

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 15.04.2019

Delivered on : 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.39538 of 2006

and

M.P.No.1 of 2006

A.Ramachandran

...

Petitioner

Vs.

1.The Commercial Tax Officer(FAC),
Sriperumbudur Assessment Circle,
Varadarajapuram - 603 103.

2.Tamil Nadu Small Industries Development
Corporation Ltd.,
A Government of Tamil Nadu undertaking,
Paulvels Road, Kathipara Junction,
Chennai - 600 016,
Rep. by its Chairman & Managing Director,

3.Tamil Nadu Industrial Investment Corporation Ltd.,
No.692, Anna Salai, Chennai - 600 035.
Rep. by its Managing Director.

4.M/s.Mac Thompson Exports Pvt. Ltd.,
1-A, 6th Cross Street, Trustpuram,
Kodambakkam, Chennai-600 024.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the First Respondent from taking any coercive action against the property more fully described in the Schedule to the Writ Petition by way of auction or otherwise for the alleged Sales Tax dues of the Fourth Respondent as mentioned in Notice Na.Ka.4134/03/A3 or its sister concern.

For Petitioner : Mr.G.M.Syed Noorullah Sheriff

For Respondents : Mr.Mr.V.Haribabu
AGP Taxes for R-1
Mrs.Rita Chandrasekar for R2 & R3

O R D E R

This Writ Petition is filed for a Writ of Mandamus to prevent the First Respondent from taking coercive action in respect of the property described in the schedule to the Writ Petition by way of auction or otherwise for the alleged sales tax dues of the Fourth Respondent as mentioned in notice dated 27.09.2006.

2.The facts that are relevant for purposes of deciding this case are as under. The Tamil Nadu Small Industries Development Corporation (SIDCO) allotted Shed No.134 to the Fourth Respondent herein in response to Application No.9901. Thereafter, a Sale Deed dated 27.10.1994 (the First Sale Deed) was executed by SIDCO in favour of the Fourth Respondent whereby the aforesaid Shed No.134 was conveyed to the Fourth Respondent for a sum of Rs.8,14,620/-. As per Clause 4 of the First Sale Deed, the vendor, i.e. SIDCO, covenanted that there is no encumbrance over the property and that the vendor has good right, title and interest to convey the property.

3.Subsequently, it appears that the Fourth Respondent availed of loan facilities from the Third Respondent herein and as security in respect thereof, a mortgage was created over Shed No.134. Thereafter, the Fourth Respondent defaulted in servicing the aforesaid loan facility and, therefore, the Third Respondent decided to bring the mortgaged property to sale. Accordingly, an auction notice was issued in respect of the proposed auction sale on 20.02.2006. In response thereto, the Petitioner herein participated in the auction and was the successful purchaser. As the successful auction purchaser, negotiations were held between the Petitioner and the Third Respondent. By letter dated 04.03.2006, the Petitioner stated, in relevant part, as follows:

"There is a sales tax due to be paid to the tune of Rs.13.50 lakhs. I have to pay the amount to sales tax department."

(emph

asis added).

4.Subsequent thereto, a Sale Deed dated 28.4.2006 (the Second Sale Deed) was executed in favour of the Petitioner for a sum of Rs.12,50,000/-. At the time of the said sale, the Third

Respondent issued terms and conditions relating to the sale. Clause III of the General Conditions of Sale specified that "the sale of the land and building and/or plant and machinery, accessories and other articles are on "as is where is" basis. In addition, Clauses 5 and 16 of the Terms and Conditions of Sale read as under:

"5. There is no express or implied condition or warranties of sale. Neither can reliance be had on any description nor will any complaint against the description be entertained."

"16. The successful bidder has to pay the property tax, commercial tax and other dues to the government and other statutory and other liabilities, if any, in respect of the property sold."

(emphasis added)

5. The recitals to the Second Sale Deed stipulated that the sale is on "as is where is" basis. In addition, clause 6 of the Second Sale Deed stipulated that there are no express or implied conditions of warranty in respect of the property conveyed under the sale deed. More importantly, clause 7 stipulated as follows:

"the purchaser hereby declares taxes, levies, statutory and other liabilities etc if found due in respect of the schedule property shall be borne and paid by the purchaser without any reference to the vendor"

(emphasis added)

6. Thereafter, a notice dated 27.09.2006 (the Notice) was issued by the Commercial Tax Officer (FAC), Assessment Circle, Varadarajapuram Circle, i.e. the First Respondent herein, to the Fourth Respondent herein calling upon the said Respondent to discharge the Sales Tax dues of Rs.12,41,710/- within 15 days from the date of receipt of the notice. Upon coming to know of the said notice, the Petitioner herein filed this Writ Petition.

