(1998) 11 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 3416 of 1996 and Writ Miscellaneous Petition No. 5504 of 1996

V. Rajendran APPELLANT

Vs

Tax Recovery Officer RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:
Income Tax Rules, 1962 — Rule 68B

Citation : (2000) 246 ITR 812

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : V. Ramachandran, for K. Mani, for the Appellant; S.V. Subramaniam, for C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The petitioner''s grievance is with regard to the proclamation of sale issued in respect of properties which he asserts

belong to him, having been acquired from his grandfather and his mother. The sale was for the purposes of recovery of the arrears of tax due from

his father. The Revenue had attached those properties on October 27, 1974, and had also issued a notice under Rule 2 of Schedule II. The

proclamation of sale, however, was issued only in the month of March, 1996. The petitioner was not heard before that proclamation was issued

and no notice had been given to him.

2. This court after issuing notice to the respondents in this petition did not prevent the Tax Recovery Officer from proceeding with the sale. The

only order that was made was that the confirmation of sale would be stayed till the disposal of the main petition. It is now submitted by counsel for

the Revenue that the sale has not been held. It is, therefore, clear that any fresh sale can no longer be possibly held pursuant to a fresh

proclamation as no such proclamation can be issued now.

3. The impugned proclamation was issued in March, 1996, in view of the deadline fixed, viz., on March 31, 1996, for issue of the proclamation.

The deadline was later extended to March 31, 1997.

4. The Revenue after having issued the proclamation and not having proceeded with the sale, despite no impediment having been placed, no fresh

proclamation can now be issued in view of Rule 68B, Sub-rule (5) of the Second Schedule to the Income Tax Act. Rule 68B(3) reads thus :

Where any immovable property has been attached under this Part before the first day of June, 1992, and 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 also become conclusive or

final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

Rule 68B(1) prescribes a period of three 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, as the period within which the sale shall be

effected. Rule 68B(4) provides that where the sale of an immovable property is not made in accordance with the provision of Sub-rule (1), the

attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this

rule.

5. Though the proclamation of sale was issued prior to March 31, 1996, the sale not having been held pursuant to the proclamation, despite the

absence of any order of the court, which prevented the sale being held, no fresh proclamation can now be issued, as none of the circumstances

visualized in the proviso to Rule 68B are attracted so as to extend the period.

6. The relief to be granted to the petitioner has now to be moulded in the light of the circumstances as they are now prevailing. It is not necessary

to set aside the impugned proclamation of sale. It is sufficient to give a declaration that the sale not having been held pursuant to the proclamation

no further proclamation of sale shall be issued in respect of the properties which had been attached prior to 1992. It is made clear that the contention of the petitioner that the deceased assessee was not the owner of the property at all is available to the petitioner and that claim is not to

be regarded as having been negatived by this order. No costs. W. M. P. No. 5504 of 1996 is dismissed.

