



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2019

CORAM:

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and
THE HONOURABLE MRS. JUSTICE T. KRISHNAVALLI

W.A. (MD) Nos. 409 to 420 of 2019
& C.M.P. (MD) Nos. 3535 to 3546 of 2019

and

W.A. (MD) Nos. 799 to 803 of 2018
& C.M.P. (MD) Nos. 4767 to 4771 of 2018

And

WA (MD) Nos. 819 to 825 of 2018
& C.M.P. (MD) Nos. 4896 to 4901 of 2018

S. RAJENDRAN, Appellant in WA. (MD) Nos. 409 to 420 of 2019

SRI SIVALAYA ADVANCES
A PARTNERSHIP FIRM
REP. BY ITS PARTNER
R. PRABHAKARAN

Appellant in WA (MD) . 799/ 2018

JAGADISH AUTO FINANCE
A PARTNERSHIP FIRM
REP. BY ITS PARTNER
R. PRABHAKARAN

Appellant in WA (MD) . 800/ 2018

SRI SIVALAYA ENTERPRISES
A PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER
R. PRABHAKARAN,

Appellant in WA (MD) . 801/ 2018

MADURA AUTO FINANCE
A PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER
R. PRABHAKARAN,

Appellant in WA (MD) . 802/ 2018

SRI SADASIVAM COMBINES
A PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER
R. PRABHAKARAN

Appellant in WA (MD) . 803/ 2018

D. S. SENTHILVEL

Appellant in WA (MD) . 819/ 2018

<https://hservices.courts.gov.in/hservices/>

P. R. SENTHIL

Appellant in WA (MD) . 820/ 2018

P. SENTHIL

Appellant in WA (MD) . 821/ 2018



R.VIJAYAN

Appellant in WA(MD). 822/ 2018

K.PONNUSAMY,

Appellant in WA(MD). 823/ 2018

SOODAMANI LEASINGS

A PARTNERSHIP FIRM REPRESENTED

BY ITS PARTNER

SHRI R. KATHIRESAN,

Appellant in WA(MD). 824/ 2018

R.S. MANIAN

Appellant in WA(MD). 825/ 2018

- Vs. -

D.S.SENTHIVEL,

1st Respondent in WA(MD). 409/ 2019

T.R.DINAKARAN

1st Respondent in WA(MD). 410/ 2019

P.SENTHIL

1st Respondent in WA(MD). 411/ 2019

A.VIJAYAN

1st Respondent in WA(MD). 412/ 2019

K.PONNUSAMY,

1st Respondent in WA(MD). 413/ 2019

SOODARMANI LEASINGS,

A PARTNERSHIP FIRM

REP.BY ITS PARTNER

SHRI R.KATHIRESAN,

1st Respondent in WA(MD). 414/ 2019

R.S.MANIAN,

1st Respondent in WA(MD). 415/ 2019

SRI SIVALAYA ADVANCES,

A PARTNERSHIP FIRMS

REP.BY ITS PARTNER

SHRI R.PRABHAKARAN,

1st Respondent in WA(MD). 416/ 2019

JEGADISH AUTO FINANCE,

A PARTNERSHIP FIRMS

REP.BY ITS PARTNER

SHRI R.PRABHAKARAN,

1st Respondent in WA(MD). 417/ 2019

SRI SIVALAYA ENTERPRISES,

A PARTNERSHIP FIRMS

REP.BY ITS PARTNER

SHRI R.PRABHAKARAN,

1st Respondent in WA(MD). 418/ 2019

MADURA AUTO FINANCE,

A PARTNERSHIP FIRMS

REP.BY ITS PARTNER

SHRI R.PRABHAKARAN,

1st Respondent in WA(MD). 419/ 2019

SRI SADASIVAM COMBINES,

A PARTNERSHIP FIRMS

REP.BY ITS PARTNER

SHRI R.PRABHAKARAN,

1st Respondent in WA(MD). 420/ 2019



TAX RECOVERY OFFICER-2
INCOME TAX OFFICES
MADURAI-02

2nd Respondent in WA(MD).Nos.409 to 420 of 2019,
Respondent in WA(MD).Nos. 799 to 803 and
819 to 825 of 2018

