

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.35080 of 2016
and
W.M.P.No.30235 of 2016

M.Vijayalakshmi

...Petitioner

Vs.

1.The Tahsildar,
Excise Department,
Government of Puducherry,
Thattanchavadi,
Puducherry.

2.The Deputy Commissioner of Excise,
Excise Department,
Government of Puducherry,
Thattanchavadi,
Puducherry.

3.Mr.R.Vengadesan

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, call for the records on the file of the 2nd respondent in proceedings No.Nil dated 08.09.2016 in so far as it seeks to bring the property of the petitioner to the revenue auction sale situated in Murungapakkam, T.s.No.7/1/E, Ward No.N, Block 1, Murungapakkam Village, Puducherry and quash the same.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.J.Kumaran, AGP (Pondy)
for R1 & R2

No appearance for R3

O R D E R

The petitioner has challenged recovery notice dated 08.09.2016 seeking to recover an amount of Rs.16,06,425/- and penalty thereon as the amount due from the 3rd respondent with reference to be license given for running an arrack shop in terms of conditions laid down in Notification No.8911/DCE/T(P)/AUC/2012-13 dated 30.05.2012 published in the Extraordinary Gaxette No.42 dated 13.05.2012 subjective confirmation order dated 14.09.2012 Form C.0-1.

2.It is the case of the petitioner that she had money transactions with the 3rd respondent and had borrowed a sum of Rs.50,000/- and in this connection had offered her property as a security for repayment of the aforesaid loan.

3.It is the contention of the petitioner that even though the petitioner had re-paid the aforesaid amount to be 3rd respondent, the 3rd respondent refused to return the title deed of the subject property which is sought to be auctioned to recover the amounts due from the 3rd respondent.

4.According to the petitioner when she demanded the title deeds from the 3rd respondent, the 3rd respondent informed the petitioner that the said document had been misplaced and the 3rd respondent would return the same to the petitioner as and when he locates the same.

5.The 3rd respondent had applied for a license to run an arrack shop and had furnished the title deed of the petitioner as a security for getting the aforesaid arrack license. According, to the official respondents, the 3rd respondent had also filed a solvency certificate for the aforesaid purpose and therefore they were constrained to 1st issue an order of attachment on 05.01.2015. Since the 3rd respondent was in arrears and thereafter the impugned order dated 08.09.2016.

6.Assailing the impugned order, the learned counsel for the petitioner submits that the petitioner has also instituted a private complaint before the Chief Judicial Magistrate at Pondicherry against the respondents and same is pending. It is further submitted that the petitioner had also obtained information from the Public Information Officer, Government of Puducherry, the Office of the Deputy Collector (Excise) and vide communication dated 24.04.2015, it was informed that the petitioner had stood as a surety for the arrack license issued to the 3rd respondent but had not produced surety annexure I and II.

7.It is further contention of the petitioner that misusing

the title deed given as a security for the amount borrowed by the petitioner, the 3rd respondent had apparently offered the same as a security for getting the aforesaid arrack license.

8.It is further submitted that as per the information obtained from the respondents, the 3rd respondent was required to not only mortgage property of a value not less than the annual kist paid by him but was also required to register a mortgage within 15 days from the receipt of the confirmation order for the rental amount due to the Government at the time of execution of the mortgage deed.

9.In this case the petitioner, has not registered any mortgage and therefore the so-called deposit of title deed would not be binding on the petitioner. It is further contended that as per the confirmation order if there is a failure to register the mortgage deed as per sub-rule 1 C of rule 156 of the Pondicherry Excise Rules, 1970 the confirmation order shall stand automatically cancelled and the deposit made by such person shall be forfeited and the right of retail vend of liquor shall be given to the next higher bidder. It is stated that though there was no valid registration, yet the 3rd respondent was allowed to carry on the arrack shop contrary to the confirmation order dated 14.09.2012.

10.On the other hand, the respondent would submit that the petitioner had furnished a solvency certificate for a sum of Rs.65 lakhs which was obtained from the Taluk Office, Puducherry on 11.06.2012 to specifically participate in the arrack/toddy shop auction.

11.It is submitted that the 3rd respondent who was the ex-license had defaulted in payment of monthly kist amount as per the conditions of the Confirmation order and therefore not only EMD amount was appropriated on its forfeiture but also the bank guarantee was encashed on 27.08.2013 and despite such adjustment, the 3rd respondent was still in arrears of amount to the Government for an amount of Rs.16,06,425/- and penal interest of Rs.1,83,918/-.

