



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.02.2018
DELIVERED ON: 21.02.2018

WEB COPY

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

W.A(MD)No.866 of 2015 and
M.P.(MD)No.1 of 2015
against
MP(MD)No.1 of 2015 in WP(MD).7482 of 2015
and W.P(MD)No.7482 of 2015 and
M.P.(MD)Nos.1 and 2 of 2015

W.A(MD)No.866 of 2015:

M.Thirumaran : Appellant/Petitioner

Vs.

1. The Commercial Tax officer,
Sengottai Assessment Circle,
Sengottai.
2. The Sub Registrar,
Tenkasi II Sub Registration District,
Tenkasi.

Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed by a Single Judge in M.P. (MD)No.1 of 2015 in W.P.(MD)No.7482 of 2015 dated 30.04.2015.

Prayer in MP(MD)No.1/2015 in WP(MD)No.7482/2015 :

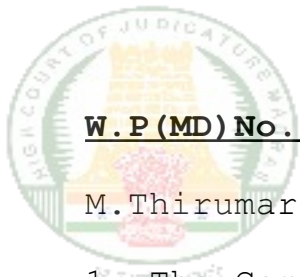
Writ Miscellaneous Petition is filed under Article 226 Constitution of India, praying this Court to grant Interim Stay of all further proceedings to the impugned proceedings of the Respondents in records in Na.Ka.2350/02.A3 dated 25.09.2009 and consequential proceedings in Na.Ka.A3/2350/02 dated 02.03.2015 and Na.Ka.A3/2350/2002 dated 20.04.2015 pending disposal of the above W.P.

For Appellant : Mr.N.Sudalaimuthu

for Mr.S.Karunakar

For Respondents : Mr.A.Muthukaruppan

Additional Government Pleader

**W.P(MD)No.7482 of 2015:**

M.Thirumaran

: Petitioner

Vs.

1. The Commercial Tax Officer,
Sengottai Assessment Circle,
Sengottai.

2. The Sub Registrar,
Tenkasi II Sub Registration District,
Tenkasi.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in Na.Ka.2350/02.A3 dated 25.09.2009 and Na.Ka.A3/2350/02 dated 02.03.2015 and Na.Ka.A3/2350/2002 dated 20.04.2015 and to quash the same as illegal arbitrary and against the provisions of Tamil Nadu General Sales Tax Act and direct the respondents to raise the charge created over the subject property.

For Petitioner : Mr.N.Sudalaimuthu
for Mr.S.Karunakar

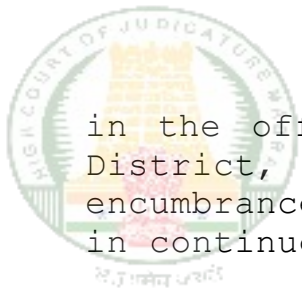
For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

COMMON JUDGMENT**(Judgment of the Court was delivered by R.HEMALATHA, J.)**

The appellant herein filed a writ petition in W.P.(MD)No.7482 of 2015 before the learned Single Judge for issuance of Writ of Certiorarified Mandamus, calling for the records in Na.Ka.A3/2350/02 dated 02.03.2015 and Na.Ka.A3/2350/2002 dated 20.04.2015 and to quash the same and direct the respondents to raise the charge created over the property. Along with the said writ petition, he filed M.P.(MD)No.1 of 2015 in which an interim order of stay was granted by the learned Single Judge on condition that the appellant should deposit 25% of the tax amount within a period of six weeks. The present appeal is filed against the said order and this Court took up both W.A.(MD)No.866 of 2015 as well as W.P(MD)No.7482 of 2015 for final disposal.

2.The facts of the case as stated in the supporting affidavit are as follows;

2.1.The appellant / writ petitioner purchased 1 acre and 42 cents in Survey No.49/1, 49/2, 49/3 and 49/4 of Kunnakudi village from one Mr.Dinesh N.Patel, through a registered sale deed dated 05.07.2004, for a sale consideration of Rs.1,25,000/- and he is a bona fide purchaser for value. According to him, he verified the encumbrance certificate with regard to the property he purchased



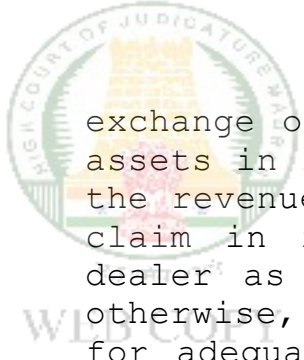
in the office of the Sub-registrar, Tenkasi II Sub Registration District, Tenkasi and satisfied himself that there was no encumbrance and that ever since the date of purchase, he has been in continuous possession and enjoyment over the said property.

