



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2020

DELIVERED ON : 26.05.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NO.3932 OF 2009

AND

M.P.NOS.2 AND 3 OF 2009

R.Kannan

... Petitioner

Vs

1. State of Tamil Nadu
rep.by the Secretary to Government,
Commercial Taxes and Religious Endowment Department
Secretariat, Fort St.George,
Chennai-600 009.

2. The Assistant Commissioner,
Commercial Tax, Krishnagiri.

3. S.Sampath

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent comprised in proceedings in RC.1524/98/A3 dated 02.01.2009 and quash the same and consequently issue a Mandamus forbearing the respondents, their officers, subordinates, employees, agents or any other person(s) claiming or acting under them from in any manner interfering with the peaceful possession and enjoyment of the petitioner's land comprised in S.Nos.42/2, 42/3B, 42/4, 45/2A1 admeasuring 0.17 cents, 0.60 cents, 1.08 cents and 1.20 cents respectively and in S.Nos.37/4, 42/1, 45/1A, 45/1B admeasuring 0.72.5 cents, 0.27.5 cents, 0.13.5 cents and 0.40.5 cents respectively in Pethappambatti Village, Pochamballi Taluk, Krishnagiri District wrongly referred as extents of 0.13 cents and 0.48 cents in S.Nos.45/3 and 45/23 respectively in the impugned notice.

For Petitioner : Mr.N.Inbarajan for Mr.P.Seshadri

For Respondents: Mr.M.Hariharan,
Addl.Govt.Pleader(Taxes)for R1 and R2



ORDER

The case of the petitioner is that the petitioner is carrying on granite business and in the course of his business, he purchased lands comprised in S.Nos.42/2, 42/3B, 42/4, 45/2A1 admeasuring 0.17 cents, 0.60 cents, 1.08 cents and 1.20 cents respectively in Pethappambatti Village, Pochampalli Taluk, Krishnagiri District for a total consideration of Rs.1,65,000/- from the third respondent herein and had taken possession of the property, by way of a registered sale deed dated 25.07.2007 registered as Doc.No.1659/2007 in the office of the SRO, Pochampalli. The petitioner also purchased lands comprised in S.Nos.37/4, 42/1, 45/1A, 45/1B admeasuring 0.72.5 cents, 0.27.5 cents, 0.13.5 cents and 0.40.5 cents respectively in Pethappambatti Village, Pochampalli Taluk, Krishnagiri District from the third respondent herein, for a total consideration of Rs.2,00,000/- and had taken possession of the property by way of a sale deed registered as Doc.No.441/2008 in the office of the SRO, Pochampalli. While purchasing the properties, the petitioner applied for encumbrance certificates for the above lands and verified the title of the properties. The vendor of the petitioner had also stated that there was no encumbrance on the properties. While so, the petitioner came to know through the third respondent that for the alleged sales tax arrears of Rs.5,80,836/- to be paid by the third respondent for the year 1995-96, action was initiated by the second respondent under the impugned notice in R.C.No.1524/98/A3 dated 02.01.2009 against the properties purchased by the petitioner from him, in the years 2007 and 2008. On seeing the impugned notice, the petitioner was shocked to note that the properties in question which were purchased by him were going to be auctioned on 19.03.2009 for non-payment of the sales tax arrears of Rs.5,80,836/- by the third respondent and that the action for recovering the dues from the properties, would be initiated under the Revenue Recovery Act. The further case of the petitioner is that in the impugned notice, the second respondent referred to 0.13 cents and 0.48 cents in S.Nos.45/3 and 45/23 respectively, but such sub-divisions are not at all available either in S.No.45 or in that village. According to the petitioner, the impugned notice refers only to the lands of the petitioner by quoting the wrong sub-divisions and such an exercise on the part of the second respondent is ex facie arbitrary and illegal.

2.With the above background, this writ petition has been filed by the petitioner seeking to set aside the impugned notice issued by the second respondent.

