

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR



PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NO: 17714 OF 2023

Between:

Gunnuru Satya Rama Murthy, Son of Sri G. Satyanarayana, #9-45,
Velama Street, Chodavaram, Andhra Pradesh -531 036.

...Petitioner

AND

1. Assistant Commissioner (ST) (INT), Visakhapatnam.
2. Deputy Assistant Commissioner (ST), Anakapalli Circle, Visakhapatnam District.
3. Sub-Registrar, Registration and Stamps Department, Government of Andhra Pradesh, Chodavaram, Visakhapatnam.
4. State of Andhra Pradesh, rep. by its Principal Secretary to Government, Revenue (CT-II) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.
5. Union of India, rep. by its Secretary (Finance), Ministry of Finance, North Block, New Delhi-110001.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may

be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction (a) setting aside the Form GST DRC-16 notice dated 29.7.2022 issued to the Petitioner by the 2nd Respondent, to the 3rd Respondent, attaching the properties of the Petitioner, viz., (a) Agriculture lands in Survey Nos. 364/4-0.50 cents, 370/1-0.30 cents, Survey Nos. 363/9-0.57 cents, 363/10-0.30 cents, 261/3-0.48 cents and 359/5-0.60 cents, Chodavaram Village, Chodavaram Mandal, Anakapalli District. (b) RCC slabbed house in Survey No. 66/1, Door No. 9-45, Ward No. 6, Block No. 6, Velama Veedhi, Chodavaram. for recovery of the tax and penalty, dues of Rs. 2,04,04,378/- allegedly due by Sri Sampath Vinayaka Non-Govt. Employees Welfare Society, Chodavaram, Visakhapatnam District as illegal, arbitrary, without jurisdiction and contrary to law and contrary to Section 79 of the CGST / SGST Acts. (b) set-aside the communication issued by the 2nd Respondent to 3rd Respondent on 3.11.2022, requesting the 3rd Respondent not to permit alienation/transfer/register the aforementioned properties for recovery of the dues allegedly due by Sri Sampath Vinayaka Non-Government Employees Welfare Society, as illegal, arbitrary and without jurisdiction and contrary to law. and (c) set-aside the Endorsement dated 27.06.2023 issued by the 2nd Respondent, proposing to take action under the provisions of AP GST Act, 2017 and Revenue Recovery Act, 1864 against the Petitioner for recovery of the dues allegedly due by Sri Sampath Vinayaka Non-Government Employees Welfare Society, as illegal, arbitrary and without jurisdiction and contrary to law.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings pursuant to Impugned Form GST DRC-16 notice dated 29.7.2022 and Communication dated 3.11.2022, including the auctioning of the subject properties for the recovery of the alleged dues of the Sri Sampath Vinayaka Non-Government Employees

Welfare Society, pending disposal of the Writ Petition as otherwise the Petitioner will be put to severe loss and hardship.

IA NO: 1 OF 2024

Between:

Deputy Assistant Commissioner (ST), Anakapalli Circle, Visakhapatnam District

...Petitioner

AND

1. Sri Gunnuru Staya Sree Rama Murthy, S/o, Sri G Satyanarayana, D.No. 9-45, Velama Street, Chodavaram, Andhra Pradesh – 531036

...Respondent/Petitioner

2. Assistant Commissioner, ST – INT, Visakhapatnam
3. Sub Registrar, Registration and Stamps Department, Government of Andhra Pradesh, Chodavaram, Andhra Pradesh
4. State of Andhra Pradesh, rep. by its Principal Secretary to Government, Revenue CT – II Department, Secretariat, Velagapudi, Amaravathi, Guntur District
5. Union of India, Rep. by its Secretary Finance, Ministry of Finance, North Block, New Delhi – 110001

...Respondents/Respondents

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim stay order passed WP No. 17714 of 2023, dated: 07.02.2024.

