IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.21919 of 2021
and
W.M.P.No.23129 of 2021

M/s.IGGI Resorts International Ltd.
Represented by its Director, Mr.S.Arunkumar
T-18A, Alsa Mal Complex
149, Montieth Road, Egmore
Chennai-600008.

...Petitioner

-Vs.-

Tax Recovery Officer-1,
Room No.208, 2nd Floor,
Annexe Building,
63 Race Course Road,
Coimbatore-641 018.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the Respondent in issuing the impugned proclamation of sale in Form ITCP 13 under Rule 38 and Rule 52(2) of the Second Schedule to the Income Tax Act, 1961 dated 14.09.2021 and consequential auction sale notice dated 20.09.2021 and quash the same.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas
Senior standing counsel

O R D E R

A proclamation of sale dated 14.09.2021 inter alia under Rules 38 and 52(2) of the Second Schedule to 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] followed by an Auction notice [for Auction of Immovable Property] dated 20.09.2021 have been called in question i.e., assailed in the captioned main writ petition.

2. Captioned main writ petition was moved in the vacation Court on 12.10.2021 and the proceedings of Hon'ble Vacation Court reads as follows:

'Mr.A.P.Srinivas, learned Senior Standing Counsel takes notice for the respondent.
Post on 20.10.2021 under the caption 'For Admission'.

3. Today, learned counsel for writ petitioner submits that the reserve price fixed for the property is a song. Learned counsel also points out that there is a waiver plea and therefore, the auction has to be interfered with.

4. Learned Revenue counsel on instructions submits that the writ petitioner has preferred a petition under Section 11 of the Second Schedule of the IT Act being petition dated 22.09.2021 and the same has been disposed of on 27.09.2021 (Pages 109 and 113 respectively of typed set of papers). Learned counsel for writ petitioner submits that he would be assailing the 27.09.2021 order separately.

5. Be that as it may, learned Revenue counsel draws the attention of this Court to Rules 11 and 15 of the aforementioned Second Schedule qua IT Act which reads as follows:

'Investigation by Tax Recovery Officer

11.(1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that-

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b) (in the case of movable property) at the date of the attachment,

he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the

defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

Adjournment or stoppage of sale.

15. (1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule(1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and cost has been paid ot the Tax Recovery Officer who ordered the sale.'

6. Learned Revenue counsel submits that under Sub-Rule 6 of Rule 11, writ petitioner should only institute a suit in Civil Court and adverting to Sub Rule (3) of Rule 15, learned Revenue counsel submits that the sale itself can be stopped, before the lot is knocked down on production of proof that arrears and cost have been paid to the Tax Recovery Officer

who ordered the sale.

7. Learned Revenue counsel also points out that this is not the first time that the subject matter immovable property is sought to be brought to sale by way of an auction and several earlier attempts have been interfered with by writ petitioner in one pretext or the other.

8. In the light of specific provision under Rules 11 and 15 and in the light of the stated position of the writ petitioner that 27.09.2021 order is to be assailed separately, this Court is of the considered view that this is not a fit case for resorting to interfering in the auction more so at the eleventh hour. This Court does not find the argument turning on waiver to be strong enough to interdict the auction that too not the first time, but many times over as pointed out by the learned Revenue counsel and at the eleventh hour.

9. As a consequence, captioned Writ Petition is dismissed leaving it open to the writ petitioner to work out its remedy by way of challenging the order under Rule 11 or other further remedies available to writ petitioner. If writ petitioner chooses to do so, this order will neither impede nor serve as an impetus in such proceedings. In other words such proceedings (if initiated) will proceed uninfluenced by observations in instant order. To put it differently, all questions raised in the writ petition on hand are left open for this purpose. Consequently, connected WMP.No.23129 of 2021 is also dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

nsa/kmi

To

Tax Recovery Officer-1
Room No.208, 2nd Floor,
Annexe Building,
63 Race Course Road,
Coimbatore-641 018.

+1cc to Mr.R.Sivaraman, Advocate SR.No.54310

+1cc to Mr.A.P.Srinivas, Advocate SR.No.53773

W.P.No.21919 of 2021
and
W.M.P.No.23129 of 2021

PL(CO)
GMY(15/11/2021)