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Prayer in WA(MD). 409/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.2932 of 2018 dated 07.03.2018 for the following among other

Prayer in WP(MD). 2932/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 410/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.2933 of 2018 dated 07.03.2018 for the following among other

Prayer in WP(MD). 2933/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 411/ 2019 :

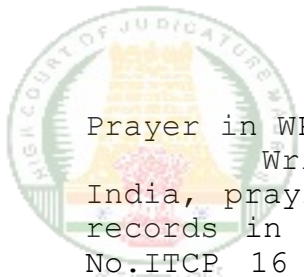
Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.2934 of 2018 dated 07.03.2018 for the following among other

Prayer in WP(MD). 2934/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 412/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.2935 of 2018 dated 07.03.2018 for the following among other



Prayer in WP(MD). 2935/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 413/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the order passed by this Honourable Court, made in WP(MD)No.2936 of 2018 dated 07.03.2018 for the following among other

Prayer in WP(MD). 2936/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 414/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.2937 of 2018 dated 07.03.2018 for the following among other

Prayer in WP(MD). 2937/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 415/ 2019 :

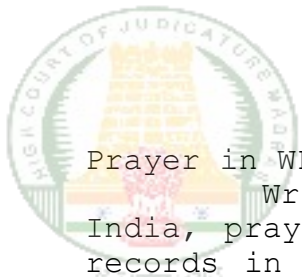
Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.2938 of 2018 dated 07.03.2018 for the following among other

Prayer in WP(MD). 2938/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 416/ 2019 :

<https://hcservices.ecourts.gov.in/hcservices/> Prefers this Memorandum of Grounds of Writ Appeal against the order passed by this Honourable Court, made in WP(MD)No.1320 of 2018 dated 28.02.2018 for the following among other



Prayer in WP(MD). 1320/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the petitioners property in Form No.ITCP 16, dated 21/12/2015 (a copy of which is not supplied to the petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 417/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.1321 of 2018 dated 28.02.2018 for the following among other

Prayer in WP(MD). 1321/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issued a Writ of Certiorari calling for the records in the matter of attachment of the petitioners property in Form No.ITCP 16, dated 21/12/2015 (a copy of which is not supplied to the petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 418/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.1322 of 2018 dated 28.02.2018 for the following among other

Prayer in WP(MD). 1322/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No. ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 419/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.1323 of 2018 dated 28.02.2018 for the following among other

Prayer in WP(MD). 1323/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records in the matter of attachment of the petitioners property in Form No.ITCP 16 dated 21.12.2015 (a copy of which is not supplied to the petitioner though admitted in his order dated 27.10.2017) and the order dated 27.10.2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

<https://hcservices.ecourts.gov.in/hcservices/> Prayer in WA(MD). 420/ 2019 :

Prefers this Memorandum of Grounds of Writ Appeal against the common order passed by this Honourable Court, made in WP(MD)No.1324 of

2018 dated 28.02.2018 for the following amount other

Prayer in WP(MD). 1324/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the petitioners property in Form No.ITCP 16, dated 21/12/2015 (a copy of which is not supplied to the petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in petitioner favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 799/ 2018 :

To submit this Memorandum of Writ Appeal against the common order dated 28.2.2018 in W.P.No.1320 to 1324 of 2018 on the file of this Honourable High Court Madurai Bench for the following among others

Prayer in WA(MD). 800/ 2018 :

To submit this Memorandum of Writ Appeal against the common order dated 28.2.2018 in W.P.No.1320 to 1324 of 2018 on the file of this Honourable High Court, Madurai Bench for following among others

Prayer in WA(MD). 801/ 2018 :

To reverse the order of the learned Judge dated 28/02/2018 in WP.No.1320 to 1324 of 2016 on the file of this Honble Court in so far as it relates to affirming the attachment of property purchased by bonafide purchaser without notice and which is contrary to the proviso to section 281 of the Income Tax Act, 1961 and quash the attachment made in form ITCP 16 dated 21.12.2015.

