IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.39314 OF 2005
AND
M.P.NO.42126 OF 2005

M/s.Vira Properties (Madras) Pvt.Ltd,
"Rayala Towers", 158 (781-785) Anna Salai,
Chennai : 600 002
Rep by its Manager,
T.M.Damodaran. ... Petitioner

Vs.

1. Commercial Tax Officer,
   Anna Salai, III Assmt.Circle,
   Chennai - 600 006.

2. M.V.R.Exports Private Limited,
   781 Anna Salai, Chennai - 600 002. ... Respondents

Prayer:
Writ Petition is filed under article 226 of the Constitution of India, Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent relating to the Notification issued in Chennai Gazette No 10 dated 03.10.2005 and to quash the notification in Chennai Gazette No.10 dated 03.10.05 and further direct the 1st Respondent to consider, the representation of the Petitioner culminating in letter dated 03.12.2005 made by the petitioner Company.

For Petitioner : Mr.George Cheriyan

For Respondents : Mr.Mohammed Shaffiq,
Special Government Pleader
for R1 R2-No appearance

O R D E R

Challenging the impugned Gazette Notification No.10, dated 03.10.2005 the petitioner has come by way of this Writ Petition, contending that the property in question has not been transferred to M/s.M.V.R. Exports Private Limited, inasmuch as the said M/s.M.V.R.Exports Private Limited had failed to sign the Maintenance Agreement with the Petitioner, who is the promoter and developer of the property, for which the said M.V.R.Exports Private Limited had paid the consideration vide agreement dated 25.09.1991.

2.Learned counsel for the petitioner submits that, the Leasehold Agreement was also signed on the same day as per the Lease Agreement and that unless the second respondent/ M.V.R.Exports Private Limited, signs the Maintenance Agreement, the property in question will not be transferred to them. It is the contention of the petitioner that the 2nd respondent/ Company has locked the premises and the whereabouts are not known and hence no further agreements could be signed. It is submitted that the rights over the property have not been transferred to the second respondent/ M.V.R.Exports Private Limited.

3.It is his further contention that, the property cannot be attached for arrears of tax of the 2nd respondent as the impugned Gazette Notification was not brought to be knowledge of the petitioner. In this regard, the petitioner had sent a representation to the first respondent stating that the property in question has not been conveyed to the second respondent, and therefore the property cannot be attached.

4.Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the 1st respondent has filed a copy of the Encumbrance Certificate, dated 24.07.2011, as per which, there is a charge created in favour of the 1st respondent/ Commercial Tax Department.

5.It is his further contention that the 2nd respondent/M.V.R. Exports Private Limited had signed a lease agreement with a third party, which was registered with the Registration Department, and therefore the 2nd respondent/ M.V.R.Exports Private Limited was the owner of the property in question and to that effect a letter dated 25.11.2005 was also issued to the petitioner.

6.He submits, question as to whether the property belongs to the 2nd respondent/Company or whether the property continues to be in the name of the petitioner can be determined by the 1st respondent. I find this suggestion reasonable.

7.I have heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

8.The dispute in the case on hand is, who is the owner of the property in question, as on date. According to the petitioner, the petitioner is still the owner of the property, as the said M.V.R.Exports Private Limited had failed to sign the Maintenance Agreement, in terms of the agreement dated 25.09.1991.

9.I am of the view, that the steps taken in the impugned Gazette Notification dated 03.10.2005 proposing to sell the property, can be kept in abeyance till there is a proper determination of actual ownership of the property. Liberty is therefore given to the 1st respondent to pass a fresh order after considering the submission of the petitioner as to who is the owner of the property in question i.e, whether 2nd respondent/M.V.R. Exports Private Limited or the petitioner is the owner of the property.

10.Since, the issue pertains to payment of tax due from the 2nd respondent, the 1st respondent is directed to pass a speaking order within a period of 30 days from the date of receipt of this order. Needless to state, before passing order, the 1st respondent/Commercial Tax Officer shall hear the petitioner. The petitioner is directed to appear before the 1st respondent/Commercial Tax Officer on 31.01.2020 with its representation on the first instance. After hearing the petitioner and consideration of the petitioner, the 1st respondent shall pass appropriate orders in accordance with law.

11.Accordingly, the Writ Petition stands disposed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

jas

To

1. The Commercial Tax Officer,
Anna Salai, III Assmt.Circle, Chennai - 600 006.

+1cc to the Special Government Pleader, S.R.No.3285

W.P.No.39314 of 2005
and M.P.No.42126 of 2005

BS(CO)
CS/02/03/2020