IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.41025 of 2005
and
W.M.P.No.2087 of 2006

Fathima ..Petitioner

Vs.

1.The District Collector,
Perambalur District.

2.The Commissioner & Special Commissioner,
Prohibition & Excise Department,
Ezhilagam,
Chenni.

3.The Divisional Excise Officer,
Perambalur. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent vide his proceedings e.f/m1/393/82/ dated 25.11.2005 and quash the same and further direct the respondents herein to revise the demand which is exorbitantly made by the respondents.

For Petitioner : Mr.G.K.R.Pandian

For Respondents : Mr.V.Nanmaran
Government Advocate

ORDER

The public auction notice dated 25.11.2005 issued by the 3rd respondent is sought to be quashed in the present Writ Petition and further direction is prayed for to direct the respondents to revise the demand which is exorbitantly made by the respondents.

2. The husband of the writ petitioner was the license holder of arrack shop within the jurisdiction of Perambalur Municipality during the year 1981-1982 in Shop No.22/81-82,

whereby a notional loss has been caused to the tune of Rs.4,95,300/-. The petitioner states that her husband late Mr.Selvaraj was paying the amounts in instalments and suddenly he passed away on 12.01.2003, leaving behind the petitioner and three children. In January 2004, the 3rd respondent issued a notice demanding a sum of Rs.4,44,300/- and the petitioner has stated that some amount has already been paid by her husband and those amounts were not adjusted. Thus, the petitioner is constrained to move the Writ Petition.

3. The learned counsel for the writ petitioner mainly contended that as per Section 36 of the Tamil Nadu Revenue Recovery Act, 1864, 30 days notice is contemplated and the present impugned notice was issued without complying with the above provision. Further, it is contended that as per the family partition deed, the minors are also holding right over the subject property and in respect of minors' property, the same cannot be auctioned by the respondents. On these two grounds, the impugned order is liable to be set aside.

4. The respondents filed a counter stating that the Excise Officer, Perambalur in his order dated 05.01.1983 itself has ordered, but permitted the notional auction amount to be paid by late Mr.Selvaraj under the provisions of the Tamil Nadu Revenue Recovery Act, 1864 as if it was an arrears of land revenue. On account of the re-sale, there had been a notional loss of Rs.4,94,300/- recoverable from late Mr.Selvaraj. He failed to remit the notional loss amount and therefore, auction under the Tamil Nadu Revenue Recovery Act was taken to the Tahsildar, Perambalur in order to recover the amount from the defaulter. Objecting the auction initiated by the Tahsildar, Perambalur, late Mr.Selvaraj filed a civil suit in O.S.No.546 of 1984 on the file of the District Munsif Court, Perambalur and the said suit was dismissed on 09.11.1987. Opposing the judgment, he filed a First Appeal before the Sub Court, Ariyalur in A.S.No.18 of 1988 which was also dismissed on 10.07.1990. Second Appeal No.247 of 1994 filed before the High Court. An interim injunction had been granted on 10.03.2004. Subsequently, the interim injunction was made absolute on condition that the appellant deposits a sum of Rs.4,95,300/- within a period of eight weeks from today, failing which the order of interim injunction stands vacated automatically. The learned Government Advocate appearing on behalf of the respondents made a submission that as per the conditional order of the High Court, the petitioner has not deposited any amount. Therefore, the interim stay granted was vacated long back. Thus, the respondents are entitled to proceed for recovery of the dues to be paid.

5. This Court is of the considered opinion that perusal

of the impugned order dated 25.11.2005 reveals that there are some corrections in the date of auction mentioned in the impugned order. Therefore, this Court has a doubt in respect of the adherence of the 30 days period as contemplated. This apart, the minors became majors and even during the relevant point of time, the partition deed was executed pertains to majors as well as the minors. Now, the minors became majors. However, in respect of the majors, even at that point of time, the respondents are empowered to initiate action under the provisions of the Tamil Nadu Revenue Recovery Act. The fact remains that the impugned order was issued on 25.11.2005 and 16 years lapsed. The conditional interim order granted in the Second Appeal was also not in force and therefore, there is no impediment for the respondents to proceed with action by following the procedures contemplated in the Tamil Nadu Revenue Recovery Act. On account of efflux of time, the notice issued in the year 2005 cannot be proceeded with and therefore, the respondents have to issue a fresh notice for the purpose of recovery of arrears of revenue dues. The learned counsel appearing for the petitioner raised an objection that the calculation made in the impugned order regarding the arrears of revenue is incorrect. Thus, the respondents are bound to calculate the arrears of revenue to be recovered in a proper manner and thereafter, issue fresh notice for recovery of revenue from the parties concerned. In view of the fact that the petitioner has not established any ground for the purpose of quashing of impugned auction notice and further the impugned auction notice issued in the year 2005 cannot be proceeded at this length on time, the respondents are bound to issue a fresh auction notice for the purpose of recovery of arrears of revenue by following the procedures contemplated.

6. With these directions, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The District Collector,
Perambalur District.

2.The Commissioner & Special Commissioner,
Prohibition & Excise Department,
Ezhilagam,
Chenni.

3.The Divisional Excise Officer,
Perambalur.

+1cc to Mr.G.K.R.Pandian, Advocate, S.R.No. 27774
+1cc to the Government Pleader, S.R.No. 27861

W.P.No.41025 of 2005

PPA(CO)
GN(15/07/2021)