

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2019
PRONOUNCED ON : 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.39939 of 2005 & 25145 of 2007, 25830, 30117 & 30118 of 2008, 3211 & 4827 of 2009, 24690 of 2010, 28104 of 2013, 25602, 30458 & 36010 of 2015 and 35988 of 2016

and

M.P.Nos.2 of 2007, 1,2 & 2 of 2008, 1 & 1 of 2009, 1 of 2010, 2 of 2011, 1 of 2013, 1,1,1 & 2 of 2015
and W.P.M.P.No.42816 of 2005, W.M.P.Nos.30948 of 2016, 27322 & 27323 of 2018

- 1 K. SENTHAMIL SELVAN ... PETITIONER in WP No.39939 of 2005
- 1 P. MOHAN ... PETITIONER in WP No.25145 of 2007
- 1 KARNATAKA ELECTRICAL AND MECHANICAL SYSTEM LTD REP BY ITS DIRECTOR MANISH GANDHI 89/1 J.C. ROAD BANGALORE. ... PETITIONER in WP No.25830 of 2008
- 1 SHANTI REALTY PVT. LTD NO.3 JANKI NAGAR ANNEXE INDORE MADHYA PRADESH REP BY ITS AUTHORISED SIGNATORY S. S.SURESH LUNAVATH ... PETITIONER in WP No.30117 of 2008
- 1 S.SANTHOSH KUMAR NAHAR ... PETITIONER in WP No.30118 of 2008
- 1 SIVABAGYAM ... PETITIONER in WP No.3211 of 2009
- 1 SHYAM FINTRADE PVT LTD REP. BY ITS DIRECTOR SRI CHANDRA PRAKASH REMSISARIA NO. 207. OPP ARCHANA COMPLEX 4TH CROSS LALBAGHROAD BANGALORE 560 027 ... PETITIONER in WP No.4827 of 2009
- 1 K.AMUDHA ... PETITIONER in WP No.24690 of 2010
- 1 K.SURESH
- 2 K.RAVICHANDRAN
- 3 K.PREMKUMAR ... PETITIONER in WP No.28104 of 2013

1 R. RAJESH ... PETITIONER in WP No.25602 of 2013

1 MRS. V. RAMYALAKSHMI
W/O. MR. R.K. VENKATRAMAN PLOT NO. 90/A. 3RD
STREET VELAN NAGAR ALWARTHIRUNAGAR
CHENNAI - 600 087 ... PETITIONER in WP No.30458 of 2015

1 M/S.SAKTHI FERRO ALLOYS INDIA
PRIVATE LIMITED REP. BY ITS DIRECTOR A.R.
DIVAKAR OLD DOOR NO.26 NEW NO.18
LOGANATHAN NAGAR SECOND STREET CHOO LAIMEDU
CHENNAI-94. ... PETITIONER in WP No.36010 of 2015

1 R.BHAGAWAT KRISHNA

2 M.UMA PARVATHI ... PETITIONER in WP No.35988 of 2016

Vs.

1 THE DEPUTY COMMERCIAL TAX
OFFICER TIRUCHENGODE (TOWN) ASSESSMENT
CIRCLE TIRUCHENGODE NAMAKKAL DISTRICT.
... RESPONDENT in WP No.39939 of 2005

1 COMMERCIAL TAX OFFICER
CENTRE -1 TIRUPPUR C.T.O KUMARAN ROAD
TIRUPPUR 641 601

2 R. BALASUBRAMANIAM ... RESPONDENT in WP No.25145 of 2007

1 THE ASSISTANT COMMISSIONER
(CT) FAC HOSUR (NORTH) DIVISION HOSUR.
... RESPONDENT in WP No.25830 of 2008

1 THE DEPUTY COMMISSIONER
COMMERCIAL TAXES ZONE II COIMBATORE.

2 THE COMMERCIAL TAX OFFICER
METTUPALAYAM COIMBATORE.

3 AARVEE ELECTRODES (P) LTD
BETTATHAPURAM BILICHI VILLAGE COIMBATORE
NORTH TALUK COIMBATORE DT.
... RESPONDENT in WP No.30117 of 2008

- 1 THE DEPUTY COMMISSIONER
COMMERCIAL TAXES ZONE II COIMBATORE.
- 2 THE COMMERCIAL TAX OFFICER
METTUPALAYAM COIMBATORE.
- 3 AARVEE ELECTRODES (P) LTD
BETTATHAPURAM BILICHI VILLAGE COIMBATORE
NORTH TALUK COIMBATORE DT.
... RESPONDENT in WP No.30118 of 2008
- 1 THE DEPUTY COMMERCIAL TAX
OFFFICER CUDDALORE
- 2 ASSISTANT COMMISSIONER
(COMMERCIAL TAXES) CUDDALORE TOWN TAXATION
CIRCLE CUDDALORE 607 001 PANRUTI
... RESPONDENT in WP No.3211 of 2009
- 1 THE ASSISTANT COMMISSIONER(CT)
(FAC) HOSUR NORTH HOSUR
- 2 MARSONS TEXTILES LTD
NO. 138/4 KODIYALAM VILAGE HOSUR TALU
TAMILNADU ... RESPONDENT in WP No.4827 of 2009
- 1 THE ASST. COMMISSIONER
COMMERCIAL TAXES PERIYA AGRAHARAM CIRCLE
ERODE
- 2 THE TAHSILDAR
ERODE TK AND DT
- 3 THE SUB REGISTRAR
SURAMPATTI ERODE
- 4 MOHAMED WAKER ALI
S/O.LATE MOHAMED JAFFER SADIQ
- 5 MOHAMED RAFIQ
S/O LATE MOHAMED JAFFER SADIQ
- 6 REKHAN
S/O. LATE MOHAMED JAFFER SADIQ RESPONDENTS
4 TO 6 ARE RESIDING AT NO.20/1 AYYANDURAI ST
BRAMANAPERIYA AGRAHARAM ERODE
... RESPONDENT in WP No.24690 of 2010

- 1 THE COMMERCIAL TAX OFFICER
MADHURANTHAKAM ASSESSMENT CIRCLE
MADURANTAKAM
- 2 M/S.GARNET POLYMERS LTD.
REP BY ITS DIRECTOR R.KANNAN NO.31/1
MILLERS ROAD KILPAUK CHENNAI 10
... RESPONDENT in WP No.28104 of 2013

THE ASSISTANT COMMISSIONER
(CT) O/O. THE ORAGADAM ASSESSMENT CIRCLE
PADAPPAI 601 301. ... RESPONDENT in WP No.25602 of 2015

- 1 THE OFFICE OF ASSISTANT
COMMISSIONER (CT) SALIGRAMAM ASSESSMENT
CIRCLE NO.21 G.K. INDUSTRIAL ESTATE 1ST
MAIN ROAD ALAPAKKAM PORUR CHENNAI - 600116
- 2 THE SUB REGISTRAR
VIRUGAMBAKKAM CHENNAI
- 3 V. SHIVAKUMAR
NO.1 KONGU ST MUGAPPAIR CHENNAI REP. BY
HIS POWER AGENT R. ARUNACHALAM S/O. G.
RAJAMANI NO.31 NAVANEETHAMMAL ST SALIGRAMAM
CHENNAI - 600093 ... RESPONDENT in WP No.30458 of 2015

- 1 THE ASSISTANT COMMISSIONER
CHOLAVARAM ASSESSMENT CIRCLE NO.22
JAWAHARLAL NEHRU NAGAR 1ST STREET 1ST FLOOR
REDHILLS CHENNAI-52.

- 2 THE CHIEF MANAGER/AUTHORIZED
OFFICER STRESSED ASSETS MANAGEMENT BRANCH
RED CROSS BUILDINGS NO.32 MONTIETH ROAD
EGMORE CHENNAI-08.

- 3 THE MANAGING DIRECTOR
M/S.R.A.B. STEELS PRIVATE LIMITED NO.74 J.
NAGAR SECOND STREET E.C.R. PANAYUR
CHENNAI-119. ... RESPONDENT in WP No.36010 of 2015

- 1 THE ASSISTANT COMMISSIONER
(C.T) PONDY BAZAAR ASSESSMENT CIRCLE NO.46
GREENWAYS ROAD 3RD FLOOR TALUK OFFICE
BUILDING R.A.PURAM CHENNAI 28

- 2 THE ASSISTANT COMMISSIONER
(CT) AMBATTUR CIRCLE NO.127 1ST FLOOR
YADHAVAL STREETS PADI CHENNAI 50
- 3 THE SUB REGISTRAR
THE SUB REGISTRAR OFFICE AMBATTUR
CHENNAI 53 ... RESPONDENT in WP No.35988 of 2016

Petitioners presented under Article 226 of the Constitution of India to issue Writs of 1. Certiorari

