



W.P(MD).No.7996 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

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and

W.M.P(MD).No.6296 to 6298 of 2019

M/s.IGGI Resorts International Limited,
T-18A Alas Mal Complex,
149, Montieth Road, Egmore,
Chennai-600 008.

... Petitioner

Vs.

1.The Tax Recovery Officer-I,
No.2, VP Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002.

2.The Tax Recovery Officer-2,
Corporate Range-2,
IV Floor, New Block, Room No.426-C,
N.H.Road, Uthamar Gandhi Salai,
Chennai-600 034.

3.M/s.Poppy Hotel Private Limited
Tiruppur.

...Respondents

(R2 and R3 are impleaded vide Court order dated 10.07.2019
in W.M.P(MD).Nos.9862 and 9863 respectively)

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus calling for the
records of the respondent contained in the proclamation of sale deed No.
T.R.X.No.41 to 45/TRO-1/2018-19, 18.01.2019 issued U/I respectfully



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submit that 52 of the Second Schedule to the Income Tax Act, 1961 and the consequent auction notice dated 01.03.2019 in respect of the Petitioner's properties at R.S.No.6/1B (Old Survey No.25/10-3) Ward C, Block 19, Kodaikkanal Town (Opposite to Chettiar Park, Kodaikkanal) admeasuring 0.3562 hectares (89 cents) and all proceedings in furtherance thereof and to quash the same as arbitrary unjust, illegal and unconstitutional and to consequently forbear the respondent from in any manner confirming any sale pursuant thereto.

For Petitioner	: Mr.R.Murali For Mr.Arun Karthik Mohan
For R1 & R2	: Mr.N.Dilip Kumar
For R3	: Mr.S.Anand Chandrasekar For M/s.Sarvabhauman Associates

ORDER

The petitioner has filed this writ petition for a writ of Mandamus to call for the records of the impugned proclamation of sale deed, dated 18.01.2019 bearing reference T.R.X.No.41 to 45/TRO-1/2018-19 issued under Rule 52 of the second schedule of the Income Tax Act, 1961 and the consequential notice, dated 01.03.2019 in respect of petitioner's property at R.S.No.6/1B (Old Survey No.25/10-3) Ward C, Block 19, Kodaikkanal Town (Opposite to Chettiar Park, Kodaikkanal) admeasuring 0.3562 hectares (89 cents) and all proceedings in furtherance thereof and to quash the same as arbitrary unjust, illegal and unconstitutional and to consequently forbear the respondent from in any manner confirming any sale pursuant thereto.



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2. The facts are not in dispute. The petitioner was in arrears of income tax for a sum of Rs.29,84,56,331/- for the period prior to the year 2008.

Earlier, proceedings were initiated and Tax Recovery certificate was issued on various dates (02.06.2000, 16.01.2003 and 19.03.2007) by the Tax Recovery Officer, Chennai-34. An earlier attempt was made in the year 2008, for drawing up a proclamation of sale deed by an undertaking, dated 16.06.2008 of the Tax Recovery Officer-II, Chennai-34. The petitioner was called upon to participate in the aforesaid proceedings on 26.07.2008.

3. Apart from the arrears of tax there were several other outstandings to its customers which included both the registered and unregistered time share holders and amounts due to Repco Bank and Municipal dues. It appears an unauthorised person was in occupation of the property and further earlier to auction did not materialize. When the earlier attempt was made to auction the subject property by issuing a advertisement on 27.09.2008, the reserved price of Rs.4,10,00,000/- was fixed by the respondent Income Tax Department in terms of Chapter III of the Second Schedule of the Income Tax Act, 1961(procedure for recovery of tax). The auction was proposed on 13.10.2008 at 11.30 a.m. However, the aforesaid auction did not materialise as the public did not evince any interest in the auction.



