IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1461 of 2004

N.Selvam ... Petitioner

Vs.

1. The Commercial Tax officer,
   Hosur North (F.A.C)
   S.945, Appavu Nagar,
   Hosur North - 635 109.

2. The Deputy Commissioner,
   Tax Officer, Hosur North,
   Hosur. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the first respondent in Proc. R.O.C. 2436/1996 A.3 and dated 05.04.2003, and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader(Taxes)

O R D E R

The Petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records on the file of the first respondent in Proc. R.O.C. 2436/1996 A.3 and dated 05.04.2003, and quash the same as illegal, incompetent and without jurisdiction.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader (Taxes) appearing for the respondents.

3.The petitioner is the owner of the property and purchased the property situated at SIDCO Industrial Estate. The property originally belonged to one Iminent Rubber Private Limited and was mortgaged with the Tamil Nadu Industrial Investment Corporation Limited (in short, TIIC) on 03.03.1988. Since the dues were not properly paid, TIIC took possession of the property on 02.02.1996 and the property was brought to public auction on 11.03.1996 and the same was sold to one P.L.Vendhan. After the said P.L.Vendhan purchased the property, the sale deed was also executed by TIIC on 19.02.1997 and thereafter, the said P.L.Vendhan sold the property to the petitioner on 11.12.1998.

4.Now, in this writ petition, the petitioner challenges the demand notice of the first respondent dated 05.04.2003 on the ground that at the time of purchasing the property, there is no charge created by the first respondent against the property and when the charge is not created against the property operation of Section 24(A) of the Tamil Nadu General Sales Tax Act, 1959, will not come. The said Section 24(A) of the Act imposed a condition if anyone purchasing a property of defaulting company that purchaser must obtain Sales Tax Clearance Certificate from the Sales Tax Department.

5.The learned Additional Government Pleader(Taxes) appearing for the respondents does not dispute the dates regarding the purchase of the property.

6.Admittedly the present petitioner purchased the property on 11.12.1998. Though the petitioner's vendor purchased the property on 11.03.1996, even then, the first respondent did not create any charge over the property. However, on the counter this Court noticed that the first respondent created charge over the property on 31.10.1996 only against the TIIC. At the relevant point of the time, even the TIIC is not a owner of the property and prior to charge, TIIC sold the property to the petitioner's vendor. Hence, this Court is convinced that when there is no charge over the property, the operation of Section 24(A) of the Act insisting to get clearance certificate from the Sales Tax Department does not arise.

7.On the second contention, the learned counsel for the petitioner raised that Section 55(4)(b) of the Transfer of Property Act, has no application in this case. It is useful to extract Section 55(4)(b) of the Transfer of Property Act hereunder:

> "55(4) (b) Where the ownership of the property has passed to the buyer before

payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered."

8.The above said Section will not attract the present case on hand, since the first charge is created on 11-03-1996. However, the petitioner is the second purchaser. Even prior to the charge, the property was sold by way of public auction on 11-03-1996 and possession handed over on 19.02.1997. When property was sold prior to the charge, Section 55(4)(b) of the Transfer of Property Act cannot be imposed against the second purchaser and the said Section relates to only seller entitlement. Admittedly, the respondent is not the seller.

9.In view of the above, this Court is inclined to grant the relief sought for by the petitioner by allowing the writ petition. Accordingly, the writ petition is allowed and the impugned demand notice issued by the first respondent dated 05.04.2003 is set aside. However, this order will not stand on the way of the Department to take necessary action against the defaulter. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msvm/pri

To

1. The Commercial Tax officer,
Hosur North (F.A.C)
S.945, Appavu Nagar,
Hosur North - 635 109.

2. The Deputy Commissioner,
Tax Officer, Hosur North,
Hosur.

+1cc to M/s.V.Ragavachari, Advocate, S.R.No.50420

W.P.No.1461 of 2004

GJ II(CO)
CU(11/08/2017)