- a)calling for the records of the respondent in Form No.7A, Auction Sale notice dated 5.8.2005 and quash the same as illegal and to issue any further direction.(in WP No.39939 of 2005)
- b)calling for the records relating to the notice of auction issued by the 1st respondent herein Na.Ka. 2003/01/a3 dated 7.6.2007 to quash the same(in WP No.25145 of 2007)
- c)calling for the records on the files of the respondent herein in Roc.No.A3/2597/1997 (Form No.1) dt 3.10.2008 quashing the same. (WP No.25830 of 2008)
- d)calling for the records of the 1st respondent pertaining to the impugned auction notice published in the Dinakaran Newspaper dt 13.12.2008 and quash Serial No.11 of the said notice(in WP No.30117 of 2008)
- e)calling for the records of the 1st respondent pertaining to the impugned auction notice published in the Dinakaran Newspaper dt 13.12.2008 and quash Serial No.11 of the said notice(in WP No.30118 of 2008)
- f)calling for the records on the file of the First Respondent herein in R.O.C. No. A3/2358/2003 dated 23.12.2008 enclosing attachment notice in form 4 under Section 25 of the Tamil Nadu revenue Recovery Act 1864 along with notice in R.O.C. No. A3/2358/2003 dated 28.01.2009(in W.P.No.4827/2009)
- g) calling for the records of the 1st respondent in its proceeding in Na. Ka. 1820/2007/A3 dt 5.9.2013 quash the same(in WP No.28104 of 2013)
- h) calling for the records comprised in auction notice as made in R.C.118/2014/A3 dated 16.07.2015 on the file of the Respondent and quash the same(in WP No.25602 of 2013)

i) calling for the entire records relating to the order datd 20.10.2015 made in R.C.No.TNGST No. 1701192 on the file of the First Respondent herein and quash the same(in W.P.No.36010/2015)

2. Certiorarified Mandamus

a) Calling for the Records and quash the proceedings of the 2nd Respondent passed in Na.Ka.No.A3/6185/2007 dated 29.09.2008 and to forbear the Respondents from in any manner interfering with petitioner's peaceful possession and enjoyment of the property bearing T.S. No. 2362/2B 1350 sq.feet with a brick built building thereon bearing door No. 36, Ethiraj Nagar in Vilvaranyam, Cuddalore, Cuddalore Taluk, Cuddalore District (in W.P.No.3211/2009)

b) Calling for the entire records pending on the file of the 1st Respondent in R.C.No. 536/2015/A3 dated 22.09.2015 issued by the first Respondent and quash the same and forbear the 1st Respondent from dealing with the property situated at Flat No. F-5 First Floor Sai Ram Apartments (Presently High Power Towers) Bearing Door NO. 61/5 5th Cross Street Logaiah Naidu Colony Saligramam Chennai - 600 093 measuring to an extent of 1399 Sq.ft with 16.64% of UDS comprised in S.No. 107/2A1A part of Saligramam Village Egmore Nungambakkam Taluk Chennai District(in W.P.No.30458/2015)and

C) Calling for the records of the impugned notice dated 29.04.2016 under Section 25 of the Revenue recovery Act in form 4 pending on the file of 2nd respondent and quash the same and further direct 3rd respondent to remove the entry dated 23.02.2012 made by the 1st and 2nd respondent in the schedule mentioned B & C property(in WP No.35988 of 2016)and

3) Mandamus directing the Respondents to raise the attachment in respect of the Petitioner's house sites in R.S.No. 36/3A2 to an extent of 1160.3 sq.feet and another house site to an extent of 3743 sq.feet situated at Periasenur Village, Erode Taluk and Erode District (in W.P.No.24690/2010)

For the Petitioner in W.P.No.39939/2005: Mr.S.Ramanathan

For the Petitioner in W.P.No.25145/2007: Mr.G. Chamkiraj

For the Petitioner in W.P.No.25830/2008: Mr.N. Prasad

For the Petitioner in W.P.No.30117 & 30118/2008:Mr.G. Jeremiah

For the Petitioner in W.P.No.3211/2009 : Mr.R. Gururaj

For the Petitioner in W.P.No.4827/2009 : Mr.V. Srikanth

For the Petitioner in W.P.No.24690/2010 : Mr.S.Dhanasekaran

For the Petitioner in W.P.No.28104/2013 : Mr.S.Rajasekar

For the Petitioner in W.P.No.25602/2015 : Mr.R. Bharanidharan

For the Petitioner in W.P.No.30458/2015 : Mrs.G. Uma Maheswari

For the Petitioner in W.P.No.36010/2015: Mr.R. Arundattan

For the Petitioner in W.P.No.35988/2016: Mr.G. Krishnakumar

For Respondent in W.P.No.39939/2005, 25830/2008 and 25602/2015

and for R1 in W.P.No.25145/2007, 30117/2008, 30118/2008, 3211/2009, 4827/2009, 28104/2013, 30458/2015, 36010/2015 and 35988/2015

and for R2 in W.P.No.30117/2008, 30118/2008, 3211/2009, 24690/2010 and 35988/2016:

Mr.Mohammed Shaffiq, Special Government Pleader

assisted by Mr.V. Haribabu, AGP(T) and

Mrs. Dhanamadiri GA(T)

For R2 & R3 in W.P.No.24690/2010

for R2 in W.P.No.30458/2015

and for R3 in W.P.No.35988/2016 : Mr.K.S. Suresh,

Government Advocate

For R2 in W.P.No.36010/2015 : Mr.M.L. Ganesh

For R4 to R6 in W.P.No.24690/2010: Mr.S.A. Md. Mubarak

For R3 in W.P.No.36010/2015 : Mr.A. Mohana Krishnan

For R2 in W.P.No.25145/2007,

4827/2008 & 28104/2013 and R3 in

W.P.No.30458/2015

: No Appearance

: Disd as against R3 in

W.P. 30117 & 30118/2008

C O M M O N O R D E R

In all these Writ Petitions, one of the main and predominant ground raised by the petitioners is that, they are bonafide purchasers of the subject properties for a valid consideration and without notice of the statutory charge created, either under Section 24 of the 'Tamil Nadu General Sales Tax Act, 1959' [hereinafter referred to as 'TNGST Act' for the sake of brevity] or under Section 42 of the 'Tamil Nadu Value Added Tax Act, 2006' [hereinafter referred to as 'TNVAT Act' for the sake of brevity] and since they are entitled for the protection under Section 100 of the 'Transfer of Property Act, 1882' [hereinafter referred to as 'TP Act' for the sake of brevity], the charge cannot be enforced against their properties.

2. The aforesaid Sections are extracted for a ready reference:-

'Section 24 of the TNGST Act:

Section 24.-Payment and recovery of tax.- (1) Save as otherwise provided for in sub-section (2) of Section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such instalments, if any and within such time as may be specified in the notice of assessment, not being less than twenty one days from the date of service of the notice. The tax under sub-section (2) of Section 13 shall be paid without any notice of demand. In default of such payment the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.

Section 24 (2).- Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person

and any fee due from him under this Act, shall, subject to the claim of the Government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it under Section 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered,-

(a) as land revenue, or

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 31, 31-A, 33, 35, 36, 37 or 38.

Section 42 of the TNVAT Act:

Section 42.-Payment and recovery of tax, penalty, etc.- (1) Save as otherwise provided for in Section 21, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice. The tax under Section 21 shall be paid without any notice of demand. In default of such payment, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or penalty or interest under this Act.

(2) Any tax assessed on or has become payable by, or any other amount due from his under this Act from a dealer or person and any fee due from him under this Act, shall,

subject to the claim of the Government in respect of land revenue and the claim of the Agriculture and Rural Development Bank in regard to the property mortgaged to it under sub-section (2) of Section 28 of the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983), have priority over all other claims against the property of the said dealer or person and the same may, without prejudice to any other mode of collection be recovered,-

(a) as land revenue, or

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him:

Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 51, 52, 54, 57, 58, 59 or 60.

(3) On any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, [interest at the rate of two percent] per month of such amount for the entire period of default:

Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall be paid:

Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under this Act, the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of

assessment, as the case may be.

(4) Where a dealer submits the prescribed return after the expiry of the prescribed period, he shall pay, in addition to the amount of tax due as per his return, interest at one and a quarter per cent of the tax payable for every month or part thereof.

(5) Where the tax paid under this Act is found to be in excess on assessment or revision of assessment, or as a result of an order passed in appeal, revision or review, the excess amount shall be refunded to the dealer after adjustment of arrears of tax, if any, due from him. Where the excess amount is not refunded to the dealer within a period of ninety days from the date of the order of assessment or revision of assessment and in the case of order passed in appeal, revision or review within a period of ninety days from the date of order giving effect to such order passed in appeal, revision or review, the Government shall pay, by way of interest, where the amount refundable is not less than one hundred rupees, a sum equal to a sum calculated at the rate of half per cent or part thereof of such amount for each month or part thereof after the expiry of the said period of ninety days.

Explanation.- For the purpose of this Section, the expression "order passed in appeal, revision or review" shall not include order passed in such appeal, revision or review with direction to make fresh assessment order.

Section 100 of the Transfer of Property Act.-

Section 100.Charges.- Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained [which apply to a simple mortgage shall, so far as may be, apply to such charge.]

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution

of his trust, [and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.]'

3. Much reliance was placed on the decision of The Ahmedabad Municipal Corporation of the city of Ahmedabad versus Haji Abdulgafur Haji Hussenhbai reported in 1971 (1) Supreme Court Cases 757 by the learned counsel for the petitioners, for the proposition that, since the property has been transferred to them for adequate consideration and without there being a notice of the charge, they are protected under the proviso to Section 100 of the TP Act.

4. The learned Special Government Pleader on the other hand would submit that, as Section 24 of the TNGST Act or Section 42 of the TNVAT Act provides that, the arrears amount shall become immediately due on default of the outstanding taxes and consequently, a charge would be created on the properties of the person liable to pay the tax, or the interest, under the respective Acts. He would also refer to Section 24-A of the TNGST Act and Section 43 of the TNVAT Act and submit that, all charges or transfers made by the dealer, during the pendency of any proceedings under these Acts, shall be void and the exception of 'absence of a prior notice', referred to in the respective provisos of the aforesaid Sections, will include a 'constructive notice', as referred to in Section 3 of the TP Act.

