IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2019

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THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.22228 of 2019
and WMP Nos.21511 & 21512 of 2019
and WMP No.23273 of 2019

Mrs.R.Parimala Ramani Mohan
... Petitioner

vs.

1.Joint Commissioner of Commercial Taxes
Salem Division
Salem.

2.Assistant Commissioner of Commercial Taxes
Dharmapuri.

3.Assistant Commissioner of Commercial Taxes
Krishnagiri - 1 Zone,
Krishnagiri.

4.Joint II Sub-Registrar
Krishnagiri.
... Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the impugned communication in Letter No.N.K.No.2462/2003/A3 dated 08.07.2019 from the 3rd respondent to 4th respondent by referring to the letter in N.K.No.3336/2019/A3 dated 04.07.2019 from the 2nd respondent and quash the same and pass such further or other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case and thus render justice.

For Petitioner : Mr.R.Neelakandan

For Respondents : Mr.V.Haribabu,

Addl. Government Pleader for
R1 to R3

Mr.R.P.Pratahsingh,
Government Advocate for R4

O R D E R

Mr.R.Neelakandan, learned counsel on record for writ petitioner, Mr.V.Haribabu, learned Additional Government Pleader, on behalf of respondent Nos.1 to 3 and Mr.R.P.Pratapsingh, learned Government Advocate on behalf of respondent No.4 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. Short facts shorn of micro details and the central issue in the instant writ petition have been captured in earlier proceedings of this Court dated 29.07.2019, which reads as follows:

> 'Mr.R.Neelakandan, learned counsel on record for writ petitioner is before this Court. Mr.V.Haribabu, learned Additional Government Pleader, accepts notice on behalf of respondent Nos.1 to 3 and Mr.R.P.Pratapsingh, learned Government Advocate, accepts notice on behalf of respondent No.4.
>
> 2. Subject matter of instant writ petition pertains to entertainment tax payable by writ petitioner qua a cinema theatre.
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> 3. It is the stated position of writ petitioner and specific submission of learned counsel for writ petitioner that there is no entertainment tax arrears, that the cinema theatre has been closed from year 2000 and more importantly, writ petitioner has not received any notice or any communication prior to the impugned communication dated 08.07.2019.
>
> 4. This is the crux and gravamen of writ petitioner's case and the same is articulated in ground (d) at page No.3 of the affidavit filed in support of the instant writ petition,

which reads as follows:

'd) As far as the alleged due of entertainment tax is concerned, there was no demand made to the petitioner. In fact, the theatre was not functioning for many years. It has been closed long back i.e., in the year 2000 itself. Hence, there is no question of demanding entertainment tax for the period 2002-03 to 2004-05. With regard to the alleged arrears of Entertainment Tax for the period 1980-81, 87-88 to 88-90, as mentioned in the impugned communication, the same is totally denied. Absolutely, there are no such arrears of Entertainment Tax.'

5. Learned Additional Government Pleader and Government Advocate who have accepted notice on behalf of respondents seek time to get instructions.

6. In the light of the stated position of writ petitioner that there is no tax arrears, that they have paid the entire entertainment tax and that writ petitioner has not received any notice or communication prior to the impugned communication dated 08.07.2019, the impugned communication shall be kept in abeyance till the next listing as encumbrance regarding auction of immovable property of writ petitioner can cause an irreversible situation. Likewise, writ petitioner or any one claiming under writ petitioner shall not deal with the immovable property that is subject matter of impugned communication till the next listing in any manner.

7. List this matter on 13.08.2019.'

4. Post aforesaid proceedings, WMP No.23273 of 2019 has been filed by the writ petitioner on 05.08.2019 and the same is before this Court. Sum and substance of WMP No.23273 of 2019 is that writ petitioner is having serious medical ailments including renal malfunctioning, family members of writ petitioner have decided to mortgage the immovable property, raise funds and pay for the medical treatment of the writ petitioner. Owing to this, vide this WMP, a request has been made to modify the earlier order dated 29.07.2019 to the effect that writ petitioner will furnish bank guarantee for the entire sum qua the impugned

order being Rs.7,11,000/- (Rupees Seven Lakhs and Eleven Thousand only) and writ petitioner requests for the attachment to be raised in lieu of the bank guarantee.

