BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20089 of 2019
and
W.M.P.(MD)Nos.16627 and 16628 of 2019

M/s.Cheran Cements Limited,
Rep. by its Authorised Signatory,
G.Duraisamy ... Petitioner

Vs.

1.The State Tax Officer,
Kulithalai Assessment Circle,
Kulithalai, Karur District.

2.State Industries Promotion Corporation
of Tamil Nadu Limited,
(A Government of Tamil Nadu Undertaking),
Rep. by its Managing Director,
No.19 A, Rukmani Lakshmipathi Road,
Egmore, Chennai – 600 008. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the impugned records on the file of the 1st respondent in Na.A.3438/2004, A3 dated 05.09.2019 (Tamil Version) and quash the same as contrary to the provisions of the Tamil Nadu Revenue Recovery Act, 1864.

For Petitioner : Mr.S.Rajasekar
For Ms.Hemalatha
For Respondent No.1 : Mr.G.Arjunan,
Government Advocate
For Respondent No.2 : Mr.N.Adithya Vijayalayan

ORDER

Heard the learned counsel on either side.

2.The petitioner was an assessee registered with the first respondent. The petitioner's sales tax liability as on 05.09.2019 was quantified at Rs.6,80,46,539/- with interest. This has become final and it is no longer open to question. In order to recover the same, the department initiated measures under Tamil Nadu Revenue Recovery Act, 1864. It served a notice of demand on the petitioner under Section 25 of the Tamil Nadu Revenue Recovery Act and that was followed by a distraint order under Section 8 of the Act. After the attachment proceedings were completed, notice for auction was also issued and published in Karur District Gazette on 15.06.2019. Interestingly in the very same gazette notification, notice of sale of land in Form 7 was also published.

3.As rightly pointed out by the learned counsel for the petitioner that this could not have been done. Form 5 annexed to the Act reads as follows:-

> "***Form No.5***
>
> *Notice of attachment to ---------------------- in the village of --------------- of ------------- taluk.*
>
> *Take notice that as you have not paid or shown sufficient cause for the non- payment of Rupees -------------- although the said sum has been duly demanded in writing from you, the landed property belonging to you is hereby placed under attachment; and that unless the arrear due by you with interest and other charges be paid within ---------------------- the landed property will be brought to sale in due course of law. You will further take notice that from the date of this attachment notice until the date of sale of your land hereby attached, you are, and will be held, liable for all kists thereon accruing, and the said kists will be demanded of, and levied from you as arrears of land revenue.*
>
> *STATION:*
> *DATE:* *Tahsildar."*

4.It can be seen therefrom that the said notice of attachment issued under Section 27 of the Act will notify the defaulter that unless the arrear due by him with interest and other charges is paid within the particular period the landed property will be brought to sale in due course of law. Therefore, notice of attachment under Section 27 of the Act and notice of sale of land in Form 7 under Section 36 of the Act could not be published on the same day and at the same time. In any event, the impugned auction sale notice does not mention the upset price at all. The arrears payable by the petitioner is alone mentioned. Whenever an auction sale is conducted, it is the duty of the auctioneer or the authority, who brings the property to auction to mention the upset price also. That alone will ensure the fairness of the auction process. Otherwise, a valuable property may be knocked down and sold for a song. In order to ensure that the property is sold for a fair price, it is necessary to incorporate upset price also in auction notice. In the impugned proceedings the upset price has not at all been mentioned.

Even though Section 36 of the Act may be silent on this, principles of fairness demand that the upset price is mentioned in the auction notification. Inasmuch as, the impugned auction notice is silent on this, the same is liable to be set aside. I make it clear that the impugned notice of sale of land alone is interfered with and all other prior proceedings including attachment are left intact. The impugned auction notice dated 05.09.2019 and the previous publication in Form 7 dated 26.04.2019 alone are quashed. The writ petition is partly allowed. It is open to the first respondent to issue fresh auction sale notice in accordance with law and recover the arrears from the petitioner herein. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

IAS

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The State Tax Officer,
Kulithalai Assessment Circle,
Kulithalai,
Karur District.

+1 CC to Mr.D.VENKATESH, Advocate (SR-9057[F] dated 05/03/2021)

Order made in
W.P(MD)No.20089 of 2019 and
W.M.P.(MD)Nos.16627 and 16628 of 2019
03.03.2021

ARV(CO)
SRS (12/03/2021) 3P : 3C