Prayer in WA(MD). 802/ 2018 :

To reverse the order of the learned Judge dated 28/02/2018 in WP.No.1320 to 1324 of 2016 on the file of this Honble Court in so far as it relates to affirming the attachment of property purchased by bonafide purchaser without notice and which is contrary to the proviso to section 281 of the Income Tax Act, 1961 and quash the attachment made in form ITCP 16 dated 21.12.2015.

Prayer in WA(MD). 803/ 2018 :

To Memorandum of Writ Appeal against the common order dated 28/02/2018 in W.P.No.1320 to 1324 of 2018 on the file of this Honourable High Court, Madurai Bench.

Prayer in WA(MD). 819/ 2018 :

To Memorandum of Writ Appeal against the common order dated 07.03.2018 in W.P.No.2932 of 2018 on the file of this Honourable High Court, Madurai Bench.

Prayer in WP(MD). 2932/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.



Prayer in WA(MD). 820/ 2018 :

To reverse the order of the learned Single Judge dated 07/03/2018 in WP.No.2933 of 2018 on the file of this Honble court in so far as it relates to affirming the attachment of property purchased by bonafide purchaser without notice and which is contrary to the proviso to section 281 of the Income Tax Act, 1961 and quash the attachment made in form ITCP.16 dated 21.12.2015.

Prayer in WP(MD). 2933/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 821/ 2018 :

To submit this Memorandum of Writ Appeal against the common order dated 7.3.2018 in W.P.No.2934 of 2018 on the file of this Honourable High Court Madurai Bench

Prayer in WP(MD). 2934/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 822/ 2018 :

To Memorandum of Writ Appeal against the common order dated 07.03.2018 in W.P.No.2935 of 2018 on the file of this Honourble High Court, Madurai Bench.

Prayer in WP(MD). 2935/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 823/ 2018 :

The Appellant above named begs to submit this Memorandum of Writ Appeal against the common order dated 7.3.2018 in W.P.No.2936 of 2018 on the file of this Honourable High Court Madurai Bench for the following among others

<https://hcservices.ecourts.gov.in/hcservices/>

Prayer in WP(MD). 2936/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of



India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 824/ 2018 :

To Memorandum of Writ Appeal against the common order dated 07.03.2018 in W.P.No.2937 of 2018 on the file of this Honourble High Court, Madurai Bench.

Prayer in WP(MD). 2937/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

Prayer in WA(MD). 825/ 2018 :

To Memorandum of Writ Appeal against the common order dated 07.03.2018 in W.P.No.2938 of 2018 on the file of this Honourble High Court, Madurai Bench.

Prayer in WP(MD). 2938/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records in the matter of attachment of the Petitioners property in Form No.ITCP 16 dated 21/12/2015 (a copy of which is not supplied to the Petitioner though admitted in his order dated 27/10/2017) and the order dated 27/10/2017 holding the sale in my favour as null and void which has been passed without jurisdiction and quash both the orders.

For Appellants in

WA(MD)Nos.409 to 420 of 2019	:MR.M.A.GOWTHAM FOR
WA(MD)Nos.819 to 825 of 2018	MR. A.SOUNDARARAJAN

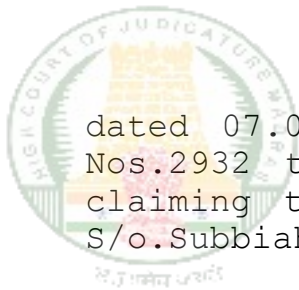
WA(MD)Nos.799 TO 803 OF 2018	: MR.R. SRINIVASAN
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FOR RESPONDENS IN ALL THE WA's	: For R1 NO APPEARANCE
	For R2 MRS. S. SRIMATHY
	CENTRAL GOVERNMENT COUNSEL

COMMON JUDGMENT

[Judgment of the Court was delivered by DR.VINEET KOTHARI, J.]

