



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.11136 & 12683 of 2019

W.M.P.Nos.11544, 11543 & 12913 of 2019

Pradeep Alexander

...Petitioner in WP.No.11136 of 2019

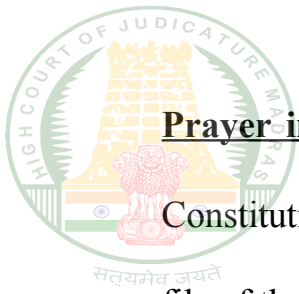
Academic Charitable Environmental and
Research Foundatino,
Rep.by its Managing Trustee,
Poombarai Village, Kodaikanal

...Petitioner in WP.No.12683 of 2019

Vs.

1. The Tax Recovery Officer,
Company Range-1,
Income Tax Department,
O/o. Tax Recovery Officer-1,
Room No.500, V Floor, New Block,
121, Mahatma Gandhi Road,
Chennai-34
2. Sub-Registrar,
Office of Sub-Registration District, Kodaikanal
Kodaikanal
- 3.M/s.Club India Resort & Metro Hotels Ltd.,
Summer Creek Poombarai Village,
Kodaikanal-624103
Kallakurichi.

... Respondents in both WPs



Prayer in WP.No.11136 of 2019: Writ Petition filed under Article 226 of the

Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the first respondent in order of attachment of immovable property in ITCP-16 in T.R.No.32/C/2006-07 dated 13.07.2009 to the extent of attaching the petitioner's land comprised in S.No.316/1 (Specified as 7th item in the Specification of Property) and quash the same.

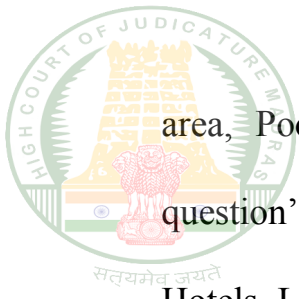
Prayer in WP.No.12683 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the first respondent in order of attachment of immovable property in ITCP-16 in T.R.No.32/C/2006-07 dated 13.07.2009 to the extent of attaching the petitioner's land comprised in S.No.316/3 (Specified in Item No.6 in the Specification of Property) and quash the same.

In both WPs

For Petitioner : Mr.Pramod Kumar Chopda for
Mr.Saravanan A.
For Respondent : Mr.Hema Muralikrishnan [R1]
Senior Standing Counsel
Mrs.Sanghamithirai [R2]
Special Government Pleader
No Appearance [R3]

COMMON ORDER

Common order is passed in both these writ petitions seeing as the cause of action is one and the same. In WP.No.11136 of 2019, the petitioner is an individual who had purchased land comprised in Survey No.316/1, Kankarkadu

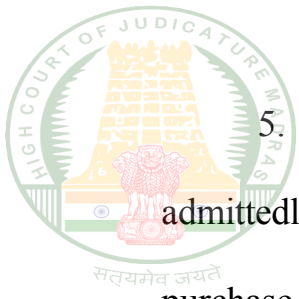


area, Poombarai Village, Kodaikanal Taluk, Dindigul District ('property in question') from an entity by the name and style of Club India Resort and Metro Hotels Ltd. ('assessee') under a registered sale deed dated 08.12.2008. He claims to be in absolute possession and enjoyment of the property thereafter and holds a valid patta, chitta and adangal issued by the revenue authorities in his favour.

2. The petitioner in WP.No.12683 of 2019 claims to be a research foundation that had purchased the land in Re-Survey No.316/3, Poombarai Village, Kodaikanal Taluk, Dindigul District (property in question) from one Mr.Mani under a registered sale deed dated 15.06.2009 and states that it has been in absolute possession and enjoyment of the same thereafter. This petitioner also holds a patta, chitta and adangal issued by the revenue authorities in its favour.

3. The above constitute admitted facts and no dispute is raised by the respondents in this regard. Barring the differences in facts as noticed above, relating to survey numbers and dates of transactions, other details remain identical qua the resolution of issues that arise.

4. Heard Mr.Pramod Kumar Chopda, learned counsel for Mr.Saravanan, learned counsel on record for the petitioner, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for R1 and Mrs.C.Sanghamithirai, learned Special Government Pleader for R2.



5. The petitioners, having purchased the property in 2008 and 2009 a.c., admittedly, in undisturbed possession and enjoyment of the properties since the purchase. While this is so, they were in receipt of the impugned order dated 13.07.2009 attaching several tranches of properties, including the properties in question that had earlier stood in the name of the assessee including the properties purchased by the petitioners. It is as against the aforesaid attachment notice that the present writ petitions have been filed.

