IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 10.10.2023
Coram
The Hon'ble Mr.Justice **Krishnan Ramasamy**

W.P.No.26385 of 2023

Mrs.S.Pushpa ...Petitioner

Vs.

1. The Official Liquidator,
   High Court, Madras.

2. The Assistant Commissioner of Income Tax Circle-I
   No.3, Gandhi Road,
   Hasthampatti, Salem – 636 007.

3. Mr.M.Sekar
   Ex-Director, M/s.Swathy Smart Card,
   D.No.177, Flat No.B1,
   Nirmal Builders Sudham Apartment,
   Kms Garden, Salem. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents 1 and 2 to consider the petitioner's representation dated 04.01.2022 to de-seal the property situated at S.No.97/5B,R.S.No.97/B 20 in Plot No.1, Bharathi Street, Swarnapuri Colony, Salem -4.

For Petitioner : Mrs.P.Rajalakshmi

For Respondent-1	:	Official Liquidator
For Respondent-2	:	Mr.R.S.Balaji, Senior Standing Counsel

O R D E R

This Writ Petition is filed seeking for issuance of mandamus directing the respondents 1 and 2 to consider the petitioner's representation dated 04.01.2022 and to de-seal the property situated at S.No.97/5B,R.S.No.97/B 20 in Plot No.1, Bharathi Street, Swarnapuri Colony, Salem -4.

2. The case of the petitioner is that the petitioner is the owner of the aforesaid property. The petitioner's erstwhile owner leased out the property to the third respondent, M/s. Swathy Smart Card and subsequent to the purchase of the said property by the petitioner, the third respondent continued the lease with the petitioner and was in possession of the property by paying rent to the petitioner. Since the third respondent-Company was under liquidation, liquidation proceedings were initiated against the third respondent-Company and the Official Liquidator sealed the property. The petitioner being the owner of the property made a representation dated 04.01.2022 to the respondents 1 and 2 setting out fact that place/property, where, the third respondent-Company run the business, is the petitioner's property and therefore, sought to de-seal the property. Since the said representation evoked no response, the petitioner has filed the present Writ Petition seeking for aforesaid prayer.

3. Mrs.P.Rajalakshmi, learned counsel appearing for the petitioner would submit that the petitioner is the owner of the property, however, pursuant to a check conducted by the Income Tax Department, all the books of accounts, statutory registers, returns and other records have been taken over by the Officials attached to Income Tax Department, and the Income Tax Officials while preparing the inventories, wrongly included the petitioner's property in the list of assets of the third respondent, and the Official Liquidator, pursuant to liquidation proceedings initiated against the third respondent-Company, took possession of the Company's assets, both movable and immovable and without verifying the title over the property, wrongly sealed the property, which belonged to the petitioner. Aggrieved over the same, the petitioner made a representation dated 04.01.2022 to the respondents 1 and 2 to de-seal the property, however, the respondents has not considered the said representation so far, which necessitated the petitioner to file this Writ Petition. Therefore, the learned counsel prayed that appropriate direction may be issued to the respondents 1 and 2 to consider the said representation of the petitioner and to de-seal the petitioner's property forthwith, since the Official Liquidator is in possession of the property from 2016 onwards without even paying any single pie to the petitioner towards rent.

4. The Deputy Official Liquidator appearing for first respondent would fairly submit that since the Company conducted by the third respondent in the petitioner's premises went under liquidation, the first respondent, Official Liquidator in the process of seizure of the assets of the third respondent-Company, both movable and immovables, locked and sealed the property, under an impression that the property also belongs to the third respondent, however, upon verification of records, it is found that the property belongs to the petitioner. Hence, Deputy Official Liquidator assured that the Official Liquidator would vacate the premises, however, requested for granting sufficient time.

5. Heard the learned counsel for the petitioner and respondents.

6. As far as second respondent, Assistant Commissioner of Income Tax is concerned, since it appears that pursuant to a check conducted by the Income Tax Officials at the premises of the third respondent-Company, the certain books of accounts and all other documents of the third respondent-Company were seizeed; that the Official Liquidator, in pursuance of the proceedings initiated against the third respondent-Company is need of such documents, which were in the custody of Income Tax Official and has sent notice dated 17.03.2021 to the Assistant Commissioner of Income Tax, for providing those documents, the said Income Tax Official has been impleaded as one of the party respondent in this Writ Proceedings, this Court is of the view that it would be suffice to direct the first respondent to vacate the property, inasmuch as, the second respondent has no role to play in regard to the prayer made by the petitioner.

7. Accordingly, this Writ Petition is disposed of with a direction to the first respondent to consider the representation made by the petitioner, dated 04.01.2022 and to pass orders for de-seal of the property. The first respondent is also directed to take back all books of accounts, equipments, if any, that were kept lying in the premises and vacate and hand over vacant premises within a period of 30 days from the date of receipt of a copy of this order. No costs.

10.10.2023

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Index : yes/no

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Krishnan Ramasamy,J.
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