2.2. However, on 25.09.2009, he was served with a notice dated 25.09.2009 by the Commercial Tax Officer, Sengottai Assessment Circle, Sengottai, Tirunelveli District, the first respondent herein, directing him to pay a sum of Rs.8,53,373/- being arrears of tax payable by his vendor Mr.Dinesh N.Patel, in respect of the property in Survey No.49 measuring 1 acre 42 cents. The appellant / writ petitioner sent a reply dated 12.11.2009, contending that he is a *bona fide* purchaser for value and that he has purchased the property after due verification of the encumbrance certificate in the office of the Sub Registrar, Tenkasi. He also explained that he was not aware of any of the proceedings initiated by the first respondent or the arrears of tax payable by his vendor Mr.Dinesh N.Patel.

2.3. The first respondent, without considering the reply sent by him, sent demand notices dated 25.01.2010, 01.06.2010 and 10.11.2010, calling upon the appellant / writ petitioner herein to pay a sum of Rs.8,53,373/-. The appellant / writ petitioner also came to know that the first respondent had issued a letter to the Sub-Registrar, Tenkasi II Sub Registration District, Tenkasi, dated 10.11.2010, requesting him to enter the encumbrance created in respect of the property in Survey No.49, in order to avoid further alienation by the appellant / writ petitioner. Thereafter, the first respondent issued another notice dated 16.05.2014, contending that the properties would be brought for sale in public auction under the Revenue Recovery Act, after creating a charge over the property. The appellant / writ petitioner sent a written objection dated 02.07.2014, not to conduct the public auction and the first respondent without considering the objection made by the appellant / petitioner, fixed the date of auction as 05.05.2015.

3. The specific contention of the appellant / writ petitioner is that since he is a *bona fide* purchaser for value, there is no justification for the first respondent in making a claim against him.

4. Assailing the correctness of the proceedings dated 16.05.2014, and by inviting the attention of this Court to Proviso to Section 24 (A) of Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act"), Mr.N.Sudalaimuthu, learned Counsel appearing on behalf of Mr.S.Karunakar, learned Counsel for the appellant / writ petitioner would submit that no doubt, during the proceedings under the Act or after the completion thereof, any dealer against whom, there is a charge, 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, with an intention to defraud the revenue, such charge or transfer shall be void, as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise, but a sale or transfer shall not be void, if it is made for adequate consideration and without notice of the pendency of such proceeding under the Act or, as the case may be, without notice of such tax or other sum payable by the dealer.

5.The learned Counsel appearing for the appellant / writ petitioner would also contend that the property which is sought to be attached, is for the arrears of tax payable for the assessment years 1999 - 2000, 2000 - 2001 and 2001 - 2002, by the said Mr.Dinesh N.Patel, who was running a business dealing in wood at Sengottai. The contentions of the appellant / writ petitioner are;

i)The property had been purchased in the year 2004 by him from Mr.Dinesh N.Patel and he was unaware of the pendency of any proceedings by the first respondent under the Act.

ii)He is a *bona fide* purchaser of the aforesaid property and therefore, a charge over his property cannot be created by the first respondent.

iii)The respondent has committed an error in passing a distraint order, under Section 8 of the Revenue Recovery Act, when a *bona fide* purchaser is protected under the Proviso to Section 24 (A) of the Act.

6.Placing reliance on the judgments of the Division Bench of this Court in **Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another Vs. R.K.Steels** reported in (1998) 108 STC 161 (Mad) and **D.Senthilkumar and others Vs. Commercial Tax Officer, Erode**, reported in (2006) 148 STC 204 (Mad), the learned Counsel appearing for the appellant / writ petitioner would submit that the appellant cannot be said to have actual or constructive notice of the charge, prior to the transfer of the property and therefore, he must be treated as a *bona fide* purchaser for value. According to him, the Commercial Tax Officer cannot direct the appellant / writ petitioner to pay tax.

7.The learned Counsel appearing for the appellant / writ petitioner would also contend that in **D.Senthilkumar's case (cited supra)**, it has been held that a *bona fide* purchaser for value need not institute any suit before a Civil Court to establish his *bona fides*, if he has no actual or constructive notice of the charge prior to the transfer of the property. His specific contention is that when the appellant / writ petitioner verified the encumbrance certificate from the office of the Sub-Registrar, Tenkasi II Sub Registration District, Tenkasi, (the second respondent's office),



no encumbrance was marked with regard to the property which he had purchased. It is the specific contention of the learned Counsel appearing for the appellant / writ petitioner that in none of the proceedings passed by the first respondent, it has been specifically mentioned that the vendor of the appellant / writ petitioner has transferred the property in favour of the appellant / writ petitioner with an intention to defraud payment of arrears of sales tax.

