(2000) 04 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 12677 and W.M.P. No. 19437 of 1993

Susheyee Steels Pvt. Ltd. APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 17-04-2000

Acts Referred:

Revenue Recovery Act, 1980 — Section 26, 27, 36

Citation : AIR 2001 Mad 10

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Advocate : S.C Raghuran, for the Appellant; G. Baulraj, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

T. Meenakumari, J.—In this writ petition, the petitioner questions the proceedings of the second respondent dated 10-6-1993 u/s 36 of the

Revenue Recovery Act (hereinafter referred to as The Act'').

2. Learned counsel for the petitioner has argued that the petitioner''s factory which was dealing with steel rerolled products has been closed from

1975 onwards. Certain notices have been issued to the petitioner by the Sales Tax Authorities. On 10-2-1993, the second respondent served a

notice of demand on the petitioner u/s 25 of the Act demanding sales tax to the tune of Rs. 4,29,785/- for the periods from 1971-72 to 1975-76

and 1982-83 to 1985-86. The petitioner was granted ten days time for making payment.

3. Learned counsel further argued that the second respondent, before attaching the property by his notice dated 10-6-1993, effected a

Newspaper publication on 21-5-1993 for suction sale on 14-7-1993. He also argued that there is no dispute about the identification and

description of properties given in the paper publication on 21-5-1993.

4. Learned counsel for the petitioner has brought to the notice of the Court that the respondents have not complied with the principles laid down

u/s 27 of the Act before issuing notice for publication of auction. Section 27 of the Act deals with the mode of attachment. It says as follows :-

The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrears,

be paid within the date therein mentioned, the land will be brought to sale in due course of law.

5. According to the learned counsel for the petitioner, the respondents have served the notice u/s 27 of the Act only on 10-6-1993. The petitioner

was granted time till 14-7-1993 for payment of arrears. But notice of assumption u/s 25 of the Act was served by the second respondent attesting

that the landed property attached on 15-10-1991 is taken under sarkar management u/s 28 of the Act II of 1964. Hence learned counsel for the

petitioner argued that notice u/s 28 of the Act has been issued without even waiting for the completion of period given in the notice of attachment

i.e. up to 14-7-1993, Learned counsel argued that on 15-10-1991, there was no attachment of the property as stated in the notice of assumption

u/s 29 of the Act. The attachment of property will be taken place if the petitioner fails to pay the arrears within the stipulated date, Hence without

even waiting for the completion of period for payment of arrears, the respondents served notice u/s 29 of the Act, which is bad in law.

6. Learned counsel for the petitioner has further argued that as per second proviso to Section 36 of the Act, the notice shall be fixed up one month

at least before the sale in the Collector''s office and in the Taluk Cutcherry, in the nearest police station-house and on same conspicuous part of the

land. Next in this case, all notices have been served on the same date i.e., 10-6-93, which shows arbitrariness on the part of the respondents.

7. Section 27 of the Act deals with the mode of attachment. Section 28 of the Act deals with the management of attached property. Section 36 of

the Act deals with procedure in sale of immovable property. In this case, the petitioner was given ten days time for making payment. He sought

time for production of records as the factory was closed in 1975 itself. But the petitioner was served with a notice of assumption u/s 26 of the Act

as if the petitioner''s property was attached on 15-10-91. As on that date, the respondents have not served the required notices as per Sections

27, 28 and second proviso to Section 36 of the Act. All the notices have been issued on the same day i.e. on 10-6-93. Hence it is clear that the

respondents have not complied with the provisions mentioned in Sections 27, 28 and second proviso to Section 36 of the Act.

8. Though the respondents have been served, they have not filed any counter. The respondents served notice on 10-6-93 giving ten days time i.e.

up to 14-7-93 for payment of arrears. So the respondents should have waited till 14-7-93. But without even waiting for the completion of period

i.e. up to 14-7-93 the respondents have issued a notice of assumption dated 10-6-93 u/s 28 of the Act stating that the landed property attached

on 15-10-91 is taken under Sarkar management u/s 28 of the Act II of 1964. Hence the action of the respondents is said to be flagrant violation of

the Act.

9. A Division Bench of this Court in a reported judgment Ancalammai Ammal v. District Collector, Tiruchirappalli (1968) 2 MLJ 489 (sic) has

held as follows ;--

Sale notice should be affixed on some conspicuous part the land.

It has further held as follows :--

If such illegality is established, it is certainly open to the owner of the land to approach a Civil Court of High Court in exercise of the jurisdiction

under Article 226 of the Constitution of India to ask for the relief by way of setting aside the sale.

10. In this case, the petitioner was not served with the required notices as laid down under Sections 27, 28 and 36 of the Act. Hence it has to be

held that there is a clear violation of the Act and therefore the respondents have completed irregularity and illegality and notice dated 10-6-1993

issued u/s 36 of the Act notifying the sale on 14-7-1993 has to be quashed. Accordingly the same is quashed. The writ petition is allowed relying

upon the Division Bench Judgment. No costs. However, liberty is granted to the respondent to proceed fresh according to law. Consequently.

W.M.P. No. 19437/93 is closed.