6. The petitioners have corresponded with the Department after having come to know of the impugned attachment, pointing out that they have purchased the properties in question and that the attachment is contrary to law. There has been no response to the representations.

7. The submissions of the petitioner are that (i) there is no justification whatsoever in law or on facts, for the Income Tax Department to have taken the impugned action (ii) the recovery is of arrears of an assessee unconnected to the petitioners (iii) the lands in question constitute private lands of the petitioners (iv) the petitioners have remitted valuable consideration for the purchase of the properties in question (v) that apart, the arrears relate to assessment years (AY) 1995-96 to 1998-99, more than 15 years prior to when the impugned attachment was made.

8. In response, learned Senior Standing Counsel would rely upon the provisions of Section 281B of the Income Tax Act, 1961 (in short 'Act') and



several Rules in the Second Schedule that deal with, and set out the procedure

for recovery of tax. She submits that the Income Tax Department is vested with the requisite power to attach the property of a defaulting assessee, who has transferred/dealt with property despite being in arrears of statutory demands that have attained finality.

9. She further states that income tax being a crown debt, it is the Income Tax Department that would have first charge upon the property of a defaulting assessee. Thus, according to her, the alienation of its properties by a defaulting assessee in the face of pending arrears, are to be treated as void and thus, coercive recovery by way of the impugned attachment is well founded.

10. The petitioner relies upon the following judgements in support of its submissions:

(i) *Tax Recovery Officer Vs. Gangadhar Vishwanath Ranade*, [(1998) 100 Taxman 236 (SC)];

(ii) *Agasthiya Holdings (P.) Ltd. Commissioner of Income Tax, Madurai*, [(2018) 93 Taxmann.81 (Madras)];

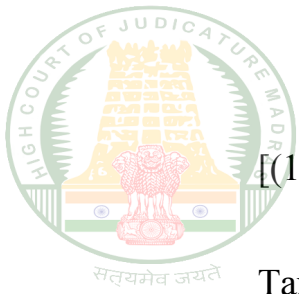
(iii) *Sancheti Leasing Company Ltd. Vs. Income Tax Officer*, [(2000) 246 ITR 814 (Madras)];

(iv) *Kareanbhai Gandabhai Patel Vs. Tax Recovery Officer*, [(2014) 43 taxmann.415];

(v) *Ms.Ruchi Mehta Vs. Union of India*, [(2008) 170 Taxman 280 (Bombay)].

12. For its part, the respondent relies upon the following judgements:

(i) *Palani Gounder Vs. Income Tax Revenue Department* [(1998) 229 ITR 59];



(ii) *Abdul Jamil Vs. Secretary, Income Tax Department* [(1998) 101 Taxman 332 (Madras)];

(iii) *Karnail Singh Vs. Union of India*, [(2011) 22 Taxmann.com 323 (P&H)];

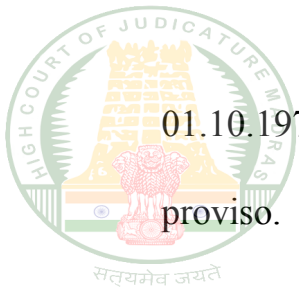
(iv) *D.S.Senthilvel Vs. Tax Recovery Officer, Madurai*, [(2018) 92 taxmann.com 354 (Madras)].

11. Heard the detailed submissions of learned counsels and studied the papers as well as the ratio of cases cited.

12. The facts in both writ petitions are not in dispute and the issue that arises for resolution is as to the validity or otherwise of the attachment made in regard to the properties in question. Admittedly, the attachments have been made after the date of purchase of the properties in question, the petitioner are unrelated to the defaulting assessee and there is no allegation whatsoever in regard to collusion between the parties. The purchase is bonafide and made for valuable consideration.

13. The scheme of the Act and Rules provide for framing of assessment and raising of disputes both pre-assessment, that is, pending proceedings for assessment, as well as post-assessment, that is, after an order of assessment has been passed and demand raised in terms of Section 156 of the Act.

14. Section 281B of the Act, protects the interests of the Department to the extent to which it invalidates any charge created upon, or alienation by an assessee of assets in his name, in favour of any other person. With effect from



01.10.1975, Section 281 was substituted and in the substituted form included a proviso.

