IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 18.09.2020

PRONOUNCED ON : 30.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.22275 & 22276 of 2018
and
WMP.Nos.26109 to 26112 of 2018

1.G.Varadharajan ...Petitioner in W.P.No.22275/2018

2.Seetharaman ...Petitioner in W.P.No.22276/2018

Vs.

The Tax Recovery Officer-X,
Office of Principal Commissioner of
Income Tax,
Aayakar Bhawan, Vnaparthy Block,
III Floor, Room No.327, 121, M.G.Road,
Nungambakkam,
Chennai-600 034. ...Respondent in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records with respect of the impugned order passed by the respondent in his proceedings in TRC.No.329 to 334/2000-01/TRO-10/2018-19 dated 03.08.2018 and to quash the same.

For Petitioner : Mr.R.Nalliyappan

For Respondent :Mrs.Hema Muralikrishnan
Sr. Standing Counsel

C O M M O N O R D E R

With the consent of both parties, the present Writ Petitions are heard through Video Conferencing on 18.09.2020.

2. The order passed by the respondent herein in TRC.No.329 to 334/2000-01/TRO-10/2018-19 dated 03.08.2018 is put under challenge in these Writ Petitions. Since the issue involved in these Writ Petitions are one and the same, the Writ Petitions are disposed of through a common order.

3. The parents of the petitioners herein had purchased a property bearing Plot No.B-66, Lord Mount Pattern Street, Sathyamoorthy Block, Jafferkhanpet, Chennai-83, under two Sale deeds dated 11.11.1999 & 12.01.2000. After the death, a portion of the property was settled in favour of the petitioners herein.

4. It is claimed by the respondent that the vendor of the property namely, G.Gopal Rao was in arrears of tax for the period 1986-1992 and in connection with the same, a charge over the property was created.

5. According to the learned counsel for the petitioners, they are bona-fide purchasers of the subject property and that the present attempt by the respondent to recover the tax arrears of G.Gopal Rao from the subject property, after a lapse of 27 years, is not sustainable.

6. Mrs.Hema Muralikrishnan, learned Senior Standing counsel for the respondent submitted that the petitioners were aware of the charge over the property, which is reflected in the Encumbrance Certificate and the transfer of property itself is with a fraudulent intention of depriving the department and therefore the Writ Petitions does not require consideration.

7. It is not in dispute that the respondent herein intended to recover tax arrears of the assessee namely, G.Gopal Rao for the Assessment Year 1986-92. The respondent claimed to have sent a notice to the assessee as well as to the parents of the petitioners herein on 28.10.2003, intimating the charge over the property. Apparently, the notice was sent after a period of 10 years. Through the impugned letter dated 03.08.2018, the respondent had informed that the petitioner's property which was attached earlier by them, is to be proclaimed for realization of the tax arrears of the assessee namely, G.Gopal Rao.

8. At the relevant point of time, Rule 68(B) of the Second Schedule to the Income Tax Act, 1961 prescribed a time limit of three years from the end of the financial year in which the order giving rise to demand of tax arises. The proviso to Rule 68(B) enables the Board to extend the period for a further period not exceeding three years.

9. The respondent's claim to proceed against the petitioners' property after a period of 27 years from the end of the financial year in which the demand of arrears of the property tax was made, is clearly in contravention to the limitation prescribed under Rule 68(B). As such, they may not have any legal right to proceed against the petitioners' property since it is clearly barred by limitation.

Accordingly, the petitioners would be entitled to succeed.

10. In view of the aforesaid reasons, the impugned order is quashed. Consequently, the Writ Petitions stand allowed. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//
Sub Assistant Registrar

DP

To

The Tax Recovery Officer-X,
Office of Principal Commissioner of
Income Tax,
Aayakar Bhawan, Vnaparthy Block,
III Floor, Room No.327, 121, M.G.Road,
Nungambakkam,
Chennai-600 034.

+2cc to M/s.Hema Muralikrishnan, Advocate SR.32105, 32106

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NRJK(CO)
CB(11/11/2020)