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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32861 of 2004

L.Kalyanasundaram
S/o.Late A.K.LalaLajapathy
17, East 4th Main Road
Gandhi Nagar
Vellore – 6. .. Petitioner

..Vs..

1.The Commercial Tax Officer
Vellore North
Vellore

2.The Assistant Commissioner
(Commercial Taxes)
Vellore

3.Mr.Milton
New No.15 (Old No.13)
4th East Main Road
Gandhi Nagar
Vellore. .. Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the proceedings of the 1st respondent made in Na.Ka.A3/6021/82 dated 20/10/2003 and quash the same.

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For Petitioner : Mr.R.Krishnamoorthy,
Senior Counsel
for Mr.S.Elamurugan

For Respondents : Ms.Vasudha Thiagarajan, A.G.P.,

ORDER

Heard Mr.R.Krishnamoorthy, learned Senior Counsel assisted by Mr.S.Elamurugan, learned counsel for the petitioner and Ms.Vasudha Thiagarajan, learned Additional Government Pleader appearing for the respondent.

2.The petitioner in this writ petition is one of the sons of late A.K.Lala Lajapathy and the challenge is to an action initiated by the first respondent viz., the Commercial Tax Officer in his proceedings dated 20.10.2003, in and by which the house property owned by late A.K.Lala Lajapathy was brought for auction sale for recovery of sales tax dues payable by the firm called A.K.Sivaprakasa Mudaliar and sons. It appears that the auction was conducted and the highest bidder had deposited a sum of Rs.25,12,000/- out of which a sum of Rs.14,30,734/- was adjusted as against the sales tax arrears payable by the partnership firm A.K.Sivaprakasa Mudaliar and sons and out of the remaining amount, a sum of Rs.6,85,541/- was adjusted against the dues of a proprietary concern Sri Lakshmi Traders in which the wife of late A.K.Lala Lajapathy namely, Tmt.Devaki Ammal was the sole proprietor.

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3.The impugned order is primarily challenged on four grounds. Firstly, after the demise of the owner of the property, if the same was to be brought for sale, notice to all his legal heirs should have been issued. Secondly, the impugned auction proceedings itself is vitiated on account of the fact that there was no clear thirty days from the date of publication of the auction notice. Thirdly, it is contended that the first respondent namely, the Commercial Tax Officer is not competent to issue the impugned proceedings and it is only the Assistant Commissioner who is entitled to exercise such powers in terms of Section 29(1) of the Tamil Nadu General Sales Tax Act, 1959. Fourthly, it was contended that M/s.Lakshmi Traders is a separate entity having a separate registration and the amount said to have been recovered out of the sale proceeds from the purchaser could not have been adjusted to the alleged dues of the said proprietorship concern.

4.This Court proposes to deal the issue as regards the jurisdiction of the officer as the first issue. Section 29 of the TNGST Act deals with special powers of the Assistant Commissioner under the Revenue Recovery Act. In terms of Sub-section 1 of Section 29, the territorial Assistant Commissioner or an Assistant Commissioner (Assessment) shall have the powers of the Collector under the Tamil Nadu Revenue Recovery Act, 1864 for the purpose of recovery of any amount due under the Act.

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5.Admittedly, in the instant case, the Revenue Recovery Act proceedings has been done by the first respondent and not the territorial Assistant Commissioner. In the counter affidavit filed by the respondent, in paragraph 10, reliance was placed on Section 29(4) of the Act to justify the action. Section 29(4) of the Act states that the territorial Assistant Commissioner and the Assistant Commissioner (Assessment) may subject to control and supervision of the Deputy Commissioner and the Commissioner of Commercial Taxes, delegate the power vested in them under Sub-sections (1) and (2) of Section 29 to any officer not below the rank of the Assistant Commercial Tax Officer. Admittedly, the first respondent is an officer below in rank than that of a Assistant Commissioner.

6.That apart, there is no record placed before this Court to show that there was a delegation in the proper manner as required under the statute. Therefore, this Court is convinced that the impugned proceedings has been issued by an incompetent officer.

7.Secondly, the property was owned by late A.K.Lala Lajapathy and admittedly, he was one of the partners of the firm. On his demise, when the property is brought for sale by exercising their rights under the provisions of the Tamil Nadu General Sales Tax Act, all the legal heirs of late A.K.Lala Lajapathy should have been issued notice. The contention raised by the respondent in the counter affidavit in page 3 that they need not inform all the legal heirs is an

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incorrect stands since the property which is individual property of late A.K.Lala Lajapathy is brought for sale and on the date when it is brought for sale, the owner of the property is no more and he has left behind his widow, two sons and nine daughters. This is also one other inherent defect.

8.Thirdly, it has to be pointed out that the auction notice should give 30 clear days to enable any objection to be filed and this 30 days is required to be computed from the date of publication in the district gazette and such publication was admittedly effected only on 22.09.2004 and the auction was held on 22.10.2004, well before the expiry of 30 days. This is also one other inherent defect in the proceedings.

9.Lastly, it has to be pointed out that if the property is sold for recovery of the tax dues of A.K.Sivaprakasa Mudaliar and sons, which is a registered dealer, then adjustment could have been made only as against the said dues and there is no jurisdiction for the respondents to adjust the balance amount towards the alleged dues payable by a proprietorship concern namely, M/s.Lakshmi Traders which was a separate entity having a separate registration.

10.Hence, for all the above reasons, the impugned proceeding is held to be unsustainable in law. At this juncture, it is brought to the notice of this Court by the learned senior counsel that the sale though effected was not confirmed as an order of interim stay was granted by this Court. Subsequently, the auction

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purchaser had withdrawn his offer and had also taken back the money deposited with the department and as on date, the property is still with the legal heirs of the deceased A.K.Lala Lajapathy.

11.In the light of the above, the writ petition is allowed and the impugned proceeding is quashed. No costs.

31.08.2016

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To

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