5. The learned Special Government Pleader would also refer to the Ahmedabad Municipal Corporation's Case and submit that the "notice of charge" referred to in Section 100 of the TP Act, would include a constructive notice also, as interpreted under Section 3 of the TP Act and the issue as to whether the petitioner had constructive notice or not, is a question of fact, or at best, mixed questions of fact and law, which requires to be determined on the facts and circumstances of each case.

6. Section 24-A of the TNGST Act, Section 43 of the TNVAT Act and Section 3 of the Transfer of Property Act read thus:-

'Section 24-A of the TNGST Act:
Section 24-A. Transfers to defraud revenue
void.- Where, during the pendency of any

proceedings under this Act or after the completion thereof, any dealer creates, a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise:

Provided that, such charge or transfer shall not be void if it is made-

(i) for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or

(ii) with the previous permission of the assessing authority.

Explanation.- In this Section, "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the dealer.

Section 43 of the TNVAT Act:

Section 43.-Transfers to defraud revenue void.- Where, during the pendency of any proceedings under this Act or after the completion thereof, any dealer creates a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise:

Provided that such charge or transfer shall not be void, if it is made,-

(a) for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may

be, without notice of such tax or other sum payable by the dealer; or

(b) with the previous permission of the assessing authority.

Section 3 of the Transfer of Property Act:

Section 3.-Interpretation Clause.- In this Act, unless there is something repugnant in the subject or context,-

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.- Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of Section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:]

Provided that-

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act.

Explanation II.- Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who

is for the time being in actual possession thereof.

Explanation III.- A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.'

7. Apart from the Ahmedabad Municipal Corporation's Case (supra), reliance was placed on various other decisions by the counsels on either side, which I shall deal with later.

8. At the outset, it would suffice if the issue as to whether all the petitioners herein can be considered to be bonafide purchasers in the absence of notice of the statutory charge created under Section 24 of the TNGST Act or Section 42 of the TNVAT Act and whether they could be imputed with constructive notice of such statutory charge and thereby be deprived of the saving clause under Section 100 of the TP Act?

9. Since the aforesaid issue has been predominantly dealt with in Ahmedabad Municipal Corporation's Case by the Hon'ble Apex Court, it would be appropriate to consider this decision first, before referring to the other judgments relied upon by the counsels.

10. The facts of Ahmedabad Municipal Corporation's Case before the Hon'ble Supreme Court was that the plaintiff was in arrears of property tax dues under the 'Bombay Provincial Municipal Corporation Act' (hereinafter referred to as the 'Bombay Act'). Section 141 of the Bombay Act creates a statutory charge over the property of the Assessee, who had defaulted in paying the municipal taxes. The defaulter had sold the property to the plaintiff while the charge was in force. Like the TNGST/TNVAT Acts, the Bombay Act also imposes a charge over the property held by defaulter. When the Municipality proposed to exercise their charge over the property, the plaintiff had filed a suit for declaration that he was the owner of the property and consequently to declare that the arrears of municipality taxes due by the transferor, were not recoverable by attachment and sale of the property in the hands of the purchaser. A Division Bench of the Gujarat High Court had decreed the suit, holding that the charge created in favour of the Municipal Corporation,

was not enforceable against the property. On appeal by the Municipal Corporation, the Hon'ble Supreme Court placed reliance on Section 100 of the TP Act and held that the general prohibition that no charge shall be enforced against any property in the hands of the transferee for consideration, without notice of the charge and the exception to this general rule must be expressly provided by law. It had further held that the real core of the saving provision of law must be, not mere enforceability of the charge against the property charged, but, enforceability of the charge against the said property "in the hands of the transferee", for consideration without notice of the charge.

11. With regard to the proposition that the plaintiff must be deemed to have constructive notice of the arrears of municipal taxes and as a purchaser, he must therefore be held liable to pay these taxes are concerned, the Apex Court held that constructive notice, considered from the point of wilful abstention or gross negligence to enquire on the encumbrances over the property, is a question of fact or at best a mixed question of fact and law, depending primarily on the facts and circumstances of each case and except for the cases directly falling within the three explanations to Section 3 of the TP Act, no inflexible rule can be laid down to serve as a straitjacket, covering all possible contingencies.

12. Apart from the aforesaid proposition rendered, there seems to be some more views subscribed in the said judgement touching upon the interpretation of the term 'constructive notice', which may have relevance to the facts involved in the present batch of cases.

13. During the course of arguments before the Hon'ble Apex Court in Ahmedabad Municipal Corporation's case, reliance was placed on the Full Bench decision of the Allahabad High Court in the case of Nawal Kishore vs. The Municipal Board, Agra (ILR 1943 ALL 453), which held that the question of constructive notice is a question of fact, which requires to be determined on the evidences and circumstances of each case. Nevertheless the Full Bench was also of the view that the intending purchasers of the property in a municipal area, where municipal taxes are a charge on the property, are deemed to have constructive knowledge of the existence of such municipal taxes and possible arrears, and hence there is a duty cast on such intending purchasers to make enquiries in this regard, failure of which would amount to willful abstention or gross negligence within the meaning of Section 3 of the TP Act and therefore, notice must be imputed to them.

14. Incidentally, the reference to the Full Bench in Nawal Kishore's case (supra) had necessitated, in view of the conflicting opinions of the two Division Benches of the Allahabad High Court in the cases of The Municipal Board, Cawnpore vs. Roop Chand Jain (ILR 1940 ALL 669) and the Oudh Chief Court in the case of the Municipal Board, Lucknow vs. Ramji Lal (AIR 1941 Oudh 305). The Full Bench had overruled Roop Chand Jain's case (supra) and approved Ramji Lal's case. While considering such a decision taken by the Full Bench in Nawal Kishore's case (supra), the Hon'ble Apex Court was inclined to agree with the reasoning adopted by the Division Bench of the Allahabad High Court in Roop Chand Jain's case, in preference to the reasoning of the Full Bench of that Court in Nawal Kishore's case, as well as the Division Bench's view of the Oudh Chief Court in Ramji Lal's case.

15. These reasonings were discussed in the following manner:

'5. The third argument, and indeed this was the principal argument which was vehemently pressed with considerable force by Shri Desai, is that the plaintiff must be deemed to have constructive notice of the arrears of municipal taxes and as an auction purchaser he must be held liable to pay these taxes and the property purchased must also be held subject to this liability in his hands. In support of this submission he cited some decisions of our High Courts. The first decision relied upon by Shri Desai is reported as Arumilli Suravya v. Piniseti Venkataramanamma A.I.R. 1940 Mad. 701 in which relying on Greet v. Ganga Ram Gool Rai I.L.R. [1937] 1 Cal. 203 it was observed by Horwill J., that Section 100 of the Transfer of Property Act does not apply to auction sales because the transfer within the meaning of the Transfer of Property Act does not include an auction sale. It was added that the position of a purchaser at an execution sale is the same as that of the judgment debtor and his position is somewhat different from that of a purchaser at a private sale. Execution purchasers, according to this decision, purchase the property subject to all the charges and encumbrances legal and equitable which would bind the debtors. We do

not agree with the view taken in this decision. We however, do not consider it necessary to go into the matter at length because we find that this decision was expressly overruled by this Court in Laxmi Devi v. Mukand Kunwar [1965]1SCR726 and the High Court, relying on this Court's decision, had also repelled a similar contention pressed on behalf of the Municipal Corporation there. This Court pointed out in Laxmi Devi's case [1965]1SCR726 that the provisions of Section 2(d) of the Transfer of Property Act prevail over Section 5 with the result that the provisions of Section 57 and those contained in Chapter IV of the Transfer of Property Act must apply to transfer, by operation of law. Section 100, it may be pointed out, falls in Chapter IV. Reliance was next placed on a Full Bench decision of the Allahabad High Court in Nawal Kishore v. The Municipal Board, Agra I.L.R. [1943] All. 453. According to this decision the question of constructive notice is a question of fact which falls to be determined on the evidence and circumstances of each case. But that Court felt that there was a principle on which question of constructive notice could rest, that principle being that all intending purchasers of the property in municipal areas where the property is subject to a municipal tax which has been made a charge on the property by statute have a constructive knowledge of the tax and of the possibility of some arrears being due with the result that it becomes their duty before acquiring the property to make enquiries as to the amount of tax which is due or which may be due and if they fail to make this enquiry such failure amounts to a wilful abstention or gross negligence within the meaning of Section 3 of the Transfer of Property Act and notice must be imputed to them. The reference to the Full Bench in the reported case was necessitated because of conflict of judicial opinion between that Court and Oudh Chief Court. The earlier decision of a Division Bench in Municipal Board, Cawnpore v. Roop Chand Jain I.L.R. [1940] All. 669 was

overruled and the Bench decision of Oudh High Court in Municipal Board, Lucknow v. Ramjilal I.L.R. [1916] 16 Luc 607 was approved. The next decision to which reference was made by Shri Desai is reported as Akhoy Kumar Banerjee v. Corporation of Calcutta I.L.R. 42 Cal. 625. In this case, after distinguishing a mortgage from a charge, it was observed that the statutory charge in that case could not be enforced against the property in the hands of bona fide purchaser for value without notice. While dealing with the question whether the appellants in that case were purchasers for value without notice, it was observed that they had not pleaded in their written statement that they were purchasers for value without notice. Having not pleaded this defence they were held disentitled to avail of it. Having so observed the Court dealt with the case on the assumption that the defence though not expressly taken in the pleadings was available to the defendants. The Court said:

"But even if we assume that the defence, though not expressly taken in their written statement, is available to the defendants, they are in a position of difficulty from which there is no escape. The appellants are private purchasers of the property and if they had enquired at the time of their purchase, they would have discovered that the rates were in arrears; as a matter of fact, they would be personally liable under Section 223 for the arrears of the year immediately prior to the date of their purchase, and they admit that they have satisfied such arrears, though they do not disclose whether by enquiry they had ascertained the existence of the arrears before they made the purchase".

