IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2025

Coram:
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27825 of 2021
and W.M.P.Nos.29400 & 29401 of 2021

Mr.Ganesan

...Petitioner

Versus

1.The State of Tamil Nadu rep. by
The Principal Secretary and Commissioner,
Commercial Taxes Department,
Ezhilagam, Chepauk, Chennai – 5.

2.The Deputy Commissioner (ST),
Villupuram Collectorate Campus,
Villupuram – 605 602.

3.The Assistant Commissioner (CT),
Joint – II, Commercial Tax Office,
Villupuram – 605 602.

4.K.Saravanan

5.L.Venkatesan

(R5 was impleaded as per Order dated 19.11.2024 in W.M.P.No.8857 of 2023 in W.P.No.27825 of 2021)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to the impugned sale certificate dated 18.08.2021 issued by the 2nd respondent in Form No.8 under Tamil Nadu Revenue Recovery Act, 1864 in favour of the 4th respondent, pursuant to the auction sale dated 14.07.2021 and registered as Document No.5238 of 2021 on 13.10.2021 at the office of Joint Sub Register – 2 at Villupuram in respect of the property having an extent of 2125 Sq.fts comprised in S.No.43/3 at Kanniyakulam Road, Poonthottam Village, Villupuram without complying the order dated 30.06.2016 passed in W.P.No.19635 of 2015 and quash the same.

For Petitioner	:	Mr.V.Rajendran
For Respondents – 1 to 3	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate (Tax)
For Respondent – 4	:	Mr.J.Agni Selvaraj
For Respondent – 5	:	Mr.K.Hemarajan

ORDER

In this writ petition, the Petitioner has challenged the Sale Certificate dated 18.08.2021 issued by the 3rd Respondent in favour of the 4th Respondent.

2. The case of the Petitioner is that the Petitioner was engaged in the business of 2nd sale of Timber in the name and style of "Guru Timber Depot". The Petitioner had closed his business w.e.f. 31.03.2010. On

21.04.2010, the Enforcement Wing Authorities had conducted an inspection at the business premises of the Petitioner and during the said inspection, the Enforcement Wing Authorities have taken all the documents and Books of Accounts from the Petitioner's business premises.

3. Based on the Report of Enforcement Wing Authorities, the 3rd Respondent vide Assessment Order dated 28.08.2013, re-assessed the taxes of the Petitioner for the years 2006-07 to 2010-11 and rejected the returns filed by the Petitioner for the said years. However, a copy of the said Assessment Order dated 28.08.2013 was not served to the Petitioner.

4. While so, the 3rd Respondent vide Demand Notice dated 27.04.2015, called upon the Petitioner to pay the revised tax of **Rs.48,35,794/-** and penalty of **Rs.72,53,690/-,** adding up to the tune of **Rs.1,20,89,484/-**.

5. Challenging the aforesaid Demand Notice dated 27.04.2015, the Petitioner had filed a writ petition in **W.P.No.19635 of 2015**. During the pendency of said writ petition, the 3rd Respondent issued a Notification

dated 18.01.2016 for sale of property belonging to the Petitioner in Form 7 & Form 7A under Revenue Recovery Act, 1894 and also, issued a publication in the District Gazette for Public Auction on 25.05.2016.

6. Challenging the aforesaid Demand Notice dated 27.04.2015 and Notification dated 18.01.2016 issued by the 3rd Respondent, the Petitioner's son Gurumurthy also filed a writ petition in **W.P.No.13680 of 2016**. This Court granted an order of interim stay in W.M.P.No.11969 of 2016 in W.P.No.13680 of 2016 vide order dated 13.04.2016.

7. Subsequently, this Court vide Order dated 30.06.2016 disposed of **W.P.No.19635 of 2015** filed by the Petitioner with the following observation:

> *"4. Be that as it may, this Court is inclined to give one more opportunity to the petitioner subject to the following condition:-*
>
> *(i) The property which is the subject matter of the Settlement Deed dated 27.10.2010 shall remain attached to recover the dues to the Department and the respondent is directed to address the same to the concerned Sub Registrar and make necessary entry in the records maintained by the Sub Registrar of Registration.*
>
> *(ii) Since the petitioner's son G.Gurumurthy is not a party in this case, but he has been served with the impugned notice, he shall execute an affidavit in favour of the Department agreeing that the property shall continue to remain attached. This condition is imposed because prima facie this Court is satisfied that the Settlement Deed was executed to defeat the interest of the revenue.*

(iii) If the above two conditions are complied with, then the respondent shall forward copies of all the assessment orders passed during the assessment years 2006-2007 to 2010-2011. On receipt of the same, the petitioner is directed to treat the orders as show cause notices and submit their objections.