<https://hcservices.ecourts.gov.in/hcservices/> In WA (MD) .Nos.409 to 420 of 2019, the appellant Mr.S.Rajendran, who is the vendor of the property in question under various sale deeds, challenges the order of the learned single Judge



dated 07.03.2018 partly allowing the writ petitions in W.P.(MD). Nos.2932 to 2938 of 2018 filed by Mr.D.S.Senthilvel and others, claiming to be the purchasers from the appellant Mr.S.Rajendran, S/o.Subbiah.

2. In W.A.(MD).Nos.799 to 803 of 2018, the appellant Mr.D.S.Senthilvel, who is the purchaser of the property in question under various sale deeds, has assailed the order of the learned single Judge dated 28.02.2018 partly allowing the writ petitions in W.P.(MD).Nos.1320 to 1324 of 2018, filed by M/s.Sri Sivalaya Advances, a partnership firm represented by its Partner R.Prabhakaran and others, claiming to be the purchasers of the property in question from the seller one Mr.S.Rajendran, S/o.Subbiah.

3. The said Mr.D.S.Senthilvel, appellant in W.A.(MD).Nos.799 to 803 of 2018, has also filed W.A.(MD).Nos.819 to 825 of 2018, aggrieved by the order of the learned single Judge dated 07.03.2018, in partly dis-allowing his prayer in W.P.(MD).Nos.2932 to 2938 of 2018.

4. The respondent Income Tax Department issued an order of attachment in respect of the properties sold by the vendor on 21.12.2015, after the sale deeds were executed by the vendor in favour of the purchasers. The purchasers challenged the said attachment order of the Income Tax Department before this Court by way of writ petitions. The writ petitions came to be partly allowed by the learned Single Judge by orders dated 28.02.2018 and 07.03.2018 with the following observations:

"20.Yet the orders impugned in these writ petitions cannot be sustained as such. The Hon'ble Supreme Court in (1998) 6 SCC 658 has held that it is the function of the civil court to declare a transaction to be null and void and that the 'Tax Recovery Officer' cannot exercise the said function. Therefore, the respondent clearly erred in declaring the transactions to which the petitioners are parties as null and void. Therefore, the orders impugned in these writ petitions stand quashed to that extent. It would certainly be open to the petitioners herein to avail the remedy set out in Rule 11(6) of the second schedule of the Income Tax Act. If the respondent authority wants to have the transactions nullified, it is the respondent who must go to the civil court to seek declaration to that effect. If the writ petitioners want the attachment to be lifted, it is for them to move the civil court and obtain relief as provided in Rule 11(6) of the second schedule of the

Income Tax Act."



5. Another set of writ petitions came to be filed in W.P.(MD). Nos.19829 to 19840 of 2016 by one Mr.N.Subramanian and others, which came to be disposed of by the learned Single Judge of this Court on 18.10.2016, observing that non impleadment of vendors will not be an impediment in the way of the Income Tax Department authorities to hold an enquiry in terms of Section 11 Schedule 2 of the Income Tax Rules, 1961.

6. Mr.Gowtham, learned counsel appearing for the vendor submitted that since the sale deeds in question were executed in favour of the purchasers without receiving actual consideration from them, he has already filed a civil suit in O.S.No.5 of 2019 and it is pending on the file of the VI Additional District Judge, Madurai, for declaration of the sale deeds as null and void. He further submitted that the vendor is not aggrieved by the above quoted portion of the order of the learned Single Judge dated **07.03.2018** made in W.P.(MD).Nos.2932 to 2938 of 2018 and the order dated 28.02.2018 made in W.P.(MD).Nos.1320 to 1324 of 2018. He further submitted that the Income Tax Officers can proceed with the enquiry and the order of attachment can continue further under Section 11 of the Schedule II of the Act. He also submitted that the Vendor was served with the notice of demand tax on 30.05.2012 and 12.06.2012 in respect of assessment years 2005-06 and 2010-11 respectively, quantifying demand to an extent of Rs.4,04,56,280/- and another Notice of Demand was also served on him on **05.01.2013** and that no appeal proceedings are pending against the assessment made against the Vendor.

