IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.23291 of 2019
and W.M.P.No.23019 & 23020 of 2019

R.Ganesan .. Petitioner

Vs.

1.The State Tax Officer
State Tax Office
Tindivanam.

2.The Commercial Tax Officer (Additional)
Tindivanam Assessment Circle
Tindivananm
Villupuram District. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling upon the connected records of the 1st respondent herein impugned auction notice dated 27.07.2019 made in Na.Ka.No.A3/2388/2014 in so far as it bringing the petitioner's property measuring an extent of 298 sq. mt. comprised in Survey No.611/5, 594/1, 616/6 (Natham Survey No.495/7 and Old Survey No.390/7) of Marakkanam Village, Marakkanam Taluk, Villupuram District into auction sale to be conducted on 08.08.2019 and quash the same or passing any further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.V.Haribabu,
Additional Government Pleader.

ORDER

Mr.Adithya Reddy, learned counsel on record for writ petitioner and Mr.V.Haribabu, learned Additional Government Pleader, who accepts notice on behalf of both the respondents are before this Court.

2. An auction notice singed on 25.07.2019 issued by the first respondent, proposing to bring the immovable property comprised in S.F.No.(611/5) (594/1) (616/6), admeasuring 00298 Sq.ft. (S.F.No.495/7 S.F.No.390/7) as per certificate of encumbrance of property, situate in Marakkanam Village, Marakkanam Taluk, Villupuram District (hereinafter 'said property') has been called in question. This auction notice signed on 25.07.2019 by the first respondent bears Reference No. Na.Ka.No.A3/2388/2014 and the same shall hereinafter be referred to as 'impugned auction notice' for the sake of convenience and clarity.

3. A perusal of the impugned auction notice reveals that the proceedings are pursuant to tax liability, penalty for the assessment years 2007-08, 2008-09 and 2014-15 ('said AYs' for brevity) under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and clarity. According to the impugned auction notice, the tax liability is Rs.14,35,376/- and penalty is Rs.18,06,430/- totalling Rs.32,41,806/-.

4. It is the case of the writ petitioner that writ petitioner came to know about the impugned auction notice on 26.07.2019, when an official attached to the office of the first respondent went over to the residence of the writ petitioner and pasted the impugned auction notice.

5. To be noted, vide the impugned auction notice, auction has been fixed tomorrow i.e., on 08.08.2019 Thursday, at 11.00 a.m.

6. Instant writ petition has been filed only yesterday i.e., 06.08.2019. Learned counsel for writ petitioner submitted that the said property originally belonged to writ petitioner's late father who transferred said property to the writ petitioner (this Court is informed that writ petitioner is second son to his father) in and by way of a registered Settlement Deed dated 05.06.2003, which has been registered as Document No.1173 in the office of jurisdictional Sub-Registrar.

7. Learned counsel for writ petitioner submits that the said AYs are post settlement, writ petitioner was not aware of the business activities of his father and he came to know about the impugned auction notice for the first time only on 26.07.2019 as mentioned above.

8. Section 42(1) of TNVAT Act reads as follows:

'42. Payment and recovery of tax, penalty, etc.-

(1) Save as otherwise provided for in

section 21, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice. The tax under section 21 shall be paid without any notice of demand. In default of such payment, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or penalty or interest under this Act.'

9.Section 43 of TNVAT Act reads as follows:

43. Transfers to defraud revenue void.-

Where, during the pendency of any proceedings under this Act or after the completion thereof, any dealer creates, a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise: .

Provided that, such charge or transfer shall not be void if it is made -

(a) for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or

(b) with the previous permission of the assessing authority.'

10. A perusal of Section 42 of TNVAT Act reveals that when tax is not paid by a dealer, the penalty shall immediately became a charge on the properties or persons, who are liable to pay the tax or penalty under this Act. There is also no disputation that with regard to said AYs, for assessment years 2007-08 and 2008-09, deemed assessment happened on 30.06.2012 and with regard to assessment year 2014-15, deemed assessment happened on 31.10.2015. Therefore, on 30.06.2012 qua assessment year 2007-08 and 2008-09 and on 31.10.2015 qua the assessment year 2013-14, there was a charge on the said property.

