IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 07.06.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.15454 of 2019
&
W.M.P.Nos.15400 & 15402 of 2019

1.N.A.Seethalakshmi
2.S.Vallirajan
3.V.Kamala
4.P.Radha
5.N.Jayalakshmi .. Petitioners

Vs.

The Government of India
Rep. By Tax Recovery Officer-8
Income Tax Department
No.209, 2nd Floor, BSNL, Tower-2
Greams Road
Chennai- 600 006 .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records on the file of the respondent made in TRC No.1728/TRO-8/CHE/2007-08 dated 27.05.2019 and quash the same and consequently forbear the respondent from recovering a sum of Rs.38,64,476/-or any other sum either from petitioners or from petitioners' tenants which is alleged to be the debt of M/s.Nalachkravathy Chettiyar (Firm) in PAN:AAHFP9599A.

For Petitioner : Ms.Selvi George

For Respondent : Mr.J.Narayanasamy
Standing Counsel

O R D E R

Ms.Selvi George, learned counsel on record for the five writ petitioners is before this Court. Mr.J.Narayanasamy, learned Standing Counsel for Income Tax Department, accepts notice on behalf of the sole respondent.

2. Though this writ petition is listed under the caption 'FOR ADMISSION' in the motion list today, with the consent of both the learned counsel i.e., learned counsel for writ petitioners as well as learned Revenue counsel, the main writ petition itself is taken up, heard out and disposed of.

3.Short facts necessary for appreciating this order are as follows:

a) One 'P.Nalachakravarthy Chettiyar (Firm) (PAN:AAHFP9599A)' is an Income Tax assessee (hereinafter 'said Firm' for brevity).

b) Said firm is a partnership firm and One P.N.Arumugam was a partner in the said firm.

c) P.N.Arumugam died some time in September 1997 and the five writ petitioners are daughters of late P.N.Arumugam.

d) Claiming certain sums of money to be due to the 'Income Tax Department' ('IT Department'), a notice has been issued to the tenants of the petitioners under Section 226(3) of the 'Income Tax Act, 1961' ('IT Act' for brevity), which shall hereinafter referred to as 'impugned notice' for brevity.

e) On receipt of impugned notice, a representation was sent on behalf of the petitioners to the IT Department and this representation is dated 27.05.2019.

f) In the aforesaid representation sent on behalf of the petitioners, it was inter-alia contended that the prohibitory order i.e., impugned notice, has been issued to the tenants of the petitioners, but the petitioners are not partners in the said firm. It was also contended that there are four partners in the said firm with sufficient assets and means, who are still available to be proceeded against.

g) It has also been contended in the representation that without proceeding against the partners of said firm, who are still available and who have means, it is unfair to proceed against the petitioners who are only legal heirs/daughters of one of the partners, who is no more and whose demise was more than two decades ago i.e., in September 1997.

h) Writ petition is also predicated on the ground that the aforesaid representation dated 27.05.2019 has not evoked any response or reply from the IT Department.

4. In the aforesaid factual matrix, instant writ

petition has been filed with prayers to quash the impugned notice and consequent secondary limb to forbear the respondent from recovering the sum claimed in the impugned notice from the tenants of the petitioners.

5. Learned counsel for petitioners reiterated the above facts and projected the same as arguments for assailing the impugned notice.

6. Learned Revenue counsel, in response, submitted that under Section 226(3) of IT Act, it is open to the IT Department to proceed against the petitioners. It was submitted that IT Department will proceed against the other partners of the firm also (who are available).

7. In other words, other partners of said firm being available and having means, cannot be put against the IT Department to assail the impugned notice, is learned Revenue counsel's say.

8. Be that as it may, considering the nature of the order which this court now proposes to pass, no opinion or view is expressed with regard to the aforementioned rival contentions.

9. It would serve the ends of justice if the respondent i.e, Tax Recovery Officer-8, Greams Road, Chennai, is directed to consider all the objections raised by writ petitioners in the aforesaid representation dated 27.05.2019, give an opportunity of personal hearing to the writ petitioners, as also opportunity to submit supporting documents and thereafter pass a considered order qua the impugned notice. The aforesaid Tax Recovery Officer in the course of this exercise, shall also hear out the four partners of said firm. The respondent is directed to complete the exercise within a period of eights weeks from the date of receipt of a copy of this order. On passing orders, a copy of the order shall be served on each of the writ petitioners within 7 working days under due acknowledgement. In the light of the trajectory thus far and in the light of nature of the matter, impugned notice shall be kept in abeyance till the disposal of the aforesaid representation dated 27.05.2019 in the aforesaid manner, which shall be done as expeditiously as possible and in any event within a period of eight weeks as stated above. If the outcome is in favour of the writ petitioners, that will be the end of the matter and the impugned notice will stand dropped. If the outcome is otherwise, the impugned notice shall be kept in abeyance for a further period of a fortnight from the date of communication of disposal of representation to the petitioner under due acknowledgement. Though the petitioner counsel says that there are four partners, this Court is informed that it appears that there are nine partners in said firm. It

may not be necessary go into those aspects of the matter and suffice to say that all the partners of said firm who are now available shall also be heard.

The writ petition is disposed of on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(imp cell)

//True Copy//

Sub Assistant Registrar

gpa

To

Tax Recovery Officer-8
Income Tax Department
No.209, 2nd Floor, BSNL, Tower-2
Greams Road
Chennai- 600 006

+1cc to Mr. J.Narayanasamy, Advocate SR.No. 45895
+1cc to Ms.Selvi George , Advocate SR.No. 45707

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A.SK(04/07/2019)