IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4659 of 2023
and
W.M.P. No. 4656 of 2023

The Madras Vanaspati Limited,
Represented by its Managing Director,
A.Kodiswaran,
No. 18, Power House Road,
Villupuram,
Tamil Nadu,
India - 605 602. … Petitioner

-vs-

1. The District Collector,
   Villupuram District,
   Collector Officer Road,
   Moovendar Nagar,
   Villupuram,
   Tamil Nadu - 605 602.

2. The State Industries Promotion Corporation of Tamil Nadu Limited,
   Represented by its Managing Director,
   19-A, Rukmani Lakshmipathy Road,
   Post Box No. 7223,
   Egmore,
   Chennai - 600 008. ...

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned notice dated 13.01.2023 issued by the First Respondent in Na. Ka. G3/29681/2020 and quash the same and consequently forbear the Respondents from invoking the provisions of the Tamil Nadu Revenue Recovery Act, 1864, for the purpose of realizing the sum of Rs. 89,63,630/- as demanded in the demand notice dated 30.07.2020 on the file of the First Respondent issued under the provisions of the Tamil Nadu Revenue Recovery Act, 1864.

For Petitioner : Mr. K.P.Sajeevkumar
for Mr. Shiva P.

For Respondents : Mr. S.J.Mohamed Sathik,
Government Advocate (for R1)

Mrs. Sudharsana Sundar,
Standing Counsel (for R2)

O R D E R

Heard Mr. K.P.Sajeev Kumar, Learned Counsel appearing for the Petitioner, Mr. S.J.Mohamed Sathik, Learned Government Advocate appearing for the First Respondent and Mrs. Sudharasana Sundar, Learned Standing Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, viz., the State Industries Promotion Corporation

of Tamil Nadu Limited, had been authorized by the Government Order (Ms) No. 1890, Industries Department, dated 15th May, 1971, read with Government Memorandum No. 37483/MI.EP/II/71-1, Industries Department, dated 24.06.1971, G.O. Ms. No. 1373, Industries Department, dated 21.08.1972 and Government Memorandum No. 66506/MIE/III/72-1, dated 28.10.1972, as the Agent of the Government of Tamil Nadu, to give Eligibility Certificates and grant loans for new units of medium and major industries to be set up in the eight districts of South Arcot, Thanjavur and Dharmapuri.

3. The Petitioner, which is a company registered under the Companies Act, 1956, had obtained an interest free sales tax loan of Rs. 15,00,000/- from the Second Respondent, in the exercise of the said powers for investing it in the fixed assets to be created for the diversification unit at Villupuram, South Arcot (Taluk) within three years, and it was repayable in three equal annual installments from the expiry of the sixth year from the date of first disbursement and in default of which interest of 12% per annum would be charged. An agreement dated 28.03.1980 was entered between the Second Respondent and the Petitioner in that regard. M/s. S.V.Sivalinga Nadar and V.K.Kumaraswamy had executed a Deed of Guarantee dated 28.03.1980 in favour of the Second Respondent for the said loan advanced to the Petitioner. Since there was default

committed in the repayment of the said loan, the Second Respondent had instituted the suit in C.S. No. 172 of 1989 in the Original Side of this Court against the Petitioner and the said guarantors for its recovery in which a judgment and decree dated 13.02.2001 was passed against them for a sum of Rs. 15,00,000/- with interest at 12% per annum from 18.04.1986 till realization with proportionate costs.

4. As the amount remained to be recovered from the Petitioner, the Second Respondent relying on clause (xiii) of the Agreement dated 28.03.1980 entered between them and Section 52-A of Tamil Nadu Revenue Recovery Act, 1864 (hereinafter referred to as 'the TNRR Act' for short) sought for recovery of the amount due as an arrear of land revenue. In furtherance thereof, the First Respondent by letter in Na.Ka. G3/29681/2020 dated 13.01.2023 to the Revenue Divisional Officer, Villupuram, requested to recover the outstanding sum of Rs. 89,63,360/- from the Petitioner and send it to the Second Respondent, which is challenged in this Writ Petition.