12.It is the contention of the respondent that the petitioner herself applied for a solvency certificate her property to participate in the arrack auction and therefore the petitioner cannot pretending as if she was not aware of the surety offered by her.

13.I have considered the arguments advanced on behalf of the petitioner and the respondents. In this case the petitioners property was offered as a security for permitting the ex-license to run a arrack shop. The 3rd respondent was not only required

to offer property by way of mortgage but was also required to register the same in favour of the respondents. However, same was not registered.

14. Similarly the information furnished by the Public Information Officer of the office of the Deputy Collector (Excise) vide communication dated 24.04.2015 in response to an application filed by the petitioner on 26.03.2015 has confirmed that the petitioner has not produced Annexure I and II.

15. There is no clarity in the role of the petitioner i.e., whether her property was offered by her in her capacity as a surety for the arrack license issued to the 3rd respondent or as mortgage or as a bidder herself. Either way in absence of valid registration of the mortgage as is contemplated in the confirmation order dated 14.09.2012, the respondent cannot proceed against the petitioner or her property.

16. Further, in the counter it is stated that the petitioner had participated in the auction and produced solvency certificate. If that be so, it remains inexplicable as to how the petitioner's can be used as a security for the license issue to the 3rd respondent.

17. There appears to be irregularity in permitting the 3rd respondent to run arrack shop contrary to the confirmation dated 14.09.2012. Therefore, while allowing the writ petition, liberty is given to the official respondents to proceed against the 3rd respondent to recover amount due from the 3rd respondent in the manner known to law. The present Writ Petition stands disposed with the observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Tahsildar,
Excise Department, Government of Puducherry,
Thattanchavadi,
Puducherry.

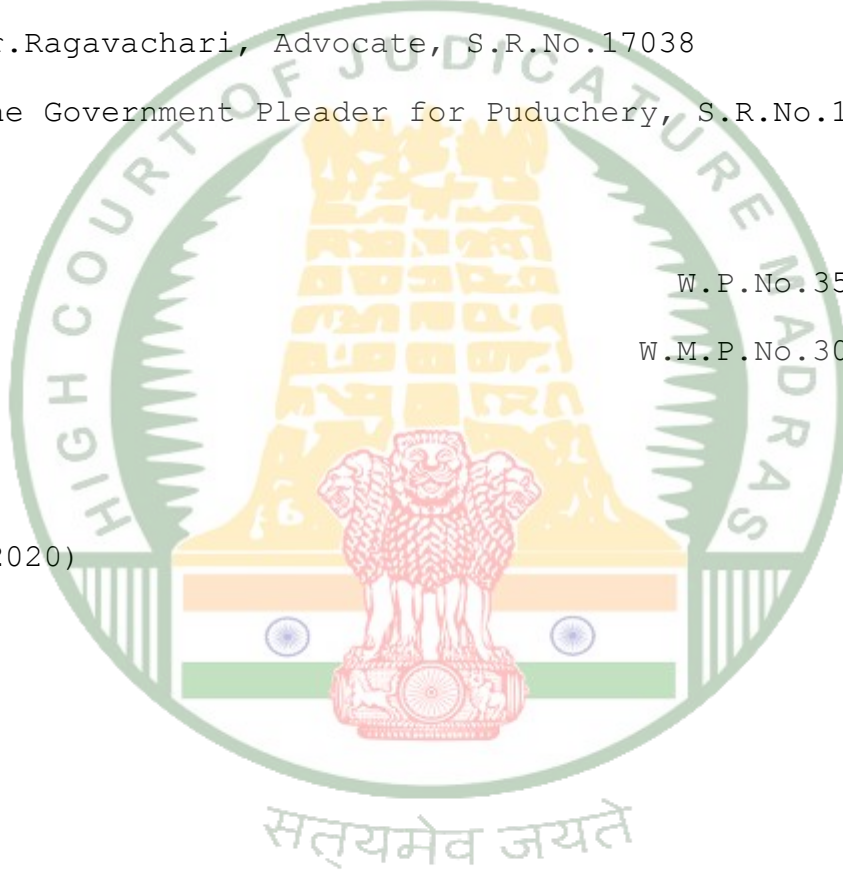
2.The Deputy Commissioner of Excise,
Excise Department, Government of Puducherry,
Thattanchavadi,
Puducherry.

+1cc to Mr.Ragavachari, Advocate, S.R.No.17038

+1cc to the Government Pleader for Puduchery, S.R.No.17382

W.P.No.35080 of 2016
and
W.M.P.No.30235 of 2016

NR(CO)
RN(16/07/2020)



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