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4. Thereafter, a second attempt was made by the Income Tax Department by issuing another proclamation of sale dated 21.08.2009. At that point, it was mentioned that the petitioner was in arrear for a sum of Rs. 18,63,83,869 as on 29.09.2009 excluding cost and interest. If public auction was fixed to be held on 29.09.2009 at the Income Tax Auditorium, No.121, Uthamar Gandhi Salai, Nungambakkam, Chennai-34 at 3p.m. However, it appears that the said auction also did not materialise.

5. Meanwhile, one Sudhakar Jayaraj representing the interest of Park View Resort Owners Welfare Association filed a writ petition in W.P. (MD).No.9640 of 2009 stating that the persons who had invested in the time shares in the petitioner's company were the owners of the property and that he had been nominated by the association to maintain the property and since attempts were made to auction the property, prayed for a writ of Certiorari to quash auction sale notice dated 03.09.2009 published by the respondents in the "The Hindu" daily issue dated 15.09.2009 in respect of the petitioner's aforesaid property. An interim order was also passed on 24.09.2009. However, the writ petition was eventually dismissed on 25.07.2014, which paved the way for Income Tax Department to take up exercise again. Thus, the third



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attempt was made by the Income Tax Department to auction the property and therefore, another auction notice, dated 27.02.2018 was issued.

6. The case of the petitioner before this Court is that the impugned auction notice dated 27.02.2017 was published on 01.03.2019 does not disclosed the reserve price through fixed the market price of Rs.4,66,41,035/-. It is the specific case of the petitioner that if the sageguards in Chapter III of the Second Schedule to the Income Tax Act, 1961 dealing with attachment and sale of immovable property particularly Rule 52, 53 and 54 were followed, the auction would have fetched a higher bid amount and therefore there was a material irregularity in the auction conducted by the respondents on 14.03.2019. It is submitted that the third respondent purchased the property for a paltry sum of Rs.3,38,03,500/- which is below the market value of the property. It is submitted that if the reserved price was declared in the auction notice, public would have participated and perhaps offered a higher amount.

7. In this connection, the learned counsel for the petitioner has placed reliance on the decision in Kerala High Court in **Moni Senan Vs**



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Commissioner of Income Tax and others. The relevant portion from the

aforesaid order reads as under:

19. Now I may also deal within the contention of the petitioner that there is violation of Rule 53(cc). The rule has already been extracted earlier. On an examination, it is seen that reference to the said rule is made in two other places in the Second Schedule. This is Rule 56 and Rule 59. An isolated examination of the impact of a provision as contained in a rule, when the expression has been used in more than one place in the statute also may not be advisable, since a comprehensive view as regards the scope and purport may not be obtained by such approach. Rule 56 prohibits a confirmation if the bid is below the reserve price fixed if any. Rule 59 gives a right to the Central Government to bid for the property in any subsequent sale. Reading Rules 53 and Rule 59 together, it has to be noticed that once a reserve price is fixed, a special procedure is mandatorily to follow. The rule also does not give any power to put the property for sale, and sell it away, once a tag of reserve price has been fixed. The Government also has not been given power to under-quote the original price specified, as Rule 59 is silent on this matter. The right of the Government to participate in auction, does not ipso facto do away with the rights of the defaulter. It also does not authorise a sale for a lower price to a new bidder. The rule is intended, according to me, for the safety of the defaulter, expressing an anxiety that the property is not lost to him for the only reason that there were no adequate offer. A defaulter may be in an unenviable position, and may be passing through a phase of distress. The State as the protector of rights of all citizens, who may include criminals, defaulters, or undesirables, have to give them equal protection of law. The rights of property of a defaulter are also to be safeguarded, and he is not to be viewed as a fugitive nor can he be placed in a disadvantageous position. The right of the Government to participate in the auction is to rejuvenate the bids and intended to give a protective shield to the defaulter and the upset price can neither be ignored nor done away with. Scanning through the Certificate Rules, it was not possible to come to a finding that the method adopted was valid and proper. Mr. Sreedharan, counsel for the petitioner, had invited my attention to a decision reported in *Elumalai Naicker v. Kishtambul Ammal*,



