IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.18486 of 2019
and WMP No.17801 of 2019

1.N.A.Seethalakshmi

2.S.Vallirajan

3.V.Kamala

4.P.Radha

5.N.Jayalakshmi .. Petitioners

vs.

1.The Government of India
Rep. by its Principal Commissioner
of Income Tax -8
No.217, BSNL Building, Tower-2
Greams Road
Chennai - 600 006.

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

3.M/s.Sangeetha Veg Restaurant
Rep. by its authorised signatory
No.9, GST Road
St.Thomas Mount, Chennai - 16.

4.P.S.B.B.Millenium School
Rep. by its authorized singatory
No.9, GST Road
St.Thomas Mount, Chennai - 16.

5.M/s.Sruti's
Rep. by its authorized signatory
8th Floor, P.M.Tower's
No.37, Greams Road
Chennai - 600 006.

6.M/s.Infocom Network Ltd
Rep. by its authorized signatory
8th Floor, P.M.Tower's
No.37, Greams Road
Chennai - 600 006.

7.M/s.Epsilon Foods
Rep. by its authorized signatory
No.9, G.S.T.Road
St. Thomas Mount
Chennai - 600 016. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent made in TRC.No.1728/TRO-8/CHE/2007-08 dated 06.06.2019 and TRC No.1/TRO-8/CHE/2018-19 dated 06.06.2019 & 07.06.2019 and quash the same and consequently forbear the 2nd respondent, his men, agents, servants subordinates, or anybody action on his behalf from recovering a sum of Rs.7,98,46,422/- or any other sum either from the petitioner or from tenants which is alleged to be the debt of Late Mr.P.N.Subramaniam in PAN:ATPPS0023F and pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioners : Ms.Selvi George

For Respondents : Mr.J.Narayanaswamy
Senior Standing Counsel for R1 & R2

ORDER

There are five writ petitioners and seven respondents. Mr.J.Narayanaswamy, learned Senior Standing Counsel accepts notice on behalf of respondents 1 and 2. To be noted, respondents 3 to 7 are lessees under writ petitioners and they are only formal parties as far as the instant writ petition is concerned.

2. Therefore, with consent of learned counsel for writ petitioner and the aforesaid Revenue Counsel, main writ petition itself is taken up, heard out and is being disposed of.

3. This matter turns on very narrow compass.

4. The case of the writ petitioner in a nutshell is that the second respondent viz., Jurisdictional Tax Recovery Officer of the Income Tax Department has issued six different notices. These notices have been sent to the aforementioned tenants/lessees of the writ petitioners.

5. The details of the six notices are as follows:

S.No	Date	Reference No.
1	06.06.2019	TRC No.1728/TRO-8/CHE/2007-08
2	06.06.2019	TRC No.1728/TRO-8/CHE/2007-08
3	06.06.2019	TRC No.1728/TRO-8/CHE/2007-08
4	06.06.2019	TRC No.1728/TRO-8/CHE/2007-08
5	07.06.2019	TRC No.1/TRO-8/CHE/2018-19
6	06.06.2019	TRC No.1/TRO-8/CHE/2018-19

To be noted, the aforesaid six notices shall be collectively referred to as 'impugned notices' in plural and shall be referred to as 'impugned notice' in singular for the sake of convenience and clarity.

6. Vide impugned notices, the second respondent has called upon the noticees to pay the moneys payable (obviously rents) to the Department towards tax liability of one Late Mr.P.N.Subramaniam. The impugned notices also say that the noticees will be treated as assessees in default in the event of non compliance.

7. It is the case of the writ petitioner that aforesaid Late Mr.P.N.Subramaniam is writ petitioner's father's blood brother. It is also the case of the writ petitioner that they are only class II legal heirs qua said late Mr.P.N.Subramaniam. It is submitted that Mr.P.N.Subramaniam, has left a testament i.e., Will dated 07.06.2007 and his date of demise is 16.09.2010.

8. Considering the nature of the order which this Court now proposes to pass, it is not necessary to advert to further facts in greater detail.

9. Suffice to say that it is the case of the writ petitioner that the moneys payable to them by their lessees cannot be appropriated by the Department towards alleged dues of writ petitioner's father's brother Late Mr.P.N.Subramaniam.

10. Responding to this, learned Revenue Counsel 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 legal heirs also (who are available).

11. In other words, other legal heirs being available and having means, cannot be put against the IT Department to assail the impugned notices, is learned Revenue counsel's say.

12. Learned Revenue Counsel also pointed out that it is not as if the writ petitioners are not beneficiaries qua the aforesaid testament left by late Mr.P.N.Subramaniam. This Court again refrains from expressing any opinion or view on this aspect of the matter in the light of the order that is proposed to be passed.

13. It is brought to the notice of this Court that in some what similar circumstances, an order came to be passed by this Court in W.P.No.15454 of 2019 and the same is dated 07.06.2019.

14. It is not in dispute that post impugned notices, the first writ petitioner has sent a detailed representation dated 20.06.2019 to the second respondent. This representation has also been delivered in the office of the second respondent on the same date i.e., 20.06.2019.

15. Under the normal circumstances, this writ petition having been filed on 26.06.2019 would have been too premature for a mandamus qua the said representation, but in the instant case as the impugned notices are under challenge, owing to the peculiar facts and circumstances of this case and owing to the trajectory of the hearing today, this Court deems it appropriate to pass an order directing the second respondent to consider all objections raised by the writ petitioners in the aforesaid representation dated 20.06.2019, 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 notices. The second respondent, in the course of this exercise, shall also hear out others, who are deemed necessary more particularly, the children of late Mr.P.N.Subramaniam. The second respondent is directed to complete this exercise within a period of eights weeks from the date of receipt of a copy of this order. On disposing of the representation, the order disposing of the representation shall be served on each of the writ petitioners under due acknowledgement within seven working days from the date of disposal/order. The impugned notices shall, therefore, be kept in abeyance till the disposal of the representation of the writ petitioner dated 20.06.2019 in the aforesaid manner. If the outcome is in favour of the writ petitioners, that will be the end of the matter and the impugned notices will stand dropped. If the outcome is otherwise, the impugned notices 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.

16. Writ Petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

vsm

To

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No.9, G.S.T.Road
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Chennai - 600 016.

+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No.53972
+1cc to M/s.Selvi George, Advocate, S.R.No.53904

W.P.No.18486 of 2019
and WMP No.17801 of 2019

JP(CO)

RRS(21/08/2019)