5. It would be useful to extract here clause (xiii) in the agreement and Section 52-A of the TNRR Act, which read as follows:-

Agreement dated 28.03.1980 entered between the Second Respondent and the Petitioner

(xiii) The Borrowing Company hereby agreed that the dues payable under these presents shall be liable to be recovered as if such dues were arrears of revenue under the provisions of the Tamilnadu Revenue Recovery Act of 1864 and that resort to such procedure shall not prejudice any other mode of recovery.

Section 52-A of the Tamil Nadu Revenue Recovery Act, 1864

52-A. Without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person- (i) by the Tamil Nadu Agro-Industries Corporation Limited, Madras, or (ii) by such other Corporation (the shares of which have been contributed, underwritten or guaranteed by the State Government) as may be notified in this behalf by the State Government in the Tamil Nadu Government Gazette, or (iii) from out of the Amalgamated Tamil Nadu Shares of the Post War Services Re-construction Fund and the Special Fund for Re-construction and Rehabilitation of Ex-servicemen together with interest on such loans and advances, and all sums due to the Corporations mentioned in clauses (i) and (ii) may be recovered in the same manner as arrears of land revenue under the provisions of this Act.

The Hon'ble Supreme Court of India in the decision in ***State of Tamil Nadu -vs- G.N.Venkatasamy*** [(1994) 5 SCC 314], while holding that Section 52-A of the TNRR Act is constitutionally valid, has recorded as follows:-

> 3. In exercise of the powers under Section 52-A(*ii*) the Tamil Nadu Government have from time to time notified various Corporations such as the State Industries Promotion Corporation Ltd., the Tamil Nadu Small Industries Development Corporation Ltd., the Tamil Nadu Industrial Investment Corporation Ltd., the Tamil Nadu Small Industries Corporation Ltd., etc. etc.

As such, there cannot be any doubt that the Second Respondent is lawfully entitled to resort to the recovery of the loan advanced by it to the Petitioner under the TNRR Act.

6. The only contention raised by the Petitioner in this Writ Petition is that the amount claimed is barred by limitation, which would vitiate the impugned action of recovery under the TNRR Act, placing reliance on the decision of the Hon'ble Supreme Court of India in ***State of Kerala -vs- V.R.Kalliyankutty*** [(1999) 3 SCC 657].

7. At the outset, it must be pointed out that an adjudication has already been completed regarding the liability of the Petitioner to the Second Respondent in the judgment and decree dated 13.02.2001 in C.S. No. 172 of 1989 passed by the Original Side of this Court, which was undoubtedly within the prescribed period of limitation under the Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act' for short). This would obviously mean that the question of limitation does not at all arise in this case.

8. Be that as it may, the Limitation Act applies only to suit, appeal and application before the civil court as held in the decisions of the Hon'ble Supreme Court of India in ***Town Municipal Council, Athani -vs- Presiding Officer, Labour Courts, Hubli*** [(1969) 1 SCC 873] and ***Ganesan -vs- Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board*** [(2019) 7 SCC 108]. The recovery action under the TNRR Act are not such proceedings, and neither the TNRR Act in general, nor Section 52-A of that Act in particular, provides for any specific period of limitation period for initiation of proceedings to recover the amount under that Act. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in ***Bombay Gas Company Limited -vs- Gopal Bhiva*** (AIR 1964 SC 752) in which the following observations have been made:-

> 13. .... It seems to us that where the legislature has made *no provision* for limitation, it would not be open to the courts to introduce any such limitation on the grounds of fairness or justice....

