

(1994) 10 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No. 19017 of 1990

C.G. Shanmugham

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 31-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2)

Citation : (1995) 215 ITR 207

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : Prakash Goklaney, for the Appellant; C.V. Raman, for the Respondent

Judgement

Raju, J.—The above writ petition has been filed for the following relief :

For the reasons stated in the accompanying affidavit, the petitioners pray that this court may be pleased to issue a writ of certiorari or any other

form of writ, order or direction in the nature of writ, calling for the records relating to proceedings No. TRO/OS/661/76- 77/90-91 dated

September 24, 1990 of the first respondent culminating in an order of confirmation of sale under Reference No. TRO/OS/661/76- 77/90-91

dated December 3, 1990 of the first respondent and quash the same and pass such further or other orders as this court may deem fit and proper

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2. The proceedings under challenge are those of the first respondent-Tax Recovery Officer, outstation charge, Bombay, and is the proclamation of

sale issued under rule 38 and rule 52(2) of the Second Schedule to the Income Tax Act, 1961. The proclamation of sale purports to bring an

immovable property, viz., Flat No. 43, 9th floor, in Prabhat Suprabhat CHS Ltd.,

76-B, Esai Road, Bombay- 400 026, more fully described in

the schedule of property annexed to the proclamation of sale. This court, while admitting the writ petition, has also granted interim stay thereof.

3. When the matter was set out for hearing on a date having been fixed therefor, by a Division Bench of this court, I called upon learned counsel

for the petitioner to substantiate the claim of territorial jurisdiction of this court to entertain the writ petition before advancing any submission or

contention on the merits of the claim itself. Learned counsel for the respondents objected to the maintainability of this writ petition with reference to

the grievance sought to be espoused in this writ petition before this court. Learned counsel for the petitioner contended that the assessment

pursuant to which the impugned recovery proceedings and the proclamation came to be issued was made at Madras, that the proclamation of sale

under challenge came to be served on the persons interested at Madras and that the legal representatives of the owner of the property are at

Madras and that, therefore, this court will have the required jurisdiction.

4. In order to decide this issue relating to the maintainability of this writ petition before this court, the provisions of clause (2) of article 226 of the

Constitution of India require to be noticed, which read as follows :

The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High

Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power,

notwithstanding that the seat of such government or authority or the residence of such person is not within those territories.

5. It is made very clear that notwithstanding that the seat of Government or authority or the residence of a person against whom the relief is sought

for is not within the territorial limits of a High Court, the powers conferred under article 226 of the Constitution of India can be exercised by any

High Court in relation to the territories within which the cause of action wholly or in part arises for the exercise of such power. The factual position

noticed supra about the nature of the proceedings under challenge, the authority who has issued such proceedings and the property which is sought

to be proceeded against by virtue of the proceedings under challenge are situated outside the territorial jurisdiction of this court. The only issue that

requires to be considered is as to whether the three features or the fact situation pointed out by learned counsel for the petitioner would amount to or could be construed to mean that cause of action wholly or in part arose within the territorial jurisdiction of this court. In my view, the fact that the order of assessment imposing the tax liability resulting in the recovery proceedings has been passed by an authority in this State is no ground to construe a part of the cause of action arising within the territorial jurisdiction of this court since, in these proceedings we are not concerned with the legality and propriety of the levy itself on the assessee, but, on the other hand, only concerned with the recovery proceedings. The fact that the notice issued by an authority situated outside the territorial jurisdiction of this court pertaining to a matter within the jurisdiction of such authority which is equally outside the territorial jurisdiction of this court, has been served on persons interested in this State or such person resides in this State, is no ground to construe that a part or the whole of the cause of action arose within the jurisdiction of this court. As a matter of fact, the decision of the Supreme Court in *State of Rajasthan and Others Vs. Swaika Properties and Another*, is directly on the point and it has been held by the Supreme Court in the said decision that the mere service in the State of West Bengal of notice u/s 52(2) of the Rajasthan Urban Improvement Act (35 of 1959) on the owner of land situated in the State of Rajasthan intimating the State Government's proposal to acquire that land for public purpose does not constitute an integral part of the cause of action sufficient to invest the Calcutta High Court with jurisdiction to entertain a petition under article 226 of the Constitution challenging the validity of the notification acquiring the land. Cause of action has been held to be a bundle of facts which taken with the law applicable to them gives the person concerned a right to relief against the other side. Consequently, the mere fact that the notice has been served on persons interested in this State or any of the persons interested or the legal representatives of the owner of the property at Bombay, which is sought to be proceeded against by the authority in Bombay are residing in this State is not just or sufficient ground to afford sufficient nexus or relation to provide the required cause of action even within the meaning of article 226(2) of the Constitution of India to entertain this writ petition by this court.

6. In the light of the above, I do not propose to further deal with the point urged by learned counsel, Mr. Vijay Narayan, for some of the respondents, about an earlier writ petition against similar proceedings in respect of the very same property having been rejected by the Bombay High Court.

7. For the reasons stated above, the writ petitioner shall stand dismissed on the sole question of maintainability alone. The dismissal of the writ petition shall not stand in the way of the petitioner pursuing his rights in the manner known to and in accordance with law before the appropriate court or forum No costs.