

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST 2015

PRESENT

THE HON'BLE MR.JUSTICE VINEET SARAN

AND

THE HON'BLE MR.JUSTICE B MANOHAR

W.A. No.715 OF 2009 (T -IT)

BETWEEN :

1. The Tax Recovery Officer
Range – 2, Department of
Income Tax,
Shilpashree Building,
Visveswaranagar
Mysore-570 008.
 2. The Commissioner of Income-Tax
Shilpashree Building,
Visveswaranagar
Mysore-570 008.
- ..Appellants

(By Sri K V Aravind and Sri G Kamaladhar, Advs.)

AND:

Sri Bhishma Pithamaha
Aged bout 85 years

S/o late Sri Maniram
By P A Holder Sri Ramajanam
R/a # 573, Ashoka Road
Mysore – 570 001.

.. Respondent

(By Sri A Shankar and Sri M Lava, Advs.)

This WA is filed under Section 4 of the Karnataka High Court Act praying to set aside the order passed in W.P.No.11433/2006 dated 1.10.2008.

This appeal coming on for final hearing this day, **VINEET SARAN, J.** delivered the following:

JUDGMENT

The petitioner-Bhishma Pithamaha filed Writ Petition No.11433/2006 challenging five notices dated 3-3-2006 issued by the Tax Recovery Officer (TRO) of the Income Tax Department to the Managers of five banks where one Sri.Ramajanam was having his accounts. Such notices were issued under Section 226(3) of the Income Tax Act (for short '**the Act**') stating that a sum of Rs.60,00,000/- was due from the said Sri.Ramajanam on account of dues of M/s.Tirupura

Bhairavi Math in Northern India (for short '**the Math**'). It was these five notices dated 3-3-2006 issued by the TRO to the Banks requesting them not to pay money from the accounts of Sri.Ramajanam, which were challenged by the writ petitioner-Bhishma Pithamaha claiming that a General Power of Attorney (GPA) had been executed by Bhishma Pithamaha in favour of Ramajanam. On the writ petition having been allowed and the notices having been quashed by the learned Single Judge with a direction to the Income Tax Department to refund the sum of Rs.18,57,999/- to the Banks along with interest at the rate of 9% p.a., this appeal has been filed.

2. In view of the statement made by the learned counsel for the writ petitioner (respondent herein) that the respondent will not precipitate the matter, no

interim order was granted and the amount in question is still lying with the appellant-Income Tax Department.

3. This case has a chequered history. The Math in question is an Income Tax assessee and for certain Income Tax dues, the properties of the Math, which are said to have been sold by the petitioner-Bhishma Pithamaha through his General Power of Attorney, were attached by the Income Tax Department initially in the year 1988, which attachment orders were renewed from time to time or fresh attachment order issued. The Mahanth of the Math Sri.Krishnananda Giri Gowswamy died on 18-09-1989 and thereafter, one Krishnamohanandananda Giri Gowswamy claimed to be the Mahanth of the Math. The petitioner-Bhishma Pithamaha also made such claim of being the Mahanth on the basis of being legal heir of late Krishnananda Giri Gowswamy.

4. In the year 1995, the writ petitioner-Bhishma Pithamaha filed a civil suit, being O.S.No.147/1995, praying for a declaration that the properties in question belonged to him. Admittedly, the said suit was dismissed by the Trial Court and the appeal against the said judgment is pending before the Appellate Court. Although there have been several other suits and writ petitions filed by the petitioner and other parties with regard to the properties of the Math, the details of the same would not be relevant for the purpose of this case, but the filing and pendency of such cases would only go to show that there were disputes pending with regard to the properties in question.

5. What is also relevant to mention is that the writ petitioner-Bhishma Pithamaha had never filed his return of income till 6-1-2003, on which date he filed

returns of income together for six assessment years comprising of the assessment years 1997-98 to 2002-03. In the said returns, it was for the first time that before the Income Tax Authorities the properties in question were declared by the writ petitioner, to be his properties. It was only after 2003, the petitioner-Bhishma Pithamaha started selling his properties through his General Power of Attorney holder Ramajanam. The properties which were sold were also the properties with regard to which the suit for declaration had been filed in the year 1995 by Bhishma Pithamaha himself, which had been dismissed.

