BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.5001 of 2023
and
W.M.P.(MD) No.4677 of 2023

1.M.Jesurathnabai

2.S.M.Antony Thomas

3.A.S.Paul Winston

4.Bennet ... Petitioners

Vs.

1.The Tax Recovery Officer,
Income Tax Department,
Rehmat Nagar East,
Kamaraj Nagar,
Tirunelveli - 627002.

2.The Income Tax Officer,
Aayakar Bhawan, 121,
M.G.Road, Nungambakkam,
Chennai - 600 0034.

3.The Sub Registrar,
Ettayapuram Sub Registrar Office,
23/7, Theppakulam Street Main Road,
Ettayapuram – 628 902,
Tuticorin District. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the attachment order of the first respondent dated 15.02.2001 in Reference No.T.R.X.No.30000/NGL against the first petitioner and quash the same and consequently direct the first respondent to communicate the same to the third respondent.

For Petitioners	: Mr.P.Jesu Moris Ravi
For R1 & R2	: Mr.J.Parekh Kumar Senior Standing Counsel
For R3	: Mr.B.Saravanan Additional Government Pleader

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ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the attachment order of the first respondent dated 15.02.2001 bearing reference No.T.R.X.No.30000/NGL against the first petitioner and quash the same and consequently direct the first respondent to communicate the same to the third respondent.

2. The specific case of the petitioners is that pursuant to the impugned Attachment Order dated 15.02.2001, the properties of the first petitioner were attached. It is further case of the petitioners that despite lapse of the period of limitation under Rule 68B of II Schedule [Procedure for Recovery of Tax] to the Income Tax Act, 1961, the properties still stand attached. It is submitted that only w.e.f. 01.09.2019 *vide* Finance Act No.2/2019, the period was extended by 7 years. It is submitted that sale could not have been made after lapse of 3 years from the date of impugned Attachment Order dated 15.02.2001.

3. On the other hand, the learned Senior Standing Counsel for the first and second respondents would submit that before passing the impugned Attachment Order dated 15.02.2001, the notice in Form No.ITCP-1 was issued to the first petitioner on 06.12.1999 demanding the arrear amount of Rs.4,19,400/- for the block assessment period between 01.04.1986 and 08.10.1996 and further interest under Section 220(2) of the Income Tax Act, 1961. However, the first petitioner did not come forward to settle the arrear amount. Therefore, the properties of the first petitioner were attached.

4. It is further submitted that after the impugned Attachment Order dated 15.02.2001, the notice in Form ITCP 17 was issued to the first petitioner on 09.04.2014, whereby, the first petitioner was informed the date for drawing up the proclamation of sale and settling the terms thereof. It is submitted that in the meantime, the first petitioner had filed W.P.(MD) No.8079 of 2014 for issuance of a Writ of Mandamus to direct the Income Tax Department to provide the copies of the material documents pertaining to the Tax Recovery Certificate No.108/CR.III 1999-2000 dated 06.12.1999. This Court *vide* order dated 07.05.2014 disposed of the said Writ Petition and stayed the recovery proceedings till 28.06.2014.

5. It is submitted that though the Income Tax Authorities have taken steps to bring the properties attached to auction sale, due to the stay of the proceedings *vide* order of this Court dated 07.05.2014, the authorities have not proceeded further with the auction sale. It is therefore submitted that the impugned Attachment Order cannot be quashed on the ground of limitation. The learned Senior Standing Counsel for the first and second respondents would therefore pray for dismissal of this Writ Petition.

6. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Senior Standing Counsel for the first and second respondents and the learned Additional Government Pleader for the third respondent.

7. It is noticed that the stay of the recovery proceedings granted by this Court *vide* order dated 07.05.2014 in W.P.(MD) No.8079 of 2014 had come to an end on 28.06.2014 itself. Despite lapse of 10 years, no orders have been passed.

8. The provisions of Rule 68B of the II Schedule [Procedure for Recovery of Tax] to the Income Tax Act, 1961 mandate the time-bound manner for disposal or sale of the attached immovable properties. Therefore, the impugned Attachment Order is liable to be declared as ineffective and therefore is liable to be quashed.

9. However, liberty is given to the Income Tax Department to proceed with attachment of property in accordance with law. The Income Tax Department is also directed to complete the proceedings in the manner know to law.

10. Accordingly, this Writ Petition stands allowed with the above liberty. No costs. Consequently, connected Miscellaneous Petition is closed.

16.07.2024
(3/3)

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

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C.SARAVANAN, J.

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