5. This being the central theme of WMP No.23273 of 2019, the same is articulated in paragraphs 4 to 6 of the affidavit filed in support of this WMP and it reads as follows:

> '4.I submit that I am suffering from disorder of renal function, to which I am taking treatment in hospital. To meet out the medical expenditure, huge money is required, as Doctors advised me go for next level treatment. As we did not have sufficient money in our hand to spend for my medical expenditure, my family members were planning to dispose of my property; but due to certain difficulties including the impugned order, the same could not be done. Now, our family members have decided to mortgage the said property, to get money for my medical expenses. But, because of the interim order, we are also unable to mortgage the property. Hence, I am constrained to pray for modification of the interim order dt. 29.07.2019, by recalling the following portion:
>
> > 'Likewise, writ petitioner or any one claiming under writ petitioner shall not deal with the immovable property that is subject matter of impugned communication till the next listing in any manner.'
>
> 5. I submit that though the next hearing is fixed on 13.08.2019, the Doctors advised me to go for immediate treatment including major surgery, to which huge amount is required. Therefore, I am constrained to file this petition. To show my bonafide, I am ready to furnish 'bank guarantee' through the bank account of my son viz., R.Swethaprakash, with SB Account No.2836201000178, Canara Bank Krishnagiri Branch, in which Rs.7,00,000/- has been deposited on 01.08.2019 for the purpose of giving bank guarantee. The claim relates to the impugned order is Rs.7,11,000/-. My readiness to furnish the bank guarantee may be recorded subject to the adjudication of issue by the appropriate authority.
>
> 6.I submit that by considering my severe

illness and undergoing medical treatment, the interim order dt.29.07.2019 may be modified as prayed for, by deleting the above said portion and by imposing a condition regarding furnishing of bank guarantee covering the alleged demand referred in the impugned order.'

6. Prayer in WMP No.23273 of 2019 reads as follows:

'To modify the Interim Order dt.29.07.2019 passed in WMP No.21522/2019 in W.P.No.22228/2019 by the following portion in paragraph No.6, whereas,

'Likewise, writ petitioner or any one claiming under writ petitioner shall not deal with the immovable property that is subject matter of impugned communication till the next listing in any manner.'

and by imposing suitable condition as to furnishing of bank guarantee.'

7. It is the case of the writ petitioner that no notice was ever served on the writ petitioner with regard to assessments, which form subject matter of instant writ petition and therefore, there was no notice before the impugned order.

8. Learned Revenue Counsel, submits that the assessments are more than four decades old i.e., commencing from 1980-81 and therefore, there is considerable difficulty in locating the files.

9. Considering the human problem that has been projected by writ petitioner viewed in the light of the fact that writ petitioner has shown her bona fides not only by offering to furnish bank guarantee and keep the same alive as per directions of this Court, but has also deposited the entire bank guarantee sum in bank account of her son from which bank guarantee is to be issued, this Court finds it appropriate to pass the following order:

a) Writ petitioner shall furnish a bank guarantee for the entire sum of Rs.7,11,000/- (Rupees Seven Lakhs and Eleven Thousand only) through the bank account of writ petitioner's son viz., R.Swethaprakash, with SB Account No.2836201000178, Canara Bank Krishnagiri Branch, in which according to the writ petitioner Rs.7,00,000/- (Rupees Seven Lakhs only) has already been deposited on 01.08.2019 for this purpose.

b) Aforesaid bank guarantee shall be given in a form required by the third respondent and the bank guarantee shall be in favour of the third respondent.

c) Aforesaid bank guarantee shall be furnished within one week from the date of receipt of a copy of this order.

d) On bank guarantee being furnished in aforesaid manner, impugned order dated 08.07.2019 bearing Reference No.N.K.No.2462/2003/A3 will stand set aside automatically without reference to this Court.

e) Third respondent, shall serve a copy of the assessment orders concerned on the writ petitioner under due acknowledgement within a fortnight therefrom (post furnishing of bank guarantee) and it is open to the writ petitioner to assail the same in a manner known to law.

f) If the third respondent is unable to locate or serve the assessment orders, assessment proceedings shall be completed in accordance with law after giving opportunity to the writ petitioner as mandated in law. This exercise, if it becomes necessary, shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

With the above direction, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Joint Commissioner of Commercial Taxes
Salem Division
Salem.

2.The Assistant Commissioner of Commercial Taxes
Dharmapuri.

3.The Assistant Commissioner of Commercial Taxes
Krishnagiri - 1 Zone,
Krishnagiri.

4.The Joint II Sub-Registrar
Krishnagiri.

+1 cc to Government Pleader Sr.No. 69357
+1 cc to Spl Government Pleader Sr.No. 69480
+1cc to Mr.R.Neelakandan , Advocate SR.No. 70486 (20/08/2019)

W.P.No.22228 of 2019
and WMP Nos.21511 & 21512 of 2019
and WMP No.23273 of 2019

A.SK(19/08/2019)