6. It may be reiterated that the said properties were attached by the Income Tax Department towards realization of dues of the Math way back in the year 1988. Then, after the sale of properties, a notice under Section 226(3) of the Act was issued on 22-07-2005 to

the writ petitioner-Bhishma Pithamaha requiring him to deposit a sum of Rs.60,00,000/- as tax dues payable to the Department by the Math. When no deposit was made, then the impugned notices dated 3-3-2006 were issued by the Department to the five Banks requiring the Banks to pay an amount of Rs.60,00,000/- from the accounts of Sri.Ramajanam towards the dues of the Math. In pursuance of the said notices, an amount of Rs.18,57,999/- was paid by the Banks from the accounts of Sri.Ramajanam to the Income Tax Department.

7. What is interesting to note is that it is not Ramajanam who had approached the writ Court challenging five notices dated 3-3-2006, but it was Bhishma Pithamaha who had challenged the said notices in the writ petition claiming that the said money in the account of Ramajanam belonged to him. For

invoking the jurisdiction of any Court and more so a writ Court, it would be the person affected who has to approach the Court. A person may claim the money in someone else's account to be his money, but unless the person in whose account the money is in deposit accepts the same or comes forward and states that the said money belongs to such person, the said person cannot, on his own, claim right over the money in such account of some other person lying in the Bank.

8. In the present case, since the notices were issued to the Banks to draw the amount from the account of Ramajanam and pay to the Income Tax Department, it was either the Bank, or the said Ramajanam, who could be said to be aggrieved. If the writ petitioner-Bhishma Pithamaha had kept his money in the benami account of Ramajanam as his Power of Attorney, then too, in our view, Bhishma Pithamaha could not have challenged

the notices issued to the Banks with regard to the accounts of Ramajanam. The learned Single Judge has dealt with this question and proceeded on the presumption that the money kept in the Bank does not belong to the Power of Attorney-Ramajanam, but to the writ petitioner. In our view, there is no basis for assuming the same merely on the basis that the said Ramajanam is the power of attorney holder of the writ petitioner. The Power of Attorney holder can always have his own accounts in which he may be having his own money as well as, may be, from the proceeds of the sale made on behalf of the writ petitioner, whose power of attorney Ramajanam holds.

9. Several issues have been considered by the writ Court on merits but the issue of the writ petitioner-Bhishma Pithamaha challenging the notices to the Banks/Ramajanam goes to the root of the matter. All

the notices dated 3-3-2006 have been issued under Section 226(3) of the Act. But since in our view, the writ petitioner-Bhishma Pithamaha could not be said to be a party concerned, as the notices were not relating to his account or addressed to him, the merits of the same need not have been considered, especially when the properties, which had been sold, were already attached by the Income Tax Department towards income tax dues of the Math nearly three decades back.

10. It is noteworthy that the attachment order of the properties of the Math, which are now being claimed by the writ petitioner as his properties, was challenged by the writ petitioner-Bhishma Pithamaha before the TRO. By an order dated 30-11-2006 passed under Rule 11(5) of the II Schedule to the Income Tax Act, it was held by the Tax Recovery Officer that the claim of the applicant that he is the lawful owner and has inherited the

properties, which are the subject matter of attachment, remains only as claim pending pronouncement of the judgment by the civil court. Admittedly, the suit filed by the writ petitioner-Bhishma Pithamaha for grant of declaration with regard to the said properties has already been dismissed and the appeal filed against such judgment of the Trial Court is pending. The Tax Recovery Officer held that the application filed by Bhishma Pithamaha under Rule 11(1) of Schedule II of the Income Tax Act was not tenable in law. In the light of the aforesaid facts, we have to consider the merits of the writ petition and the order passed by the learned Single Judge allowing the said writ petition.

11 We have heard Sri.K.V.Aravind, learned counsel for the appellant and Sri.A.Shankar, learned counsel for the respondent at length and have perused the records.