Counsel for the Petitioner: SRI. K V J L N SASTRY

Counsel for the Respondent Nos. 1,2 and 4: GP FOR COMMERCIAL TAX

Counsel for the Respondent No. 3: GP FOR STAMPS AND
REGISTRATION

Counsel for the Respondent No.5: SRI Y V ANIL KUMAR (CENTRAL
GOVERNMENT COUNSEL)

The Court made the following order:



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3508]

WEDNESDAY, THE FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM
WRIT PETITION NO: 17714/2023

Between:

Gunnuru Satya Rama Murthy

...PETITIONER

AND

Assistant Commissioner Stint and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.K V J L N SASTRY

Counsel for the Respondent(S):

1.GP FOR REGISTRATION AND STAMPS (AP)

2.GP FOR COMMERCIAL TAX

3.Y V ANIL KUMAR (Central Government Counsel)

The Court made the following Order:

The petitioner has approached this Court with the following averments:

- a) The petitioner worked as Secretary of a Society, called as Sri Sampath Vinayaka Non-Government Employees Welfare Society (herein-after referred to as "the Society"). The petitioner sought to raise funds for paying his

daughter's college fee, by mortgaging the agricultural lands situated in Chodavaram Village and Mandal, Anakapalli District, as well as a house situated in Chodavaram Village itself. For this purpose, the petitioner was informed by the Registration Authorities that this property had been attached by the 2nd respondent herein for realization of the sales tax dues of the Society, to an extent of 2.04 Crores.

- b) The petitioner had, thereupon, obtained the relevant documents, under the Right to Information Act, 2005 and had approached this Court, contending that the dues of the said Society cannot be recovered from him as he was only a Secretary of the Society and no tax could have been collected from him, on account of the dues of the Society.

2. The respondents have filed their counter affidavit. The contention of the respondents, in this counter affidavit, is that, an amount of Rs.2.04 Crores had become due from the Society. As the petitioner was the Secretary of the Society, notice under Section 79 of the Central / State Goods and Services Tax Act, 2017, (herein-after referred to as CGST/SGST Act) had been issued for recovery of the dues under the AP GST Act, 2017. Under a notice, dated 29.07.2022, the Sub-Registrar, Chodavaram, Anakapalli District was informed about the arrears of the Society and the requirement to attach

the properties of the petitioner, for recovery of such dues. The details of the property that were sought to be attached were also set out in Form GST DRC-16. On this basis, the Sub-Registrar, Chodavaram, is said to have kept the properties in the prohibitory list.

3. The respondents contend that Section 94 of the CGST/ SGST Acts, empowers the Tax Authorities to recover the dues of any firm, association of persons or Hindu Undivided Family from any member of such a firm or association of persons. Accordingly, taxes were sought to be recovered from the petitioner, on the ground that he is a member of the Society, which is an association of persons.

4. The learned counsel for the petitioner would contend that such a view is impermissible. He contends that a Society has been dealt with separately under the GST Act itself and an association of persons cannot be treated as a Society.

Consideration of the Court:

5. The Society was served with relevant assessment orders raising tax dues, etc. According to the respondents, the amount due from the Society is Rs.2,04,04,378/-. This figure has not been disputed and shall be taken to be an admitted figure, for the purpose of this Writ Petition.

6. The material placed before this Court would show that this Society had been registered as Society No.157 of 2008, under the provisions of the Andhra Pradesh Societies Registration Act, 2001 (herein-after referred to as "the Act of 2001"), on 10.03.2008. The annual list, for the year 2014-15, filed for the Registration of Societies, shows the name of the petitioner as a Secretary of this Society. It can, therefore, be deduced that the petitioner is a member of this Society.

7. The question that arises before this Court is, whether Section 94 of the CGST Act empowers the Tax Authorities to recover the dues of the Society, registered under the Act of 2001, from any of its members. Section 94 of the CGST Act reads as follows:

"94. Liability in other cases.-- (1) *Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business-*

(a) *the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and*

(b) *every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family,*

whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person."

8. This provision would be applicable where the taxable person is a firm or association of persons or a Hindu Undivided Family. Further, this entity should have discontinued business. It appears that the Society had discontinued business and the second condition would be applicable. However, the question of whether the first condition is applicable or not requires to be looked into.