6. The Court then proceeded to deal with the position of the vendor from

whom the appellants had purchased the property in order to see if he could raise the defence of being a purchaser for value without notice. The appellant's vendor was a mortgagee who had acquired title by foreclosure-an involuntary alienation by his mortgagor-and it was held that to him constructive notice could not be imputed to the same extent as to a purchaser at a private sale. But had he made enquiries from the municipal authorities he could still have ascertained whether any arrears of consolidated rates were due. When he had taken the mortgage he was aware that if the rates were not paid the arrears would be first charge on the property with the result that before becoming full owner by foreclosure he should have ascertained the true state of affairs. On this reasoning he was held to have constructive notice and the purchasers from him could not claim greater protection. These circumstances clearly disclose that the reported case is not similar to the one before us and is of little assistance.

7. Chandu Ram v. Municipal Commissioner of Kurseong Municipality AIR1951Cal398 was the next decision cited. The Bench in that case followed the Full Bench decision of the Allahabad High Court in Nawal Kishore's case (supra). A Division Bench of the Oudh Chief Court in Municipal Board, Lucknow v. Lala Ramji Lal A.I.R. 1941 Oudh 305 disagreeing with the Bench decision of the Allahabad High Court in Roop Chand Jain's case (supra) observed that it must be presumed that a person who buys house property situate in a municipality is acquainted with the law by which a charge is imposed on that property for the payment of taxes. The charge having been expressly imposed by the Municipal Act upon the property for payment of municipal taxes the municipality was entitled to follow the property in the hands of a transferee who had not cared to make any enquiry as to whether the payment of taxes was in arrears. The Court approved the Calcutta decision in Akhoy

Kumar's case (supra). The next decision cited is reported as Laxman Venkatesh Naik v. The Secretary of State for India 111 B.L.R. 257 but being a case of taccavi loans it is of no assistance in the present case.

8 . We may now turn to the Bench decision of the Allahabad High Court in Roop Chand Jain's case (supra). The reasoning for the view adopted there may be reproduced:

"A bona fide purchaser takes property he buys free of all charges of which he has no notice actual or constructive. He is said to have constructive notice when ordinary prudence and care would have impelled him to undertake an enquiry which would have disclosed the charge. If for instance the charge is created by a registered document then the purchaser would be held to have constructive notice of that charge inasmuch as a prudent purchaser would in ordinary course search the registers before effecting the purchase. There is no register, as far as we know, of arrears of taxes or of charges in respect thereof. It has not been shown that the municipality of Cawnpore intimate to the public in the "Press" or by other publication a list of the properties which are charged in respect of arrears of taxes. There is nothing upon the record to justify the conclusion that the defendants could have demanded any information from the municipality in regard to charges on immovable property within the municipal limits. "

9. The Court then noticed the fact that the Kanpur Corporation had allowed 11 years'

arrears of taxes to accumulate and it was observed that no intending purchaser was bound to presume that taxes upon the property, he contemplates purchasing had not been paid in the ordinary course, in the absence of special intimation by the municipality. On this reasoning the suggestion of constructive notice was negatived.

10. According to Section 3 of the Transfer of Property Act which is described as interpretation clause, a person is said to have notice of a fact when he actually knows that fact or when but for wilful abstention from an enquiry or search which he ought to have made or gross negligence he would have known it. There are three explanations to this definition dealing with three contingencies when a person acquiring immovable property is to be deemed to have notice of certain facts. Those explanations are:

Explanation I.-Where any transaction relating to Immovable property is required by law to be and has been affected by a registered instrument, any person acquiring such property or any part of, or share of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under Sub-section (2) of Section 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that-

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder.

(2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under

Section 51 of that Act and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act.

Explanation II.-Any person acquiring any Immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.-A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material.

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

11. Now the circumstances which by a deeming fiction impute notice to a party are based, on his wilful abstention to enquire or search, which a person ought to make or, on his gross negligence. This presumption of notice is commonly known as constructive notice. Though originating in equity, this presumption of notice is now a part of our statute and we have to interpret it as such. Wilful abstention suggests conscious or deliberate abstention and gross negligence is indicative of a higher degree of neglect. Negligence is ordinarily understood as an omission to take such reasonable care as under the circumstances is the duty of a person of ordinary prudence to take. In other words it is an omission to do something which a reasonable man guided by consideration which normally regulate the conduct of human affairs would do or doing something which a normally prudent and reasonable man would not do.

.....

From the plaintiff's testimony it is clear that he did nevertheless make enquiries from the receivers if there were any dues against the property though the enquiry was not made specifically about municipal dues. Apparently he was not informed about the arrears of municipal taxes. This seems to us explainable on the ground that the receivers had, after securing appropriate orders, for some reasons not clear on the record, omitted to pay the arrears of municipal taxes and they were, therefore, reluctant to disclose this lapse on their part. On these facts and circumstances we do not think that the plaintiff could reasonably be fixed with any constructive notice of the arrears of municipal taxes since 1949. So far as the legal position is concerned we are inclined to agree with the reasoning adopted by the Allahabad High Court in Roop Chand Jain's case (supra) in preference to the reasoning of the Full Bench of that Court in Nawal Kishore's case (supra) or of the Division Bench of Oudh Chief Court in Ramji Lal's case (supra). We do not think there is any principle or firm rule of law as suggested in Nawal Kishore's case (supra) imputing to all intending purchasers of property in municipal area where municipal taxes are a charge on the property, constructive knowledge of the existence of such municipal taxes and of the reasonable possibility of those taxes being in arrears. The question of constructive knowledge or notice has to be determined on the facts and circumstances of each case. According to the Full Bench decision in Nawal Kishore's case (supra) also the question of constructive notice is a question of fact and we do not find that the material on the present record justifies that the plaintiff should be fixed with any constructive notice of the arrears of municipal taxes.

13. We may add before concluding that as the question of constructive notice has to be approached from equitable considerations we feel that the municipal corporation in the present case was far more negligent and blameworthy than the plaintiff. We have,

therefore, no hesitation in holding that the High Court took the correct view of the legal position with the result that this appeal must fail and is dismissed.'

16. Thus, the ratio of the presumption that a person who purchases a property situated in a Municipality is acquainted with the Local laws, which creates charges on the property of the defaulter for non-payment of taxes, as held by the Hon'ble Full Bench in Nawal Kishore's case, was disagreed. Accordingly, the reasoning adopted by the Division Bench of the Allahabad High Court in Roop Chand Jain's case was agreed upon in preference to the reasoning of the Full Bench of the Allahabad High Court in Nawal Kishore's case and the Division Bench of Oudh Chief Court in Ramji Lal's case.

17. In other words, the Hon'ble Apex Court, on analysing the ratio laid down in Nawal Kishore's case, was of the view that there cannot be any principle or firm rule of law imputing to all intending purchasers of properties in Municipal areas, where municipal taxes are a charge on the property, with constructive knowledge of the existence of municipal taxes or possibility of such taxes being in arrears. While holding so, the Hon'ble Apex Court held that the question of constructive notice requires to be approached from equitable considerations and thereby, found that the charge of the Municipal Corporation for arrears of Municipal taxes is not enforceable against the property of the plaintiff.

18. To overcome the proposition in the Ahmedabad Municipal Corporation's case and as an alternate submission, the learned Special Government Pleader would stress on the observations made therein that the question of constructive notice, as well as the question as to whether the purchasers had made due enquiries, failure of which would amount to willful abstention or gross negligence, are questions of fact and law, that requires to be dealt independently, on case to case basis.

19. In support of his contention, reliance was placed on the following observations made by the Hon'ble Apex Court in the Ahmedabad Municipal Corporation's case:

"... Wilful abstention suggests conscious or deliberate abstention and gross negligence is indicative of a higher degree of neglect. Negligence is ordinarily understood as an omission to take such reasonable care as under the circumstances is the duty of a person of ordinary prudence

to take. In other words it is an omission to do something which a reasonable man guided by consideration which normally regulate the conduct of human affairs would do or doing something which a normally prudent and reasonable man would not do.

The question of wilful abstention or gross negligence and, therefore, of constructive notice considered from this point of view is generally a question of fact or at best mixed question of fact and law depending primarily on the facts and circumstances of each case and except for cases directly falling within the three explanations, no inflexible rule can be laid down to serve as a straight-jacket covering all possible contingencies. The question one has to answer in circumstances like the present is not whether the purchaser had the means of obtaining and might with prudent caution have obtained knowledge of the charge but whether in not doing so he acted with wilful abstention or gross negligence. Being a question depending on the behavior of a reasonably prudent man, the Courts have to consider it in the background of Indian conditions. Courts in India should, therefore, be careful and cautious in seeking assistance from English precedents which should not be blindly or too readily followed."

