IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.20004 & 6354 of 2020 and
WMP.Nos.7490, 24676 & 7492 of 2020

D.Swarnakumar …Petitioner in both WPs

Vs

1.The Tax Recovery Officer-6,
O/o. Principal Commissioner of Income Tax-6
Income Tax Department
Room No.426-E, 4th Floor
Wanaparthy Block, 121 M.G.Road,
Ayakar Bhavan, Chennai-600 034.

2.Anand Muruga Uthakar …Respondents in both WPs

Prayer in WP.20004 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorarified mandamus to call for the records pertaining to the impugned letter dated 11.03.2020 issued by the 1st respondent and quash the same and further direct the 1st respondent to consider the objections raised by the petitioner.

Prayer in WP.6354 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorari to call for the records pertaining to the 1st Respondent impugned auction notice dated 6.2.2020 in respect of the property situated at Plot No.23, 2nd Street, Bala Murugan nagar in the layout plan No.5582/75, approval DTP No.221/75, Velacherry, Chennai 600 042 and quash the same.

(In both WPs)
For Petitioner : Mr.G.Derrick Sam

For Respondents: Mr.A.P.Srinivas (for R1)
Senior Standing Counsel
R2 – No Appearance

COMMON ORDER

Heard Mr.Derrick Sam, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for R1/Income Tax Department.

2. WP.No.6354 of 2020 has been filed challenging an auction notice dated 06.02.2020 issued by the first respondent i.e. the Tax Recovery Officer-6 bringing to auction the property at Plot No.23, 2nd Street, Bala Murugan Nagar in layout plan No.5582/75, approval DTP No.221/75, Velacherry, Chennai-600 042.

3.When the matter had come up for admission, I had passed an order on 11.03.2020 to the following effect:

> 3. The challenge is to an auction of the property situated at Plot No.23, 2nd Street, Bala Murugan Nagar, Velacherry, Chennai – 600 042 comprised in S.No.257 (Part) Velacherry Village, Mambalam Guindy Taluk, Chennai District admeasuring 2400 sq.ft (in short 'property in question').
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> 4. According to the petitioner, he is the legitimate owner of the property. My attention is drawn to a judgment and decree of the City Civil Court, Chennai in O.S.No.6826 of 2005 dated 02.12.2008 wherein the plaintiff is one M.Antony Selvaraj and the third defendant is David Sual singh, who is the vendor of the petitioner before me. Rival claims were raised in respect of the property in question and a declaration sought for by the plaintiff. The suit was dismissed for non-prosecution. It appears that an application for restoration was filed, which also come to be dismissed on 02.12.2008 for non-prosecution. Thereafter, vide registered sale deed dated 18.01.2012, the property in question has been sold by the said David Sual Singh to the petitioner before me. It is vide this trajectory of events that the petitioner claims title to the property. Encumbrance Certificates dated 04.08.2012 and 05.03.2020 are also placed on file (pages 28 and 33 of the document compilation) to show that the property, prima facie, stands in the petitioners' name.
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> 5. The above facts are set out only to complete the narration as the petitioner has, rightly, raised an objection to the proposed auction in terms of Rule 11 of the Second Schedule to the Income Tax Rules, 1962 (in short 'Rules') before the Tax Recovery Officer/R1 on 05.03.2020. In such circumstances, it is appropriate that the objections filed by the

petitioner be adjudicated upon by R1 after hearing the petitioner and any move to auction the property be carried out only subsequent thereto. The impugned auction notice is thus, in my considered view, pre-mature.

6. In view of the discussion above, the petitioner is permitted to appear before the Tax Recovery Officer/R1 on Monday, the 23rd of March, 2020 at 10.30 a.m. without expecting any further notice in this regard along with a copy of the objections filed. After hearing the petitioner and R1, shall pass appropriate orders within a period of four (4) weeks thereafter that is, on or before 30.04.2020, R1 is also at liberty to issue notice to R2, if he deems it necessary and hear him prior to passing an order.

7. Interim stay of auction till 30.04.2020.

8. List on 30.04.2020. Counter by then with an advance copy served upon the petitioner.'

4.When the petitioner had approached the first respondent with a copy of the aforesaid order, he was given to understand that orders had already been passed on the objections filed by the petitioner in terms of Rule 11 of the second schedule to the Income Tax Rules. This order has come to be challenged in WP.No.20004 of 2020. In so far as impugned order dated 11.03.2020 has been passed, admittedly, without hearing the petitioner, there has been violation of the principles of natural justice and this order is set aside.

5. The petitioner will now appear before R1 on Thursday, the 22nd July, 2021 at 10.30 a.m. without expecting any further notice in this regard and the objections filed by the petitioner shall be adjudicated upon and a speaking order passed by R1 within a period of four (4) weeks from date of personal hearing as aforesaid. The hearing may be conducted as far as possible, virtually. There shall be a stay of auction till 19.08.2021 or till date of order, as aforesaid, whichever is earlier.

6. The name of Mr.Anand Muruga Uthakar/R2 is printed in the cause list after completion of service. However, there is no response by or on his behalf. Notice shall be issued by R1 to R2 as well, for the hearing on 22.07.2021.

7. Both writ petitions are disposed as above. Connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

vs

To

The Tax Recovery Officer-6,
O/o. Principal Commissioner of Income Tax-6
Income Tax Department, Room No.426-E, 4th Floor
Wanaparthy Block, 121 M.G.Road,
Ayakar Bhavan, Chennai-600 034.

+1cc to Mr.A.P.Srinivas, Advocate SR.No.33241

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KJ(CO)

GMY(22/07/2021)