IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.Nos.7612 & 7613 of 2008
and
M.P.Nos.2 & 2 of 2008

M/s.Vinayaga Inn,
36-C, Garden Road,
Udhagai (North) ..Petitioner in both WPs.

Vs.

The Deputy Commercial Tax Officer,
Udhagai (North). ..Respondent in both Wps.

Common Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in proceedings Ref.57/2007.A3 and 58/2007.A3 respectively and quash the proceedings dt. 05.03.2008 issued therein and further direct the respondent not to take any coercive action against the petitioner herein for any sales tax arrears of M/s.Parkview Restaurant, Garden Road, Udhagai as the petitioner is a bonafide purchaser for adequate consideration and has purchased the property comprised R.S.No.4208/3 and 4209/1, (New T.S.No.C24/4, C24/5) situate at the Nilgiris, Ootacamund and without notice of any charge created by the respondent.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader
... in both Wps.

COMMON ORDER

The notice issued under the Revenue Recovery Act, to the petitioner herein, is under challenge in these writ petitions.

2. It is seen that the petitioner had purchased the property comprised in R.S.No.4208/3 and 4209/1, (New T.S.No.C24/4, C24/5), The Nilgiris, Ootacamund, through a registered sale deed dated 27.03.2006, for a valid consideration. The petitioner's vendor was running a hotel in the same premises in the name of M/s.Parkview Restaurant. The

recovery notice has now been issued for tax arrears of M/s.Parkview Restaurant. At the time, when the petitioner had purchased the property, there was no assessment order passed against the original assessee namely M/s.Parkview Restaurant. It is also submitted that when the petitioner had purchased the suit property, he had conducted due deligence over the title and found that there was no encumbrance detrimental to the title of the property and thereafter purchased the same.

3. The respondent have also admitted that the arrears of the Sales Tax was cleared under the "Samadhan Scheme" and as such, there was no arrears of Sales Tax under the TNGST Act. Insofar as the arrears of the original assessee pertaining to Luxury Tax is concerned, there was no order of assessment passed under the Tamil Nadu Luxury Tax Act. Even otherwise, the notice pertaining to the Luxury Tax itself was issued on 31.05.2006, which is after the sale deed of the petitioner and hence no charge could have been in existence when the petitioner had purchased the property. As such, the petitioner herein can be considered to be a bonafide purcharser of the property and the respondent may not be justified in proceeding against the property purchased by the petitioner. Hence the impugned order dated 05.03.2008 in Ref.Nos. 57/2007.A3 and 58/2007.A3 are quashed.

4. Accordingly, these writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

Pns
To

The Deputy Commercial Tax Officer,
Udhagai (North).

+1cc to Mr.B.Raveendran, Advocate SR.No.73072

+1cc to Special Government Pleader (Taxes) SR.No.73493

W.P.Nos.7612 & 7613 of 2008
and
M.P.Nos.2 & 2 of 2008

SPD(CO)
GMY(11/10/2019)