(iv) On receipt of the objections, the respondent shall afford an opportunity of personal hearing and thereafter, proceed to re-do the assessment in accordance with law.

(v) The order of attachment shall abide by the fresh orders to be passed by the respondent.

5. In the result, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed."

8. During the year 2018, this Court vide Order dated 28.11.2018, dismissed **W.P.No.13680 of 2016** filed by the Petitioner's son Gurumurthy. Operative portion of the Order dated 28.11.2018 passed in W.P.No.13680 of 2016 reads as follows:

"7. A careful perusal of the above section coupled with the facts of this case makes it clear that when the petitioner's father, who was a dealer, was issued with three summons on 22.04.2010, 18.06.2010 and 07.10.2010 fixing the dates of hearing on 10.05.2010, 07.07.2010 and 25.10.2010 respectively, the petitioner's father did not bother to appear and produce the books of accounts. Therefore, against sealed summons were issued for four years i.e., 2006-07, 2007-08, 2008-09 and 2009-10. Again the petitioner's father did not bother to appear and produce books of accounts before the respondents. But, in the meanwhile, he has executed a Registered Settlement Deed in favour of his elder son Gurumoorthy, the petitioner herein, only for the purpose of defrauding the revenue. Therefore, this Court is of the view that Section 43 of the Tamil Nadu Value Added Tax Act, 2006 would squarely apply to the case of the petitioner. Besides, Mr.Ganesan did not question the impugned order, hence, the petitioner has not locus standi to maintain this petition.

8. In the result, the writ petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed."

9. After the dismissal of W.P.No.13680 of 2016, the 3rd Respondent vide Notice dated 29.11.2019, demanded the Petitioner to furnish an Affidavit from Gurumurthy (Petitioner's son) as directed by the Court in Order dated 30.06.2016 in W.P.No.19635 of 2015. Pursuant to the Notice dated 29.11.2019, Gurumurthy (Petitioner's son) filed an Affidavit dated 23.12.2019 expressing his consent for his property to remain in attachment, before the 3rd Respondent.

10. Immediately, thereafter, the Petitioner vide Letter dated 24.12.2019 requested the 3rd Respondent to furnish him a copy of the Assessment Order dated 28.08.2013, but, the same was not furnished by the 3rd Respondent.

11. In this background, based on the earlier Notification dated 18.01.2016, the 3rd Respondent sold out the property of Gurumurthy (Petitioner's son) by way of Public Auction on 14.07.2021, though the

Petitioner vide Letter dated 31.07.2021, requested the 3rd Respondent to defer the confirmation of said sale. Without considering his request, the 3rd Respondent issued the impugned Sale Certificate dated 18.08.2021 in favour of the 4th Respondent.

12. On 13.10.2021, the Sale Certificate dated 18.08.2021 has been registered as Document No.5238 of 2021 on the file of Joint Sub-Registrar II, Villupuram. Aggrieved by the same, the Petitioner has filed this writ petition for the relief stated *supra*.

13. It is to be noted that in Paragraph Nos.16, 18 & 40 of the Counter Affidavit filed by the 3rd Respondent, it has been stated as follows:

> "*16. With regard to the averments made in Para 12 of the affidavit, it is submitted that the Petitioner has duly received the pre-assessment notices dated 28.06.2013 on 15.07.2013 issued to him for the years 2006-07 to 2010-11 by the 3rd Respondent & sent through RPAD. Hence, he is well known about the huge amount of tax and penalty that has to be payable by him prior to the coercive action by way of issue of notice dated 27.04.2015. Such a transfer of property by the Petitioner to his son is an act of defraud the Government revenue which is void u/s.43 of TNVAT Act, 2006.*
>
> *18. With regard to the averments made in Para 14 of the affidavit, it is submitted that the Petitioner has duly received the pre-assessment notices dated 28.06.2013 on 15.07.2013 issued to him for the years 2006-07 to 2010-11 by the 3rd Respondent & sent through RPAD. Hence, he is well aware of the huge amount of tax and penalty that has to be payable by him prior to the coercive action by way of issue of notice 27.04.2015.*

The Petitioner refused to receive the order of assessment of the 3rd Respondent dated 28.08.2013 sent to him through RPAD which was returned by postal authority endorsement dated 24.09.2013. However, he is well aware of the contents of the order through notice dated 28.06.2013 which was duly received by him on 15.07.2013. It is also a mode of service prescribed under Rule 19(1)(c) & (d) of TNVAT Rules, 2007.

