In the High Court of Judicature at Madras

Dated : 07.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.38674 & 38675 of 2016
& WMP.Nos.33128 to 33130 of 2016

Breeze Hotel Ltd., rep.by its
Authorized Representative
Mr.S.K.Kumar ...Petitioner

Vs

1.The Assistant Commissioner (CT),
Kilpauk Assessment Circle,
Chennai-10.

2.The Sub-Registrar (District
Registrar Cadre), Purasawalkam,
Chennai-7. ...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of (i) a Writ of Certiorarified Mandamus to call for the records on the files of the 2nd respondent herein in E.C.No.4959 dated 16.8.2016, quash the same and direct the 2nd respondent to delete the encumbrance on property in Survey No.3123/1 created on 2.6.2016 & Survey No.3123/1A9 created on 3.6.2016 in Document No.21/2016 and (ii) a Writ of Certiorari Calling for the records on the files of the 1st respondent herein in TIN.No. 33941121428/07-08 to 11-12 dated 2.9.2015 and quash the same.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. In these writ petitions, the petitioner has challenged an encumbrance certificate dated 16.8.2016, in and by which, the property owned by the petitioner has been attached by the second respondent for the dues payable to the respondent Department and a recovery notice issued by the first respondent dated 2.9.2015.

3. The case of the petitioner is that their vendor's vendor was not communicated with the orders of assessment and as such, assessments were completed and now, the petitioner is faced with the difficulty, after having become a 100% shareholder of the properties and the business, because of the recovery notice and the order of attachment.

4. It is not known as to whether the petitioner was diligent enough before the purchase of the properties and as to whether they verified the sales tax dues and other statutory dues, which are payable to the Government. This Court is not concerned with the litigation, which had resulted in the sale of the properties. The petitioner, claiming to be the purchaser of the properties, ought to have exercised due care and caution to verify as to whether there are any dues payable by their vendors to the Commercial Taxes Department.

5. Be that as it may, the petitioner's case is that they do not have any records and that their vendor's vendor, who was now treated as a defaulter, was served with notices and copies of the assessment orders. When a request was made under the Right to Information Act, the Information Officer had stated that the assessment proceedings were issued. It is not clear from the reply of the Information Officer as to whether the assessment proceedings were issued to the petitioner or the petitioner's vendor's vendor.

6. The learned Additional Government Pleader, on instructions, produced the original file, from which, it is seen that statements were recorded from one Mr.S.P.C.Balasubramaniam, who was the authorized signatory of the petitioner during the relevant point of time i.e during 2012. Further, it is seen that pursuant to the VAT audit, notices, which were issued during 2013, were also received by the said Mr.S.P.C.Balasubramaniam and his signature is contained in the said notices. Therefore, it prima facie appears to be a case where the proceedings were served on the dealer and it is highly doubtful at this distant point of time, the petitioner can take a stand that assessment orders were not communicated to them.

7. In any event, since the petitioner states that they did not have the copies of any of the documents, this Court is inclined to direct the first respondent to furnish the copies of assessment orders for the relevant assessment years. It is made clear that this Court has not expressed any opinion on the validity of the assessments. However, on the grounds raised

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by the petitioner, this Court cannot set aside the recovery notice nor lift the attachment of the properties or property at this juncture. It is open to the petitioner to work out their remedies in a manner known to law after receipt of the copies of the documents from the Department. The first respondent is directed to furnish copies of the assessment orders for the relevant years within a period of two weeks from the date of receipt of a copy of this order.

8. The writ petitions are disposed of with the above directions. No costs. Consequently, the above WMPs are closed.

07.11.2016

Internet : Yes

To
1.The Assistant Commissioner (CT), Kilpauk Assessment Circle, Chennai-10.
2.The Sub-Registrar (District Registrar Cadre), Purasawalkam, Chennai-7.

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