AIR 1988 Mad 106. This was a case where the upset price had been reduced at the instance of the decree holder. The court has, in the said decision, made the observations, which I think are relevant, as extracted hereinbelow (page 108) :

"As observed above, when the court fixes the upset price that fixation is only for facilitating the conduct of the sale and to safeguard the interests of the judgment-debtor by fixing a reserve price. The object of fixing the upset price is to fix the lowest sum for which the property which is being auctioned will be sold or in other words, it is the sum from which the bidding may start. The upset price, therefore, has some relation to the price which the property intended to be sold in the auction is expected to fetch. When the court gives the upset price, it cannot do so merely on the ipse dixit of either the judgment-debtor or the decree-holder. What should be the amount to be fixed as the upset price must, therefore, be determined after an objective consideration of all the relevant facts to which the court must apply its mind, so as to safeguard the interests of the judgment-debtor. It is true that for fixing the upset price, no elaborate enquiry may be required to be made, but the upset price cannot also be any figure having no relation whatsoever to the minimum price which the property intended to be sold is expected to fetch at the auction sale."

20. Mr. Menon, senior standing counsel, however, pointed out that Rule 53(cc) does not at all in mandatory terms require the authority to fix a reserve price, and the expression used is "if any" which has a definite connotation. But this has to be examined from yet a different angle. The rule, according to me, has to be strictly construed. A proclamation of sale has to be drawn up only after notice to the defaulter. The expression can be understood as the procedure to be followed. It is not a simple notice. As regards fixation of the upset price, the views of the defaulter also is to be given due importance. What is postulated is definitely not a notice about the proclamation to the defaulter. But notice is to be given before the proclamation is drawn up. This, according to me, is the quintessence of the rule prescribing the procedure. When the defaulter gets an opportunity as above, he has the option to suggest the reserve price. He has to be realistic and normally cannot afford to be casual as it is in his interest to discharge the liability at the earliest point of time, once the properties have parted from his



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hands. The Department also is able to get the views of the defaulter and the reserve price is thus fixed. Therefore, there is an inbuilt safety mechanism for minimising arbitrariness. Viewed from this point, I have to find that the condition for a reserve price becomes automatically relevant. Only because the rule has referred to the procedure as "if any" the discretion arising from the procedure cannot be ignored. If there is a failure for giving notice of drawing up of proclamation, I am of the opinion that there is procedural irregularity. In the present case, as a reserve price in respect of the property at the time of previous occasion was specified, a sale proclamation not incorporating the above at least, was irregular. It should have found a place as a condition coming under Rule 53(d) as well. As there was no notice giving the defaulter about the drawing up of the proclamation, the consequent steps cannot be held as valid and binding. Exhibit P-6 was unsustainable for this reason as well.

8. It is therefore submitted that the entire auction conducted by the Income Tax Department and consequential sale in favour of the third respondent is liable to be interfered and countermanded

9. Opposing the prayer, the learned counsel for the respondents submits that the auction has taken place and the property is in possession of the third respondent and nothing further survives for adjudication. That apart, the learned counsel for the official respondents submits that the amount that was paid by the third respondent in the auction held on 14.03.2019, was other than the liability amounting to Rs.95,02,698/- of the petitioner. It is submitted that the auction notice, which was published in the newspaper clearly indicates



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that the detailed terms and conditions of the auction sale may be obtained from the office during office hours and/or can be obtained at the downloaded in the income tax website in www.incometaxindia.gov.in/ www.tnincometax.gov.in.

