IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. Nos.8276 & 8277 of 2007
and
M.P. Nos.2 & 2 of 2007

Mrs.Anitha Kedia ... Petitioner in W.P.No.8276/2007
Mr.Gitender Kedia ... Petitioner in W.P.No.8277/2007

Vs.

1.Government of Tamil Nadu
Rep by its Secretary
Commercial Tax Department
St. George Town, Chennai - 600 009.

2.The Assistant Commissioner
Commercial Taxes, Kanchipuram.

3.The Commercial Tax Officer
Ponneri. ...Respondents in both WPs

Prayer : Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, call for the records pertaining to the 2 and 3 respondents in ROC 1983/2002/A2/27.02.2002 and published in Thiruvallur District Gazette dated 01.04.2002 for attachment and sale of the petitioners' lands and quash the same and /or issue any other appropriate writ or order or direction.

For Petitioners (in both WPs) .. Mr.Milind Gokhale For Mr.K.S.Ganesh Babu

For Respondents (in both Wps) .. Ms.G.Dhana Madhri Government Advocate

O R D E R

Heard Mr.Milind Gokhale, learned counsel for Mr.K.S.Ganesh Babu, learned counsel for the petitioners and Ms.Dhana Madhri, learned Government Advocate appearing on behalf of the respondents.

2.The petitioners in both these writ petitions have challenged the proceedings initiated by respondents 2 and 3, bringing the properties owned by the petitioners for recovery of sales tax due owed by M/s.Sree Jagannath Steels Limited. The petitioners had purchased the properties from the defaulting company vide sale deeds dated 26.09.1998, 25.09.1998, 22.09.1998, 25.09.1998 and 26.09.1998. After the purchase of the properties, Patta stood transferred in the name of the petitioners by the Tahsildar, Ponneri. Much after the petitioners had become the lawful owner of the properties, the impugned notification has been issued in the name of M/s.Sree Jagannath Steels Limited describing the said company as the owner of the said properties.

3.However, the said company had been wound up pursuant to the order passed by the High Court of Andhra Pradesh at Hyderabad in Company Petition No.236 of 1998 dated 07.09.1999 itself. On the date when the impugned notification was issued the company was not in existence. That apart, much prior to the proceedings being initiated by the respondents /department for attachment of the properties vide notice of attachment dated 02.04.2002, the petitioners had become the lawful owner of the properties.

4.Somewhat an identical case has been decided by this Court in the case of Sri Bakgyam Engineering Corporation V. Deputy Commercial Tax Officer, Avrampalayam Circle, Coimbatore reported in [2016] 93 VST 190 (Mad). Wherein, after taking into consideration the earlier decisions including the decision in the case of N.Padma Coffee Works V.Commercial Tax Officer reported in [1999] 114 STC 494 and other decisions, it has been held that :

> "The petitioner therein had purchased the property in question without notice of the charge over the same from his vendor and the same had also not been reflected in the encumbrance certificate issued by the Registration Department. The petitioner was a bona fide purchaser for consideration without notice of the charge over the property. Unless a provision was made in any statute contrary to the rule of Section 100 of the Transfer of Property Act, a bona fide purchaser for consideration without notice of the charge was protected. Section 24(2) of the Sales Tax Act did not provide anything contrary to section 100 of the Transfer of Property Act. Thus the petitioner could not be proceeded against insofar as the arrears of sales tax of his vendor. Therefore, the proceedings of the respondent taken against the petitioner and on

the property were liable to be quashed."

5.The above referred decisions would apply with full force to the case on hands. As noticed above under five sale deeds, the petitioners purchased the properties dated 26.09.1998, 25.09.1998, 22.09.1998, 25.09.1998 and 26.09.1998 and registered as document Nos.2717/1998, 2783/1998, 2839/1998, 2758/1998 and 2885/1998 respectively on the file of the Sub Registrar Office, Ponneri and those sale deeds have been registered much prior to the notice of attachment of the properties vide notice dated 02.04.2002 and on that date the said M/s.Sree Jagannath Steels Limited was not the owner of the properties. Thus, the petitioners are bonafide purchasers and therefore the impugned notification cannot be proceeded against.

6.For the foregoing reasons, the writ petitions are allowed and the impugned notification is set aside. Since the defaulting company is wound up, liberty is granted to respondents 2 and 3 to file appropriate claim petition before the Official Liquidator and on filing such claim petition for claiming arrears of sales tax payable by the defaulting tax payers within a period of 60 days from the date of receipt of a copy of this order, the Official Liquidator is directed to entertain the claim petition without rejecting the claim petition on the ground of limitation and take a decision on merits and in accordance with law.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1.The Secretary
Commercial Tax Department
St. George Town, Chennai - 600 009.

2.The Assistant Commissioner
Commercial Taxes, Kanchipuram.

3.The Commercial Tax Officer
Ponneri.

+1 CC to the Special Government Pleader (Taxes) SR.NO.3903
+4 CC to Mr.K.S.Ganesh Babu Advocate SR.NO.3205,3206

W.P. Nos.8276 & 8277 of 2007

VC (17/02/2018)