8. Per contra, Mr. A. Muthukaruppan, learned Additional Government Pleader appearing for the first respondent would contend that the Commercial Tax Officer, can proceed against the property of the dealer, if such a dealer with an intention to defraud the revenue, had sold the property to some other person. Placing reliance upon an unreported decision in ***the State of Tamil Nadu and another Vs. M. Cauvery Ammal, in S.A.No.21/87*** of this Court, the learned Additional Government Pleader appearing for the first respondent would contend that there would be a statutory charge relating to the property of the assessee and any sale of the property by the assessee would be subject to payment of sales tax amount. He would further contend that although, the term "first charge" is not seen under Section 24 of the Act, it is evidently clear that a statutory charge has been created as per records and the final order of assessment had been made by the competent authority and under such circumstances, the appellant / writ petitioner is not entitled to get any relief in the present writ petition. At this juncture, it is relevant to extract Section 24 and 24 (A) of the Act, which reads as follows;

"24. Payment and recovery of tax: (1) Save as otherwise provided for in sub-section (2) of Section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. The tax under sub-section (2) of Section 13 shall be paid without any notice of demand. In default of such payments the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.

(2) Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, ~~subject to the claim of the Government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it under Section~~



28 (2) of the Tamil Nadu Cooperative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered,

WEB COPY (a) as land revenue; or

(b) on application to any Magistrate by such Magistrate as if it were a fine imposed by him;

Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount of fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 31, 31-A, 33, 35, 36, 37 or 38.

(3) On any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at [one and a half percent per month of such amount for the first three months of default and two per cent per month of such amount for the subsequent period of default]:

Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall be paid:

Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under this Act, the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment as the case may be.

(3-A) Where a dealer submits the prescribed return within ten days after the expiry of the prescribed period, he shall also pay, in addition to the amount of tax due as per his return, interest at two per cent of the tax payable for every month or part thereof.

(4) Where the tax paid under this Act is found to be in excess on final assessment or revision of assessment, or as a result of an order passed in appeal, revision or review, the excess amount shall be refunded to the dealer after adjustment of arrears of tax, if any, due from him. Where the excess amount is not refunded to



the dealer within a period of ninety days from the date of the order of assessment or revision or review, within a period of ninety days from the date of receipt of the order, the Government shall pay by way of interest, where the amount refundable is not less than one hundred rupees, a sum equal to a sum calculated at the rate of one per cent or part thereof of such amount for each month or part thereof after the expiry of the said period of ninety days.

.....

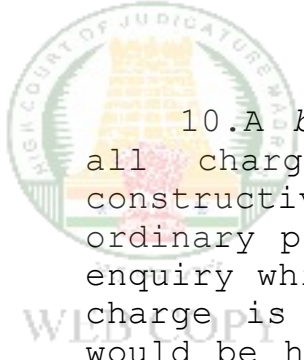
24-A. Transfers to defraud revenue void: Where during the pendency of any proceedings under this Act or after the completion thereof, any dealer creates, a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise:

Provided that, such charge or transfer shall not be void if it is made-

(i) for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or

(ii) with the previous permission of the assessing authority."

9. The only point to be considered in the writ petition is as to whether the writ petitioner is a *bona fide* purchaser of the property and would be protected from the proceedings under the Revenue Recovery Act, and under Section 24 (A) of the Tamil Nadu General Sales Tax Act, 1959. In the present case, the encumbrance certificate does not reveal the charge created over the property and there is nothing to infer that the appellant / writ petitioner and his vendor with an intention to defraud the tax payable to the first respondent colluded with each other and effected transfer of the property. The business conducted by the vendor of the writ petitioner was actually closed on 01.04.2002 and the property had been purchased by the writ petitioner only in the year 2004. Therefore, it cannot be said that he had actual or constructive notice of the charge created over the property for payment of arrears of sales tax in respect of the business conducted by his

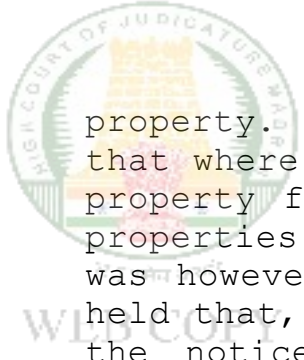


10.A *bona fide* purchaser takes the property he buys free of all charges of which he has no notice either actual or constructive. He is said to have constructive notice when ordinary prudence or care would have impelled him to undertake an enquiry which would have disclosed a charge. If for instance, the charge is created by a registered document, then the purchaser would be held to have constructive notice of that charge inasmuch as a prudent purchaser would in ordinary course search the Registers before effecting the purchase. In the instant case, the encumbrance certificate did not disclose any charge created over the property. A reading of Section 3 of the Transfer of Property Act, 1882, shows that a person is said to have notice of a fact when he actually knows that fact or when, but for willful abstention from an enquiry or search which he ought to have made or gross negligence, he would have known it. This presumption is known as constructive notice.

