

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8148 of 2012
and M.P.No.1 of 2012

Champa Devi,
W/o.Shri Ravi Prakash.

... Petitioner

-vs-

The Tax Recovery Officer-I,
Income Tax Department,
Office of the Tax Recovery Officer-I,
63, Race Course, Coimbatore-641 018.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in TR No.11/P-93/2010-11/TRO-I/CBE dated 07.03.2012 and quash the proceeding dated 07.03.2012 as illegal and consequently lift the order of attachment by the respondent in respect of my property namely land measuring 3916 sq.ft. With R.C.C. Building of about 5100 sq.ft. at T.S.No.10/1734 (Door No.1678, 1678-A, 1678-B (Part)), Trichy Road, Ramanathapuram, Coimbatore-641 045.

For Petitioner : Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas, SSC

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O R D E R

Heard Mr.R.Sivaraman, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondent.

2.The petitioner has filed this writ petition challenging an intimation given by the respondent, Tax Recovery Officer-I, stating that the recovery of tax arrears in the case relating to M/s.NEPC India Ltd., the immovable property situated in Trichy Road, belonging to M/s.NEPC India Ltd., and later transferred to the petitioner vide Sale Deed dated 05.09.2011 registered as Doc. No.3016 has been attached vide order dated 29.02.2012. Further, the notice states that the said property has been

attached, as the transfer in the name of the petitioner is null and void in view of Section 281(1) and Rule-16 of the 2nd Schedule to the Income Tax Act, 1961. The petitioner was prohibited from dealing with the property in any manner.

3.The petitioner would contend that the respondent, by the impugned notice, declared the transfer of property in the name of the petitioner as null and void and the same is totally against the principles of Rule-16 of the 2nd Schedule to the Income Tax Act, 1961.

4.It is submitted that the petitioner is a bona fide purchaser of the said property for a valuable consideration and as on the date of purchase, there are no encumbrances / charge on the property. Further, it is submitted that there are no income tax dues payable by the petitioner's vendor and to that effect, a certificate was issued by the Assistant Commissioner of Income Tax, Company Circle IV(4), Chennai, dated 13.01.2006.

5.Further, it is submitted that the respondent attached the petitioner's property for the arrears of the vendor only on 29.02.2012, that is, long after the petitioner had purchased the property and therefore, the notice of attachment will not bind the petitioner.

6.Section 281 of the Income Tax Act deals with certain transfers, which are held to be void. Sub-Section (1) of Section 281 states that Where, during the pendency of any proceeding under the Act or after the completion thereof, but before the service of notice under Rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise.

7.Proviso states that such charge or transfer shall not be void if it is made for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or with the previous permission of the [Assessing] Officer.

8. On a reading of the said provision, it is seen that transfers, during the pendency of any proceeding under the Act or after the completion thereof, but before the service of notice under Rule 2 of the Second Schedule, if an assessee creates a charge on a property, such charge or transfer shall be void against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding.

9. The language of Section 281(1) read with the proviso would make it clear that the onus is on the assessee, who claims the transaction to be valid and not void.

10. In the instant case, the respondent has issued the impugned notice and the petitioner has straightaway approached this Court and filed this writ petition. In my considered view, this writ petition is not the proper remedy, which the petitioner should have availed. In this regard, it is relevant to point out that the 2nd Schedule to the Income Tax Act contains the procedure for recovery of tax. Under the said Schedule, there is a power conferred on the Tax Recovery Officer / respondent for investigation under Rule 11, which reads as under:-

"Investigation by Tax Recovery Officer.

Rule 11. (1) Where any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

Rule 11(2) : Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

Rule 11(3) : The claimant or objector must adduce evidence to show that-

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b) (in the case of movable property) at the date of the attachment, he had some interest

in, or was possessed of, the property in question.

Rule 11(4) : Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

Rule 11(5) : Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

Rule 11(6) : Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

11. In terms of the above Rule, if any claim is preferred to, or any objection is made to the attachment or sale of, any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection. The procedure for such investigation and the manner in which the proceedings to be conducted are enumerated under Rule 11 of the said Rules. Therefore, if the petitioner's claim is that the property is not liable for such attachment, then the petitioner has to make a claim before the Tax Recovery Officer and for such reason, the petitioner could not have approached this Court invoking the jurisdiction under Article 226 of the Constitution of India. Therefore, the Court holds that the writ petition is not maintainable. However, considering the fact that the Income Tax Act and Rules framed thereunder, especially Rule 11 under the 2nd Schedule, provides for a remedy to the assessee, the petitioner is at liberty to avail such a remedy.

12.In the result, the writ petition is dismissed 'as not maintainable' with a direction to the petitioner to file a claim before the respondent in terms of Rule 11(1) of the 2nd Schedule to the Income Tax act within a period of four weeks from the date of receipt of a copy of this order. On such claim being filed, the respondent is directed to investigate the same in accordance with law. No costs. Consequently, M.P.No.1 of 2012 is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

abr
To

The Tax Recovery Officer-I,
Income Tax Department,
Office of the Tax Recovery Officer-I,
63, Race Course, Coimbatore-641 018.

+lcc to Mr.A.P.Srinivas, Advocate Sr.No.45901
+lcc to Mr.R.Sivaraman, Advocate SR.No.46437

SV(CO)
sm:26.7.2018

W.P.No.8148 of 2012

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