[Emphasis supplied by me]

20. The aforesaid findings of the Hon'ble Apex Court that the question of constructive knowledge or notice has to be determined on the facts and circumstances of each case, is corollary to its earlier finding that there cannot be any principle or firm rule of law, imputing to all intending purchasers of properties in municipal area, where municipal taxes are a charge on the property, and that there cannot be a constructive knowledge on the part of the intending purchasers to the existence of such municipal taxes or the reasonable possibility of those taxes being in arrears.

21. "Wilful abstention" or "gross negligence" from conducting a search are the two ingredients to constitute 'constructive notice' as interpreted under Section 3 of the TP Act. Interpreting the term 'wilful abstention', the Hon'ble Apex

Court, in Ahmedabad Municipal Corporation's case had observed that, while "wilful abstention" suggests conscious or deliberate abstention, "gross negligence" is indicative of a higher degree of neglect. It was held that negligence is an omission to do something which a reasonable man, guided by consideration which normally regulate the conduct of human affairs would do, or doing something which normally a prudent and reasonable man would not do. Considering from this point of view, the Hon'ble Apex Court was of the view that the question of willful abstention, is generally a question of fact or mixed question of fact and law, depending primarily on the facts and circumstances of each case and no inflexible rule can be laid down covering all possible contingencies.

22. Thus, in view of the aforesaid ratio decidendi, the legal position stands clarified to the effect that a charge created by operation of law will not automatically infer a presumption of knowledge on the intending purchasers about the tax arrears, as well as the consequent charge on the property, which they intend to purchase. Consequently, the question of "Wilful Abstention" or "Gross Negligence", would generally be a question of fact or law or a mixed question of fact and law and the exception to such a finding would be the three explanations given under Section 3 of the Transfer of Property Act, 1882 as well as to cases wherein the purchaser has failed to make enquiries on the arrears of municipal taxes with the authorities. If and when this proposition is applied to the issue involved in the present case, the objections raised by the respondents that the intending purchasers had constructive notice of the charge on the property would be contrary to this decided ratio.

23. While that being so, when the prospective purchasers are not expected to have constructive knowledge of the charge and when the property is purchased for a valid consideration and without notice of the charge, they would be entitled to the saving clause provided under Section 100 of the TP Act.

24. This leads to the question that when the Hon'ble Supreme Court had held that there is no constructive knowledge on the arrears of taxes, how could the Tax Department expect the purchasers to make enquiries with them? While dealing with the facts, in the Ahmedabad Municipal Corporation's case, the Hon'ble Apex Court held that there is a duty cast on the purchasers to make enquiries with their "vendors" regarding sales tax arrears and failure to do so would amount to negligence and willful abstention. It was also held that the plaintiff therein, as a prudent and reasonable man, was not

bound to enquire from the Municipal Corporation about the existence of any arrears of tax due from the receivers.

25. In other words, the ratio laid down therein is that it would be sufficient for the purchasers to make due enquiries with their "vendors" with regard to arrears of the municipal taxes and the enquiry with Municipal Corporation was not necessary. This ratio was explained in the following manner:

'On the facts and circumstances of this case, therefore, we cannot hold that the plaintiff as a prudent and reasonable man was bound to enquire from the municipal corporation about the existence of any arrears of taxes due from the receivers. It appears from the record, however, that he did in fact make enquiries from the receivers but they did not give any intimation. The plaintiff made a statement on oath that when he purchased the building in question it was occupied by the tenants and the rent used to be recovered by the receivers. There is no rebuttal to this evidence. Now, if the receivers were receiving rent from the tenants, the reasonable assumption would be that the municipal taxes which were a charge on the property and which were also given priority under Section 61 of the Provincial Insolvency Act, 1920, had been duly paid by the receivers out of the rental income. The plaintiff could have no reasonable ground for assuming that they were in arrears. From the plaintiff's testimony it is clear that he did nevertheless make enquiries from the receivers if there were any dues against the property though the enquiry was not made specifically about municipal dues. Apparently he was not informed about the arrears of municipal taxes. This seems to us explainable on the ground that the receivers had, after securing appropriate orders, for some reasons not clear on the record, omitted to pay the arrears of municipal taxes and they were, therefore, reluctant to disclose this lapse on their part. On these facts and circumstances we do not think that the plaintiff could reasonably be fixed with

any constructive notice of the arrears of municipal taxes since 1949.'

26. On a co-joint reading of the law laid down by the Hon'ble Apex Court in the Ahmedabad Municipal Corporation's case, the following propositions of law emerge and which are summarized below:

(a) The bona-fide purchaser has no constructive knowledge of the local tax arrears;

(b) Wilful Abstention is conscious or deliberate abstention and gross negligence is indicative of a higher degree of a neglect or omission to do something which a reasonable or prudent man would not do;

(c) Constructive notice on account of willful abstention or gross negligence construed from the aforesaid point of view, are mixed questions of facts and law.

(d) The mixed question of law is not where the purchaser had means of obtaining knowledge of the charge or with prudent caution could have obtained, but whether in not doing so, he acted with willful abstention or gross negligence, which question the Courts should consider in the background of Indian conditions;

(e) Failure to enquire with tax authorities will not amount to willful abstention;

(f) Cases which fall under the three explanations to Section 3 of the Transfer of Property Act and cases where enquiries made with vendors but failure to make enquires with the tax authorities, cannot impute the purchasers with constructive notice of tax arrears;

27. The learned Special Government Pleader placed reliance on a Full Bench decision of this Court in the case of B.Suresh chandh vs. State of Tamil Nadu and another reported in 2006 (4) L.W. 409 and submitted that the ratio laid down by Ahmedabad Municipal Corporation's case has been adopted by the Full Bench in B.Suresh Chand's case, wherein it was held that, failure on the part of the vendors to make necessary enquiries will amount to willful abstention and therefore, they are said to be persons with constructive notice of the charge and hence cannot claim the benefit under Section 100 of the TP Act. Before addressing such an objection, this Court deems it appropriate to reiterate the view of the law laid down in Ahmedabad Municipal Corporation's case to the effect that, such an enquiry mandated under Section 3 of the TP Act, would be with the vendors of the property and not the tax Departments.

28. As discussed above, while holding that the purchasers cannot be imputed with constructive knowledge of the existence

of municipal taxes or tax arrears and on the facts of the case, the Hon'ble Apex Court held in Ahmedabad Municipal Corporation that an enquiry with the vendors was sufficient to hold that the purchasers had not indulged in willful abstention or gross negligence.

29. The aforesaid ratio came to be adopted by the Full Bench of this Court in the case of B.Suresh chandh's case and by referring to the facts of that case where the plaintiff had omitted to enquire with his "vendors" about the sales tax arrears, the Full Bench held that it would amount to negligence or willful abstention on the part of the purchasers. The relevant portion of such finding is as hereunder:

'But on the other hand P.W.1 in his cross examination has categorically admitted that he did not enquire T.P.Narayanasamy about the sales tax arrears. Therefore, the omission on the part of the plaintiffs to enquire with their vendors regarding their sales tax arrears amounts to negligence on their part and also it will amount to wilful abstention. In this case the plaintiffs had the means of obtaining the necessary information and the plaintiffs with prudent caution might have obtained knowledge of the charge and therefore the failure on their part to make necessary enquiries with their vendors will amount to wilful abstention or gross negligence and therefore it could be held that the plaintiffs have constructive notice. [emphasis supplied by me]'

30. In the light of the aforesaid ratio laid down, when the purchasers in the instant cases had failed to make enquiries with the Sales Tax authorities on the antecedents of the subject properties, the same would neither amount to willful abstention nor of gross negligence and therefore, they cannot be termed to be 'persons said to have notice', as interpreted under Section 3 of the TP Act and it would suffice if the purchasers had made enquiries with their vendors with regard to the tax arrears. Accordingly, it can only be held that these purchasers, neither had 'constructive notice' under Section 3 of the TP Act, nor did they have 'notice of the charge' as referred to under Section 100 of the TP Act and therefore, they could be entitled to the benefit of the saving clause therein. Consequently, the statutory charge created on the property in view of Section 24 of the TNGST Act or under Section 42 of the TNVAT Act, cannot be enforced against the properties in the hands of these writ petitioners.

31. The learned Special Government Pleader had also placed reliance on the decision in the case of Showtech Stone International Pvt. Ltd., vs. Commercial Tax reported in 2015 (77) VST 226 for the proposition that when the transferee has constructive notice of the charge, he would not be entitled for the protection under Section 100 of the TP Act, as it cannot be said that he had no notice of the charge. On the same proposition, the learned Special Government Pleader placed reliance on the decisions in the case of State of Karnataka and Another vs. Shreyas Papers (P) Ltd., and others reported in (2006) 1 SCC 615 as well as in the case of AI Champdany Industries Limited vs. Official Liquidator and another reported in (2009) 4 SCC 486.

32. Such a submission cannot be sustained in view of the pronouncement in the Ahmedabad Municipal Corporation's case, wherein it was held that a bonafide purchaser has no constructive knowledge of the local tax arrears and further, failure to enquire with the tax authorities will not amount to willful abstention. If that be the position, the very basis of the submissions that the transferee had constructive notice of the charge fails and therefore, the purchaser would be entitled to seek protection under Section 100 of the TP Act.