40. With regard to the averments made in Ground (E) of the affidavit, it is submitted that the Petitioner's son has not executed proper affidavit and thereby, violated the condition imposed by this Court in the order in W.P.No.19635 of 2015 dated 30.06.2016. Hence, the Public Auction Sale and issuance of Sale Certificate is correct as per law."

14. The 4th Respondent has filed a Typed Set of Papers enclosing a copy of the Sale Deed dated 30.11.2021 executed by the 4th Respondent in favour of the 5th Respondent which was registered as Document No.5974 of 2021 on the file of Sub Registrar II, Villupuram and a copy of the Certificate Extract from the Town Survey Land Register dated 01.03.2023.

15. Heard the learned counsel on either side and perused the materials available on record.

16. According to the Petitioner, the Petitioner's son Gurumurthy had filed an Affidavit dated 23.12.2019 expressing his consent for his property to remain in attachment, before the 3rd Respondent and thereby, duly

complied with the direction issued by this Court in Order dated 30.06.2016 in W.P.No.19635 of 2015. However, the 3rd Respondent has not furnished a copy of the Assessment Order dated 28.08.2013 to the Petitioner as directed by this Court in Order dated 30.06.2016 in W.P.No.19635 of 2015.

17. At the same time, a reading of Paragraph No.18 of the Counter Affidavit filed by the 3rd Respondent indicates that the Assessment Order dated 28.08.2013 was sent to the Petitioner by way of RPAD, but, the same was returned with the postal endorsement, “Refused”. It also indicates that the Petitioner was well aware of the contents of the Pre-Assessment Notice dated 28.06.2013 which was served to him by way of RPAD on 15.07.2013.

18. The fact remains that since the Petitioner and his son have failed to comply with the conditions imposed by this Court in Order dated 30.06.2016 in W.P.No.19635 of 2015, the 3rd Respondent has sold the property of Gurumurthy (Petitioner's son) in a Public Auction on 14.07.2021 and has also issued the impugned Sale Certificate dated 18.08.2021 in favour of the 4th Respondent.

19. Much water has flown from 21.04.2010 (date on which inspection was conducted at the Petitioner's business premises) till 14.07.2021 (date on which the property of Gurumurthy was sold through Public Auction) and 30.11.2021 (date on which the 4th Respondent has executed a Sale Deed in favour of the 5th Respondent).

20. Considering the above facts and circumstances of the case, this Court is of the opinion that the relief sought in this writ petition cannot be granted to the Petitioner. Hence, this writ petition is liable to be dismissed.

21. Accordingly, this Writ Petition is dismissed. However, liberty is granted to the Petitioner to challenge the Assessment Order dated 28.08.2013 by way of filing a Statutory Appeal before the Appellate Authority.

22. The 3rd Respondent is directed to furnish a copy of the Assessment Order dated 28.08.2013 to the Petitioner, within a period of 30 days from the date of receipt of a copy of this order so as to enable the Petitioner to file a Statutory Appeal before the Appellate Authority.

23. Upon receipt of a copy of the Assessment Order dated 28.08.2013, the Petitioner shall file a Statutory Appeal before the Appellate Authority, within a period of 30 days thereafter.

24. On filing of such Statutory Appeal by the Petitioner, the Appellate Authority shall entertain the same without raising any issue as regard to the limitation aspect and dispose of the same, on merits and in accordance with law, as expeditiously as possible.

25. It is made clear that the validity of the Public Auction dated 14.07.2021 and the Sale Deed dated 30.11.2021 will be subject to the outcome of Statutory Appeal to be filed by the Petitioner.

26. This Writ Petition is dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

20.01.2025

mrr
Index : Yes/No
Speaking Order (or) Non-Speaking Order

To

1.The Principal Secretary and Commissioner,
Commercial Taxes Department,
Ezhilagam, Chepauk, Chennai – 5.

2.The Deputy Commissioner (ST),
Villupuram Collectorate Campus,
Villupuram – 605 602.

3.The Assistant Commissioner (CT),
Joint – II, Commercial Tax Office,
Villupuram – 605 602.

C.SARAVANAN, J.

mrr

W.P.No.27825 of 2021

20.01.2025