IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.08.2021

CORAM:

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

WP No.10590 of 2018
and WMP No.12549 of 2018

M/s.Indian Oil Corporation Ltd.,
Rep. By its Authorized Agent
& Senior Manager (Retail Sales)
having its State Head Office at
No.139, Nungambakkam High Road,
Chennai - 600 034. ...Petitioner

Vs

1. The Tahsildar
Taluk Office, Villianur South Car Street,
Villianur, Puducherry - 605 110.

2. Government of Puducherry,
Department of Revenue and Disaster Management,
Puducherry.

3. D.Dinesh Menon

4. Commercial Tax Officer - IAC,
Officer of the Commercial Tax Officer [IAC],
Puducherry ...Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to impugned auction notice dated 27.03.2018 bearing No.288/TOV/RR/2016 issued by the 1st respondent and quash the same and consequently direct the 1st respondent to exclude the building superstructure and equipment from the said notice and include the subsistence of the lease dated 15.07.2004 registered as document No.2337/2004 on the file of the SRO, Villianur, executed in favour of the petitioner include the reserve price for auction and to direct the 1st respondent to retain the surplus amount received after appropriation of the due amount and deposit the same in the account of C.S.No.467 of 2018 pending on the file this Court.

For Petitioner : Mr.Mohammed Fayaz Ali

For Respondents : Mr.J.Kumaran (for R1, R2 & R4)
Additional Govt. Pleader (Puducherry)
Mr.S.Raveekumar (for R3)

O R D E R

The writ on hand is filed to call for the records pertaining to impugned auction notice dated 27.03.2018 bearing No.288/TOV/RR/2016 issued by the 1st respondent and quash the same and consequently direct the 1st respondent to exclude the building, superstructure and equipment from the said notice and include the subsistence of the lease dated 15.07.2004 registered as document No.2337/2004 on the file of the SRO, Villianur, executed in favour of the petitioner, include the reserve price for auction and to direct the 1st respondent to retain the surplus amount received after appropriation of the due amount and deposit the same in the account of C.S.No.467 of 2018, pending on the file this Court.

2. Petitioner is Indian Oil Corporation Limited [IOCL]. The 3rd respondent is the legal heir of the original tax defaulter. The contention raised on behalf of the writ petitioner is that, they have entered into lease dated 15.07.2004, with the owner of the subject property viz., Late Mr.K.Deivanayagam, father of the 3rd respondent. Based on the lease deed, the petitioner-IOCL has constructed certain building for their usage. The period of lease is for 20 years.

3. Relying on the said lease deed, the learned counsel for the petitioner reiterated that the petitioner may not have serious objection for auctioning the land belongs to the owner of the property, however, their right towards the building has to be protected. The respondents 1 and 2 have no authority to auction the property belongs to the writ petitioner-IOCL and therefore, those infrastructures, which belongs to the petitioner has to be protected.

4. This Court is of the considered opinion that the father of the 3rd respondent was the tax defaulter. Action was initiated by the respondents 1 and 2 under the provisions of the Act. Auction notice was issued. First of all, the petitioner cannot be construed as an aggrieved person, as far as recovery of tax is concerned. If at all the petitioner is a leasee, holding the right in respect of certain infrastructures in the subject property based on the lease deed, the petitioner has to seek redressal by approaching the appropriate forum. Even in the prayer column, the petitioner has stated that a Civil Suit is pending in C.S.No.467 of 2018, before the High Court, wherein

owner of the property is also a party in the said suit. While so, it is for the petitioner to work out their remedy by establishing their right based on the lease agreement dated 15.07.2004.

5. However, as far as the auction notice is concerned, the same was issued to recover the tax arrears from the 3rd respondent, as he is the legal heir of the original tax defaulter. Admittedly, the 3rd respondent is the absolute owner of the land and based on the lease agreement, the petitioner has developed certain infrastructures. Thus, the petitioner is having leasehold rights for which they can seek appropriate remedy of compensation or otherwise. Further, the writ petitioner cannot prevent the Government of Puducherry, from recovering the tax arrears by following the procedures as contemplated under the Act from the defaulter and the legal heirs of the defaulter. Admittedly, the 3rd respondent is the owner of the subject property.

6. The learned counsel appearing on behalf of the 3rd respondent made a submission that the 3rd respondent has also filed writ petitions questioning the competent jurisdiction of the tax authorities. However, the issue raised in the present writ petition by the writ petitioner, who is a leasee. is in no way connected with the claim, if any, to be made by the 3rd respondent, who is the legal heir of the tax defaulter.

7. As far as the petitioner is concerned they have to establish their leasehold rights and therefore, if a leasee suffered any loss on account of violation of lease deed by the lessor, then he is entitled to claim appropriate compensation and seek further remedy in the manner known to law and by approaching the competent forum.

8. In the present case, a civil suit is also filed, which is pending. Thus, the petitioner is at liberty to seek appropriate remedy before the competent Court of law and as far as the present writ petition is concerned, the auction notice challenged by the writ petitioner, cannot be quashed as the auction notice impugned was issued to recover the tax arrear from the defaulter and as far as the tax defaulter is concerned, the petitioner is in no way connected and the relief as such sought for in the present writ petition, cannot be granted. However, liberty is grant to the petitioner to work out the remedies in the manner known to law.

9. With the above observations, the writ petition stands dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Tahsildar
   Taluk Office, Villianur South Car Street,
   Villianur, Puducherry – 605 110.

2. Government of Puducherry,
   Department of Revenue and Disaster Management,
   Puducherry.

3. The Commercial Tax Officer,
   IAC, Puducherry.

+1 cc to Mr.Mohammed Fayaz,Advocate Sr.No.38649
+1 cc to the Government Pleader, Sr.No.38953 for Puducherry.

WP No.10590 of 2018

KG[co]
NSK 02/09/2021