IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No. 31959 of 2017
and
W.M.P.No. 35108 of 2017

S.Murugesan ...Petitioner

Vs.

1. The Assistant Commissioner,
(Commercial Tax) (Mu.Ku.Po),
Mettur Road, Erode & District.

2. The Sub-Registrar-1,
Office of the District Registrar,
Erode.

3. A.Deivasigamani ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records with regard to the impugned order passed by the 1st respondent vides his office proceedings No.Na.Ka.367/2017/A3 dated 06.04.2017 attaching the petitioner's property of 3427 of Sq.Feet situated in R.S.No.T.S.No.59, Brough Road, (Old Ward No.14) New Re-survey Ward-C, Block No.28 in Erode Town, within the Municipal Limits and quash the same and consequently direct the 2nd respondent to delete the entry in his records to that effect.

For Petitioner : Mr.I.C.Vasudevan

For 1st Respondent : Mr.G.Dhanamadhri
Government Advocate

For 2nd Respondent : Mr.R.P.Prathap Singh
Government Advocate

ORDER

Heard Mr.I.C.Vasudevan, the learned counsel appearing for the petitioner, Mrs.G.Dhanamadhri, the learned Government Advocate appearing for the first respondent and Mr.R.P.Prathap Singh, the learned Government Advocate appearing on behalf of the second respondent.

2. The petitioner has filed this Writ Petition, challenging the order of attachment passed by the first respondent, attaching the petitioner's property for recovery of sales tax arrears payable by the third respondent.

3. Admittedly, the order of attachment has been made after the petitioner had purchased the property. The petitioner has, infact, availed loan from HDFC Bank, who are now holding the original title deeds of the property, and they are the secured creditors.

4. In the light of the above undisputed facts, the first respondent cannot proceed against the petitioner for recovery of the debts, payable by the third respondent, as the property was sold by the third respondent to the petitioner, much prior to the action initiated by the first respondent/Department for recovery of tax dues. An identical issue was considered by this Court, in Ansari Vs. Commercial Tax Officer, and another, in W.P.No.12756 of 2012, dated 20.07.2016. The operative portion of the order reads as follows:-

> " '' 4. At this stage, it would be worthwhile to refer to the decision of the Hon'ble Division Bench of this Court in the case in 1.D.Senthil Kumar 2.C.P.Senthil 3.C.P.Sakthivel vs. 1. The Commercial Tax Officer, Brough Road, Erode 2.The Sub-Registrar, No.1, Karungalpalayam, Erode (2006-3-L.W.627), wherein in an identical set of facts, the order of attachment was set aside. Paragraph No.12 of the judgment is usefully extracted hereunder:
>
> > "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 25.3.2003 and the sale was confirmed in their favour on 23.4.2003. 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 25.6.2004, 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. Further, in the decision in the case of Senthil Kumar vs. Assistant Commissioner, Chennai and Others, in W.P.No.9928 of 2009, dated 22.12.2010, the Hon'ble Division Bench, in somewhat identical circumstances, has held as follows:

"17. However in this case, the property was sold under the provision of SARFAESI Act for non-payment of dues to the Bank, the Third Respondent which brought the property for auction through tender-cum-auction sale on 19.5.2008; The Sale Certificate was also issued on 19.5.2008 and possession and also stated to be given to the petitioners. The rights already got accrued to the petitioners in view of the sale under the SARFAESI Act. The First respondent's communication dated 24.12.2008 to the

Third Respondent-Bank reads as follows:

> "The Sub-Registrar, Virugambakkam has issued an Encumbrance Certificate on 24.12.2008 with the Commercial Tax Officer as one of the purchaser cannot claim the right on the said property."
>
> The aforesaid communication would show that the Encumbrance (tax arrears) Certificate was only reflected on 24.12.2008. Whereas the Encumbrance Certificate dated 15.5.2008 issued by the Sub-Registrar Office, Virugambakkam did not reflect any encumbrance except the Sale Ded dated 9.6.1998 and no claim of the First Respondent was reflected. The sale was conducted on 19.5.3008 and subsequent only the encumbrance of the First Respondent was made on 24.12.2008. It is clear from Sale Notice dated 20.09.2008 by the First Respondent, the sales tax arrears were due from 1991-92 to 1996-97. However, the petitioners had no notice of charge over the property in question, in spite of their due verification of Encumbrance Certificate dated 15.5.2008. Hence, it has to be held that the petitioners are bona fide purchasers without notice of charge under Section 24(2) of th TNGST Act and the rights accrued to them cannot be interfered with. For the reasons stated above, the respondents 1 and 2 belatedly could not proceed against the petitioner's property for the arrears of sales tax due of the Company which availed the loan from the Third Respondent-Bank." "

6. In the light of the above, the Writ Petition is allowed and the impugned attachment is quashed and the second respondent is directed to delete the said entry and make appropriate entries stating that the said attachment has been lifted. The above direction shall be complied with by the second respondent within a period of four weeks from the date on which the petitioner approaches the second respondent by way of representation, accompanied by a copy of this order. The first

respondent is granted liberty to recover the sales tax arrears from the third respondent by initiating appropriate action. No cost. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner,
(Commercial Tax) (Mu.Ku.Po),
Mettur Road, Erode & District.

2. The Sub-Registrar-1,
Office of the District Registrar,
Erode.

+1cc to Mr.I.C.Vasudevan, Advocate in sr.no.29107
+1cc to Government Pleader in sr.no.29982
+1cc to Special Government Pleader(Taxes) in sr.no.29679

Writ Petition No. 31959 of 2017

ssv(co)
nr 17/05/2018