IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.4480 of 2024
& W.M.P.No.4835 of 2024

Usha Devi

... Petitioner

Vs.

1.Tax Recovery Officer,
Office of Income Tax Recovery Officer,
No.63, Main Building, Race Course Road,
Coimbatore 641 018.

2.Sub Registrar Office,
No.40, Gandhi Road,
Hosur HO, Hosur 635 109.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to remove the attachment/encumbrance in respect of the schedule mentioned property belonging to the petitioner.

For Petitioner : Mr.Rishab R Jain

For Respondent : Dr.B.Ramaswamy,
Senior Standing counsel for R1

Mr.P.Balathandayutham,
Special Government Pleader for R2

ORDER

This writ petition has been filed challenging the attachment order passed by the respondent dated 23.08.2023.

2. The learned counsel for the petitioner would submit that pursuant to the passing of attachment order, a summon was issued by the 1st respondent on 20.09.2023 calling upon the petitioner for production of some documents. Subsequently, on 05.10.2023, the petitioner had sent a letter enclosing all the documents and the said letter was also acknowledged by the respondent. However, in spite of the production of all the documents, the respondent had refused to revoke the attachment order dated 23.08.2023. Hence, this petition has been filed to direct the respondents to remove the attachment/encumbrance in respect of the schedule mentioned property belonging to the petitioner.

3. On the other hand, Dr.B.Ramaswamy, learned Senior Standing counsel appearing for the respondents had strongly opposed for the contentions made by the petitioner and would submit that the petitioner had only produced a copy of bank letter, regarding NPA account and details of official bank account where the money was transferred. The other documents, which were sought for by the respondents, were not produced by the petitioner and hence, in the absence of certain documents, the respondents are not in a position to remove the attachment in respect of the schedule mentioned property belonging to the petitioner. Further, he would submit that if all the documents were produced by the petitioner to the satisfaction of the respondents, the respondents will consider the request made by the petitioner.

4. Heard the learned counsel for the petitioner and the learned Senior Standing counsel appearing for the respondent and also perused the entire materials available on record.

5. The first *proviso* to Section 281(1) of the Income Tax Act, 1961, (hereinafter called as "IT Act") reads as follows:

"281.Certain transfers to be void.

[Substituted by Act 41 of 1975, Section 73, for Section 281 (w.e.f. 1.10.1975).]

(1)Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise:

Provided that such charge or transfer shall not be void if it is made-

(i)for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or

(ii)with the previous permission of the][Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).]."

6. A reading of the above provision makes it clear that if any

property was sold without adequate consideration or without disclosing the pending litigation or without obtaining prior permission from the concerned Authority, the attachment order shall be passed on the said property.

7. In the case on hand, the allegation against the petitioner was that she had sold the subject property without informing about the pending income tax proceedings. In order to prove that whether the adequate consideration was passed on, the respondent had issued a summon, whereby they sought for Document No.10473/2022 along with other relevant documents. However, the said document, viz., Document No.10473/2022, was not furnished by the petitioner before the respondent. Hence, in the absence of the said document, the respondent had refused to revoke the attachment order dated 23.08.2023.

8. Today, it was submitted by the learned Senior Standing counsel for the respondent that if all the documents were produced by the petitioner, as sought for by the respondent, the request made by the

petitioner would have duly considered by the respondent. In the absence of those documents only, the respondent had refused to revoke the original attachment order passed on 23.08.2023.

9. In view of the above, this Court finds force in the submissions made by the learned Senior Standing counsel that only in the absence of some vital documents, the 1st respondent had refused to revoke the attachment order dated 23.08.2023.

10. On the other hand, the petitioner's case was that those documents were very much available with him and he could be able to furnish those documents to the concerned Authority. In such view of the matter, in the interest of justice, this Court is inclined to grant one more opportunity to furnish all those documents before the concerned Authority.

11. Accordingly, this Court passes the following order:

(i) The petitioner is directed to produce all the documents, which were sought for vide summon dated 20.09.2023, before the respondents within a period of 4 weeks from the date of receipt of copy of this order.

(ii) Upon production of all the documents by the petitioner, the respondent shall take an independent view and decide the matter without influenced by the observations made by this Court in the present order.

12. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

30.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

1.Tax Recovery Officer,
Office of Income Tax Recovery Officer,
No.63, Main Building, Race Course Road,
Coimbatore 641 018.

2.Sub Registrar Office,

No.40, Gandhi Road,
Hosur HO, Hosur 635 109.

KRISHNAN RAMASAMY.J.,

nsa

W.P.No.4480 of 2024
& W.M.P.No.4835 of 2024

30.10.2024