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Shantharam Vs. the Special Commissioner and Commissioner of Land Reforms,

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Court : Chennai

Decided On : Oct-17-2006

Reported in : 2006(5)CTC477

Judge : R. Banumathi, J.

Acts : Tamil Nadu Urban Land Tax Act - Sections 10, 11, 14, 15, 19(5), 20, 30, 30(3) and 33; Code of Civil Procedure (CPC) , 1908 - Sections 33(2) - Order 9, Rule 13; Indian Penal Code (IPC) - Sections 193, 196 and 228; Limitation Act - Sections 5; Contempt of Courts Act; Bihar and Orissa Cooperative Societies Act

Appeal No. : Writ Petition No. 452 of 2001

Appellant : Shantharam

Respondent : The Special Commissioner and Commissioner of Land Reforms, ;The Assistant Commissioner, Urban Land T

Advocate for Def. : Haja Nazirudeen, Spl. G.P. [Taxes]

Advocate for Pet/Ap. : J. Antony Jesus, Adv.

Disposition : Petition allowed

Judgement :
ORDER

R. Banumathi, J.

1. The Petitioner seeks for a Writ of Certiorarified to call for the orders of the first Respondent dated 16.11.2000, confirming the Urban Land Tax Assessment, Demand Notice issued by the third Respondent and quash the same.

2. For the Fasli year 1391 to 1410, under Section 14 of the Tamil Nadu Urban Land Tax, [for short, 'the Act'], Tax was determined at Rs. 1,68,520/-, payable by the Petitioner in Assessment No. 1338/91 and 1339/91 relating to S. Nos. 1015 and 1016 of Kulavanigarpuram Village, Palayamkottai, Thirunelveli District. Demand of Urban Land Tax was issued under Form 6 Notice, on 25.09.2000, calling upon the Petitioner to pay Rs. 1,68,520/-.

3. Challenging the Demand Notice, the Petitioner had preferred revision Petition before the first Respondent. Confirming the Demand Notice, the first Respondent has rejected the Revision Petition by the impugned order. However in the impugned order, the Petitioner was advised to take recourse under Section 19(5) of the Act and file an application with necessary details, so that future Tax Liability could be avoided. It was observed that the order of the Assistant Commissioner under Section 19(5) shall have prospective application from the Fasli in which the Section 19(5) application is filed.

4. The learned Counsel for the Petitioner has contended that the Petitioner had sold the entire holdings to 13 parties and that the same was not considered by the third Respondent. It was further submitted that no enquiry, contemplated under Section 10 or 11 of the Act, was held and had such an enquiry been held, the Petitioner would have had the opportunity showing that he is not the owner of the urban land. It was further submitted that under Section 15 of the Tamil Nadu Urban Land Tax Act, notice of demand should be made for each Fasli year and a consolidated demand for a period of fifteen years is arbitrary and illegal.

5. The learned Special Government Pleader [Taxes] has admitted that the Petitioner had been given the opportunity to file application under Section 19(5) of the Act and if the Petitioner is aggrieved, he can have recourse to Section 19(5) by filing the application with necessary details.

6. It is seen from the records that Form-4B notice in C. Nos. 1338 and 1339/1391 was issued from the office of the third Respondent on 25.10.1993, inviting objection for the proposed assessment on Urban Land Tax for the lands in S. Nos. 1015 and 1016 at Kulavanigarpuaram Village, Palayamkottai Taluk. The date of hearing was fixed on 29.11.1993 an the Notice was served on 13.11.1993 and it was received by the Petitioner's wife Rajalakshmi. It is stated that the Petitioner did not appear for enquiry on 29.11.1993 and hence, exparte assessment was passed.

7. According to the the Petitioner, he has purchased the property to an extent of 79.07 cents by the Sale Deed dated 09.04.1985 from one Glory Estherammal and that between 12.04.1985 to 24.08.1985, the Petitioner had sold the entire extent of the above said land to 13 persons and possession was also delivered to them and the sale deeds were executed and the revenue records have also been transferred in the name of the purchasers. It was contended that the Petitioner having sold the entire extent, he was not holding any urban land in the said S. Nos. 1015 and 1016.

8. Form 4B Notice was served upon the Petitioner's wife. The Petitioner had neither appeared for enquiry nor produced the documents. Hence the exparte assessment was passed. Any Assessment Order passed by the Assistant Commissioner of Urban Land Tax under Section 10 or Section 11 is appealable to the tribunal under Section 20 of the Act. Without filing appeal, the Petitioner had preferred the revision, perhaps because exparte assessment had been passed against him.

