
(1971) 06 MAD CK 0005
In the Madras High Court
Case No : Writ Petition No. 986 of 1966

S. Muthusankara Nadar

APPELLANT

Vs

Deputy Commercial Tax Officer

RESPONDENT

Date of Decision : 21-06-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, Order 32 Rule 14, Order 32 Rule 15

Citation : (1972) 29 STC 242

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : S.V. Subramaniam, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Judgement

Ramaprasada Rao, J.—The petitioner is the father of one Sri Purushothaman, who along with one Mounaguruswami was carrying on

business in cardamom and other commodities in partnership under the name and style of Messrs M. Purushotham and Co., hereafter referred to as

the firm. The firm ceased to do business from 1st April, 1962, and there is no dispute on this factual situation. During the year 1958-59, the

question arose as to the liability of the firm to suffer sales tax under the Tamil Nadu General Sales Tax Act, hereinafter referred to as the Act, and

though the firm was assessed initially, later at the intervention of the Board of Revenue, the order of assessment by the original authority was

cancelled against which it is said, Tax Case No. 207 of 1970 has been filed and is pending disposal in this court. We are not, however, concerned

in this case with the year 1958-59. During the subsequent year 1959-60, the original authority again found the firm liable to pay sales tax in the sum

of Rs. 7,556.04. The firm, aggrieved against the order of assessment is reported to have filed an appeal to the Assistant Commissioner who dismissed the same and the firm has filed a further appeal before the Tribunal and is questioning the order of assessment on merits. The appeal before the Tribunal is still pending. In this state of affairs, the authorities under the Act issued the impugned order dated 30th March, 1966, which appears to be an order of distraint and purports to be in Form No. I prescribed u/s 8 of the Madras Revenue Recovery Act. The name of the defaulter as given in the impugned order threatening distraint is the petitioner as guardian of Sri Purushothaman, who was one of the partners of the quondam firm. It is not in dispute that u/s 19A of the Act Sri Purushothaman, as the partner of the quondam firm, is jointly and severally responsible for the payment of all arrears of taxes until and up to the date of the cessation of the working of the firm. But the point of challenge is that the order of distraint is squarely directed against the petitioner as father and guardian of Sri Purushothaman and as Sri Purushothaman is a person who can look after his interest and who is capable of administering his affairs, the notice as such is irregular and illegal. Learned counsel for the petitioner invited my attention to Rule 44 of the Rules framed under the Tamil Nadu General Sales Tax Act, 1959, and said that until it is established in a manner known to law that Sri Purushothaman is an incapacitated person being of unsound mind and is unable to conduct his affairs himself the notice as such is susceptible to challenge as illegal. On merits his contention is that the proceedings are premature in that the very assessment proceedings which have resulted in the creation of the arrears of tax are under appeal before one or the other of the statutory authority, namely for the year 1958-59 in this court and for the year 1959-60 before the Sales Tax Appellate Tribunal. When therefore it is not clear whether there would be any arrears at all at any given point of time in the future, it would be inequitable for the department to issue a notice of distraint and threaten to distrain the articles belonging to the petitioner on the foot that he is to be deemed to be the guardian of his son who is only physically disabled but does not appear to be mentally unsound. Learned Government Pleader, however, states that the notice issued under Form I of Section 8 of the Revenue Recovery Act is apparently directed against the movables in the custody of the petitioner but belonging to the defaulter,

namely, Sri Purushothaman, and at all material times it was never the intention of the department to distraint the articles solely belonging to the

petitioner as an individual and in which articles the son Sri Purushothaman did not have or could never have any interest.

2. In a case where the revenue intends to act under Rule 44 or under circumstances similar therein, it is essential that they should satisfy the various limbs of that rule in order to enable them to act under it. The persons for whom a guardian, trustee or agent can act are enumerated in the rule itself

and they are a minor and an incapacitated person. In so far as the minor is concerned, the position is clear and explicit as he should be a person

who is not of the full age as prescribed.

