IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19723 of 2006 &
M.P.No.2 of 2006

1.A.Kasim Mohamed
2.K.Sajeetha Banu ... Petitioners

Vs.

1.The Commissioner of Commercial Taxes,
Office of Commercial Tax Department,
Greams Road, Chennai - 600 006.

2.The Assistant Commissioner,
Commercial Tax Office,
Collector Office Circle, Kancheepuram.

3.The Commercial Tax Officer,
Ponneri Assessment Circle,
Ponneri - 601 204.

4.St. Antony's Guild,
Rep. by its Director,
Upparapalayam Village,
Ponneri Taluk, Thiruvallur District. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents 1 to 3 from bringing to auction the land measuring an extent of 4.40 acres in S.F.Nos.330/4, 330/3, 316/1E2, 332/3 and 328/1A1 in No.111, Alamatti Village, Ponneri Taluk, Thiruvallur District owned by the petitioners in view of the proviso to Section 24-A of the Tamil Nadu General Sales Tax Act.

For Petitioners : Ms.C.Uma
For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

The petitioners are before this Court contending that they have purchased the property in question from Prateep.K.Shah and Kanthilal.N.Shah by a registered Sale Deed on 25.09.1998 and they are in possession and enjoyment of the property. There was no encumbrance. While so, they were shocked and surprised to know about the auction proceedings. The reason stated by the Sales Tax Department bringing the property for sale is for recovery of the alleged tax dues of the fourth respondent.

2.The fourth respondent is not the petitioners' vendor, but the fourth respondent appears to have sold the property to Prateep.K.Shah and Kanthilal.N.Shah. Though the petitioners have not purchased the property from the fourth respondent, they cannot be put to peril. From the written instructions given by the Assessing Officer to the learned Special Government Pleader vide letter dated 23.08.2006, it is evidently clearly that there were no proceedings initiated by the Sales Tax Department to bring the property for sale and there was no attachment of the property nor was there any record created in the encumbrance register maintained by the Sub-Registrar.

3.The defaulter is the fourth respondent and the fourth respondent had filed a writ petition in W.P.No.13071 of 1989, challenging the notice issued by the third respondent in Form 5 dated 24.04.1989 and the said writ petition was dismissed. Thus, the petitioner being a purchaser of the property for a valuable consideration and no proceedings were pending/initiated against the said property by way of attachment prior to the petitioners' purchase, the petitioner cannot be made liable for the sales tax dues payable by the fourth respondent, as the petitioner has no privity with the fourth respondent.

4.Accordingly, the writ petition is allowed and the impugned proceedings are quashed. It is open to respondents 2 and 3 to initiate appropriate proceedings against the fourth respondent for recovery of the sales tax arrears. At the time when the writ petition was admitted, an interim order was granted and a condition was imposed that the petitioner should pay Rs.5,00,000/-. It is not known as to whether the petitioner has complied with the said condition. If the petitioner has complied with the said condition, then it is open to the petitioner to approach respondents 2 and 3 for refund of the said amount. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

abr

To

1.The Commissioner of Commercial Taxes,
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Greams Road, Chennai - 600 006.

2.The Assistant Commissioner,
Commercial Tax Office,
Collector Office Circle, Kancheepuram.

3.The Commercial Tax Officer,
Ponneri Assessment Circle,
Ponneri - 601 204.

+1 Cc to Spl. Govt. Pleader sr 60178.
+1 Cc to Ms. C. Uma, Advocate sr 60598.

W.P.No.19723 of 2006

NM(CO)
sp(14/09/2017)