IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.12.2018

CORAM

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.5029 of 2011
and
M.P.Nos.1 and 3 of 2011

M/s.Srei Equipment Finance Private Ltd.,
290, Peters Road,
Gopalapuram,
Chennai - 600 086. ... Petitioner

Vs .

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
100, Santhome High Road,
Chennai 600 028.

2.The Sub-Registrar,
Red Hills, Chennai - 600 052.

3. Joint Commissioner of Customs (Bonds)
Office of the Commissioner of Customs,
Custom House, New No.60, Rajaji Salai,
Chennai - 600 001.

4.Jai Bhavani Steel Enterprises Ltd.,
Rep. By its Director, Mr.Pramod Saraf
New No.2/221, Old No.4/181, G.N.T.Road,
Panchetty 601204.
Thiruvallur District.

5.M/s.SDS Steels Enterprises Ltd.,
Rep. By its Director Mr.Pramod Saraf,
New No.2/220 B, G.N.T.Road,
Panchetty 601204. Ponneri Taluk,
Thiruvallur District.
(R4 and R5 impleaded as per order
dated 08.11.2011 in MP.No.2 of 2011) ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent's letter dated 14th December 2010 F.No:S4/4/2009 and 43/2008

(Bonds) and quash the same to the extent of land measuring 2.46 acres owned by Mr.Pramod Saraf comprised in Survey No.197/1A1B; Survey No:197/2A1; Survey No.197/2B2; 197/2A2B and Survey No:185/2 situated in Panchetty village, Ponneri Taluk, Tiruvallur District and direct the first and the second respondents to admit and register the sale deed executed by Mr.Pramod Saraf in favour of the petitioner company herein conveying land measuring 2.46 acres owned by Mr.Pramod Saraf comprised in Survey No:197/1A1B; Survey No:197/2A1; Survey No:197/2B2; 197/2A2B and Survey No:185/2 situated in Panchetty village, Ponneri Taluk, Tiruvallur District.

For Petitioner : Mr.P.B.Ramanujam

For Respondents: Mr.P.P.Purushothaman
Additional Government Pleader for R1 & R2
Mr.K. Magesh
Standing counsel for R3
RR4 & R5 disd. Vide order dated 24.02.2012

O R D E R

The Writ Petition has been filed to call for the records of the third respondent's letter dated 14th December 2010 and quash the same to the extent of land measuring 2.46 acres owned by Mr.Pramod Saraf comprised in Survey No.197/1A1B; Survey No:197/2A1; Survey No.197/2B2; 197/2A2B and Survey No:185/2 situated in Panchetty village, Ponneri Taluk, Tiruvallur District and direct the first and the second respondents to admit and register the sale deed executed by Mr.Pramod Saraf in favour of the petitioner company herein conveying land measuring 2.46 acres owned by Mr.Pramod Saraf situated in Panchetty village, Ponneri Taluk, Tiruvallur District.

2. Learned counsel for the petitioner submitted that the petitioner has purchased one Non-Banking Finance Company registered under the Companies Act, 1956. One Pramod Saraf approached the petitioner company in 2007-2008 and sought financial assistance to the tune of Rs.25 Crores for his different companies engaged in manufacture and trading of Iron and Steel Rods of different types. Mr.Pramod Saraf represented himself as one of the Directors of M/s.Jai Bhawani Steel Enterprises Ltd., and M/s.SDS Steels Private Ltd and had a Rolling Mill manufacturing different types of Iron rods in Panchetty Village, Ponneri Taluk, Tiruvallur District coming under the Sub-Registration District of Red Hills. He represented that he was prepared to offer as security, the property viz., land measuring 2.46 acres comprised in Survey No:197/1A1B; SurveyNo:197/2A1; Survey No: 197B2; 197/2A2B and survey No:185/2 situated at Panchetty village, Ponneri Taluk, Tiruvallur District coming under Sub-Registration Office of Red Hills.