9. The three forms of business, stipulated under Section 94 of the CGST Act are: 'Firm', 'Association of Persons' and 'Hindu Undivided Family.' The term "Firm" has not been defined under the provisions of the CGST Act. However, the explanation under Section 94 of the CGST Act is helpful in understanding this term. The explanation reads as follows:

"Explanation.—For the purposes of this Chapter,--

(i) a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a firm;

(ii) "court" means the District Court, High Court or Supreme Court."

10. The said explanation, states that a Limited Liability Partnership should also be considered as a firm. This would mean that the term "Firm", under Section 94 (1) of the CGST Act, would be a partnership firm, registered or unregistered, under the provisions of the Indian Partnership Act, 1932, or the Limited Liability Partnership Act, 2008. Obviously, the Society does not answer the description of firm. The term "Hindu Undivided Family" is also not defined under the CGST Act. However, a "Hindu Undivided Family", under the law, is understood to mean a Joint Family consisting of various coparceners, who are members of such a "Hindu Undivided Family", on account of their birth. Strangers to the family cannot be a part of a "Hindu Undivided Family". This leaves only an "Association of Persons" to be considered. An "Association of Persons" is also not defined under the CGST Act. However, the term "person" is defined under Section 2 (84) of the CGST Act which reads as follows:

"(84) 'person' includes—

- (a) an individual;*
- (b) a Hindu Undivided Family;*
- (c) a company;*
- (d) a firm;*
- (e) a Limited Liability Partnership;*
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*

- (g) *any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);*
- (h) *any body corporate incorporated by or under the laws of a country outside India;*
- (i) *a co-operative society registered under any law relating to co-operative societies;*
- (j) *a local authority;*
- (k) *central Government or a State Government;*
- (l) *society as defined under the Societies Registration Act, 1860 (21 of 1860);*
- (m) *trust; and*
- (n) *every artificial juridical person, not falling within any of the above;"*

11. This definition places an "Association of Persons" in Clause 'f', while, "Society" as defined under the Societies Registration Act, 1860 (hereinafter referred to as "the Act of 1860"), is kept in Clause 'l'. The legislature, clearly, considered these entities to be two separate categories. Apart from this, an "Association of Persons", as set out under Section 2 (84) (f), describes it as an association of persons or body of individuals, whether incorporated or not, in India or outside India. Under the Income Tax Law, an "Association of

Persons", has always been considered to be an association or body of individuals who have joined together for a business venture, on a one time basis, or for a prolonged period. The terms on which such an association of persons is to be taxed has also been laid down under the Income Tax Act. This Court need not take, even this interpretation, on what amounts to be an "Association of Persons", under the Income Tax Act, for the purpose of arriving at a decision in the present case.

12. Section 2 (84) of the CGST Act has already made that distinction by placing "Association of Persons" in Sub-clause 'f' while, placing "Society" in Sub-clause 'i'. In the present case, the Society in question has not been registered under the Act of 1860, but under the Act of 2001.

13. A closer look at Section 2 (84) (i) would show that, the Society, mentioned in this provision, is not a Society registered under the Act of 1860, but a Society, as defined under the Act of 1860.

14. Sections 1 & 2 of the Act of 1860, read as follows:

"1. Societies formed by memorandum of association and registration.—Any seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint-Stock Companies form themselves into a society under this Act.

2. Memorandum of association.—The memorandum of association shall contain the following things, that is to say,—

the name of the society;

the objects of the society;

the names, addresses, and occupations of the governors, council, directors, committee, or other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association."

15. The purposes, in Section 20, are essentially literary, scientific or charitable purposes and the same can be formed by seven or more persons subscribing to a Memorandum of Association and filing the same with the Registrar of Companies. In the State of Andhra Pradesh, this provision was amended to stipulate that the Memorandum of Association should be filed with the Inspector General of Registration and not the Registrar of Companies. Section 3 of this Act provides for registration of the Society. Section 5 of this Act stipulates that the property purchased in the name of the Society, if not vested with the members, shall be deemed to be vested in the governing body of such Society. The suits against such Societies can be instituted or defended in the name of the office bearers of the Society.

