IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

WP.No.1440 of 2019
and
W.M.P.Nos.1591 & 1594 of 2019

P.Sathasivam ...Petitioner

vs.

1. The Assistant Commissioner (CT)
Udumalpet (North) Assessment Circle
Udumalpet, Tirupur District.

2. The Sub-Registrar
The Office of the Sub-Registrar
Udumalpet, Tirupur District. ...Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in N.Dis.212/2009/A3 dated 29.08.2018 addressed to the second respondent and quash the same as issued contrary to the provisions of the Tamil Nadu General Sales Tax Act as well as the Tamil Nadu Value Added Tax Act and against the principles of natural justice and further direct the first respondent to remove/lift the encumbrance created on the petitioner's properties situated in Survey No.176/1, Survey No.176/2 & Survey No.173/3 in Pookulam Village, Udumalpet Taluk, Tirupur District.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.M.Hariharan
Additional Government Pleader
for R1
Mr.P.P.Purushothaman
Government Advocate for R2.

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the first respondent. Mr.P.P.Purushothaman, learned Government Advocate takes notice for the second respondent. By consent of the parties, this main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the proceedings dated 29.08.2018 of the first respondent, wherein and whereby, he directed the second respondent to create encumbrance on the subject matter properties referred to in this writ petition.

3. Following are the short facts necessary for the disposal of this writ petition:

One M/s.Ashok Spinners, Udumalpet, were the registered dealer before the Commercial Tax Officer, Udulmalpet (North). An order dated 29.07.2008 was passed by the Assessing Officer against the said dealer confirming the levy of penal interest of Rs.4,68,175/- as proposed in the notices dated 10.01.2008 and 15.04.2008. For the purpose of realising tax arrears from the said dealer, the first respondent sent the impugned communication to the second respondent with a request to create encumbrance on the properties referred to therein. The petitioner herein is not in any way connected with the said dealer. On the other hand, he purchased the subject matter properties by way of two sale deeds dated 25.11.2004 and 03.04.2006, much earlier to the order dated 29.07.2008. Those purchases were made by the petitioner from the partners of the said M/s.Ashok Spinners. Hence, the present writ petition is filed by contending that the impugned proceedings cannot be sustained against the petitioners' properties as the same were purchased much earlier to the order fastening the tax liability on the said dealer. It is also contended that those properties were never attached by the first respondent at any point of time.

4. Mr.P.Rajkumar, learned counsel for the petitioner submitted that the properties purchased by the petitioner much earlier to the said order of assessment dated 29.07.2008 cannot be made as the subject matter encumbrance, that too, after a period of nearly 10 years from the date of the said order of assessment and 14 years from the date of purchase by the petitioner. He further contended that when those properties were never attached by the first respondent, creating encumbrance over the subject matter properties now, is totally illegal. In support of his contention, the learned counsel relied on a recent decision of this Court in WP.No.30793 of 2007 dated 31.10.2017.

5. The learned Additional Government Pleader for the first respondent, on the other hand, contended that since the said dealer was assessed by imposing penal interest, the impugned proceedings was issued in order to safeguard the interest of the Revenue since those properties were belonging to the partners of

the said M/s.Ashok Spinners. However, he is not disputing the fact that no attachment was made on those properties at any point of time and that the purchases made by the petitioner were prior to the date of assessment order dated 29.07.2008.

6. Heard both sides.

7. There is no dispute to the fact that the present impugned communication was issued by the first respondent to the second respondent to create encumbrance in respect of the subject matter properties only for the purpose of realising the tax dues from the said dealer viz., M/s.Ashok Spinners, Udumalpet. It is also not in dispute that the petitioner is nothing to do with the said dealer and on the other hand, he purchased the subject matter properties by way of two sale deeds dated 25.11.2004 and 03.04.2006. Therefore, it is apparent that those properties were purchased much earlier to the order of assessment dated 29.07.2008. It is also not in dispute that the subject matter properties were not attached at any point of time by the first respondent. When such being the factual position, it is not known as to how the first respondent has chosen to issue the communication to the second respondent to create encumbrance on the subject matter properties, without even ascertaining the factual position whether those properties, are still available with the said dealer or not. In any event, as these properties were purchased by the petitioner much earlier to the order of assessment and in view of the admitted fact that at the time of purchase, those properties were free from encumbrance much less an attachment by the Revenue, I find that the present impugned proceedings cannot be sustained in the eye of law.

8. Under similar circumstances, this Court by relying on the decisions made in the case of Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another Vs.R.K.Streels reported in (1998) 108 STC 161, in the case of Raghuvar (India) Limited Vs. Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur reported in (2006) 144 STC 331, in the case of D.Senthil Kumar and others Vs. Commercial Tax Officer, Erode and another reported in [2006] 148 STC 204 (Mad) and in the case of Rukmani Vs. The Deputy Commercial Tax Officer (CDJ 2012 MHC 5515), allowed the similar writ petition filed by the similarly situated purchasers and set aside the impugned proceedings therein. At Paragraph No.3 of the said order, it has been observed as follows:

"3. In the case of Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another Vs.R.K.Streels reported in (1998) 101 STC 161, the Court considered somewhat a similar case and held that the respondent therein is a bona fide purchaser without notice of charge under Section 24(2) of the Tamil Nadu General Sales Tax Act, 1959 and therefore, the property cannot be proceeded against for the recovery of sales tax arrears. In the case hand, there is no charge on the property and there is no doubt about the bonafide of the purchase made by the petitioner, because it is TIIC who brought the property for sale. In Raghuvar (India) Limited Vs. Deputy Commissioner (Appeals) I, Commercial Taxes, Jaipur reported in (2006) 144 STC 331, the Court considered the case of similar purchaser who had purchased the property without notice of Sales Tax arrears and it was held that the property, at the hands of the purchaser, was free of charge and it was not open to the Sales Tax Department to enforce the liability of the defaulter against the purchaser. In D.Senthil Kumar and others Vs. Commercial Tax Officer, Erode and another reported in [2006] 148 STC 204 (Mad), the Hon'ble Division Bench has held that the appellants therein, as transferee for the properties for valuable consideration without the notice of the charge are entitled for direction as mentioned above. The petitioner's case is on a better footing as there was no charge on the property. In Rukmani Vs. The Deputy Commercial Tax Officer (CDJ 2012 MHC 5515), a similar view was taken and it was held that there is no material placed before them to prove that steps have been taken under the provisions of the Revenue Recovery Act against the delinquent or the subsequent first purchaser, and therefore the petitioner therein cannot be penalized. The above decisions are fully in support of the petitioner. Thus, for all the above reasons, this Court is of the firm view that the impugned notice is unsustainable in law."

9. Since this Court finds that the facts and circumstances of the present case are squarely covered by the above decision made by this Court and in view of the findings rendered supra, the petitioner is entitled to succeed. Accordingly, this writ petition is allowed and the impugned order is set aside. However, this order will not prejudice the right of the Department to proceed against the said dealer viz., M/s.Ashok Spinners, Udumalpet, to recover the tax dues in a manner known to law. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mk
To

1. The Assistant Commissioner (CT)
Udumalpet (North) Assessment Circle
Udumalpet, Tirupur District.

2. The Sub-Registrar
The Office of the Sub-Registrar
Udumalpet, Tirupur District.

+1cc to M/S.P.Rajkumar, Advocate sr.3900
+1cc to the Government Pleader sr.5044
+1cc to the Special Government Pleader sr.4767

W.P.No.1440 of 2019

vsn ii[co]
srg 13/02/2019