BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2017**

CORAM:

THE HONOURABLE **MR.JUSTICE T.S.SIVAGNANAM**
AND
THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

W.A.(MD).No.1148 of 2016 &
C.M.P.(MD).No.7224 of 2016

The Commercial Tax Officer,
Nagercoil (Town) Assessment Circle,
No.131, Mead Street,
Nagercoil-629 001. ...Appellant/Respondent

Vs.

1.V.Nagarajan ...Respondent/Petitioner
2.Joint Sub Registrar-I,
District Registrar Officer,
Registration Department,
Nagercoil,
Kanyakumari District. ... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clauses 15 of Letters Patent against the order dated 26.04.2016 in W.P.No.3359 of 2016.

Prayer in WP(MD). 3359/ 2016 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the entire records in connection with the impugned proceedings of the second respondent dated 1.10.2015 in RC.No.398/2015/A3 and that of the impugned proceedings of the first respondent dated 21.1.2016 and quash the said proceedings and consequently direct the first respondent to remove the unnecessary endorsement made pursuant to the impugned proceedings of the second respondent in the Encumbrance Certificates.

For Appellant : Mr.V.Muruganantham
Additional Government Pleader

For Respondents : Mr.K.K.Kannan for R1
No appearance for R2

JUDGMENT

[Judgment of the Court was made by **T.S.SIVAGNANAM,J**]

This appeal has been directed against the order, in W.P.No.3359 of 2016, dated 26.04.2016. The first respondent is the writ petitioner, who sought for quashing the encumbrance created on the subject property for recovery of the dues payable to the appellant department. The defaulter who is liable to pay the amount is one V.S.K.Radhakrishnan, who was carrying on business in petroleum dealership.

2. Admittedly, the defaulting dealer is liable to pay Rs.1,95,74,139/- being arrears of sales tax for the period between 2010-2011 and 2014-2015. The first respondent's/writ petitioner's case before the Writ Court was that he is an innocent purchaser of the subject property for valuable consideration and the purchase was effected much prior to the attachment effected by the appellant department as reflected in the encumbrance certificate. The writ Court accepted the statement of the first respondent and allowed the writ petition.

3. After we heard the learned counsel for the parties for considerable length of time, initially the submissions put forth by the counsel for the first respondent/writ petitioner appeared to be convincing, but however when we have a closer look into the factual matrix, the position which emerges is otherwise. The first respondent/writ petitioner is not the purchaser of the property from the original owner, but was appointed as power agent of the son of the original owner, namely Rajiv Radhakrishnan s/o.V.S.K.Radhakrishnan to deal with the subject property. The person who appointed the writ petitioner as a power agent is the son of the original owner/defaulting dealer, who claims to have acquired title to the property by virtue of a Will executed by his father. The father, being a defaulter to the Sales Tax Department was bound to clear the sales tax arrears and in default the sales tax department was entitled to proceed against the properties. Thus it appears that the encumbrance created on the property by the writ petitioner/power agent is with a view to defeat the interest of the department. The power agent gets no independent right and is bound by what his principal is subject to. Therefore, the decision in the case of M/s.Sri Bakgyam Engineering Corporation v. The Deputy Commercial Tax Officer, reported in 2010 Writ L.R. 281, cannot be applied to the case on hand and is clearly distinguishable.

4. For the above reasons, we allow the writ appeal and consequentially, dismiss the writ petition with a direction to the

first respondent/writ petitioner to appear before the appellant and establish his claim. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Co)

/True copy/

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Nagercoil (Town) Assessment Circle,
No.131, Mead Street,
Nagercoil-629 001.

2.Joint Sub Registrar-I,
District Registrar Officer,
Registration Department,
Nagercoil,
Kanyakumari District.

+1 cc to Mr.K.K.Kannan , Advocate in SR.No. 50190

jikr
AE/SV MMS/SAR4/20.04.2017/3P/4C

JUDGMENT MADE IN
W.A.(MD).No.1148 of 2016 &
C.M.P.(MD).No.7224 of 2016
04.04.2017