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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.19830 of 2013
and
M.P.(MD).Nos.2 & 3 of 2013

1.N.Madhavan

2.M.Radha ... Petitioners

Vs.

1.The Tamilnadu Tax Appellate Tribunal,
Tirunelveli,
Tirunelveli District.

2.The Commercial Tax Officer,
Tirunelveli,
Tirunelveli District.

3.The Sub Registrar,
Palayamkottai Sub-Registrar Office,
Tirunelveli District.

4.V.Rengaramanuja Chetti & Sons Jewellers,
Represented by V.Rengaramanuja Chetti,
No.66, Madurai Road, Tirunelveli Junction,
Tirunelveli District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the

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records relating to the impugned order passed by the 1st respondent in his proceedings No.A3/2634/02 dated 31.10.2006 in respect of the petitioner's properties situated in Survey Numbers 2, 6/2, 10/2, 90, 91 (New S.Nos.91/1 & 91/2), 94, 96, 98, 100/1, 100/2, 103, 107 (New S.No.107/1), 112 (New S.No. 112/1A), 114 (New S.No.114/3), 116 (New S.No.116/1), 121 (New S.No. 121/1A, 121/1B & 121/2), 124, 126 in Muthoor Village, Palayamkottai Taluk, Tirunelveli District and quash the same and consequently direct the 1st respondent to remove the petitioner's properties in Survey Numbers 2, 6/2, 10/2, 90, 91 (New S.Nos.91/1 & 91/2), 94, 96, 98, 100/1, 100/2, 103, 107 (New S.No. 107/1), 112 (New S.No. 112/1A), 114 (New S.No.114/3), 116 (New S.No. 116/1), 121 (New S.No. 121/1A, 121/1B & 121/2), 124, 126 in Muthoor Village, Palayamkottai Taluk, Tirunelveli District from impugned attachment order dated 31.10.2006 passed by the 1st respondent.

For Petitioner : Mr.S.Meenakshi Sundaram

For Respondents : Mr.A.K.Manikkam,
Special Government Pleader
For R-1 to R-3

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent dated 31.10.2006, in respect of the petitioner's property in various Survey numbers.

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2. The contention of the petitioner is that the respondents have attached the petitioner's property. Certain mortgaged properties were granted as security to the respondents. However, the properties listed in the prayer was never ever granted as security. Without ascertaining the facts, the respondents have initiated the proceedings and the petitioner's properties were attached through the attachment notice. Therefore, the petitioner is before this Court.

3. The learned Counsel appearing for the petitioner relies on earlier order passed by this Court in W.P.(MD).No. 4297 of 2010 dated 04.04.2013. The respondents herein had stated that inadvertently the list of the properties shown in the prayer were attached. The relevant portion of the said judgment is extracted hereunder:

> *7. After considering the submissions made by the learned counsel for the parties and taking note of the counter affidavit filed by the official respondents, it is seen that the Commercial Tax Department has acted in haste and without properly verifying the records, brought the properties mentioned in the impugned Order of attachment, for sale for recovery of the sales tax arrears. It may be an easy statement for the Assistant Commissioner of Commercial Tax, Tirunelveli District to say inadvertently, without proper verification, certain properties were included in the impugned order of attachment, however the department has failed to take note of the serious implications the impugned notice has caused to the true owner of these properties.*

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8. Therefore, the irresponsible action on the part of the Sales Tax Department cannot be appreciated. Since the right over the suit properties is said to have been adjudicated by the Civil Court, the Sales Tax Authority cannot proceed as such oblivious of the Civil Court Decree by issuing impugned attachment notice.

9. Therefore, on this ground alone, the impugned Order of attachment is quashed. It is needless to state that this Court has not gone into the correctness of the statement made by the petitioners nor the stand taken by the respondents 7 to 9 nor the certain allegations made against the official respondents in the counter affidavit regarding the share owned by Janakirama Reddiar and others. If there is Civil Court Decree, then the Sales Tax Authority shall be bound by such Decree and without reference to such Decree, the Authority cannot proceed further.

10. Accordingly, liberty is granted to the Sales Tax Department to verify as to whether the properties in question, which are the subject matter of the impugned Order of attachment, are owned by person, who has committed default in payment of sales tax respondent and whether the properties could be proceeded against for the arrears of sales tax payable by the fourth respondent and before finalizing the same both the petitioners and the respondents 4 to 9 shall be issued notice for filing their objections and only thereafter the sales tax authorities shall proceed further only in accordance with law.

4. Since already this Court has dealt with the issue which is raised by the petitioner and the said order is in favour of the petitioner, this Writ Petition is unnecessary.

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5. In view of the above, this Writ Petition is closed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Sml

To

1.The Tamilnadu Tax Appellate Tribunal,
Tirunelveli,
Tirunelveli District.

2.The Commercial Tax Officer,
Tirunelveli,
Tirunelveli District.

3.The Sub Registrar,
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S.SRIMATHY, J.

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