33. The Division Bench of this Court in the case of the Deputy Commercial Tax Officer, Thudiyalu Assessment Circle, Coimbatore and another vs. R.K.Steels reported in 1998 (1) CTC 124 was of the view that, unless a provision is made in any statute contrary to the rule of Section 100 of the TP Act, a bonafide purchaser for consideration without notice of the charge is protected. For such a proposition, the Division Bench had placed reliance on Ahmedabad Municipal Corporation's case.

34. Nevertheless, the Court has already held that in view of the law laid down in the case of Ahmedabad Municipal Corporation, there cannot be constructive notice in the case of tax arrears, since the purchaser has no constructive knowledge of the same and failure to enquire with such authorities will not amount to willful abstention and therefore, Section 3 of the TP Act is not attracted and consequently, the transferee would be entitled to the protection under Section 100 of the TP Act. Hence, the decisions relied upon by the learned Special Government Pleader do not require consideration.

35. The learned Special Government Pleader relied upon the decision in the case of Shyam Telelink Ltd., now Sistema Shyam Teleservices Ltd., vs. Union of India in Civil Appeal No.7236 of

2003, dated 05.10.2010 and submitted that the petitioners, who had purchased the property, along with the charges, cannot approbate and reprobate by taking advantage of the purchase and rejecting the liability of arrears on the properties. This is not a case of approbation or reprobation, where the purchase is deemed to be free of encumbrance, in the absence of any notice, either actual or constructive and as such, it can only be deemed that there is no encumbrance at all on the properties, in the hands of the transferee, in view of the discussions made above. Hence, the principle of approbation and reprobation will not apply to the cases on hand.

36. A learned Single Judge of this Court in the case of M/s.Sri Bakgyam Engineering Corporation vs. The Deputy Commissioner Tax Officer in W.P.No.37309 of 2002 dated 16.12.2015 had relied upon a Division Bench decision of this Court and held that, unless the charge is duly registered in the Registration Department, it would not be possible for any prospective buyer to know about the prevailing charge and had questioned the impugned charge on the ground that the charge has not been reflected in the encumbrance certificate issued by the Registration Department. Relevant portion of the order reads as follows:

I 10. Also, this Court in Rukmani v. The Deputy Commercial Tax Officer - I, Pattukottai - I, Assessment Circle, Pattukottai, Thanjavur District [W.P(MD) No.2736 of 2006, decided on 08.10.2012], while dealing with an identical issue, has held as under:

"26. In the case on hand, the contention of the learned counsel for the petitioner is that prior to the purchase of the property in the year 2004, the petitioner had verified with the encumbrance details in the Registration Department and finding that there was no encumbrance over the property, she had purchased the same, which would show that she had made bonafide efforts to find out as to whether there was any encumbrance over the property. Though the assessment of tax had already been finalised in the year 1995 - 1996 by the orders, on the appeal preferred by the dealer,

the Recovery Officers have not reported the charge over the property to the Registration Department. Even though a reference has also been made in Paragraph No.2 of the counter affidavit that the demand notice was duly served on the defaulter - assessee, no specific date is mentioned. As rightly contended by the learned counsel for the petitioner, there is no specific averment, rebutting the contention of the petitioner that the purchase was made bona fide. Establishment of fact arises only when there is a dispute. When the respondent has not even made any averments disputing the fact of bona fide purchase, and proved that the sale effected by the first purchaser - Mr.S.Prabhakaran was to defraud the revenue, this Court is of the view that it would not be appropriate to drive the petitioner, the second purchaser, to approach the civil court of competent jurisdiction to prove her bona fide. In normal circumstances, when a sale is made immediately, after the finalisation of an assessment, the attempt to defraud the revenue by the defaulting dealer, who is in arrears of tax, can be presumed. But, in the case on hand, the sales effected are not in quick succession. The second sale has been made, after six years from the date, on which the assessment has been finalised. The tax officials have not reported the charge over the property, held by the dealer to the Registration Department. Even assuming that there is a charge, by virtue of the statutory provision, the bona fides of the petitioner in

purchasing the property, after six years from the date of assessment, cannot be doubted, as it is the case of the petitioner that she had verified the encumbrance. On the contra, the contention of the respondent that the demand notices have been issued to the dealer has not been substantiated. At this juncture, this Court deems it fit to extract a decision of the Apex Court, which has distinguished the pleadings and proof required in a writ proceeding and a civil suit. In *Bharat Singh and Others Vs. State of Haryana and Others*, reported in 1988 (4) SCC 534, at paragraph 13, the Supreme Court held as follows:

".... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will

not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ

petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

27. Going through the judgments relied on by both parties, this Court is inclined to accept the submissions of the learned counsel for the petitioner that the decision rendered in R.K.Steels's case (cited supra) has been approved in D.Senthilkumar's case (cited supra) following Shreyas Papers P.Ltd., (cited supra) and this Court is inclined to follow the same.

28. Even in N.Padma Coffee Works's case (cited supra) the Special Tribunal has clearly observed that the legislative intent in engrafting proviso to section 24-A of the Act, is to protect a honest person, who had purchased the property from a seller and further observed that there should not be any collusion with the seller, but the necessary ingredients of Section 24-A of the Act should be there, i.e., the sale effected should be for adequate consideration and want of notice. Taking note of Section 3 of the Transfer of Property Act, the Special Tribunal in N.Padma Coffee Works' case has also observed that if there was any wilful absentism or gross negligence in making any

enquiry, that would tantamount to notice of fact, by the purchaser of the property, upon which a charge is created by operation of law. As per the version of the petitioner, she had purchased the property from a subsequent purchaser in the year 2004 and it was not a direct purchase from the defaulter. There is nothing on record to indicate that action has been taken against the vendor of the purchaser. There are no averments to suggest collusion of the petitioner with the defaulting dealer. On the contra, there are clear averments made by the petitioner to the effect that she had verified the encumbrance details from the Registration Department, in the year 2004, when she had purchased the property. When the subsequent sale has been effected after six years from the first sale, it is incumbent on the respondent to prove collusion, with the defaulting dealer. There can be a presumption of collusion with the defaulting dealer, if the transactions are in quick succession. But, if there is a long gap of six years between the first sale and the subsequent sale, without there being any action by the Revenue to realise the arrears of tax from the defaulter or against the immediate subsequent purchaser on the facts of this case, this Court is of the view that even collusion cannot be presumed. In the absence of any rebuttal to the bona fides of the purchase, absentism or negligence, in making due enquiry with the Registration Department, prior to purchase, the conduct of the subsequent purchaser cannot be doubted by making any allegation

of fraud, being played on the revenue.

29. Though the respondent has contended that the petitioner ought to have obtained a 'No Objection' from the revenue before purchasing the property, no provisions have been quoted by the respondent in the counter affidavit. Needless to say that a purchaser in normal course would only verify from the Registration Department as to whether the property to be purchased has any encumbrance. Unless the charge is duly registered in the Registration Department, it would not be possible for any prospecting buyer to know whether there is any charge over the property, for any arrears of tax or any statutory dues to be paid to the Government or statutory body. As stated supra, no materials have been produced before this Court to prove that notice demanding arrears of tax, has been served on the defaulter. No materials have been placed before this Court to prove that steps have been taken under the provisions of the Revenue Recovery Act, against the defaulter or the subsequent first purchaser, from whom the petitioner has purchased the property in the year 2004, after six long years, since the date of finalisation of the assessment. In the absence of any specific plea of collusion, rebuttal of even doubting the bona fide of the purchase, the action taken in the year 2005, after seven years, from the date of finalisation of the assessment, against the second purchaser, who has taken diligent steps to verify from the Registration Department,

before purchasing the property cannot be approved. That apart, there are no materials to indicate that the petitioner had any constructive notice of the charge. There is no pleading to the effect and rightly, no arguments have been advanced, and therefore, this Court is of the view that the case on hand would squarely also fall within the ambit of the Apex Court in Ahmedabad Municipal Corporation's case reported in 1971 (1) SCC 757 also. On the facts and circumstances of this case, this Court is of the view that the legislative protection has to be extended to the petitioner.

30. For all the reasons stated above and in the light of the decisions and the discussion on facts, this Court is of the view that the petitioner is a bona fide purchaser and is entitled to protection under the proviso to Section 24(A) of the Act. Hence, the impugned distraint order dated 13.02.2006 issued by the respondent is liable to be set aside and accordingly set aside. The Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

11. Here, it is, no doubt, clear that the petitioner had purchased the property in question without notice of the charge over the same from his vendor and the same has also not been reflected in the Encumbrance Certificate issued by the Registration Department. In such circumstances, this Court is of the view that the impugned order passed by the respondent is vitiated in law.'

37. This Court is also conscious of the fact that in the

guise of a bona-fide purchase, the tax department should not be put at loss, in what could be termed as 'fraudulent transfer' in order to defraud revenue. In cases of this nature, there requires to be substantial material to establish that the transfer was made fraudulently to evade payment of tax arrears or to wriggle out of the charge created. In none of the cases before this Court, have the Department come out that such materials to show that the transfer was not bona-fide but has been made in order to defraud revenue. In the absence of such material, the appropriate remedy open to the Department is to substantiate the aspect of "fraudulent transfer" before the appropriate civil forum, by letting in evidence.

38. In the order passed in W.P.No.36469 of 2006 dated 26.03.2019 in the case of R.Dakshinamoorthy vs. The Deputy Commercial Tax Officer, a learned Single Judge of this Court was of the view that in the absence of any evidence that there was a collusion between the petitioner and the erstwhile owner, the petitioner could be treated as bonafide purchaser without notice, either actual or constructive of the charges created and therefore, precluded the respondents from taking action by enforcing the charges.

