IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.28349 & 30785 of 2019
and
W.M.P.Nos.30870, 30871, 28025 & 28027 of 2019

K.Madheswari
D/o.Krishnamoorthy ... Petitioner in both W.P.s

vs.

1. The Commercial Tax Officer
Musiri. ... 1st respondent in W.P.No.30785 of 2019

2. The Assistant Commissioner (CT)(FAC)
Rasipuram.

3. The Sub-registrar
Office of the Sub-Registrar
Sendhamangalam
Namakkal District. ... Respondents 1 & 2 in W.P.No.28349 of 2019 and respondents 2 & 3 in W.P.No.30785 of 2019

Writ Petition No.28349 of 2019 filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records on the files of the 1st respondent in Na.Ka.1847/14/A3 dated 27.02.2015 and quash the same as being contrary to the principles laid down by this Court in the judgement rendered in W.P.No.1440 of 2019 dated 21.01.2019 (P.Sathasivam Vs. The Assistant Commissioner (CT), Udumalpet (North) Assessment Circle, Udumalpet and another).

Writ Petition No.30785 of 2019 filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records on the files of the 1st respondent in Na.Ka.2417/2003-A3 dated 12.10.2010 and the connected notice of the 2nd respondent in Na.Ka.1847/14/A3 dated 27.02.2015 and quash the same as being contrary to the principles laid down by this Court in the judgement rendered in W.P.No.1440 of 2019 dated 21.01.2019 (P.Sathasivam Vs. The Assistant Commissioner (CT), Udumalpet (North) Assessment Circle, Udumalpet and another).

For Petitioner in both W.P.s: Mr.R.Seniappan

For Respondents : Mr.M.Hariharan
Additional Government Pleader
for R1 in W.P.No.28349 of 2019
forR1&R2 in W.P.No.30785 of 2019
Mr.P.P.Purushothaman
Government Advocate
for R2 in W.P.No.28349 of 2019
for R3 in W.P.No.30785 of 2019

C O M M O N O R D E R

W.P.No.28349 of 2019 is filed challenging the order dated 27.02.2015, attaching the properties of the petitioner. W.P.No.30785 of 2019 is filed challenging the orders of attachment dated 12.10.2010 and 27.02.2015, attaching the properties of the petitioner.

2. Both these writ petitions are filed by one and the same petitioner. The impugned orders of attachment were passed for realizing the tax dues recoverable from one R.Ramesh, who was trading in the name of M/s.Sri Balaji Traders.

3. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the first respondent in W.P.No.28349 of 2019 and the respondents 1 & 2 in W.P.No.30785 of 2019 and the learned Government Advocate appearing for the second respondent in W.P.No.28349 of 2019 and the third respondent in W.P.No.30785 of 2019.

4. The grievance of the petitioner is that when she purchased the property on 18.05.2010 earlier to the impugned orders of attachment, the authorities are not justified in making the impugned attachment orders, especially, when the petitioner is not the defaulter. Therefore, it is contended that the impugned attachments cannot be sustained in the eye of law, since as on the date of attachments, the vendor of the petitioner had lost his right over the said properties and on the other hand, the petitioner has become the owner of the said properties.

5. The learned counsel for the petitioner, in support of his contention, relied on an order passed by this Court in W.P.No.1440 of 2019 dated 21.02.2019, deciding the very same issue in favour of the petitioner therein.

6. The learned Additional Government Pleader is not disputing the fact that the petitioner has purchased the properties prior to the date of the impugned attachments.

7. Going by the above stated facts and circumstances, it is evident that the impugned orders of attachment were made in respect of the properties, over which, the defaulter has lost his title as on the date of attachments and that the petitioner has became the owner of the properties which is sought to be attached on the date of such attachments. It is not in dispute that the petitioner is not the defaulter and on the other hand, the above said person is the defaulter. The very same issue under similar facts and circumstances has been considered by this Court in W.P.No.1440 of 2019 dated 21.01.2019, wherein this Court after following several decisions of this Court allowed the writ petition and set aside the impugned proceedings therein. Paragraph Nos. 7 to 9 of the said order read as follows:

> "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."
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> 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."

8. The facts and circumstances of the present case would undoubtedly indicate that the petitioner herein is also entitled to the similar relief as has been granted in the above said writ petition. Accordingly, both these Writ Petitions are allowed and the impugned proceedings are set

aside. However, this order will not prejudice the right of the Department to proceed against the defaulter to recover the tax due in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer
Musiri.

2.The Assistant Commissioner (CT)(FAC)
Rasipuram.

3.The Sub-registrar
Office of the Sub-Registrar
Sendhamangalam
Namakkal District.

+1cc to M/s.R.Senniappan, Advocate SR.98997
+1cc to the Spl Government Pleader(Taxes) SR.99603

W.P.Nos.28349 & 30785 of 2019

GP(CO)
CB(02/12/2019)