3.The learned counsel for the petitioner has submitted that the impugned notice seriously affects the petitioner's right to



property guaranteed under Article 300A of the Constitution of India in as much as it also indicates that the second respondent is contemplating action against the petitioner's property without notice to the petitioner under the Revenue Recovery Act and to attach and to proceed by way of auction sale of the petitioner's property in respect of a non-existing liability in so far as the petitioner is concerned. It is specifically submitted that even assuming that any amount was due, even in the absence of a specific charge on the subject properties from the erstwhile owner, still the recourse open to the second respondent is to proceed only against the third respondent by treating the sale consideration already received by the third respondent from the petitioner or on other properties owned by him and not to subject innocent purchasers for valuable consideration without notice. It is further submitted that the second respondent utterly lacks jurisdiction to issue the impugned notice without notice to the petitioner and is also against the principles of natural justice and the Tamil Nadu General Sales Tax Act, in particular Section 26(1). The learned counsel for the petitioner relied upon the judgment of this Court in the case of D.Senthil Kumar and others v. Commercial Tax Officer, Erode and another, reported in (2006) 148 STC 204 (Mad), and submitted that a charge on the property should not be enforced against a transferee if he has had no notice thereof, unless by law, the requirement of such notice had been waived. Stating so, the learned counsel for the petitioner has prayed for setting aside the impugned notice.

4.A counter affidavit has been filed on behalf of the respondents 1 and 2, in which it is stated that the third respondent herein was the sole proprietor of M/s.Sampath Granites and an assessee on the files of the Assistant Commissioner (CT), Krishnagiri, the second respondent herein. The assessment of the dealer (third respondent) for the year 1995-96 was finalised originally on 09.03.2000 and thereby a tax of Rs.8,08,094/- had become due, which was not paid by the third respondent. The third respondent filed an appeal before the Appellate Assistant Commissioner (CT), Salem, who modified the assessment and pursuant to the same, the assessment already made was revised on 05.01.2004 to Rs.5,80,836/-. The dealer had not paid the dues even as per the revised order. Even after issue of Form I on 12.05.2004 which was duly served on him on 22.05.2004 and Form 4 on 20.08.2004 which was duly served on 26.08.2004 through Registered Post Ack.Due before attaching the properties, the dealer failed to respond to the same. Thereafter, Forms 5, 7 and 7A were also issued on 08.09.2005 attaching the properties of the dealer. Since his house was locked at the time of service, affixture of these notices was done on 14.09.2005 and thereafter the notices for attaching the defaulter's property were also published in the Dharmapuri District Gazette. It is



also stated that the properties of the defaulter were put to auction on 27.12.2006 after issuing due intimation to the defaulter. Thereafter, auction sale was proceeded on 30.05.2007 and 19.09.2007. The original demands were raised as early as on 19.03.2000 for the year 1995-96, in respect of the defaulter, but the petitioner had purchased the immovable properties from the defaulter, after accrual of arrears and after creating charges by the Department. Hence, the sale itself is void. It is stated that the petitioner ought to have taken reasonable care and sufficient steps by approaching the Commercial Taxes Department in order to ascertain whether there were any encumbrances already created in respect of the properties in question, but he had not done so. Without doing that, the petitioner is now diverting the issue, even after making invalid purchases from the defaulter. It is finally stated that the petitioner had not approached the Department regarding the requirement of any details either in person or in writing as regards existence of any charge on the properties and that only after filing of this writ petition, the Department came to know that the petitioner had purchased the properties which were already attached by the Department for the legitimate Government dues.

5.Reiterating the averments made in the counter affidavit filed on behalf of the respondents 1 and 2, the learned Additional Government Pleader has submitted that this writ petition deserves only to be dismissed, since the authorities have followed the correct procedure in attaching the properties in question and that the impugned notice issued by the second respondent is perfectly valid in the eye of law.

6.Heard the learned counsel on either side and perused the papers.

7.It is seen from the sale deeds enclosed along with the typed set of papers that the lands comprised in S.Nos.42/2, 42/3B, 42/4, 45/2A1 admeasuring 0.17 cents, 0.60 cents, 1.08 cents and 1.20 cents respectively in Pethappambatti Village, Pochampalli Taluk, Krishnagiri District, which have been purchased by the petitioner from the third respondent have been registered on 25.07.2007 and the lands comprised in S.Nos.37/4, 42/1, 45/1A, 45/1B admeasuring 0.72.5 cents, 0.27.5 cents, 0.13.5 cents and 0.40.5 cents respectively in Pethappambatti Village, Pochampalli Taluk, Krishnagiri District, which have been purchased by the petitioner from the third respondent, have been registered on 21.02.2008. Further, it is seen from the impugned notice that prior proceedings were issued to the third respondent as regards the demand of sales tax arrears and only due to non-payment of the same by the third respondent, the decision for auctioning the properties has been taken by the