39. As found earlier, mere enquiries with the vendors of the properties would be sufficient to construe that the purchaser was diligent enough while conducting due diligence on the property. One common fact noticed in all these writ petitions before this Court is that, the petitioners, who are purchasers, had not made enquiries with the Sales Tax authorities, prior to the purchase. The law also does not mandate them to do so. While that being so, what was required and expected of them is to have made enquiries with their respective vendors. While some of the petitioners herein have stated in their affidavits that such enquiries were made with the vendors, the others have not done so.

40. The usual mode, and in my view the appropriate mode, on the part of a purchaser to conduct due diligence on the title of the property, would be to verify the encumbrance certificates from the registering officers. Such a search in these certificates would reveal the legality on the title which the vendors possess over the said properties. If the encumbrance certificates do not reveal encumbrances, which could be detrimental to the title of the vendor, the said property is deemed to be free of all detrimental entries. This would lead to a situation where the statements made by the petitioners in the affidavits filed in support of the present writ petitions or production of the encumbrance certificates by some of the

petitioners, could be construed as a conclusive evidence that the petitioner did make some enquiries about the title of the subject properties. In cases where no statement has been made in the affidavit that the petitioners had made relevant enquiries with their vendors or had not searched the entries in the encumbrance certificate during the relevant point of time, it would not be conducive at this point of time to draw an inference that those petitioners had failed to make enquiries with their respective vendors. Nevertheless, if the antecedents of the title of the vendors over the subject properties are verified from the respective encumbrance certificates, during the relevant point of time, a conclusion can be arrived to the effect that the property did not suffer from such an encumbrance, that reveal the statutory charge created therein. Such a task of verifying the encumbrance certificate can be assigned to the concerned tax authorities, with a direction to the petitioners to produce the same before them.

41. Now that, I have held that the charges are not enforceable against these petitioners, an incidental reference could be made on the situation giving rise to all these confusions. Had the Sales Tax authorities intimated to the registering officers about the statutory charge being created on the property of the tax defaulter in time, this situation could have been thwarted. The Department seeks to take protection from such inaction on the ground that there is no law or rules or regulations mandating conveyance of such information to the registering officers.

42. Incidentally, it can also be said that had the Tax Department enforced the charge in time, the present situation would not have arisen. It is not in dispute that in the instant cases, the Department had not enforced the charge on the properties, within a reasonable time. In Ahmedabad Municipal Corporation's case, the Municipal Corporation therein had also failed to enforce the charge in time, which led to the situation where a bonafide purchaser had purchased the property and after such purchase, the Corporation had sought to enforce the charges. In this situation, the Hon'ble Apex Court held as follows:

'It is however difficult to appreciate why after having secured the necessary order from the Court municipal taxes were not paid off by the receivers and why the municipal Corporation did not pursue the matter and secure payment of the taxes due. May be that the municipal Corporation thought that since these dues were a charge on the

property they need not pursue the matter with the receivers and also need not approach the insolvency Court. If so, then this, in our opinion, was not a proper attitude to adopt. In any event the plaintiff could not reasonably have thought that the municipal corporation had not cared to secure payment of the taxes due since 1949. On the facts and circumstances of this case, therefore, we cannot hold that the plaintiff as a prudent and reasonable man was bound to enquire from the municipal corporation about the existence of any arrears of taxes due from the receivers.

.....
We may add before concluding that as the question of constructive notice has to be approached from equitable considerations we feel that the municipal corporation in the present case was far more negligent and blameworthy than the plaintiff. We have, therefore, no hesitation in holding that the High Court took the correct view of the legal position with the result that this appeal must fail and is dismissed.'

43. Incidentally, while dealing with the question of willful abstention and the consequential constructive notice, a reference was made to the caution to be adopted by the Courts in considering the question in the background of Indian conditions. In the light of such an observation by the Hon'ble Apex Court in Ahmedabad Municipal Corporation's case, this Court does not intend to lose sight of the various charges being created under several laws prevailing in our country and which could be considered to be an encumbrance on the said property, which empowers the authorities to invoke the provisions of the Revenue Recovery Act, for the purpose of enforcing the charges.

44. Sections 24 and 28 of the Revenue Recovery Act, 1890 empowers the authorities for recovering tax arrears by enforcing the charges created on the properties under Section 24 of the TNGST Act and Section 42 of the TNVAT Act. Apart from these two provisions, Section 2 of the Tamil Nadu Irrigation Cess Act, 1865, Section 7 of the Tamil Nadu Land Encroachment Act, 1905, Section 64 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, Section 26(6) of the TNGST Act, Section 28 of the Tamil Nadu Labour Welfare Fund Act, 1972, Section 74 (a) of the Chennai Metropolitan and Water Supply and Sewerage Act, 1978,

Section 59 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987, Section 7 (b) of the Tamil Nadu Tax on Consumption and Sale of Electricity Act, 2003, Section 45 (6) of the TNVAT Act and Section 37 (1) of the Tamil Nadu Stamp Act, 2013 are some of the Acts, which empower the authorities to recover the arrears of revenue under the Tamil Nadu Revenue Recovery Act.

45. In order to rule out that there are no arrears of taxes under the aforesaid various laws, it would be imperative on the prospective purchasers of these properties, to make enquiries with all the departments under these several Acts, to rule out the possible charges on the properties, by the concerned authorities.

46. Though the TNGST Act and the TNVAT Act alone create a statutory charge by operation of law, the charges under the other Acts, are subject to issuance of notices, which procedure is enumerated in the respective law itself. However, the fact remains that in order to rule out the possible encumbrance under all these Acts, the prospective purchasers may have to conduct due diligence on the properties under all these authorities also, which may not be conducive.

47. In order to implement the observations of the Hon'ble Apex Court that the "behaviour of a reasonably prudent purchaser, in the background of Indian conditions", it would be conducive that such encumbrances be reflected in the register books maintained by the concerned properties registration authorities. This Court would only observe and recommend that the Government of Tamil Nadu should take necessary measures to amend the rules suitably to ensure that the creation of the statutory charges under the TNGST Act or TNVAT Act or of any other sales tax laws, be mandated for compulsory registration / filing before the registering officers.

48. The normal mode adopted by the intending purchasers under Indian conditions in general and in the State of Tamil Nadu in particular, while conducting due diligence on the title to the property which they intend to purchase, is through scrutiny of the encumbrance certificates obtained from the Registration Department of the concerned jurisdictional registration authority where the subject property is situated, apart from verifying the validity of its title from the title deeds and revenue records.

49. In the case of Rukmani vs. Deputy Commercial Tax Officer I reported in 2013 (62) VST 369 (Mad), a learned Single

Judge of this Court had dwelled upon the importance of an encumbrance being reflected in the records of the Registration Department. According to the learned Single Judge:

'Needless to say that a purchaser in normal course would only verify from the Registration Department as to whether the property to be purchased has any encumbrance. Unless the charge is duly registered in the Registration Department, it would not be possible for any prospecting buyer to know whether there is any charge over the property, for any arrears of tax or any statutory dues to be paid to the Government or statutory body.'

The aforesaid decision came to be affirmed by the Division bench of this Court in the case of Gupta & Company vs. the Commercial Tax Officer, Alandur Assessment Circle and Ors, reported in 2018 (3) CTC 740.

50. While highlighting the importance of registration, the Hon'ble Supreme Court in Suraj Lamp and Industries Private Limited vs. State of Haryana and another reported in (2009) 7 SCC 363 had observed as follows:

'18.Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence

upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.'

51. While Section 17 of the Registration Act, 1908, adumbrates various documents which are compulsory registerable, Section 18 refers to registration of certain documents as optional. The charge created by operation of Section 24 of the TNGST Act, 1959 and Section 42 of the TNVAT Act is not reflected in either Section 17 or 18 of the Registration Act.

52. The contention of the Tax Department seems to be that since the charge under the tax laws is by operation of law, it cannot be deemed to be a document and in the absence of any specific provision under the Registration Act, mandating registration of such a charge created by an operation of law, there is no duty cast on the tax authorities to have the charge registered before the concerned registering officers.

53. While it is true that there is no mandate under law to have a charge registered before the registering officers on a charge created by operation of law, there is also no impediment on the part of the tax authorities to bring it to their notice about the charge having been created on the properties for the tax arrears of the defaulting dealers, particularly, in the light of the Ahmedabad Municipal Corporation's case, which does not expect the purchaser to make enquiries with the tax authorities. As a matter of fact, such information have also been given by them to the registering officers in various matters and some of the writ petitions before this Court stands testimony to it, wherein, the tax authorities have infact informed the authorities about the charge created either under Section 24 of TNGST Act or under Section 42 of TNVAT Act. (Eg. W.P.No.25602 of 2015)

54. When the Hon'ble Apex Court had laid down the law in the Ahmedabad Municipal Corporation's Case, way back in the year 1971 that the purchasers need not make enquiries or searches with the Tax Authorities in connection with the sales tax arrears and such a law being laid down by the highest Court of law in the Country, the Tax Department ought to have realised that all prospective purchasers of the property over which the statutory charge has been created, would not approach them for making enquiries regarding the tax arrears and thereby, ought to have been prudent and cautious in informing the registering officers about the creation of the statutory charge, since there

was no duty cast on these purchasers to verify with them on the pending charges. Thus, such a duty, is not one of a choice or an option, but an inherent duty cast on the Tax Department to inform the registering officers about the existence of the statutory charge.