7. At the hearing, the learned counsel appearing for the Petitioner referred to the First Sale Deed under which the Fourth Respondent purchased the property from SIDCO. He also referred to the auction notice and to the Notice. He, thereafter, referred to the judgment of the Division Bench of this Court in GUPTA AND COMPANY Vs. THE COMMERCIAL TAX OFFICER AND OTHERS in W.P.No.6267 of 2006. In particular, he referred to paragraph 18 of the said judgment and pointed out that the said case also dealt with a purchase in a public auction. He further referred to paragraph 32 of the said judgment wherein the judgement in DEPUTY COMMERCIAL TAX OFFICER vs. RK STEELS CASE,

1998 108 STC 161 (the RK Steels Case) was referred to for the proposition that an honest and bona fide purchaser without knowledge of the encumbrance or the tax liability was protected under the proviso to Section 24-A of the Tamil Nadu General Sales Tax Act, 1959 (the TNGST Act). He also referred to page 28 of the said judgment wherein the PADMA COFFEE WORKS CASE, (1999) 114 STC 494, was cited for the principle that a charge cannot be enforced against a transferee without notice. In particular, the learned counsel relied on the PADMA COFFEE WORKS Case to submit that unless the charge is registered in the registration department, it would not be possible for a prospective buyer to know if there is a charge over the property for any arrears of tax. In the instant case, according to the learned counsel for the Petitioner, the charge was not registered in the SRO concerned. Therefore, he submitted that the Petitioner is a bona fide purchaser for valuable consideration and is, therefore, entitled to protection under Section 24-A of the TNGST Act.

8.He also submitted that it was a statutory sale under Section 29 of the State Financial Corporations Act, 1957 (the SFC Act) and, therefore, the Petitioner is entitled to enjoy the property without encumbrances.

9.In reply, the learned counsel appearing for the Third Respondent referred to the terms and conditions of sale, wherein Clause 16 makes the purchaser liable for commercial tax dues. In addition, the learned counsel also referred to clause 7 of the Second Sale Deed wherein it is reiterated that the purchaser shall bear commercial tax dues.

10.The learned counsel for the First Respondent referred to the prayer in the Writ Petition and contended that the Writ Petition is not maintainable because the Notice from the First Respondent is not under challenge. He further submitted that only a bona fide purchaser is protected under Section 24-A of the TNGST Act and referred to paragraphs 2 and 3 of the affidavit wherein it is stated that the price should be reduced if there are sales tax dues from the Fourth Respondent. It is further stated therein that the Petitioner was given an impression by the Third Respondent that there are sales tax dues from a sister concern of the Fourth Respondent to the First Respondent and not from the Fourth Respondent. By citing the said paragraphs, the learned counsel for the First Respondent contended that the Petitioner herein is not a bona fide purchaser. Accordingly, he submitted that the Writ Petition is liable to be dismissed.

11.The affidavit, documents on record and oral submissions of all parties were carefully considered.

12.The terms and conditions of sale coupled with the Second Sale Deed, which is in favour of the Petitioner herein, make it abundantly clear that the purchaser is liable in respect of commercial tax dues. The Second Sale Deed further clarifies that the seller is not providing title warranties to the purchaser and this may be compared and contrasted with the First Sale Deed which contains a title warranty from SIDCO to the Fourth Respondent and does not impose liability for commercial tax dues on the Fourth Respondent. Indeed, the letter dated 04.03.2006 from the Petitioner to the Third Respondent puts the matter beyond doubt. By the said letter, the Petitioner herein acknowledged that he is fully aware about the sales tax dues and his liability in respect thereof upon purchase of the property. In fact, in view of recognising this debt, the Petitioner had requested for a lower price. In light of the above documents, it cannot be said that the Petitioner was unaware about the sales tax dues of the Fourth Respondent and the liability of the purchaser in respect thereof. Therefore, the Petitioner is not a bona fide purchaser. Section 24-A of the TNGST Act is relevant, in this regard, and reads, in relevant part, as under:

"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 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(emphasis added); or
- (ii) with the previous permission of the assessing authority"

13.When the documents on record are examined in the context of section 24-A of the TNGST Act, there is little doubt that the Petitioner herein was aware of the sales tax dues of the Fourth Respondent and was duly notified that he would be liable in respect thereof. Thus, he would not be entitled to any protection as a bona fide purchaser. The judgments of the

Division Bench of this court in the RK STEEL case and GUPTA AND COMPANY case are in the factual context of a bona fide purchaser who was unaware about the sales tax dues. Therefore, the said cases do not advance the cause of the Petitioner. The contention of the Petitioner that his purchase was under the SFC Act and that, therefore, he is entitled to an encumbrance-free property is completely untenable. The SFC Act enables a state financial corporation to step into the shoes of the defaulting borrower in order to bring the mortgaged/charged property to sale without the intervention of Court. In that respect, it is akin to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In effect, there are no implied warranties on title or encumbrance-free status in a purchase under the SFC Act per se. In the instant case, by way of specific clauses in the Second Sale Deed, the implied warranties on title under Section 55 of the Transfer of Property Act, 1882 were varied by a contract to the contrary, namely, the specific clauses in the Second Sale Deed. Consequently, the Writ Petition is liable to be dismissed.

14. In the result, the Writ Petition is dismissed but the parties are left to bear their respective costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

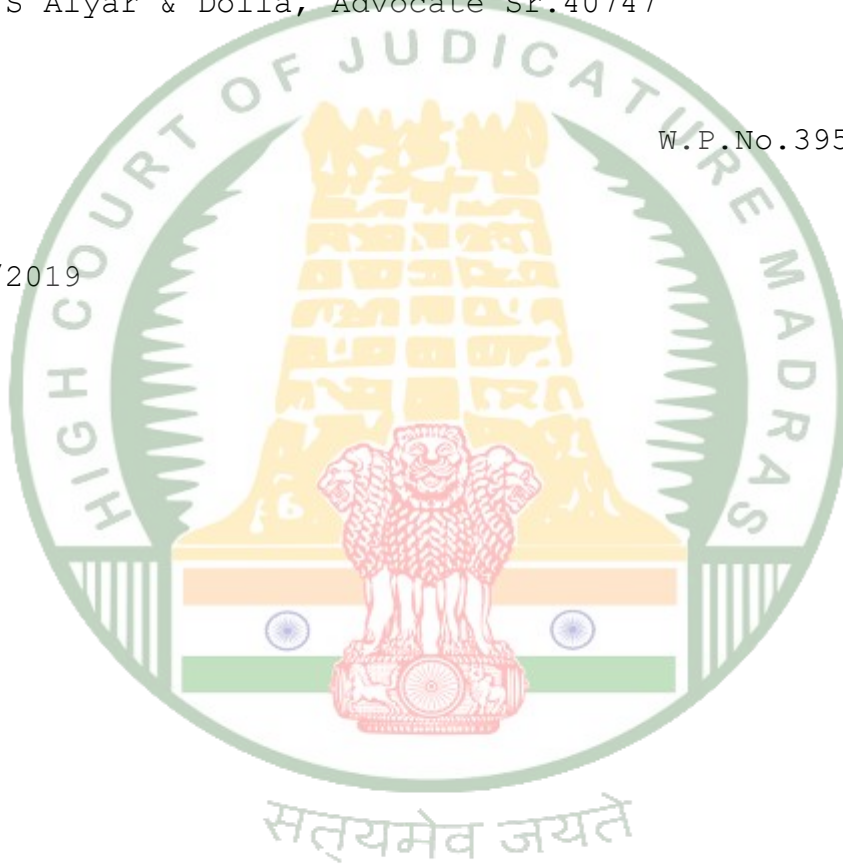
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3.The Managing Director.
Tamil Nadu Industrial Investment Corporation Ltd.,
No.692, Anna Salai,
Chennai - 600 035.

+lcc to Mr.G.M.Syed Nurullah Sheriff, Advocate Sr.39199
+lcc to the Special Government Pleader sr.39665
+lcc to M/S Aiyar & Dolia, Advocate Sr.40747

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