BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.3801 of 2012
and
W.P(MD) No.3 of 2012

1.M.Bharathi Malayaman

2.M.Muthuramalingam ... Petitioners

Vs.

1.The Deputy Commissioner (Commercial Taxes),
Trichy Division,
Commercial Tax Building,
Court Complex,
Trichy-1.

2.The Assistant Commissioner (Commercial Tax),
Palakkarai-1 Assessment Circle,
Commercial Tax Building,
Court Complex,
Trichy-1.

3.The Entertainment Tax officer,
Palakkarai-1Assessment Circle,
Commercial Tax Building,
Court Complex,
Trichy-1. ... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the second respondent relating to the Auction Notice published on 08.03.2012 in the Dinamalar Newspaper (Trichy Edition) and quash the same.

For Petitioner	:	Mr.A.Thirumurthy
For Respondents	:	Mr.J.John Rajadurai Government Advocate

ORDER

This writ petition has been filed to call for the records of the second respondent relating to the Auction Notice published on 08.03.2012 in the Dinamalar Newspaper (Trichy Edition) and quash the same.

2.The petitioners would submit that their father was proprietor of the Thearte at Trichy. He has been very diligent in payment of his entertainment tax and penalty. It is the case of the petitioners that their father had died tragically in an aircraft accident that occurred near

Kathamandu. While the family was reeling under the shock, the second respondent has published an auction notice in Dinamalar Newspaper (Trichy Edition) dated 08.03.2012. From the perusal of the auction notice, it is seen that the amounts mentioned therein are based on the orders passed by the third respondent on 06.01.1997 and 04.06.2001 in respect of the years 1995-96 and 1996-97. It is further case of the petitioner that by an order dated 14.05.2004, in Revision Petition Nos.ET/4/98(95-96) and ET/4/03 (96-97), the third respondent had passed the revised final order stating that no amounts were due from the petitioners' father for the year 1995-96 and refixed the demand of tax Rs. 1,26,600/- and penalty of Rs.1,89,900/-, for the year 1996-97. The petitioners would further submit that the records would clearly reveal that the petitioners' father had paid amounts in December 2004 and May 2005 and thereafter, the auction notice has been published mentioning the due as Rs.12,31,367/- for the year 1995-96 and Rs. 37,57,172/- for the year 1996-97. The third respondent had passed an order dated 06.01.1997 assessing entertainment tax on the alleged escaped turnover for the years 1995-96 and 1996-97 and also levied penalty for the said years i.e., Rs.12,31,367/- for 1995-96 and Rs.

44,91,235/- for 1996-97. This order was appealed by the petitioners' father and by order, dated 25.06.1998, the Assistant Commissioner (CT), Trichy (Town) dismissed the appeal in respect of the tax for the period 1995-96 and remanded the matter back to the Entertainment Tax Officer for fresh disposal in the case of the year 1996-97.

3. The petitioners would further submit that after the remand, the third respondent had revised and reduced the assessment and penalty for the period 1996-97 at Rs.37,57,172/-. This order was challenged and the second respondent by order dated 05.12.2001, dismissed the appeal filed by the petitioner and a revision petition in Revision Petition No.4/98(ET) was filed thereafter before the first respondent. Likewise the appeal was filed challenging the order with reference to the assessment year 1995-96. The revision petition filed to the first respondent was dismissed on 22.06.2001. Against the order dated 22.06.2011, a further revision petition No.65/2001 was also filed and the Joint Commissioner of Entertainment Tax/ Joint Commissioner (RP), Chennai, passed the order, dated 26.03.2004 remitting the matter back to the first respondent for fresh disposal. Ultimately, the first respondent had deleted the demand

for the period 1995-96 and fixed a total tax and penalty of Rs.3,16,500/- for the period 1996-97. The petitioner has also remitted the same. While so, they have been shocked to receive the auction notice for bringing the property to sale. Hence, the present writ petition.

4. A counter affidavit was filed by the second respondent, which was adopted by respondents 1 and 3 stating that against the tax due of Rs.1,26,000/- for the assessment year 1996-97, the petitioner had only paid a sum of Rs.26,600/- vide challan dated 14.02.2005 and it is the case of third respondent that the cheque for a sum of Rs.1,26,000/- was not issued by the petitioner. They would further submit that a sum of Rs.1,00,000/- and the penalty of Rs.1,89,900 together with interest at 24 % per annum is to be paid by the petitioners.

5. Since the issue only revolves around as to whether the payment has been made or not, an opportunity should be given to the petitioners to produce the documents before the third respondent regarding the payments. The auction notice, which is the subject of the writ petition has been stayed and the period has also lapsed. Taking into account the

counter filed by the respondents, the Writ Petition is disposed of with a direction to the petitioners to appear before the third respondent on 27.06.2023 with all the documents to show the payment of the amounts. The third respondent shall consider the same affording an opportunity of personal hearing to the petitioners and pass orders within a period of two weeks therefrom. Till then, the property shall not be brought for sale. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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P.T.ASHA, J.

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