16. Section 32 of the Act of 2001, repealed the provisions the Act of 1860 in its application to the State of Andhra Pradesh. However, as noticed above, the test to be applied is, whether Societies registered or formed, under the Act of 2001, meets the definition of Society under the Act of 1860. Section 2 N of the Act of 2001 defines Society to mean as a Society registered or deemed to be registered under the Act of 2001. Section 3 stipulates the following:

"3. Societies which may be registered under this Act—(1) *Any seven or more persons forming a society which has for its object the promotion of art, fine art, charity, crafts, religion, sports (excluding games of chance), literature, culture, science, political education, philosophy or diffusion of any knowledge or any public purpose may be registered under this Act.*

(2) *No society of which a firm, whether registered or not or any unincorporated association of individuals is a member shall be registered under this Act.*

(3) *Nothing contained in sub-section (2) shall preclude the registration under this Act of a society on the ground that a partner as defined in Section 4 of the Indian Partnership Act, 1932, (Central Act 9 of 1932) or a member of an unincorporated Association of individuals is, in his individual capacity, a member of the society."*

17. The conditions required for creation of a Society under the Act of 2001 are *in pari materia* similar to the conditions set out in the Act of 1860.

Further Sub-section 2 and Sub-section 3 stipulate that a Society in which un-incorporated association of individuals is a member or a firm is a member, is not liable to be registered under the Act of 2001. This would clearly indicate that a Society registered under the Act of 2001 meets all the requirements of a Society, as defined under the Act of 1860.

18. In view of the above, it must be held that the Society would not fall within the purview of the term "Association of Persons" set out under Section 94 (1) of the CGST/SGST Act.

19. Consequently, no proceedings can be initiated against the petitioner, who was a member/Secretary of the Public Association, registered under the Act of 2001.

20. Accordingly, the Writ Petition is allowed, setting aside Form GST DRC-16, dated 29.07.2022, the communication of the 2nd respondent to the 3rd respondent, dated 03.11.2022, requesting the 3rd respondent not to permit alienation of the properties of the petitioner and the endorsment, dated 27.06.2023, issued by the 2nd respondent for taking action for recovery of the dues of the Society from the petitioner.

21. It shall also be open to the petitioner to deal with his property, as he so desires and the 3rd respondent shall receive and register any such documents, without reference to any of the claims made by the Commercial Tax Department, against the petitioner. However, it would be open to the Tax

Authorities to take such steps as may be deemed necessary for recovery of the dues from the Society. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any shall stand closed.

//TRUE COPY//

Sd/- K.J.RAJA BABU
ASSISTANT REGISTRAR


SECTION OFFICER

To,

1. The Assistant Commissioner (ST)(INT), Visakhapatnam.
2. The Deputy Assistant Commissioner (ST), Anakapalli Circle, Visakhapatnam District.
3. The Sub-Registrar, Registration and Stamps Department, Government of Andhra Pradesh, Chodavaram, Visakhapatnam.
4. The Principal Secretary to Government, Revenue (CT-II) Department, State of Andhra Pradesh, Secretariat, Velagapudi, Amaravathi, Guntur District.
5. The Secretary (Finance), Union of India, Ministry of Finance, North Block, New Delhi-110001.
6. One CC to Sri. K V J L N Sastry Advocate [OPUC]
7. One CC to Sri. Y.V. Anil Kumar Central Government Counsel [OPUC]
8. Two CCs to GP for Commercial Tax, High Court Of Andhra Pradesh. [OUT]
9. Two CCs to GP for Stamps and Registration, High Court Of Andhra Pradesh. [OUT]
10. Three CD Copies

GSC

HIGH COURT

DATED:04/12/2024

ORDER

WP.No.17714 of 2023



ALLOWING OF THE WP

WITHOUT COSTS