IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 8637 of 2003

Between:

1. S.V.Gopala Rao, S/o.late Venkata Rao, Aged about 69 years,

   Occ: Advocate, R/o.7-8, Velama Street, Near Gandhi Statue,
   Bobbili - 535 558, Vizianagaram Dist

2 S.Satish Kumar, S/o. S.V.Gopala Rao, Aged about 37 years,

   Occ: Teacher, R/o.7-8, Velama Street, Near Gandhi Statue,
   Bobbili - 535 558, Vizianagaram Dist

3 S.Venkata Ramana Rao, S/o. S.V.Gopala Rao, Aged about 32 years,

   Occ: Private employee, R/o.7-8, Velama Street, Near Gandhi Statue,
   Bobbili - 535 558, Vizianagaram Dist

4 S.Asiyamma, W/o. S.V.Gopala Rao, Aged about 62 years,

   House wife, R/o.7-8, Velama Street, Near Gandhi Statue,
   Bobbili - 535 558 Vizianagaram Dist

5 S.Bapayamma, W/o. late Venkata Rao, Aged about 85 years,

   R/o.7-8, Velama Street, Near Gandhi Statue,
   Bobbili - 535 558, Vizianagaram Dist

..... PETITIONERS

AND

1 The Commissioner of Income Tax, Ayakar Bhavan,

Dabagardens, Visakhapatnam.

2 The Tax Recovery Officer, Range-3, I.T. Department,
Ayakar Bhavan, Dabagardens, Visakhapatnam.

3 Paluri Satyam Naidu, S/o. Gowrinaidu, Major, Occ: Agriculture,
Barli Village - 535 557, Balijipeta Mandal,
Vizianagaram Dist

4 Tentu Satyanarayana, S/o. Bangarunaidu, Major,
MIG-137, Vuda Phase II, Gandhinagar, Pedagantyada
Visakhapatnam - 530 044.

5 Thummagunta Yamini Krishna S/o. Muralikrishna, Major,
15-25, F-Block Lakshminagar, Gopalapatnam PO,
Visakhapatnam- 530 027

6 Pogiri Krishna Rao, S/o. Papinaidu, Major,
Raovari Street, Bobbili,
Vizianagaram District - 535 558

7 Kumari Odisela Lakshmi, D/o. Arjuna Rao, Major,
4-181, Harijan Colony, Vidyanagar, Gopalapatnam,
Visakhapatnam - 530 027

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly in the nature of Mandamus by calling for the records relating to the sale proclamation in Form No. ITCP 13 vide proceedings No.SR1/87-88/VZM/IT Dt.6/1/03 issued by the respondent No.2 herein for conducting auction on 19-02-2003 in respect of petitioners properties mentioned therein, and also records relating to the confirmation of sale issued in Form No. ITCP 18 Dt.31/3/2003 in favour of the respondents 3 to 7 herein as auction purchasers of the said properties and declare the auction conducted on 19/2/2003 by the respondent No.2 in respect of the petitioners properties mentioned in the said sale proclamation issued in Form ITCP No. 13 vide proceedings No. SR 1/87-88/VZM/IT Dt.6/1/03 as arbitrary, illegal, without jurisdiction, barred by limitation and also violative of Rule 68-B of Second schedule to the Income Tax Act, 1963, and consequently declare the confirmation of sales in Form No. ITCP 18 Dt.31/3/2003 issued by the respondent No.2 in favour of respondents 3 to 7 as null and void and pass such other order.

Counsel for the Petitioner: Mr.N.R.Siva Swamy

R-1: (Acknowledgment returned without signatuare.) None appeared

Counsel for Respondent No.2: Mr. S.R. Ashok & M. Vijaya Saradhi Reddy.

R-3: (Notice sent.) None appeared

R-4: (Notice returned unserved.) None appeared

Counsel for the Respondent No.5: Mr.D.L.Kiran Prakash

R-6 & R-7: (Notice served.)None appeared.

The Court made the following:

ORDER: (Per the Hon'ble BILAL NAZKI, J)

Heard learned Counsel for both the parties and perused the record.

The controversy is very short and mostly the material facts are not at dispute. The petitioners challenge a sale on the ground that the sale was affected beyond time. The dates which are material, as stated above, are not in dispute. The order became final somewhere in 1991-1992 and according to Rule 68-B of the Income Tax Act, 1961(for short 'the Act'), the order had to be deemed to have come into force 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 had been attached and had become conclusive. As such, the time would start running from 31-03-1993 since Rule 68-B of the Act itself was incorporated by the Finance Act, 1992 with effect from 01-06-1992. Therefore, 01-06-1992 was taken as a date for reference. The assessment, in the present case, has been completed before 01-06-1992. In between, the department tried to auction the property but cancelled the auction because the price procured in such auction was not acceptable to the department. Therefore, the department claimed one year's further time in accordance with proviso to sub-rule

1 of Rule 68-B of the Act. The matter was also pending in the High Court and almost for a period of five years the High Court continued the stay. Therefore, the Senior Counsel appearing for the respondents submits that the time during which the stay of the High Court remain operative has to be excluded. He also contends that one year's further time has to be granted because in one of the auctions, the property was not sold. He further contends that there has been amendment to Rule 68-B of the Act, vide notification No.9995 dated 01-03-1996, by which the period of three years mentioned in Rule 68-B of the Act has been extended to four years. Therefore, the auction, which was conducted on 19-02-2003 was within time, as the order had become conclusive by deeming provision in Rule 68-B (3) of the Act by 31-03-1993.

Learned Counsel for the petitioners does not dispute this factual position but he contends that the so called amendment to Rule 68-B by notification No.9995 could not be given effect to as it was ultra virus. He submits that Rule 68-B itself was inserted by the Finance Act, 1992 by an Act of Parliament. An Act of Parliament could not be amended by any authority whatsoever much less by the Board under its powers under Section 119 of the Act.

The Senior Counsel appearing for the respondents, on the other hand, submits that under Rule 94 of the Act, the Board has power to issue circulars by removing difficulties.

We failed to understand what difficulty was removed by the Board by amending a provision which had been enacted by the Parliament. Even otherwise, we have not seen any power under Section 119 of the Act, which gives any power to the Board to issue such notifications. Therefore, in our view, Rule 68-B (1) of the Act as on today lays down the period of three years alone and the notification referred to by the respondents has no effect at all. Therefore, clearly the sale was carried beyond time and as such set aside.

The writ petition is allowed. However, the respondents shall have

liberty to take steps for recovery, if permissible in law. No order as to costs.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Ninth day the august of Two thousand and four.

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(BILAL NAZKI, J)

_____ **(S.ANANDA REDDY, J)**

Date: 09-08-2004

Ghn/da

To

1 The Commissioner of Income Tax, Ayakar Bhavan,
Dabagardens, Visakhapatnam.

2 The Tax Recovery Officer, Range-3, I.T. Department,
Ayakar Bhavan, Dabagardens, Visakhapatnam.

3. Two CD copies.