11. Writ petitioner points out that the aforesaid registered Settlement Deed is dated 05.06.2003. It is prior to these two dates and therefore, on the said dates viz., 30.06.2012 and 31.10.2015, said property was not in the hands of

his father. However, what is of relevance is Section 26 of TNVAT Act, which reads as follows:

> ' 26. Assessment of legal representatives.-
>
> Where a dealer dies, his executor, administrator, or other legal representative shall be deemed to be the dealer for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that, in respect of any tax or fee assessed as payable by any such dealer or any tax, or fee which would have been payable by him under this Act as if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.'

12. From a perusal of Section 26 of TNVAT Act, it becomes clear that writ petitioner, who is a legal heir of the dealer under TNVAT Act, is now holding immovable property i.e., said property of the dealer. The transfer is from father to son by way of a settlement.

13. Learned Additional Government Pleader, who accepted notice on behalf of the respondent, on instructions, submitted that the details of said property were given by writ petitioner's father in the course of the business to the tax department or in other words it was to demonstrate that there is adequate security and that is how the respondents are aware of the property details.

14. In this regard, learned counsel for writ petitioner by way of reply drew the attention of this Court to Sections 39 (4) and 39(5) of TNVAT Act and submitted that security ought to have been provided in the manner mandated in the said provisions.

15. In the instant case, there is no disputation or disagreement that the writ petitioner's father was originally a dealer under 'Tamil Nadu General Sales Tax Act, 1959' ('TNGST Act' for brevity). TNGST was subsumed by Tamil Nadu Value Added Tax vide TNVAT Act on and from 01.01.2007. Under such circumstances, learned Revenue counsel drew the attention of this Court to TNGST Act as well as TNVAT Act, more particularly Form XIX-B in TNGST Act and Form G of TNVAT Act. It is submitted that though Form G talks about Bank guarantee for stay of collection of tax, fee or other amount disputed, Form XIX-B of TNGST Act talks about the immovable property also.

16. In the instant case, as it is the stated position of writ petitioner that he does not know anything about the business transactions of his late father, writ petitioner obviously is not in a position to dispute that said property was offered as a security to the respondent.

17. Therefore, the argument predicated on Sections 39(4) and 39(5) pales into insignificance.

18. Learned Revenue counsel also pointed out that the transfer is by way of a Settlement Deed from father to his son and therefore, it is clearly with the intention to defeat the interest of the Revenue. This has also weighed in the mind of this Court. Another aspect, which has weighed in the mind of this Court is that though the writ petitioner, even on his own volition states that he got knowledge about the impugned auction on 26.07.2019 itself, has chosen to file the instant writ petition only on 06.08.2019 (Yesterday), the matter was on Board in admission list today, when the auction is scheduled to be held at 11.00 a.m. tomorrow i.e., 08.08.2019. To be noted, the impugned auction notice very clearly mentions the date and time of auction as 08.08.2019, 11.00 a.m. and therefore, it is clear that the writ petitioner had knowledge about the date and time of the auction on 26.07.2019 itself even according to his own admission. Therefore, writ petitioner has approached this Court at the eleventh hour. This Court is of the considered view that this is not just a case of eleventh hour, but it is fifty-ninth minute of eleventh hour. This Court is informed that the date of demise of writ petitioner's father is 26.02.2017. By way of an additional affidavit, a cryptic representation dated 30.07.2019 said to have been sent by the writ petitioner to the first respondent has been placed before this Court.

19. A perusal of what according to the writ petitioner is a representation reveals that it is cryptic and there is absolutely no elaboration or articulation regarding the impugned auction notice and tax liability. It merely says that the date of demise of writ petitioner's father was 26.02.2017 and that the same is being communicated to the first respondent.

20. Though obvious it is very clear that this is not a case where the writ petitioner has purchased the said property for valuable consideration. It is by way of settlement and the consideration is the usual love and affection covenant. More importantly, writ petitioner has chosen to approach this Court at the eleventh hour and more importantly fifty-ninth minute of eleventh hour, as this Court has described supra.

21. Therefore, this appears to be a feeble attempt to derail the auction tomorrow at 11.00 a.m. and it is an attempt to prevent the hammer going down tomorrow.

22. This Court therefore in the light of the facts and circumstances of this case is not inclined to interfere qua impugned auction notice. This writ petition is dismissed. There

shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

vsm

To

1.The State Tax Officer
State Tax Office
Tindivanam.

2.The Commercial Tax Officer (Additional)
Tindivanam Assessment Circle
Tindivananm
Villupuram District.

+1cc to Mr.Adithya Reddy, Advocate SR.67473
+1cc to the Spl Government Pleader (Taxes), SR.68177

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VGII(CO)
CB(15/10/2019)