11.The correctness of a notice of recovery issued to a specific purchaser came up for consideration before the Division Bench of this Court in ***D.Senthilkumar's case***, in which it has been held that the appellant therein was a *bona fide* purchaser for valuable consideration and therefore, he would be covered within the exempted category, as provided under Section 24 (A) of the Act. It is further held in the said judgment that under Section 100 of the Transfer of Property Act, 1882, a charge may not be enforced against a transferee, if he had notice there of, unless by law, the requirement of such notice had been waived.

12.The learned Counsel appearing for the petitioner also relied on the decision in ***P.Kannamba and others Vs. The Board of Revenue (C.T.)***, Madras reported in (1967) 19 STC 456. In that case, a house property was sold by an assessee on 18th April, 1958. Even on the date of sale, there were arrears of sales tax due by the assessee and in seeking to recover the tax arrears, the said property was brought for sale under the Act. The learned Judge held that the transferee of the property is not a defaulter in respect of the sales tax due by the transferrer.

13.In fact, the Provisions of Section 100 of the Transfer of Property Act was considered by the Honourable Supreme Court in ***Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenhali*** reported in (1971) 1 SCC 757. In that case, the Ahmedabad Municipal Corporation created a charge over the property of the defaulter though the property was sold in execution of a mortgage decree in Court auction. When the Municipal Corporation purported to exercise the charge over the property, the purchaser filed a suit for declaration that he was the owner of the property and that the Municipal tax which fell in arrears cannot be recovered from him by proceeding against his



property. The main contention of the Municipal Corporation was that where the law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive notice. This argument was however, rejected by the Honourable Supreme Court. The Court held that, while the constructive notice was sufficient to satisfy the notice as per Proviso to Section 100 of the Transfer of Property Act, whether the transferee had constructive notice of the charge, had got to be determined on the facts and circumstances of the case. The Honourable Supreme Court has also held that it cannot be presumed that the transferee had constructive notice of the charge against the property. In the present case, as already observed, the encumbrance certificate does not reveal the charge created over the property.

14. In the light of the above judgments, it can be seen that even though a charge is created on the properties on the finalisation of the assessment of tax and a demand is raised, the same would not preclude the *bona fide* purchaser from seeking protection under Section 24 (A) of the Act. The specific contention of the appellant / writ petitioner is that prior to the purchase of the property in the year 2004, he had verified the encumbrance details in the Registration Department and finding that there was no encumbrance over the property, he had purchased the same. This would show that the appellant / writ petitioner had made sincere efforts to find out whether there was an encumbrance over the property. A perusal of the encumbrance certificate dated 06.04.2015, reveals that nothing has been mentioned about the charge created over the property. The learned counsel appearing for the first respondent has not averred any *mala fides* on the part of the appellant / writ petitioner. The first respondent did not also file any materials before this Court to show that steps have been taken by them under the Provisions of the Revenue Recovery Act, against the defaulter from whom the appellant / writ petitioner had purchased the property in the year 2004.

15. In the instant case, it cannot be said that there was willful abstention or gross negligence in making any enquiry that would tantamount to a notice under Section 3 of the Transfer of Property Act, and the appellant / writ petitioner is a *bona fide* purchaser for value. Therefore, this Court holds that the proceedings in Na.Ka.A3/2350/02 dated 02.03.2015 and in Na.Ka.A3/2350/2002 dated 20.04.2015 and the order of the learned Single Judge passed in M.P.(MD)No.1 of 2014 in W.P.(MD)No.7482 of 2015 dated 30.04.2015 are liable to be set aside.

16. In the result, both the writ appeal and the writ petition are allowed. No costs. Consequently, connected miscellaneous petitions are closed.



10

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

WEB COPY

To

1. The Commercial Tax officer,
Sengottai Assessment Circle,
Sengottai.
2. The Sub Registrar,
Tenkasi II Sub Registration District, Tenkasi.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 50768
+ 1 CC TO Mr.S.KARUNAKAR, ADVOCATE IN SR No. 50826, 50829

MR
TE/CVC/SAR-4 : 09/03/2018 : 9P/5C
IN

JUDGMENT MADE

W.A(MD)No.866 of 2015 and
W.P(MD)No.7482 of 2015
21.02.2018