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15. The proviso protects the interests of bonafide purchasers and states that the alienation of the property by an assessee shall not be void, if it has been made by such assessee for adequate consideration and without having received any notice from the Assessing Officer of the pendency of the assessment proceedings or without notice of any tax or other sums payable by such assessee. Such charge/transfer shall also not be void had it been made with the previous permission of the assessing officer.

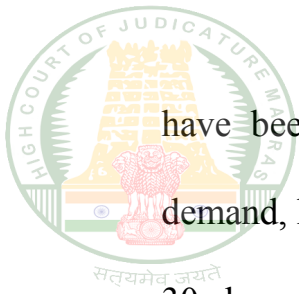
16. For completion of narration, Section 281 is extracted below:

281. (1) *Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise:*

Provided that such charge or transfer shall not be void if it is made— (i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or

(ii) with the previous permission of the Assessing Officer.

17. The above provision deals with the creation of charge/alienation of property, pending proceedings for assessment and prior to the service of notice under Rule 2 of the Second Schedule. Thus, where proceedings for assessment



have been completed and an order of assessment, accompanied by a valuation demand, has been served upon an assessee, that normally provides for a period of 30 days for settlement of the demand or a lesser period where the assessing officer in his discretion believes that such lesser period would be more appropriate in the circumstances of that case, but such demand still remains outstanding, then resort may be taken to the procedure set out in the Second Schedule to the Act.

18. The trigger for the proceedings under the Second Schedule is the drawing up of a certificate under Section 222 of the Act by a Tax Recovery Officer (TRO). It is relevant at this juncture to take note of the fact that assessment proceedings are initiated and finalized under the powers granted to an assessing officer defined in terms of Section 2(25) whereas recovery in terms of the Second Schedule is by a TRO, as defined in Section 2(44) of the Act. There is thus a clear and categorical distinction between assessment and recovery under the Act.

19. The definitions of, nomenclature used, titles, roles and powers of the two officers are separate and distinct. An Income Tax Officer (ITO) is defined under Section 2(25) and the appointment is in terms of Section 117, both provisions extracted below:

2 (25) 'Income tax Officer' means a person appointed to be an Income Tax Officer under section 117.

Appointment of income-tax authorities.



117. (1) *The Central Government may appoint such persons as it thinks fit to be income-tax authorities.*

(2) *Without prejudice to the provisions of sub-section (1), and subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may authorise the Board, or a Principal Director General or Director-General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner.*

(3) *Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.*

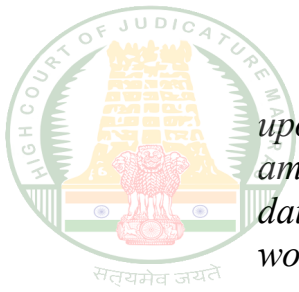
20. A TRO is defined under Section 2(44), as follows:

2.(44) *'Tax Recovery Officer' means any Income-tax Officer who may be authorised by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, by general or special order in writing, to exercise the powers of a Tax Recovery Officer and also to exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer under this Act and which may be prescribed;*

21. Once a certificate is drawn up under Section 222, an assessee is stated to be 'in default' or is deemed to be in default in making a payment of tax. Such a statement is to be drawn in terms of Rule 2 of the Second Schedule to the Act that reads thus:

Issue of notice:

2. *When a certificate has been drawn up by the Tax Recovery Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served*



upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

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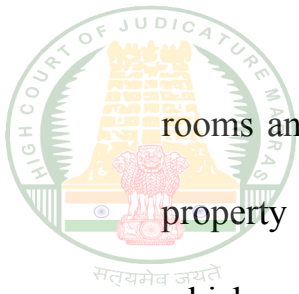
22. Such a certificate in this case has been drawn up on 13.08.2002 in the required form, being ITCP-1, certifying that a sum of Rs.74,09,124/- has become due from the assessee. With the issuance of Rule 2 notice, the procedure for recovery under the Second Schedule stands kick-started. Rule 3 of the Second Schedule provides for the execution of the certificate and provides for a period of fifteen days to be given to the defaulting assessee to settle the outstanding.

23. Rule 4 talks about modes of recovery that are available to a TRO to proceed to realise the amount in question by (a) attachment and sale of the movable property (ii) attachment and sale of defaulter's immovable property (c) by arrest and detention (d) by appointing a receiver for the management of his properties. In the present case, an attachment notice has been sent on 10.07.2006. The properties in question, that have been attached, are specified and described in the notice of attachment, as follows:

Specification of Property

All the Rooms an Resorts at Summer Creek, Poomparai Village, Kodaikanal belonging to the defaulter i.e. M/s.Club India Resorts & Metro Hotels Ltd.

