IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

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THE HONOURABLE Mr.JUSTICE M.S.RAMESH
W.P. 25647 of 2018
and
W.M.P. 29831 of 2018

Mr.M.G.M.Maran @ Nesamani Maran ... Petitioner

Vs

1. The Tax Recovery Officer VII,
Company Range-IV,
Room No.327, III Floor,
New Building, Income Tax office,
'Ayakar Bhavan' Uttamar Gandhi Salai,
Nungambakkam, Chennai.

2. Maxworth Home Limited,
Maxworth Nagar,
No.153, S.Kolathur,
Chennai-117.

3. The Sub-Registrar,
Pallavaram,
Chennai-600 075. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records comprised in TR No.M-47/2006-07, dated 11.09.2006, on the file of the 1st respondent, quash the same consequentially direct the 3rd respondent to remove/delete the entry relating to attachment order dated 11.09.2006, in so far Plot No.880 in DTCP approved layout No.12/75 in Survey No.397/17(Part) & 398/3 (Part) situated at 153, Sunnambu Kolathur, No.97, Madipakkam II Village, Tambaram Taluk, Kancheepuram District.

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

For Respondents in both W.P.s : Mrs.Hema Muralikrishnan, Senior Standing Counsel for R1

Mr.J.Shenbagalingam for R2

Mr.A.Zakir Hussain,
Government Pleader for R3

O R D E R

When the order impugned in this Writ Petition was put under challenge by one of the subsequent purchasers under the 2nd respondent, this Court in more than one order had quashed the impugned order in so far as it relates to those owners are concerned. The relevant portion of one such order passed in W.P. No.27245 of 2013, dated 06.11.2014 in the case of Geetha Rajagopalan Vs. The Tax Recovery officer VII, Company Range-IV, Nungambakkam, Chennai and others reads as follows :-

> "7. The second respondent does not claim any title over the property, which is the subject matter of attachment. Admittedly, the order of attachment refers to house plot Nos.38 and 39 in DTCP approved layout No.351/73 situated at 153, Sunnambu Kolathur, No.97, Madipakkam II Village, Tambaram Taluk, Kancheepuram District. As on the date of attachment, the second respondent was not the lawful owner of the above said plot since the sale deed has been executed and registered in favour of the petitioner as early as on 16.07.1997. The second respondent does not dispute the fact that they are not claiming title over the property. In such event, the Income Tax Department cannot attach the property mentioned supra, which is owned by the petitioner as it cannot be treated to be a property owned by the defaulter viz., the second respondent. Therefore, the impugned order of attachment is necessarily to be vacated in so far as the property of the petitioner viz., Plot Nos.38 an 39 in DTCP approved layout No.351/73 situated at 153, Sunnambu Kolathur, No.97, Madipakkam II Village, Tambaram Taluk, Kancheepuram District. Having held so, it has to be seen as to whether the petitioner is entitled to relief in this writ petition on the ground that the proceedings dated 15.11.2012 has not been challenged. According to the second respondent, this proceedings is an order passed by the first respondent after considering the petitioner's claim for raising the order of attachment.
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> 8. On a careful reading of the communication dated 15.11.2012, it is seen that it is not an order passed by the first respondent on the claim made by the petitioner for raising attachment, rather, a communication sent to the petitioner by

> the first respondent viz., the Tax Recovery Officer intimating as to what circumstances the attachment order dated 11.09.2006 was passed and also enclosing a copy of the order of attachment. Therefore, the communicated dated 15.11.2012 is not an order passed by Tax Recovery Officer. But, it is in fact a reply to the petitioner's representations made to the Chief Commissioner of Income Tax-I, Chennai dated 28.05.2012 and 19.06.2012 and the petitioner need not independently challenge the communication dated 15.11.2012, consequently, it is held that it is not a proceedings under the provisions of Rule 11 as stipulated under II Schedule and hence, the petitioner could not be driven to institute a suit."

With the above observation, this Court had quashed the impugned order in so far as it relates to the property of the petitioners therein and also observed that the order will not in any way prejudice the rights of the 2nd respondent in executing the lawful rights available under the agreement they had entered into with the petitioners therein.

2. In the instant case, the 2nd respondent herein had sold the subject property in Plot No.880 to the vendor of the petitioner herein vide Sale deed dated 12.10.1994 in Document No.1594/95. The petitioner had purchased it from his Vendor on 07.08.2000. As such, if at all, the 2nd respondent intends to exercise any rights available, it would be against the Vendor of the petitioner, who was the agreement holder. Subject to the terms of such an agreement, the petitioner will be at liberty to exercise his rights if any. With this liberty, the impugned order dated 11.09.2006 comprised in TR No.M-47/2006-07, on the file of 1st respondent is quashed in so far as it relates to the petitioner's property at Plot No.880, in DTCP approved layout No.12/75 in Survey No.397/17 (Part) & 398/3 (Part) situated at 153, Sunnambu Kolathur, No.97, Madipakkam II Village, Tambaram Taluk, Kancheepuram District. Accordingly, this Writ Petition stands allowed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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   Chennai-117.

3. The Sub-Registrar,
   Pallavaram,
   Chennai-600 075.

+1cc to Mr.R.Karthikeyan , Advocate SR.No. 59836
+1cc to Mr.J.Paranthaman , Advocate SR.No. 60291

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and
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A.SK(19/08/2019)