



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30677 of 2007

and

M.P.No.1 of 2007

M/s.Bismillah Industrial Steel Suppliers,  
A partnership firm represented by its Partner,  
Mr.Kaleelulliah,  
Son of Syed Mohamed,  
No.10 A, Coramandal Town,  
Menambedu Road,  
Chennai - 600 098.

.. Petitioner

Vs.

1. Commercial Tax Officer,  
Villivakkam Assessment Circle,  
No.5, High Court Colony,  
Chennai - 600 049.
2. The Recovery Officer,  
Debts Recovery Tribunal - 1,  
6<sup>th</sup> Floor, Spencers Towers,  
No.770 - A, Anna Salai,  
Chennai - 600 002.
3. M/s.Chemee Boilers Madras,  
rep. by its Managing Partner,  
P.L.Karunakaran,  
No.59 - B, Industrial Estate,  
Ambattur, Chennai - 600 098.
4. P.L.Karunakaran
5. K.Devika Rani
6. Indian Bank,  
Asst. Recovery Management Branch - 1,  
Commander in Chief Road,  
Egmore,  
Chennai.



7. The Commissioner,  
Commercial Tax Office,  
No.1, PAPJM Building,  
Greens Road, Nungambakkam,  
Chennai 600 006.

.. Respondents

(R7 suo-motu impleaded vide order of this Court  
dated 24.06.2021 made in W.P.No.30677/2007)

Prayer: Writ Petition filed under Article 226 of the  
Constitution of India praying to issue a Writ of Certiorari,  
calling for the entire records of the first respondent in  
R.C.No.4344/1987 A 3 and quash the Demand notice Prior notice  
attachment of land dated 30.08.2007 and all other consequential  
proceedings and allow this Writ Petition with costs.

For Petitioner : Mr.V.John Aquinas

For Respondents : Mr.Veluchamy  
Government Advocate for R1 & R7  
No appearance for R2 to R6

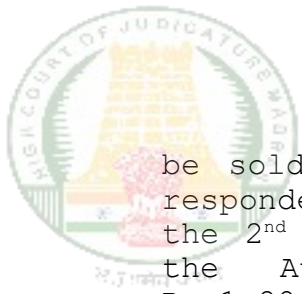
#### O R D E R

The demand prior to attachment of land issue in Form - 4 in  
proceedings dated 30.08.2007 is under challenge in the present  
writ petition.

2. The petitioner is a registered partnership firm and  
carries on business in buying and selling of Iron and steel and  
other allied products.

3. The third respondent is a partnership firm and the  
respondents four and five are its partners. The industrial plot  
in Plot No.31/A 18 in the developed plot at Ambattur Industrial  
Estate Chennai at Korattur Village was originally owned by M/s  
Chemee Boilers, the 3<sup>rd</sup> respondent herein. The 3<sup>rd</sup> respondent  
committed default in respect of certain facilities availed from  
their bankers, namely Indian Bank, the 6<sup>th</sup> respondent herein.  
The 6<sup>th</sup> respondent had instituted recovery proceedings before the  
Debts Recovery Tribunal - I in T.A.No.648 of 1997 against the 3  
to 5 respondents to recover its outstanding dues. The Debts  
Recovery Tribunal - I, by its order dated 01.07.2003 has issued  
recovery certificate against the 3<sup>rd</sup> respondent.

4. Pursuant to the order passed by the Debts Recovery  
Tribunal - I, the 2<sup>nd</sup> respondent herein issued Recovery  
Certificate in DRC No.187/2003 and the properties of the 3<sup>rd</sup>  
respondent in the said plot at Ambattur Estates, was ordered to



be sold in public auction to recover the dues of the 3 to 5 respondents. The Public Auction was held on 29.11.2005 before the 2<sup>nd</sup> respondent. The petitioner was the successful bidder in the Auction sale and the total consideration being Rs.1,28,00,000/-. The petitioner deposited the entire amount with the 2<sup>nd</sup> respondent. The Auction sale was confirmed in favour of the petitioner and the petitioner has taken possession of the property and enjoyment.

5. Under these circumstances, the respondents issued the impugned notice on 30.08.2007, after a lapse of more than one year stating that the 3<sup>rd</sup> respondent / M/s.Chemee Boilers Madras, is defaulter in demand of sales tax arrears. The petitioner has stated that they have no knowledge about any such default nor there was an attachment at the time of auction purchase of the subject property by the petitioner. Therefore, the impugned demand notice is illegal.

6. The learned Government Advocate appearing on behalf of the respondents 1 & 7, submit that the notice was issued on 30.08.2007, which reveals that the sales tax arrears are to be paid by the 3<sup>rd</sup> respondent. Thus, the notice is in accordance with the provisions of the statute and the writ petition is to be dismissed.

7. This Court is of the considered opinion that in respect of the subject property, the Indian Bank approached the Debt Recovery Tribunal and after passing an order the public auction was conducted, sale certificate was issued and possession was also handed over to the petitioner in the year 2006 itself. However, after a lapse of more than one year, first time the respondent issued the impugned demand notice in proceedings dated 30.08.2007.

8. This being the factum, the sale was already violated pursuant to the provisions of the Debt Recovery Act, cannot be now unsettled and therefore, in view of the said factum, the impugned order passed by the first respondent in proceedings R.C.No.4344/1987 A3, dated 30.08.2007 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns



To

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+1cc to Mr.V.John Aquinas, Advocate, S.R.No.31858

W.P.No.30677 of 2007

UM(CO)  
HS(02/08/2021)