BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.6491 of 2024
and
W.M.P.(MD)Nos.6073 and 6076 of 2024

A.Hairuni Nisha ... Petitioner

Vs.

1.The Secretary to the Government,
Ministry of Finance Department,
Income Tax Department,
Room No.76,
New Delhi – 01.

2.The Tax Recovery Officer,
No.322, 3rd floor, New No.46,
Mahathma Gandhi Road,
Chennai - 600 034.

3.The Thasildhar,
O/o Thashildhar,
Ramanathapuram.

4.The Sub Registrar,
Vellipattinam Registrar Office,
Ramanathapuram District.

5.The Village Administration Officer,
O/o.Village Administration Office,
Sakkaraikottai Village, Ramanathapuram.

6.S.M.Noor Mohamed ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned penalty proceedings in No.TRCNo. 18-24/C/-2/2019-20 dated 11.06.2019 on the file of the second respondent, quash the same as illegal and consequently, lift up the attachment made by the second respondent in the property comprised in Survey No.432/9, situated at Sakkaraikottai Village, Ramanathapuram.

For Petitioner	: Mr.S.Vidhya Sagar
For R1	: Mr.P.Subbiah Central Government Standing Counsel
For R2	: Mr.N.Dilip Kumar Standing Counsel
For R3 to R5	: Mr.S.P.Maharajan Special Government Pleader

ORDER

The sixth respondent appears to be an Assessee in default and is in arrears for a sum of Rs.3,65,74,966/- for the Assessment Years 2011-2012 to 2017-2018. Under these circumstances, the Income Tax Department has proceeded to issue Form No.ITCP 16 dated 11.06.2019 under Rule 48 of the Second Schedule to the Income Tax Act, 1961. By the impugned attachment notice, the following assets have been attached.

"Specification of the Properties situated in the Village of Chakkarakottai, Ramanathapuram

Registration District.

Survey No.	Area
409/1	73 cents
430/2	35 cents
432/1A1	88 cents
430/1A1A	2.5032 sq.m.

2. The specific case of the petitioner is that the petitioner as also her siblings are having equal share in the properties. In this connection, a copy of the extract from the SLR has been produced. It is submitted that the properties are held by 11 legal heirs of Ibrahimsha, C.Mohamed Meeran Ali and Umarkhan. It is submitted that the impugned attachment has been made in respect of the properties, wherein the petitioner as also the other legal heirs have an equal right.

3. It is submitted that the attachment without proper enquiry as to the ownership of the properties is liable to be interfered with. That apart, the learned counsel for the petitioner has also produced a copy of the Settlement Deed bearing Document No.6032 / 2021 dated 28.09.2021 executed by the sixth respondent herein in favour of N.Sowhath Alikhan, N.Sadiq Batcha and A.Moharaj Banu. It is submitted that the property is of high value. The sixth respondent has deliberately misled the Income

Tax Department inasmuch as the sixth respondent has also acquired properties independently in his own name and therefore, the said properties also can be attached.

4. On the other hand, the learned Standing Counsel for the second respondent would draw attention to Rule 11 of second schedule to the Income Tax Act, 1961. It is submitted that a method has been prescribed for raising objections to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer can proceed to investigate the claim or objection. It is submitted that the petitioner has to work out her remedy under Rule 11 of the Second Schedule to the Income Tax Act, 1961. It is submitted that under Rule 12 of the Second Schedule to the Income Tax Act, 1961, the Recovery Officer can pass suitable orders after enquiry.

5. I have considered the arguments advanced by the learned counsel for the parties. Though no notice has been served on the sixth respondent, this Writ Petition is disposed of dispensing with notice on the sixth respondent, as no adverse orders are proposed to be passed against the sixth respondent in this Writ Petition.

6. Having considered Rule 11 of the Second Schedule to the Income Tax Act, 1961, I am inclined to direct the petitioner to file a suitable objection to the impugned attachment notice before the Recovery Officer, the second respondent herein. The second respondent shall thereafter pass suitable orders as is contemplated under Rules 11 and 12 of the Second Schedule to the Income Tax Act, 1961. The second respondent shall also proceed to attach any other property, which the sixth respondent may have acquired after the Assessment Orders came to be passed in respect of which the sixth respondent is purportedly in arrears of tax.

7. Therefore, the petitioner is directed to file suitable objection under Rule 11 of the Second Schedule to the Income Tax Act, 1961, within a period of 30 days from the date of receipt of a copy of this order. Pending such exercise and disposal of the objection, the assets which have been attached in respect to which the petitioner claims to have an equal right along with the sixth respondent shall not be sold by the Income Tax Department to recover the alleged arrears of tax due and payable by the sixth respondent. This is without prejudice to the rights of the Income Tax Department to proceed against the sixth respondent in respect of any other property which the sixth respondent may have acquired, which is not forming part of the attachment notice.

8. Needless to state such sale shall also be in accordance with the provisions of the Second Schedule to the Income Tax Act, 1961. If such objection is filed by the petitioner, such objection shall be disposed of as expeditiously as possible, preferably, within a period of three months thereafter. Needless to state the petitioner as also the other legal heirs including the sixth respondent shall be heard before passing orders. It is made clear that the petitioner shall implead all the legal heirs and give proper particulars, duly substantiating the submissions with the extract from the SLR.

9. This Writ Petition stands disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.07.2024

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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C.SARAVANAN, J.

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