second respondent. The notices for attachment of the properties were also published in the Dharmapuri District Gazette. Thus, this Court is of the view that the petitioner ought to have taken necessary care and caution while purchasing the properties from the third respondent. No documents/ papers have been filed by the petitioner to show that he had approached and contacted the office regarding the requirement of any details as regards existence of any charge on the properties. Thus, it is clear that the petitioner had never approached the Department, to find out as to whether any dues are payable by the third respondent / existence of any charge on the properties, before purchase of the properties.

8. In this connection, it would be appropriate to refer to the judgment of this Court in the case of Meenakshi J. Ganesh Kumar v. Deputy Commercial Tax Officer, Srivilliputhur and another, reported in 2010 SCC OnLine Mad 6460 : (2011) 41 VST 150. The said judgment has been passed under similar circumstances. In that case, the petitioner therein contended that he was the bona fide purchaser, since he purchased the property only after getting encumbrance certificate from the Sub-Registrar, Srivilliputhur and that when the Department had not attached the property prior to purchase of the same by the petitioner therein, it was not open to the Department to issue the notice impugned therein. But, this Court has observed that it cannot treat the petitioner therein as a bona fide purchaser as he had failed to ascertain the details of arrears payable by his vendor before execution of the sale deed. Further, this Court has referred to a Division Bench judgment of this Court in the case of R. Balasubramanian v. Additional Deputy Commercial Tax Officer III, Tuticorin in W.A.(MD) No. 130 of 2005 dated 22.08.2005, wherein it has been held that the claim of the appellant therein that he is a bona fide purchaser on which automatic charge is created, cannot be adjudicated in a writ petition under Article 226 of the Constitution of India as the property remedy for the said person is only to approach the Civil Court to establish his right.

9. In the present case, the petitioner herein purchased the properties from the third respondent only subsequent to the attachment effected by the Department. Further, the petitioner had failed to ascertain the details of arrears payable by his vendor before execution of the sale deed.

10. It is also seen from both the sale deeds executed between the petitioner's vendor and the petitioner, that the vendor has given an undertaking that there is no encumbrance on the properties in question and if any encumbrance arises at a later stage, he would make good the loss on his own. It would be appropriate to extract the undertaking given in the sale deed



dated 25.07.2007, as under:

“வடி சொத்துக்களின் பேரில் அரசு கடன்களோ தனியார் கடன்களோ கோர்ட் நடவடிக்கைகளோ மற்றும் இதரவகையான எவ்விதமான வில்லங்கமும் இல்லை. அப்படியாதாகினும் இருந்து பின்னிட்டு வெளியானால் அதனை நான் என் சொந்த செலவிலும் பொறுப்பிலும் முன்னின்று தீர்த்து தர கடமைப்பட்டவர் ஆவேன்.”

The issue as regards the charge created on the properties, cannot be adjudicated in a writ petition filed under Article 226 of the Constitution of India and the proper remedy for the petitioner is only to approach the competent Civil Court relying upon the undertakings given by his vendor in the sale deeds.

11.The judgment of this Court relied upon by the learned counsel for the petitioner in the case of D.Senthil Kumar and others v. Commercial Tax Officer, Erode and another (cited supra), will not apply to the facts of the present case, since in that case, the charge created on the property was subsequent to purchase of the property, but in the present case, the petitioner herein purchased the properties from the third respondent only subsequent to the attachment effected by the Department.

12.The order passed by this Court in the case of Meenakshi J.Ganesh Kumar v. Deputy Commercial Tax Officer, Srivilliputhur and another, cited supra, squarely applies to the facts and circumstances of the present case. In the circumstances, the writ petition is liable to be dismissed and accordingly it is dismissed, leaving it open to the petitioner to approach the competent Civil Court against the third respondent for damages or else to establish his right, as he claims to be a bona fide purchaser. Consequently, the connected miscellaneous petitions are also dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu,
Commercial Taxes and Religious Endowment Department
Secretariat, Fort St.George, Chennai-600 009.



2. The Assistant Commissioner,
Commercial Tax, Krishnagiri.

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NRJK(CO)
CS/14/07/2020

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and
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