BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.2598 and 4809 of 2012
and
M.P(MD)Nos.1 & 2 of 2012

K.A.Thirumalaiappan ... Petitioner in W.P(MD)No.2598/2012

K.T.Kuthalingam ... Petitioner in W.P(MD)No.4809/2012

Vs.

1.The Commissioner of Commercial Taxes,
Elilagam, Chepauk,
Chennai - 5.

2.The Assistant Commissioner,
Commercial Taxes,
Tenkasi, Tirunelveli District. ... Respondents in both W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, to call for the records on the file of the second respondent pertaining to the advertisement published in Dina Thanthi on 16.02.2012 pertaining to Na.Ka.No.2704 of 2008, dated 14.02.2012 and quash the same with regard to the second item of the advertised property.

For Petitioner (in both W.Ps') : Mr.S.C.Herold Singh

For Respondents (in both W.Ps') : Mr.R.Murugan, Additional Government Pleader.

COMMON ORDER

These two Writ Petitions have been filed by two individuals claiming to be the brothers of one K.T.Namasivayam, who had passed away on 02.09.2010. According to them, the property at Door No.3/31, 3rd Block, 11th Ward, Kidarkulam Village (in short 'property in question') has devolved upon them fully and absolutely pursuant to Will, dated 21.02.1993 executed by their grandfather.

2.In the aforesaid circumstances, they were taken aback when they came to know of a publication dated 14.02.2012 proposing to bring the property in question to auction along with another property, in connection with the commercial tax arrears of two entities 'Great Marketing' and 'Ever Power Enterprises'. The present Writ Petitions have, thus, been filed seeking a Writ of Certiorari quashing auction notification, dated 14.02.2012.

3.A counter has been filed by the respondent / Commissioner of Commercial Taxes wherein, it is stated that the concerns by the name of 'Great Marketing' and 'Ever Power Enterprises' had been registered as dealers under the provisions of the Tamil Nadu General Sales Tax Act, 1959. The former is a partnership dealing with Electronic Florescent lamps under the name and style of 'Great Marketing' (wherein K.T.Namasivayam was a partner). He has also offered the property in question as surety in respect of 'Ever Power Enterprises' in which his wife was sole proprietor. Both the aforesaid concerns are stated to be in arrears of sales tax for the periods 1994-95, 1995-96 and 1996-97, of amounts of Rs.2,99,538/-, Rs.5,53,722/- and Rs.2,314/- amounting in all to a sum of Rs.8,55,574/-. It is for this reason, that, invoking powers under the Revenue Recovery Act, 1864, the property in question has been attached and is now intended to be brought for sale. They also aver that a notice of attachment of the aforesaid property has also been issued prior to the proposed sale in accordance with law.

4.None of the above documents have been placed before this Court. I am thus not in a position to appreciate the factual matrix of the matter and, hence, of the view that, in the interests of justice, the petitioners should be permitted to putforth their case and establish their title to the property by production of relevant documents. The respondents will furnish a copy of the attachment of the property in question within a period of two weeks from date of receipt of this order. Upon receipt as aforesaid, the petitioners will file proper response / representations setting out all the facts as well their objections to the attachment notice as well as auction notification. Such representation, shall if so desired, be filed within a two weeks from date of receipt of a copy of the notice of attachment from the respondents. On receipt thereof, the petitioner shall be heard and appropriate orders passed by the respondent within a period of four weeks thereafter. There is an interim stay granted by this Court in W.P(MD)No.4809 of 2012 on 12.04.2012 and this stay shall continue only for a period of eight weeks from date of receipt of this order.

5.These Writ Petitions are disposed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
Elilagam, Chepauk,
Chennai - 5.

2.The Assistant Commissioner,
Commercial Taxes,
Tenkasi, Tirunelveli District.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-81261[F] dated 13/08/2019)

+1 cc to Special Government Pleader, SR.No. 81166

W.P(MD)Nos.2598 and 4809 of 2012
08.08.2019

ps
JM/12.09.2019/3P/5C