IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17136 of 2003
and
W.P.M.P.No.21423 of 2003

P.Sellamamal ... Petitioner

Vs.

1. The Commercial Tax Officer,
   Perundurai, Erode District.

2. S.Ramanathan ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the proceedings of the 1st respondent in Na.Ka.No.2780/2001/A3 dated 29.05.2003 and quash the same.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.K.Venkatesh
Government Advocate for R1

O R D E R

Heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the first respondent.

2.Though notice has been served on the second respondent and his name has also been printed in the cause list, none appears for the second respondent.

3.The petitioner has filed this writ petition, challenging the order of attachment of the petitioner's property and for recovery of the tax dues payable by the second respondent. The impugned proceedings has been issued on the ground that the second respondent was carrying on business in the property owned by the petitioner and there is a registration certificate granted to the second respondent under the TNGST

Act. The undisputed fact being that the second respondent entered into a registered lease with the petitioner on 18.11.1989 and the lease was cancelled by a registered document dated 30.12.2002, registered as Document No.2990 of 2002, on the file of the Sub-Registrar, Perundurai. Thereafter, the petitioner applied for a new registration certificate to the first respondent on 17.03.2003 and a new registration certificate was granted. In the meantime, action was initiated against the petitioner by the first respondent by cancelling the registration certificate on the ground that already there is a firm registered in the same address. This order was challenged by the petitioner in W.P.No.17345 of 2003 which was allowed by order dated 25.06.2003. Thus, one of the impediments against the petitioner has been set aside. On account of the present attachment order, the petitioner had to close down the business and there is no business activity since 31.03.2004.

4.The learned Government Advocate appearing for the first respondent submitted that during the pendency of the proceedings, the second respondent has paid a sum of Rs.2,00,000/- by two demand drafts dated 31.12.2010 bearing Nos.11578 drawn on Karur Vysya Bank and 502198 drawn on State Bank of India. Thus, the first respondent has proceeded for recovery against the second respondent and a portion of the arrears had been paid. As rightly pointed by the learned counsel for the petitioner, the first respondent is not empowered to proceed against the petitioner for the alleged tax arrears of the second respondent, when they had no notice of such proceedings and the lease between the petitioner and the second respondent was validly terminated on 30.12.2002, coupled with the fact that the petitioner was issued with registration certificate under the Act on 17.03.2003. The stand taken by the petitioner is clearly supported by the decision of the Hon'ble Division Bench of this Court in the case of D.Senthil Kumar and 2 others Vs. Commercial Tax Officer, Brough Road, Erode & another, reported in 2006-3-L.W.627, wherein the Hon'ble Division Bench after following the decision of the Hon'ble Supreme Court in the case of State of Karnataka Vs. Shreyas Papers (P) Ltd., reported in 2006-3-L.W.269, set aside the order of attachment. At this juncture, it would be worthwhile to refer to the operative portion of the judgment of the the Division Bench of this Court (supra) as follows:

> "11.In Shreyas Paper's case, the Supreme court also referred to the decision of a Division Bench of this Court in C.T.O. Vs. R.K.Steels, (1998) 108 S.T.C.161 (Madras), where this very question arose under Section 24 of the TNGST Act. In that case, the assessee firm was in arrears of tax from the Assessment Years 1976-77 to 1979-80. The assessee

firm was closed on 19.10.1979. Thereafter, the land belonging to the firm was sold by one of the partners of the firm on 30.12.1981. The purchaser had no notice of the charge over the property by virtue of sales tax dues. The purchaser challenged the Form -7 notice issued under the Tamil Nadu Revenue Recovery Tax on the ground that he is a bona fide purchaser without notice of charge under the TNGST Act. The Division Bench held that no provision is made in the TNGST Act contrary to Section 100 of the Transfer of Property Act and therefore, a bona fide purchaser for consideration without notice is protected.

12. In the instant case, the property was sold by public auction on 10.03.2003. The sale was conducted in execution of the Recovery Certificates issued by the Debts Recovery Tribunal for recovery of dues to the City Union Bank. The appellants had paid the entire amount due on 25.03.2003 and the sale was confirmed in their favour on 23.04.2003. There is no indication of any sales tax arrears in the advertisement for auction sale and there was no application from any statutory or public authority seeking to set aside the sale. For the first time, by letter dated 25.06.2004 the Commercial Officer required the second respondent to create an encumbrance with regard to the property and consequently an entry was made in the register in respect of encumbrance of the first respondent. Thus, it is evident that the appellants had no actual notice of the charge prior to the transfer. There is also no material to show that the appellants had constructive notice of the charge and no submissions were made by the learned Special Government Pleader on this issue. In the circumstances, we are of the view that the appellants were the purchasers for value without notice for the sales tax arrears of the defaulting company or the consequent charge on the property. Thus, the property in the hands of the appellants was free of the charge and it is not open to the first respondent to enforce the liabilities of the defaulting company in this manner against the appellants.

5.In the light of the above discussion and applying the law laid down by the Hon'ble Division Bench of this Court in D.Senthil Kumar and 2 others Vs. Commercial Tax Officer, Brough Road, Erode & another (supra), the impugned attachment has to be held to be bad in law. Accordingly, the writ petition is allowed and the impugned order is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

km/kak

To

The Commercial Tax Officer,
Perundurai,
Erode District.

+1 CC to Mr.N. Manokaran, Advocate sr 53599
+1 CC to Special Government Pleader(Taxes), sr 54000.

W.P.No.17136 of 2003
and
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SCD(CO)
sp(11/08/2017)