IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19037 of 2010 and
M.P.No.1 of 2010

Sri Venkateswara Seeds,
Represented by its Proprietor
Mr.N.Govindharajan, ... Petitioner

Vs.

The Commercial Tax Officer,
Dharapuram. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the proceedings of the respondent in Ref: 175/2001/A3 dated 26.05.2010 and to quash the same.

For Petitioner : M/s.A.Bakkiya Lakshmi
for Mr.Joseph Prabakar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

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ORDER

Heard Ms.A.Bakkiya Lakshmi, representing counsel for Mr.Joseph Prabakar, the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader for the respondent.

2. The petitioner has filed this Writ Petition, challenging the notices issued by the respondent, dated 26.05.2010, proposing to bring the petitioner's property for sale, if the petitioners fails to remit a sum of Rs.77,20,849/- being the sales tax arrears payable by M/s.Selvanayaki Gin & Press Ltd., Dharapuram, who had defaulted in payment of sales tax.

3. The question would be as to whether the Commercial Tax Department can proceed against the petitioner for recovery of the default committed by M/s.Selvanayaki Gin & Press Ltd., Dharapuram. The answer to the question should be negative for the following reason.

4. The said defaulting Company/Dealer had availed loans from the State Bank of India and the Krishnagiri Taluk Agricultural Producers Co-operative Marketing Society Limited. The petitioner has purchased the property owned by the defaulting dealer, in a public auction conducted pursuant to an order passed by the Debts Recovery Tribunal (DRT), Madurai, in T.A.No.455 of 2008. Therefore, it has to be seen as to whether the petitioner has purchased the property lawfully.

5. Admittedly, when the petitioner has purchased the property in an auction conducted by the DRT, it should be valid and binding for all purposes. In the instant case, the Commercial Tax Department proposes to proceed against the petitioner's property for recovering the sales tax arrears payable by the defaulting Company M/s.Selvanayaki Gin & Press Ltd., Dharapuram. It is not, as if, the Commercial Tax Department was unaware of the proceedings initiated by the State Bank of India, the secured creditor. The Commercial Tax Department is stated to have attached the petitioner's property and brought the property for sale by publishing the District Gazette on 26.12.2001. However, the sale did not fructify. Subsequently, the Commercial Tax Department moved the DRT to enforce its claim based on the attachment effected on the property.

6. The DRT did not grant any relief to the Commercial Tax Department and the proceedings initiated by them attained finality. What is important to note is that the bank initiated recovery proceedings and approached the DRT in the year 1989 itself.

7. The original application in O.A.No. 771 of 1999 was filed before DR.T-I/Chennai, thereafter, it was transferred to DRT, Coimbatore, and re-numbered as T.A.No.2235 of 2002 and subsequently, transferred to Debts Recovery Tribunal, Madurai and re-numbered as T.A.No.455 of 2008.

8. Thus, the State Bank of India, a secured creditor was the first to approach the Tribunal for recovery of their dues by filing the application in the year 1999. The Tribunal has clearly ruled in favour of the secured creditor and held that the State Bank of India is a secured creditor under law and they are not only having first charge over the property but also having priority of charge.

9. Therefore, the Commercial Tax Department appears to have made a half baked attempt to recover its dues by initiating auction proceedings belatedly and not pursued the matter after the DRT turned down its claim.

10. Thus, the petitioner, being a bonafide purchaser for valuable consideration in a public auction conducted by the DRT is entitled to enjoy the property in its individual right and the Commercial Tax Department cannot proceed against the petitioner or their property for recovery of the sales tax arrears payable by M/s.Selvanayaki Gin & Press Ltd., Dharapuram, the defaulting company dealer.

11. For the above reasons, the Writ Petition is allowed and the impugned order is quashed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msm

To

The Commercial Tax Officer,
Dharapuram.

+1 cc to Mr.Joseph Prabakar Advocate sr 80036
+1 cc to Spl Government Pleader sr 80058

W.P.No.19037 of 2010

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