7. The learned counsel for the purchasers, Mr.Srinivasan, has not appeared before this Court. However, considering the nature of this order passed by us, his presence is dispensed with.

8. Mrs.Srimathy, learned Central Government Standing Counsel for the Income Tax Department submitted that the attachment of the property was made and therefore, the sale in question could not have been made by the Vendor and the attachment of property should continue till the revenue is recovered.

9. Having heard the learned counsel for the parties, except the learned counsel for the purchasers, Mr.R.Srinivasan, who is not present before this Court, we are of the opinion that the orders passed by the learned Single Judge do not warrant any interference by this Court and the present appeals filed by both Vendor as well as the Purchasers are liable to be dismissed.

10. Procedures to issue notice and Recovery of tax against an Assessee have been laid down in the Rules framed in the Second Schedule of the Act. Rule 11 of Schedule II of the Act *inter alia* permits the Tax Recovery Officer to hold an investigation, where any claim or objection is made to the property in execution of award of



recovery.

11. Rule 11(1), (2) and (6) of Schedule II of the Income Tax Rules (Procedure for Recovery) reads as follows:

"Investigation by Tax Recovery Officer

11(1) Where any claim is preferred to, or any objection is made to the ground that such property is not liable to such attachment or sale, the **Tax Recovery Officer shall proceed to investigate the claim or objection;**

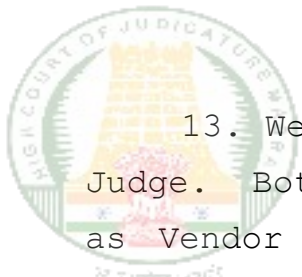
Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designatedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

....

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil Court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

12. Thus, it is clear that the recovery proceedings by the Income Tax Authorities under Rule 11(6) of the Act, are independent of the determination of the civil rights of the parties in the properly instituted civil suit and subject to the outcome of such civil suit, the Tax Recovery Officer can proceed with the recovery of the attached properties. In the instant case, the parties have already instituted a civil suit for the relief of declaration of rights for the property in question and according to Mr. Gowtham, learned counsel, one such civil suit in O.S.No.5 of 2019 has already been instituted by the Vendor. The learned Single Judge has left the Income Tax Department free to proceed with the recovery proceedings under Rule 11(6) of Schedule II of the Act. The Tax Recovery Officer is free to proceed further, by holding an enquiry under Rule 11 of the Second Schedule to the Act.



13. We do not find any error in the order of the learned Single Judge. Both the set of writ appeals filed by the purchasers as well as Vendor are accordingly dismissed. There shall no order as to costs. Consequently, connected Miscellaneous Applications are also dismissed.

TRUE COPY

SD
ASSISTANT REGISTRAR (CS III)

SUB ASSISTANT REGISTRAR (CS)

VS / kpl

TO

THE TAX RECOVERY OFFICER - 2,
INCOME TAX OFFICER,
MADURAI 02.

1CC TO MR. A. SOUNDARARAJAN, ADVOCATE SR 58240

1CC TO MR. R. SRINIVASAN, ADVOCATE SR 57647

1CC TO M/S. S. SRIMATHY, ADVOCATE SR 57716

KK
10/07/2019
12P 5C

**W.A. (MD) Nos.409 to 420 of 2019
& C.M.P. (MD) .Nos.3535 to 3546 of 2019
and**

**W.A. (MD) .Nos.799 to 803 of 2018
& C.M.P. (MD) .Nos.4767 to 4771 of 2018
And**

**WA (MD) .Nos.819 to 825 of 2018
& C.M.P. (MD) .Nos.4896 to 4901 of 2018**

28.03.2019