24. A combined reading of the Rule 2 notice and the attachment notice issued in terms of Rule 4, makes it clear that the attachment has only been of the



rooms and resorts of the defaulting assessee. There is no mention of any other property that has been attached. Power of detention is set out under Rule 48 which provides for an order prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

25. Upon a combined reading of the certificate and attachment in terms of Forms ITCP-1 and ITCP-16 respectively, I am of the view that the attachment in the present case is only of the rooms of the properties and there has been no attachment of any other property of the defaulting assessee. The question then that arises is as to what is the impact of a Rule 2 notice, such as the notice in the present case, which is an omnibus notice of demand.

26. A literal reading of Rule 2 would result in a situation where any property of a defaulting assessee would fall and continue to be under a cloud, for all time, till such time the defaulter settles the arrears. The question that then arises is as to the status of the property if the defaulter does not take any step for settlement of the arrears and neither does the Department, for enforcing recovery of the same.

27. In fact, yet another argument raised by the Revenue turns upon an interpretation of Rule 16 of the Second Schedule, that deals with instances of private alienation and stipulates situations when such private alienation would be void. Rule 16 reads thus:



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16. (1) *where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.*

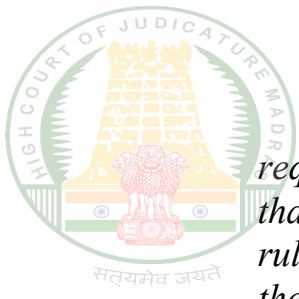
(2) *Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.*

28. Thus, taking a cue from Rule 16, Revenue argues that as notice under Rule 2 has been served as early as in 2002, the right of the assessee to alienate its properties stood frozen from the date of issuance of such notice and even for this reason, the transfers to the petitioners are void. This argument fails in light of the time frame set in terms of Rule 68B of the Second Schedule, which, envisaging a situation such as the present, stipulates a time limit for sale of the attached property. Rule 68B reads as follows:

Time limit for sale of attached immovable property.

68B. (1) *No sale of immovable property shall be made under this Part after the expiry of seven years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-I or, as the case may be, final in terms of the provisions of Chapter XX:*

Provided that the Board may, for reasons to be recorded In writing extend the aforesaid period for a further period not exceeding three years:



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Provided further that where the immovable property is require to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rules 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

29. Learned Senior Standing Counsel confirms her instructions to the effect that the demands have become final and that there have no appeals that have been filed by the defaulting assessee. In such a situation, and in light of the statutory embargo under Rule 68B, the attachment of the properties in question, 25 years from the elapse of the assessment years in question, is wholly impermissible in law.

30. The question of competence or otherwise of the assessee to have made the transfers in 2008 and 2009 becomes irrelevant as on date today, seeing as the time frame set out under Rule 68B has long expired and the respondents have, admittedly not taken any action within the time provided. It must be noted that the scheme of recovery under the Second Schedule is time bound, sacrosanct and must be enforced strictly, both qua the assessee as well as the Department.

31. In light of the discussion aforesaid, I am of the categoric view that the impugned attachments made after purchase of the properties by the petitioners for valuable consideration cannot be sustained by the Department. Bearing in mind the elapse of time and the sequence of events that I have noticed aforesaid, the reference to incompetence under Rule 16 is entirely misconceived.



32. The impugned attachments are quashed and there is a direction.

R2 to lift the attachments forthwith and in any event within a period of one week from today. These writ petitions are allowed in the above terms. Connected miscellaneous petitions are closed. No costs.

30.06.2022

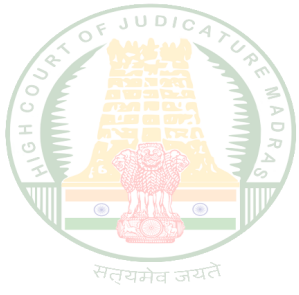
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Index: Yes

Speaking order

To

1. The Tax Recovery Officer,
Company Range-1,
Income Tax Department,
O/o. Tax Recovery Officer-1,
Room No.500, V Floor, New Block,
121, Mahatma Gandhi Road, Chennai-34
2. Sub-Registrar,
Office of Sub-Registration District, Kodaikanal
Kodaikanal



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Dr.ANITA SUMANTH, J.
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