3. But in so far as an incapacitated person is concerned, the incapacity does not appear to be physical incapacity for the latter part of the rule

makes it clear that the incapacity should have an impact on the soundness of the mind of the individual and his inability to conduct the business or

his own affairs by himself. As a matter of fact this is in pari materia with the provisions of the CPC and particularly Order 32, Rule 15 . Order 32

dealing with suits by or against minors and persons of unsound mind prescribes, under Rule 15, as to what exactly are the required conditions in

cases where the subject relates to persons of unsound mind. The provisions of Order 32, rules 1 to 14, shall extend to persons adjudged to be of

unsound mind and to persons who, though not so adjudged are found by the court on enquiry, by reason of unsoundness of mind or mental

infirmity to be incapable of protecting their interest when being sued. This rule, in fact, can be taken as a rule of guidance for interpreting Rule 44 of

the Rules under the Act under consideration. Under the rule, the person can therefore be said to be an incapacitated person if he is of unsound

mind or suffers from any mental infirmity as a consequence of which he is incapable of managing or looking after his own interest or conducting his

own business. In the instant case, the only thing that is said against Sri Purushothaman is that he is unable to walk and nothing is said about the

soundness of his mind. In these circumstances, Rule 44 cannot be invoked or applied.

4. The argument of the learned Government Pleader, however, is that the impugned order does not ex facie purport to be one under Rule 44 of the

Rules but it is certainly one issued in the exercise of the powers of the authorities u/s 19A read with Section 24 of the Act. I have already referred

to Section 19A. Section 24 provides for payment and recovery of tax in case default is committed. If default, is made in paying according to the

final notice of assessment, the whole of the amount, outstanding on the date of default shall become immediately due and shall be a charge on the

property of the person or persons liable to pay the tax under this Act. Sub-clause (2) of Section 24, in addition, provides that any tax assessed on

or any other amount due under the Act from a dealer...may without prejudice to any other mode of collection be recovered as if it were an arrear

of land revenue. The other portions of the section are not necessary for our consideration. He argued that the revenue in exercise of the powers u/s

24, Sub-clause (2), has invoked the provisions of the Revenue Recovery Act and issued the notice of distraint threatening to distraint apparently the

movable properties of the petitioner as if he was the guardian of Sri Purushothaman. The further explanation given is that it was never the intention

of the revenue to attach the properties independently belonging to the petitioner; but as the defaulter at all material times was Sri Purushothaman,

son of the petitioner, and as the petitioner was from time to time acting on behalf of the petitioner by giving a guarantee and making representations

on behalf of Purushothaman and preferring objections on behalf of the quondam firm, it was bonafide thought that the petitioner was looking after

the affairs of Purushothaman and that Sri Purushothaman in turn was unable to look after his interest, It was with this object in view that the notice

of distraint was given in the manner given and the learned Government Pleader says that the revenue makes it clear to the petitioner that the

distraint if any of movable properties sought to be made or proposed under the challenged notice is directed only against the belongings of Sri

Purushothaman in the hands of the petitioner. This fair reading of the notice by the Government Pleader on the basis of the records produced

satisfies the petitioner as well. The apprehension of the petitioner was that for no fault of his an attempt was being made to distraint his articles. The

record discloses that Sri Purushothaman was maintaining that he had no funds or belongings of his own and he was unable to pay arrears of tax.

Now that the position is made clear, as it ought to be, that the distraint notice is only directed against the belongings or movables of Sri

Purushothaman in the hands of the petitioner, it is not necessary to issue a rule. I may make it, however, clear that I am not expressing any opinion

on the propriety of the notice of distraint as it cannot be issued in the instant case on the ground that Sri Purushothaman was of unsound mind. But

in view of the statement as above and as it is accepted by the petitioner, it is not necessary for me to further delve into the matter to find whether

the notice as such is properly or legally issued by the concerned authorities.

5. In this view, no further orders are passed as they are not necessary in this writ petition.