IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. No.7404 of 2021
and
WMP. Nos.7917 & 7920 of 2021

1.Shri T.Giridhar
2.Smt.Vandana Giridhar …Petitioners

Vs.

1.The Principal Commissioner of Customs,
Commissionerate - VII,
Air Cargo Complex, Chennai 600 027.

2.Assistant Commissioner of Customs,
Revenue Recovery Unit,
O/o. The Principal Commissioner of
Customs, Commissionerate - VII,
Air Cargo Complex, Chennai 600 027.

3.Regional Manager,
M/s.MSTC Ltd., Southern Regional Office,
at 3rd Floor, ISPAT Bhavan,
5 Kodamabakkam High Road,
Chennai - 600 034.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ Mandamus, forbearing the respondents from auctioning and selling the property i.e. Flat No.38/12, Mookathal Street, Second Floor, Sai Muthayams Apartment, Pursaiwalkam, Chennai 600 007 ad measuring 1127 sq.ft along with undivided share of the land thereto pursuant to proclamation of sale dated 12.03.2021 in F.No.RRU/01/2006-Air of the 2nd respondent herein.

For Petitioners : Mr.B.Satish Sundar
For Respondents : Ms.Anu Ganesan,
Junior Standing Counsel for R1 & R2
No Appearance for R3.

ORDER

The petitioner has sought a Mandamus forbearing the respondents i.e. the Commissioner and Assistant Commissioner of the Customs Department/R1 & R2 as well as the Regional Manager of the MSTC Limited, Chennai/R3 from auctioning and selling the property at Flat No.38/12, Mookathal Street, Second Floor, Sai Muthayams Apartment, Pursaiwalkam, Chennai 600 007 (property in question) admeasuring 1127 sq.ft along with undivided share of land belonging to the petitioner and his wife, sought to be auctioned under proclamation of sale dated 12.03.2021.

2. After hearing the petitioner and the learned Standing Counsel for the Customs Department, the following order was passed by me on 22.03.2021:

> 'Ms.Anu Ganesan, learned Junior Standing Counsel accepts notice for R1 and R2 and seeks some time to obtain instructions and file a counter.
>
> 2. Notice to R3 through Court as well as privately, returnable 30.03.2021. Proof of service be placed on file by then.
>
> 3. The case of the petitioner is that the impugned proclamation of sale seeks to deal with an asset owned jointly by the first petitioner, his wife, his estranged brother and his wife, the brother being a defaulter under the provisions of the Customs Act, 1962. This is a question of fact. Upon receipt of the proclamation of sale, the petitioners, have written to the respondents on 14.03.2021, received on 16.03.2021, setting out the above contentions and this representation has been received and acknowledged by the respondent as well.
>
> 4. In such circumstances, let the above request be considered and the ownership of the asset in question be determined prior to any coercive steps being taken, involving the same.
>
> 5. For this purpose, let the petitioners appear before the 2nd respondent/Assistant Commissioner of Customs, Revenue Recovery Unit on Thursday the 25th of March, 2021 at 10.30 a.m. without expecting any further notice in this regard and let orders be passed after hearing the petitioner on or before 29.03.2021.

6. List on 30.03.2021 for production of orders.'

3. Learned Standing Counsel states that after hearing the concerned parties, an order has been passed on 29.03.2021, a copy of which is placed before me today. The aforesaid order is to the effect that 50% of the property does vests with the petitioner and his wife and the auction proposed is only in regard to the remaining portion that vests with the petitioner's brother and his wife. With this, the Mandamus sought for is achieved and the writ petition is disposed recording the aforesaid submissions and confirmation of the learned Counsel for R1 & R2.

4. Learned counsel for the petitioner at this juncture refers to the Customs (Attachment of property of Defaulters for Recovery of Government Dues) Rules, 1995 stating that where the property is jointly owned by the defaulters along with a third party, the same can only be attached to the extent of the defaulters' share and in any event, cannot be alienated. Let the aforesaid submission be putforth to the Customs authorities for their consideration, prior to proceeding with the proclamation, if at all.

5. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy// Sub Assistant Registrar

rkp

To
1.The Principal Commissioner of Customs,
Commissionerate - VII,
Air Cargo Complex, Chennai 600 027.

2.The Assistant Commissioner of Customs,
Revenue Recovery Unit,
O/o. The Principal Commissioner of
Customs, Commissionerate - VII,
Air Cargo Complex, Chennai 600 027.

+1cc to Ms.Anu Ganesan, Advocate SR.No. 21005

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gpl co
A.SK(18.05.2021)