IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.No.2486 of 2012
and M.P.No.2 of 2012

S.Usha .. Petitioner

Vs.

The Commercial Tax Officer,
Chithode Circle, Erode. .. Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in Form No.7 Land Sale notice Na.ka.2375/1999/A3 dated 15.06.2011 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.M.Hariharan,
Additional Government Pleader

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records of the respondent in Form No.7 Land Sale Notice, dated 15.06.2011 and to quash the same.

2.It is a case of the petitioner that she purchased an immovable property measuring an extent of 3880 square feet along with building in S.F.No.317/2A, Site No.10, Old Door No.197 & 197 ABC and New Door No.246, Muniappan Koil Street, Periasembur Village, Erode Taluk from one C.Rajeswari, wife of Chinnasamy on 29.09.2000. The property originally belonged to one S.Mary and she had sold the property to the petitioner's vendor, C.Rajeswari under a registered Sale Deed dated 12.11.1997. The petitioner received a notice dated 10.08.2009 from the Office of the Assistant Commissioner, Commercial Taxes, Chithode Circle, Erode stating that one M.G.Joseph of M/s.Megalaya Sales Corporation has done business at No.227, Manikampalayam Main Road, Periasembur, Erode and he was in arrears of tax for the years 1994-95 to 1995-96, amounting to Rs.1,85,000/-. Since there was no property standing in the name of said M.G.Joseph, the property belonging to the petitioner has been subjected to the revenue recovery proceedings for the recovery of arrears of tax of the said

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M.G.Joseph. Challenging the proceedings initiated against the petitioner's property for realizing the tax dues of the said M.D.Joseph, the petitioner has filed the above Writ Petition.

3.The learned counsel appearing for the petitioner submitted that the respondent cannot proceed against the petitioner's property for the reason that she is not an assessee under the respondent. The respondent can only proceed against the dealer for the dues payable by him. In support of his contention, the learned counsel relied upon an order passed by this Court in W.P.No.21789 of 2004 [M.Susila vs. The Commercial Tax Officer, Annathanapttai Circle, Salem and another] dated 14.07.2017, wherein this Court held as follows:

> "3.The petitioner's case is that, the second respondent/husband was a proprietor of a Firm, run under the name and style Karthiravan Enterprises', dealing in Sago. He has been assessed to the sales tax for the assessment years 1998-1999 to 2000-01, both under the TNGST and CST Acts, and the liability attained finality. For recovery of the sales tax, the first respondent initiated action against the second respondent and parallely, sought to proceed against the property owned by the petitioner. According to the petitioner, the property, which is the subject matter of this Writ Petition, is the property exclusively owned by the petitioner, purchased in the year, 1998, vide registered sale deed, dated 22.04.1988, registered as Document No.951 of 1988, much prior to the period of defaulting. The petitioner has produced all the records before the first respondent, and in spite of the same, the first respondent, refused to withdraw the attachment order, and also refused to acknowledge the representation.
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> 4.In the para wise comments given to the learned Special Government Pleader (Taxes) High Court, Chennai, it is stated that the property belongs to a Hindu undivided family. It is not known as to how the first respondent came to such conclusion, in the absence of any record to show that it was the joint property of the petitioner and her husband (second respondent) or the property owned by Hindu undivided family, or that the property was purchased by the second respondent in the name of the petitioner. In the absence of any such records, the conclusion arrived by the first respondent is not tenable."

4.The learned Additional Government Pleader appearing for the respondent submitted that the ratio laid down in W.P.No.21789 of 2004 applies to the present case.

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5.Following the earlier order passed in W.P.No.21789 of 2004, I am of the considered view that the respondent is not the authority to proceed against the petitioner's property, when the petitioner is not an assessee under the respondent. Hence, the impugned order dated 15.06.2011, is set aside and it is open to the respondent to proceed against the dealer in accordance with law.

6.With these observations, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

abr/va

To

The Commercial Tax Officer,
Chithode Circle, Erode.

+ 1 cc to Mr. S. Ramanathan, AdvocateSR.10451
+1 cc to the Government Pleader Sr.10929

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