It is equally settled position of law that the statute of limitation only bars the remedy, but does not extinguish the debt, except in cases provided by Section 28 of the Limitation Act, which does not apply to a debt, as held by the Hon'ble Supreme Court of India in the decisions in ***Bombay Dyeing and Manufacturing Co. Ltd. -vs- State of Bombay*** (AIR 1958 SC 328) and ***Khadi Gram Udyog Trust -vs- Ram Chandraji Virajman Mandir*** [(1978) 1 SCC 44]. The law has been further explicated by the Hon'ble Supreme Court of India in the decision in ***Punjab National Bank -vs- Surendra Prasad Sinha*** [(1993) Supp (1) SCC 499] in the following words:-

> 5. .... The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act 36 of 1963, for short "the Act" only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation is that the right itself is destroyed. For example under Section 27 of the Act a suit for possession of any property becoming barred by limitation, the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists. Though the right to enforce the debt by judicial process is barred under Section 3 read with the relevant article in the schedule, the right

> to debt remains. The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section 3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt. It is also equally settled law that the creditor when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody....

The Hon'ble Supreme Court of India in the decision in ***K.C.Ninan -vs- Kerala State Electricity Board*** (Order dated 19.05.2023 in Civil Appeal No. 2109-2110 of 2004) has approved the principle that apart from filing of suit, there is no legal bar for recovery of any dues through other avenues in accordance with law. Commenting on possibility of prejudice that may be caused on account of delayed action of a creditor, it has been observed by the Hon'ble Supreme Court of India in the decision in ***Hindustan Times Limited -vs- Union of India*** [(1998) 2 SCC 242] as follows:-

> 10. .... On the other hand, the defaulter has obviously had the benefit of the "*boon of delay*" *which* "*is so dear to debtors*", as pointed out by the Privy Council in ***Nagendranath De* v. *Sureshchandra De*** [ILR (1932) 60 Cal 1 : AIR 1932 PC 165]. In that case, it was observed that equitable considerations were out of place in matters of limitation and the strict grammatical construction alone was the guide. Sir Dinshaw Mulla stated:

> "Nor in such a case as this is the judgment-debtor *prejudiced*. He may indeed obtain *the boon of delay*, which is so *dear to debtors*, and if he is *virtuously inclined* there is nothing to prevent his paying what he owes into court."
>
> (emphasis supplied)
>
> ....

An overview of the said authoritative pronouncements would clearly lead to the irresistible conclusion that when there is no prescribed period of limitation for invoking Section 52-A of the TNRR Act in the first place, there is absolutely no scope for restraining the Second Respondent from recovering its public debt on the specious plea that it is 'time-barred'.

9. The words 'amounts due' used in Section 71 of the Kerala Revenue Recovery Act, 1968, had been construed as 'legally recoverable' with reference to the Limitation Act in the decision in ***State of Kerala -vs- V.R.Kalliyankutty*** [(1999) 3 SCC 657] relied by Learned Counsel for the Petitioner. The language adopted in Section 52-A of the TNRR Act is, however, different as it speaks about enabling recovery of amounts advanced by the Corporations notified in this behalf by the State Government in the Tamil Nadu Government Gazette, like the Second Respondent in this case, as an arrear of land revenue. This view taken is fortified by the decision of this Court in ***Tamil Nadu Salt Manufacturers Association -vs- Government of Tamil Nadu*** [(2007) 2 MLJ

735] in an analogous fact situation after referring to the aforesaid decision in this case.

10. In view of the foregoing discussion, it is not possible to countenance the claim of the Petitioner that the Respondents have to be restrained from invoking the TNRR Act for recovering the interest free sales tax loan advanced by the Second Respondent to the Petitioner for which the civil court has already made an adjudication, which remains only to be enforced. As its corollary, the Respondents are entitled to proceed for recovery of that amount determined in the impugned proceedings under the TNRR Act in accordance with law.

In the result, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

06.03.2024

Index: Yes/No
NCC: Yes/No

Note: Issue order copy by 05.06.2024.

vjt

To

1. The District Collector,
   Villupuram District,
   Collector Officer Road,
   Moovendar Nagar,
   Villupuram,
   Tamil Nadu - 605 602.

2. The Managing Director,
   State Industries Promotion Corporation of Tamil Nadu Limited,
   19-A, Rukmani Lakshmipathy Road,
   Post Box No. 7223,
   Egmore,
   Chennai - 600 008.

P.D. AUDIKESAVALU, J.

vjt

W.P. No. 4659 of 2023

06.03.2024