12. The writ petitioner had invoked the extraordinarily discretionary jurisdiction of this Court under Article 226 of the Constitution of India. Such jurisdiction is to be exercised in favour of bonafide party, where equity is in his favour. In the present case, what we see is that the writ petitioner-Bhishma Pithamaha had been claiming right over the properties of the Math, which were attached by the Income Tax Department in the year 1988, which was prior to the death of earlier Mahanth of the Math late Krishnananda Giri Gowswamy in the year 1989. For ascertaining his right, the writ petitioner had also filed O.S.No.147/1995 praying for a declaration with regard to the said properties, which was dismissed by the Trial Court. Never before 6-1-2003, the writ petitioner had ever filed his return of income or wealth and it was for the first time, on the said date i.e. 6-1-2003, he filed his first returns of

income or wealth for six assessment years being 1997-98 to 2002-03. It was for the first time, before the Income Tax Department that the writ petitioner had declared the properties in question to be his properties. Right over the said properties apparently has always been that of the Math, and the right of the writ petitioner has never been established by any authority or Court of law.

13. As per the own case of the writ petitioner, this High Court in W.P.No.13170/1999, clearly held that the question of ownership of the properties would be a purely civil matter and if the petitioner (Bhishma Pithamaha) has any right over any part of the properties, he can challenge the same in any proceedings in a Civil Court. On the contrary, the writ petitioner had filed his claim over the properties in the Civil Court, which suit has admittedly been dismissed.

As such, we do not find any concluded right of the petitioner over the properties in question.

14. Learned counsel for writ petitioner-respondent has vehemently submitted that one Original Suit No.758/2005 was filed by the Income Tax Department against the writ petitioner, his Power of Attorney Ramajanam and the Math praying for a declaration of orders of attachment dated 13-09-1995, 03-05-1995 and 05-01-2003 issued by the Tax Recovery Officer, Mysuru in respect of the schedule properties in the suit as absolute and binding on the defendants. It is contended that since the said suit filed by the Department has been dismissed by the Trial Court on 19-08-2013, the claim of the Department with regard to attachment of the properties in question stands negated. In this regard, it may be stated that the suit filed by the Department was with regard to attachment

orders passed by the Tax Recovery Officer and not with regard to the ownership of the properties in question. It is also noteworthy that at the time of issuance of notices dated 3-3-2006, there was no such judgment dated 19th August 2013. Even otherwise, in view of what this Court has held that notices could not have been challenged by the writ petitioner as the same were neither addressed to the writ petitioner nor regarding his bank accounts, the aforesaid submission of the learned counsel for the writ petitioner/respondent is not of much relevance.

15. In such background, the question before this Court is that would it be appropriate for this Court to invoke extraordinarily discretionary jurisdiction under Article 226 of the Constitution of India at the behest of a person who does not have any confirmed right over the properties and his filing of the writ petition challenging

certain notices, which were neither addressed to him nor relate to his own Bank accounts, but are with regard to Bank accounts of one Sri.Ramajanam, who may happen to be his General Power of Attorney, but would be an independent person. In the facts and circumstances of the present case, in our opinion, the writ Court was not justified in going into the merits of the correctness of the notices which had been challenged in the writ petition by the writ petitioner who, in our view, would be a stranger to the said notices, and the writ petition, filed by a stranger or a person not named in the notices, should not have been entertained.

16. It is well settled law that while invoking equity jurisdiction of this Court, the bonafides of the petitioner approaching the Court is to be considered and even if the law may be, to some extent, in favour of the

petitioner yet, if the bonafides of the petitioner himself is doubtful or the petitioner has not come with clean hands, meaning thereby, the equity is not in favour of the petitioner, this Court will always refuse to exercise its extraordinarily discretionary jurisdiction under Article 226 of the Constitution of India in favour of such petitioner.

17. In the facts of this case, we are of the firm view that no discretion ought to have been exercised in favour of the writ petitioner whose bonafide cannot be ascertained and as such, the order of the writ Court allowing the writ petition and quashing the notice dated 3-3-2006 at the behest of the writ petitioner-Bhishma Pithamaha, is liable to be set aside.

18. Accordingly, this appeal stands allowed, the writ petition stands dismissed and the judgment and order

dated 01-10-2008 passed by the Writ Court is set aside.

No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

mpk/-*