10. The learned counsel for the respondents further submits that earlier also two other attempts were made in the years 2009, 2015 and 2016 are futile. In the auction notice, the reserved price was fixed as Rs.4,70,00,000/-. Thereafter, on 26.12.2018, the respondents issued a notice to the petitioner informing the petitioner to come for a personal hearing on 21.01.2019 for fixing and drawing up the proclamation of sale and settling the term thereof. The petitioner responded on 12.01.2019 wherein, the petitioner informed the respondent that the petitioner was willing to co-operate with any application or petition which the income tax may file in the High Court to vacate the illegal occupant and to bring the property for sale against the tax of arrears. The petitioner also requested the income tax department to consider that the interest of time share holder in the property may be taken into account when the property is brought to sale. It is pursuant to the above, a proclamation of sale deed, dated 18.01.2019 was issued. In the aforesaid proclamation of sale, the reserved price was fixed as Rs.3,33,03,500/-.



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11. It is submitted that there is no material irregularity in following Rule 51, 52, 53 and 54 of the Chapter II of the Second Schedule of the Income Tax Act, 1969 and therefore, the writ petition is liable to be dismissed. It is further submitted that even according to the petitioner, the property did not evince any interest from the public right from the year 2008 and the third party have to be evicted only after the orders came to be passed by this Court in W.P.(MD).No.9640 of 2009 filed at the behest of the third party vide order, dated 25.07.2014.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. I have also perused the documents filed in support of the present writ petition filed by the petitioner and the documents filed by the third respondent, namely the bidder who has taken possession of the property.

13. The arguments advanced on behalf of the petitioner that Rule 52 and 53 (of the II Schedule of the Income tax Act 1961) were not followed cannot be countenanced in the light of the fact that the impugned auction notice clearly stated the terms and condition of the proposed Auction could be



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downloaded from the website of the Income Tax Department or collected from the office of the respondent Tax Recovery Officer. There is also no violation of Rule 53 (b). As per Rule 53 (b), a proclamation of sale of immovable property is to be drawn up after due notice to the defaulter as to the time and place of sale. The proclamation shall also specify as fairly and accurately as possible the reverse, if any, assessed upon the property or apart thereof. If revenue has not been assessed, question of including the same in the proclamation sale does not arise. In this case the property was admittedly in the hand of one sudhakar jayaraj who had filed W.P.No.9640 of 2009.

14. That apart, even according to the petitioner, the property was not used for any business by the petitioner. When the first attempt was made to recover the amount with the issue of auction notice, dated 16.06.2008, there was response. By that time, the said Sudhakar Jayaraj had filed W.P.(MD).No. 9640 of 2009 had encroached on the subject property. That apart reading of the affidavit of the said Sudhakar Jayaraj in W.P.(MD).No.9640 of 2009 which has been filed along with the typeset also indicates that he had filed the said writ petition to stall auction notice dated 03.09.2009. Therefore, I do not find any irregularity committed by the Income Tax Department while auctioning the property. The Income Tax Department also made it very clear



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that the auction amount will be adjusted toward the tax liability and the interest thereon and the balance if any will be adjusted and payable toward the other state holders namely 234 time share holders, dues to Repco Bank and the tax due to the Commercial Tax Department totalling to Rs.95,02,968/-.

15. Since the amount was recovered from the auction sale is only Rs. 3,38,03,500/-, the third respondent is also bound to pay the amounts due to the 234 time share holders, Commercial Tax Department and Repco Bank. These are the liabilities of the petitioner which the third respondent has undertaken to discharge and therefore, I do not find any irregularity in the auction conducted by the Income Tax Department. There is no merit in the present writ petition.

16. The writ petition therefore stands dismissed in light of the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

13.04.2022

Index : Yes / No
Internet : Yes/ No
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To

- 1.The Tax Recovery Officer-I,
No.2, VP Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002.
- 2.The Tax Recovery Officer-2,
Corporate Range-2,
IV Floor, New Block, Room No.426-C,
N.H.Road, Uthamar Gandhi Salai,
Chennai-600 034.



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C.SARAVANAN, J.

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