9. Under Section 30(3) of the Act, every application to the Commissioner for the exercise of revisional powers under Section 30 shall be preferred within three months from the date on which the order, regarding which the application relates, was received by the applicant. The revision was filed in 2000, challenging the

assessment passed in June 1994 and the Revision was not filed in time.

10. Before the first Respondent also, the Petitioner did not produce any documents. The first Respondent rejected the revision, advising the Petitioner to take recourse to Section 19(5) of the Act. However, the first Respondent observed that the order of the Assistant Commissioner under Section 19(5) shall have prospective application from the Fasli in which Section 19(5) application is filed. According to the Petitioner, he has sold away the entire holdings in 1985. In support of his contention, the Petitioner had produced Encumbrance Certificate which shows various sale transactions from April 1985 to August 1985. Hence, filing application under Section 19(5) and the order of the Assistant Commissioner having prospective application from the Fasli in which the Section 19(5) application is filed, may not have any significance.

11. Concedingly, exparte assessment has been passed against the Petitioner. Under Section 33 of the Act, Tribunal/Commissioner of Land Reforms, the Director, the Assistant Commissioner, or the Urban Land Tax Officer or any officer empowered under the Act shall, for the purposes of the Act, have the some powers as are vested in a Court under the Code of Civil Procedure, when trying the suit in respect of the following matters viz.,

(a)enforcing the attendance of any person and examining him on oath;

(b)requiring the discovery and production.

(c)receiving evidence on affidavit;

(d)issuing commissions for the examination of witnesses;

Any proceeding before the Tribunal and the above said authorities shall be deemed to be a 'judicial proceeding' within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

12. As per Section 33(2), in any case where the exparte order of assessment is made, the provisions of the CPC shall apply in relation to the such order. Section 33(2) reads as under:

33(2). In any case in which an order of assessment is passed exparte under this Act, the provisions of the Code of Civil Procedure, 1908 [Central Act V of 1908] shall apply in relation to such order as it applies in relation to a decree passed exparte by a Court.

The investment of this power makes the proceedings under the Act 'judicial' instead of being quasi judicial. Section 33(2) specifically makes the Order and Rules of CPC in respect of the exparte orders applicable to the exparte assessments. if for any reason personal appearance or production of evidence was not made on the day of the hearing and exparte orders of assessment has been made, a Petition to set aside the exparte assessment and reassess could be made before the Authority who passed the order of assessment without resorting to appeal under Section 20 or by filing revision under Section 30. In the impugned order, the Petitioner has been directed to file application under Section 19(5) of the Act. The first Respondent ought to have directed the Petitioner to file application before the third Respondent to set aside the exparte assessment, invoking the provisions of CPC i.e. under Order 9, Rule 13 CPC.

13. The impugned assessment in C. Nos. 1338 and 1339/1391 is dated 03.06.1994. For filing application under Order 9, Rule 13 CPC, to set aside the exparte order, stipulated time is only thirty days. The question might arise, at this juncture, 12 years after the impugned order of assessment, whether the Petitioner could be directed to file application under Order 9 Rule 13 CPC. As noted earlier, the Assistant Commissioner and other authorities constituted under the Act had not merely trappings of a Civil Court. As stated in Section 33(1), to a Civil Court where the Authority is a trappings of the Civil Court, the provisions of the Limitation Act are applicable. In [P. Sarathy v. State Bank of India], the Supreme Court has held as follows:

In Thakumar Jugal Kishore Sinha v. Sitamarhi Central Cooperative Bank Ltd. , this Court while considering the question under the Contempt of Courts Act, held that the Registrar under the Bihar and Orissa Cooperative Societies Act was a Court. It was held that the Registrar had not merely the trappings of a Court but in many respects he was given the same as was given to an ordinary Civil Court by the

Code of Civil Procedure including the powers to summon and examine witnesses on oath, the power to order inspection of documents and to hear the parties.

Therefore, every jurisdiction is vested with the third Respondent to receive application to condone the delay in filing the application under Order 9, Rule 13 CPC, to set aside the exparte order of assessment dated 03.06.1994. The first Respondent, Commissioner of Land Reforms itself having the trappings of the Civil Court and since he issued appropriate directions to the Petitioner, the impugned order is liable to be set aside.

14. This Writ Petition is allowed. The impugned order is set aside. The Petitioner is directed to file application under Order 9 Rule 13 CPC, to set aside the exparte order of assessment and the application under Section 5 of the Limitation Act to condone the delay in filing the application under Order 9, Rule 13 CPC, within a period of eight weeks from the date of receipt of a copy of this order. On such applications being filed, the third Respondent shall consider the applications and pass orders in accordance with law.

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