no 1 to 3 mentioned in the impugned notice from the files of the respondent herein, quash the same and direct the respondent to the lift the attachment with regard to the vacant lands belonging to the petitioner herein in Plot No N33 A with Survey Nos 147/5A, 147/5B, 146/4B5, Plot No N33B with Survey Nos 146/4B5 and Plot no N33C 146/4b5, 146/4B3 and 146/4B2.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Ms.Hema Muralikrishnan

Senior standing counsel (Income Tax)

ORDER

Ms.Aparna Nandakumar, learned counsel on record for writ petitioner and Ms.Hema Muralikrishnan, learned Senior standing counsel for Income Tax on behalf of the lone respondent who is official respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. In the light of the trajectory of the hearing today or in other words in the light of what unfurled in the hearing today, the writ petition now turns on a very narrow compass.

4. Therefore, short facts shorn of elaboration will suffice. In other words, short facts imperative for appreciating the instant order will suffice.

5. An order of attachment of immovable property being 'order dated 15.03.2019 bearing reference T.R.No.73-R/2014-15' [hereinafter 'impugned order' for brevity] made by the sole respondent has been called in question in the instant writ petition.

6. There is no dispute or disagreement before this Court that the impugned order has been made Rule 48 of Schedule II of 'Income Tax Act, 1961' ['IT Act' for brevity]

7. Notwithstanding the verbose averments and grounds made in the affidavit filed in support of the writ petition, learned counsel for writ petitioner, at the hearing today, submitted that the writ petitioner was originally owner of about 680 cents of land comprised in various survey numbers in Tiruvidanthai Village, Tiruvidanthai Panchayat, Kancheepuram District.

8. There is also no dispute that the writ petitioner entered into a joint venture agreement dated 05.05.2009 with a company, which goes by the name 'Regaliaa Reality Ltd' [hereinafter 'said company' for brevity]

9. Aforesaid extent of 680 cents of land comprised in various survey numbers in aforesaid village shall hereinafter be referred as 'said land' for the sake of convenience and clarity. Aforementioned joint venture agreement between the writ petitioner and the said company was for development of major part of said land, but the same ran into rough weather. Suffice to say that the joint venture agreement was followed by a Power of Attorney executed by the writ petitioner in favour of the said company on 06.05.2009. This Power of Attorney document is registered. To be noted, Power of Attorney document is registered as Document No.465 in the jurisdictional Registrar's office.

10. It is submitted that the aforesaid registered Power of Attorney was ultimately revoked in and by a deed of revocation dated 11.11.2011, which is registered as Document No.730 of 2011 in the office of Sub Registrar of Periamet.

11. In the interregnum, there has been some alienation qua said land. It is the case of learned Revenue counsel that the Encumbrance Certificate reveals alienation post revocation also. Be that as it may, this Court refrains itself from expressing any view or opinion on merits of the matter in the light of the trajectory of the hearing today and the narrow compass on which the matter now turns.

12. It is necessary to notice that the said company had entered into some finance agreement with another company i.e., 'Karvy Financial Services Limited' [hereinafter 'said finance company' for brevity] and the writ petitioner parted with some part of said land in favour of said Finance company which according to the writ petitioner is for buying peace.

13. What is of utmost significance is, after issuing of impugned notice, the writ petitioner has set the law in motion, by filing an application on 25.03.2019, which is admittedly under Rule 11(1) of Schedule II of IT Act. In this context, this Court deems it appropriate to extract Rule 48 and Rule 11(1) of the IT Act. To be noted, Rule 48 is captioned 'Attachment' and Rule 11(1) is captioned 'Investigation by Tax Recovery Officer'.

'Attachment. 48. Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.'

'Investigation by Tax Recovery Officer. 11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that— (a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b) (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed⁸⁸ of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter

at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.'

14. While the claim preferred by the writ petitioner on 25.03.2019 itself is in the nature of objections to the attachment made vide impugned notice, instant writ petition came to be presented in this Court on 05.04.2019.

15. The sole respondent has filed a counter affidavit dated 23.04.2019.

16. While, the writ petition was progressing over successive listings, it is submitted without any disputation or disagreement by learned counsel on both sides that the aforesaid application under Rule 11(1), was also being carried further. In other words, it was being carried towards what would be its logical end in that direction. It is submitted without any disagreement that the writ petitioner appeared before the respondent on 11.07.2019 / 12.07.2019, produced original documents and supporting documents, in support of the claim / objections vide / under Rule 11(1), Schedule II of IT Act. It is submitted by learned counsel for writ petitioner that the instant writ petition was filed, as proceedings under Rule 11(1) were consuming time. Under such circumstances, learned Revenue counsel for respondent, on instructions, submits that the application / objections of the writ petitioner dated 25.03.2019 under Rule 11(1) will be disposed of inter-alia by passing an order under Sub Rule 4 of Rule 11 within a fortnight from the date of receipt of a copy of this order. This submission is recorded.

17. In the light of the respondent now dealing with the matter in accordance with the procedure prescribed / adumbrated under the Rules (as already alluded to supra) this Court refrains itself from expressing any view or opinion on the merits of the matter as that will impact the proceedings before the respondent.

18. Though obvious, it is made clear that orders passed by the respondent under Rule 11(4), which will be culmination of the writ petitioner's application dated 25.03.2019, will be open to challenge in a manner known to law, if it is adverse to the writ petitioner. Obviously, if it is in favour of the writ petitioner, that would be the end of the matter as far as writ petitioner's campaign qua impugned order is concerned. In the light of no opinion being expressed on merits, it is made clear that other legal recourse, if any available to the writ petitioner in law if resorted to, post respondent passing orders on 25.03.2019 claim / objections of writ petitioner will not be impeded by the instant order.

19. This writ petition is disposed of, recording the submissions of the lone respondent that orders under Rule 11(4) of Schedule II will be passed within a fortnight from the date of receipt of a copy of this order, obviously order in 25.03.2019 claim / objections filed by the writ petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Tax Recovery Officer-5,
Office of the Tax Recovery Officer-5,
Room No.505, [5th Floor], Wanaparthy Block, 121, M.G.Road,
Chennai - 600 034.

+1 cc to M/s.Aparna Nandakumar, Advocate Sr.No.63560
+1 cc to M/s.Hema Murali Krishnan, Advocate Sr.No. 63111

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AKM/ 28.08.19/ 5P- 4C /