3. The aforesaid Pramod Saraf was an absolute owner of the aforesaid property. The Vice-President defaulted in payment of the loan amount for partial discharge of the loan of the petitioner's company, However, Pramod Saraf has informed to the petitioner to make some arrangement to clear the liability and consequently, thereafter offered to execute a registered property by way of a sale to the petitioner company towards partial discharge of the liability and the sale consideration was fixed at Rs.99 lakhs/-. He approached the second respondent to register the sale deed. The second respondent informed to the petitioner that the communication was received from the third respondent by stating that M/s.Jai Bhawani Steel Enterprises Ltd., is having outstanding customs duty payable to the Customs Department. Challenging the same, the petitioner is before this court.

4. On the contrary, the learned counsel for the respondents would submit that the petitioner being the purchaser of the property has not presented the said document before the second respondent to register the sale deed. Therefore, the petitioner does not have locustandi to challenge the impugned communication and further, the Pramod Saraf, Director of the Company was not impleaded as a party in the present writ petition. Hence, there is no bonafide on the part of the petitioner by relying upon unregistered document. In M/s.Jai Bhawani Steel Enterprises Ltd., and M/s.SDS Steels Pvt. Ltd, its Director, Pramod Saraf, has caused huge loss to the Government exchequer and also the Department has proceeded against him u/s.122-A of the Customs Act of 1962 for the said offence and directed to recover the goods transported without payment of customs duty and other charges.

5. Learned counsel for the third respondent/Department has submitted that it is the duty of the third respondent to protect the government's interest in as much as Jai Bhavani and its Director Mr.Pramod Saraf has caused huge loss to the government exchequer and to protect the government's revenue interest, the action initiated is perfectly tenable in law. This respondent is fully empowered under Section 142(c)of Customs Act, 1962 to distrain any immovable property belonging to either importer that of Jai Bhavani and SDS in this case or its directors that Pramod Saraf, Mrs. Sangeetha Saraf and Piyush Saraf, directors of Jai Bhavani and Pramod Saraf and Piyush Saraf, directors of SDS, to recover the government dues. Thus, the communication dated 14.12.2010 issued in exercise of powers vested in the Assistant Commissioner under the said section 142 (1)(c) (i) is legal.

6. It is further submitted that the Department is empowered to proceed against the Company as well as the individuals, who are responsible for the commission of offence and on completion of the investigation proceedings personal penalty on the said companies and its directors under Sec.122 (a) of the Customs Act, 1962 for the offence of clandestine removal of bonded goods without payment of Customs Duty and other charges which has resulted to the total duty evasion of Rs.16.21 Crores and the available goods in the bonded warehouse, should also be confiscated under the proviso of Sec. 126 of the Customs Act, 1962 and such goods shall thereupon vests in the Central Government as per the Clauses 1 & 2 of the said Section. Therefore, the Department has sent the communication by exercising power u/s.142 1(c)(i) and the same is perfectly valid.

7. The petitioner has purchased the said property and sale deed was executed by the aforesaid Pramod Saraf. The said contention of the petitioner cannot be accepted, for the reason, the said sale deed executed by the Pramod Saraf, has not presented for registration of the documents, before the Registration Department. Hence, the second respondent is empowered to distrain the immovable property as charge over the property. By relying upon the unregistered document, the petitioner cannot challenge the impugned communication, issued by the third respondent and hence the grounds raised by the petitioner cannot be countenanced. Therefore, there is no merit in the contention of the writ petition, this court is not inclined to interfere with the order passed by the third respondent and the same is liable to be rejected. It is for the petitioner to seek his remedy before the appropriate forum, if any surplus amount is available.

8. In the result, the writ petition stands dismissed with the above directions. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

gv

To

1.The Inspector General of Registration,
Office of the Inspector General of Registration,
100, Santhome High Road, Chennai 600 028.

2.The Sub-Registrar,
Red Hills, Chennai - 600 052.

3. Joint Commissioner of Customs (Bonds)
Office of the Commissioner of Customs,
Custom House, New No.60, Rajaji Salai,
Chennai - 600 001.

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Magesh, Advocate SR.No.87292

+1cc to M/s.P.B.Ramanujam, Advocate SR.No.87347

+1cc to Government Pleader SR.No.88357

W.P.No.5029 of 2011
and
M.P.Nos.1 and 3 of 2011

NRL(CO)
GMY(14/02/2019)