IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7729 of 2006
and
WPMP. No.8496 of 2006

P. RAJAM ..PETITIONER

Vs.

1. THE COMMERCIAL TAX OFFICER,
EGMORE ASSESSMENT CIRCLE, CHENNAI.

2. THE COMMERCIAL TAX OFFICER,
PORUR ASSESSMENT CIRCLE, CHENNAI-87.

3. THE RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL-II, 4TH FLOOR,
SPENSER TOWERS, 770 A,
ANNA SALAI, CHENNAI-2.

4. M/S. OM SAPTAGIRISWARA PACKERS LTD.,
FLAT NO.6, NO.37, CASA MAJOR ROAD,
EGMORE, CHENNAI-8. ..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent in relation to Notice of Demand issued in RC 590/01/A3 dated 16.01.04 and Notice of Attachment issued in RC. No.590/01/A3 dated 6.1.06 and the Notice of sale of land issued in proceedings No. Nil dated 06.01.06 and quash the same and issue a consequential direction to the respondents to drop the proceedings initiated under Tamilnadu Revenue Recovery Act 1864.

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For Petitioner : Mr. P.S.Sivasubramanian

For Respondents : Mr.K.Venkatesh,
Government Advocate.

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O R D E R

The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the notice issued by the second respondent demanding payment of sales tax which was due and liable to be paid by the fourth respondent dealer and consequential notice dated 06.01.2006, proposing to bring the property owned by the petitioner for sale.

2. Admitted facts are that the property was purchased by the petitioner in auction conducted by the Debt Recovery Tribunal No.II (DRT), Chennai, on 12.03.2003 at 2.30.p.m in the matter filed by Bank of Maharashtra against the fourth respondent. The petitioner was a bonafide purchaser for valid consideration and sale certificate was issued in favour of the petitioner on 29.8.2003. Admittedly, on that date, when the property was purchased by the petitioner, there was no attachment of the property made by the sale tax department in respect of sales tax due payable by the fourth respondent and it is seen from the records that only on 06.01.2006, an attachment order was passed. Admittedly, there is no record to show that the Commercial tax department has proceeded against the property for recovery of sales tax due. Thus, three years after the petitioner's purchase, now the attempt made by the commercial tax department to bring the petitioner's property for sale is without jurisdiction.

3. In the parawise instructions given by the first respondent to the learned Special Government Pleader (Taxes), vide letter dated 04.12.2007, the respondent has referred to section 24A of the Tamil Nadu General Sales Tax Act, stating that if the recovery proceedings are pending, the transfer will be void as against the claim in respect of tax due. As pointed out earlier, there is no record to show that recovery was pending against the property on the date, the property was brought for sale by the DRT at the instance of secured creditors namely, Bank of Maharashtra and the attachment order was passed only after three years after the sale certificate was registered in favour of the petitioner. Therefore, the attachment order passed on 06.01.2006 is unsustainable in law. That apart, the Bank of Maharashtra, being secured creditor, have got first charge over the property and their claim precedes claim of all other parties including the Commercial taxes authorities. In this regard reference can be made to the judgment of the Full Bench of this Court in Assistant Commissioner (CT) Vs.Indian Overseas Bank and ors, (FB) reported in 2016 (6) CTC 769.

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4. Thus, for all the above reasons, the writ petition is allowed and the impugned proceedings, being illegal, is quashed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
1. THE COMMERCIAL TAX OFFICER,
EGMORE ASSESSMENT CIRCLE, CHENNAI.

2. THE COMMERCIAL TAX OFFICER,
PORUR ASSESSMENT CIRCLE, CHENNAI-87.

3. THE RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL-II, 4TH FLOOR,
SPENSER TOWERS, 770 A,
ANNA SALAI, CHENNAI-2.

+1cc to Mr.P.S.,Sivasubramanian, Advocate sr.58263

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nm(co)
ss(6/10/2017)

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