55. The learned Special Government Pleader would state that since the statutory charge created under Section 24 of the TNGST Act or Section 42 of the TNVAT Act is by operation of law, and not through a document which could fall under the purview of the Section 17 of the Registration Act, the same is not registerable.

56. After the pronouncement of the decision in the Ahmedabad Municipal Corporation's Case, this Court is of the view that the inherent duty referred above, had embedded on the authorities to inform the registering officers through a document about the statutory charge created. Such an information could be treated as a document which would mandate filing of such information in the register books, as provided under Section 51 of the Registration Act.

57. Section 51 (1) of the Registration Act reads as follows:

'Section 51 - Register-books to be kept in the several offices.- (1) The following books and the information storage devices shall be kept in the several officers hereinafter named, namely:-
(A)- In all registration offices-
Book No.1, "Register of non-testamentary documents relating to immovable property'

58. In view of such an inherent duty cast on them and had the Tax Authorities informed the registering officers about the charge created on the said properties, well in time, the same could have been dealt as a document under Register Book No.1 of Section 51 (1)(A) of the Registration Act, thereby enabling the registering officers to file and maintain the same. Eventually, the same would have also been reflected in the Encumbrance Certificate, which entry would have been detrimental to the title of the property and thereby served as a warning to the intending purchasers to evade dealing with the property.

59. There is yet another aspect as to why the Tax Authorities should have informed the registering officers with regard to the statutory charge created. Sections 20, 21(1-A) and (2-A) of the TNGST Act r/w Rule 24 (15-A) of the TNGST Rules and

Section 38 of the TNVAT Act r/w Rules 4 and 5 (6) (a) of the TNVAT Rules deal with the procedure for registration of a dealer.

60. The form of application under Rule 24 of the TNGST Rules and Rule 4 (9) of the TNVAT Rules provides for details of the property of the dealer at the time of applying for dealership registration. Rule 24 (15-A) of the TNGST Rules and Rule 5(6)(a) of the TNVAT Rules provide for furnishing of security in various forms, among which, furnishing of security of immovable property, is one. The form of security provided under TNVAT Rules mandates mortgage of the properties offered by the dealer. The mortgage provided under the prescribed form-F therein is in the nature of a simple mortgage. Hence, in the cases where the dealer applies for registration by opting to furnish security bond, a simple mortgage is created on such a security being furnished, which would also be in the nature of a "floating charge" on the property, which mandates registration.

61. Nevertheless, in the light of the observations made in this order, and after the pronouncement of the order in Ahmedabad Municipal Corporation's case, I am constrained to hold that there is an inherent duty on the tax authorities to inform the registering officers of the statutory charge created and therefore, in the absence of such information being made, purchases effected pursuant to the statutory charge created under the tax laws, will not be enforceable against the properties in the hands of the subsequent purchasers. Above all, this Court has also substantiated that there is no constructive notice of the charge created either under Section 24 of the TNGST Act or under Section 42 of the TNVAT Act and therefore, all the petitioners herein, who had purchased the properties for consideration and without notice of the charge, would be entitled to the benefit of the saving clause under Section 100 of the TP Act. Accordingly, all the writ petitions deserve to be allowed in the light of the above discussions.

62. For the foregoing reasons, all the Writ Petitions stand allowed and Form No.7A-Auction sale notice dated 05.08.2005 issued by the respondent in W.P.No.39939 of 2005, notice of auction issued by the 1st respondent in Na.Ka.2003/01/a3 dated 07.06.2007 in W.P.No.25145 of 2007, records in Roc.No.A3/2597/1997 (Form No.1), dated 03.10.2008 in W.P.No.25830 of 2008, impugned auction notice published in the Dinakaran Newspaper dated 13.12.2008 and the Serial No.11 of the said notice passed by the 1st respondent in W.P.No.30117 of 2008, impugned auction notice published in the Dinakaran Newspaper dated 13.12.2008 and the Serial No.11 of the said notice passed

by the 1st respondent in W.P.No.30118 of 2008, proceedings of the 2nd respondent in Na.Ka.No.A3/6185/07, dated 29.09.2008 in W.P.No.3211 of 2009, records of the 1st respondent in Roc.A3/2358/03, dated 23.12.2008 enclosing attachment notice in Form 4 under Section 25 of the Tamil Nadu Revenue Recovery Acts, 1864 along with notice in Roc.No.A3/2358/03, dated 28.01.2009 in W.P.No.4827 of 2009, records of the 1st respondent in Na.Ka.No.1820/2007/A3, dated 05.09.2013 in W.P.No.28104 of 2013, records of the auction notice in R.C.118/2014/A3 passed by the respondent, dated 16.07.2015 in W.P.No.25602 of 2015, records of the 1st respondent in RC.536/2015/A3, dated 22.09.2015 in W.P.No.30458 of 2015, records of the 1st respondent in Rc.No.TNGST No.1701192, dated 20.10.2015 in W.P.No.36010 of 2015, impugned notice dated 29.04.2016 on the file of the 2nd respondent in W.P.No.35988 of 2016 are set aside and the matters are remanded back to the concerned authorities, for the limited consideration as to whether there was any encumbrance of the charge reflected in the subject properties before the concerned jurisdictional registering officers, for the properties in question, between the date of creation of the charge and the date on which the petitioner had purchased the properties. In the absence of such encumbrance of the charge, the concerned respondent shall release the properties, free from the charge created, either under Section 24 of the TNGST Act or Section 42 of the TNVAT Act, forthwith, which exercise shall in any event be completed atleast within a period of four (4) weeks, from the date of receipt of a copy of this order, for every one of the petitioners respectively.

63. The petitioners are also at liberty to produce copies of the relevant encumbrance certificates pertaining to their properties, from the date of the charge till the date of their purchase, along with their representations enclosing a copy of this order.

64. In case, the Tax Department is of the view that in any case, the transfer of the property could be termed as a 'fraudulent transfer to defraud revenue', the Department is at liberty to approach the concerned jurisdictional Civil Courts, within three months from the date of receipt of copy of this order and establish their case. However, it is made clear that this liberty shall not entitle the Department to refrain or refuse to release the properties involved in these Writ Petitions, from the statutory charges.

Schedule A

All that piece and parcel of Property situated at Devar Street, comprised in Survey. No. 204 as per patta present Survey.No. 145/1A2 of Menambedu Village, Ambattur Taluk, Thiruvallur District measuring an extent of 3920 sq.ft and being bounded on the;

North By: Naidu Plot House
South By: Narayanar Plot House
East By : Devar Street
West By: Land belongs to A. Elumalai

on the Northern Side : 93 feet 10 inches
on the Southern Side : 88 feet 00 inches
On the Eastern Side : 46 feet 03 inches
on the Western Side : 42 feet 10 inches

In all total measuring an extent of 3920 sq.feet or thereabouts and lying within the Registration District of Chennai North and Sub Registration District of Ambattur.

Schedule B

279 sq. feet undivided share of land from and out of Schedule-A mentioned Property.

Schedule C

Flat bearing No.F3 in First Floor measuring 800 sq.feet.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sm/DP

Note:Registry is directed to circulate the copy of this order to the Chief Secretary, Government of Tamil Nadu to take note of the observations made in this order in paragraph Nos.41 to 61.

To

1. The Deputy Commercial Tax Officer,
Tiruchengode (Town) Assessment Circle,
Tiruchengode, Namakkal District.
2. The Commercial Tax Officer
Centre I, Tirupur CTO Kumaran Road
Tirupur 641 601.
3. The Assistant Commissioner
CT FAC Hosur, North Division Hosur
4. The Deputy Commissioner
Commercial Taxes Zone II
Coimbatore.
5. The Commercial Tax Officer
Mettupalayam, Coimbatore
6. The Deputy Commercial Tax Officer
Cuddalore.
7. The Assistant Commissioner
Commercial Taxes Cuddalore Town
Taxation Circle Cuddalore 607 001 Panruti
8. The Assistant Commissioner
Commercial Taxes
Periya Agraharam Circle
Erode
9. The Tahsildar
Erode Taluk and District
10. The Sub Registrar
Surampatti, Erode
11. The Commercial Tax Officer
Maduranthakam Assessment Circle
Maduranthakam
12. The Assistant Commissioner (CT)
O/o. The Oragadam Assessment Circle
Padappai 601 301.

13.The Office of the Assistant Commissioner(CT)
Saligramam Assessment Circle
No. 21 G.K. Industrial Estate
1st Main Road, Alapakkam Porur
Chennai 116.

14.The Sub Assistant Registrar
Virugambakkam
Chennai

15.The Assistant Commissioner
Cholavaram Assessment Circle
No.23, Jawaharlal Nehru Nagar
1st Street, 1st Floor, Redhills
Chennai 52.

16.The Chief Manager/Authorized Officer
Stressed Assets Management Branch
Red Cross Buildings No.32, Montieth Road
Egmore, Chennai 08.

17.The Assistant Commissioner(CT) Pondy
Bazaar Assessment Circle
No. 46, Greenways Road
3rd Floor Taluk Office Building
R.A. Puram Chennai 28.

18.The Assistant Commissioner(CT)
Ambattur Circle
No.127 1st Floor Yadhaval Street
Padi Chennai 50.

19.The Sub Registrar
Sub Registrar Office
Ambattur Chennai 53.

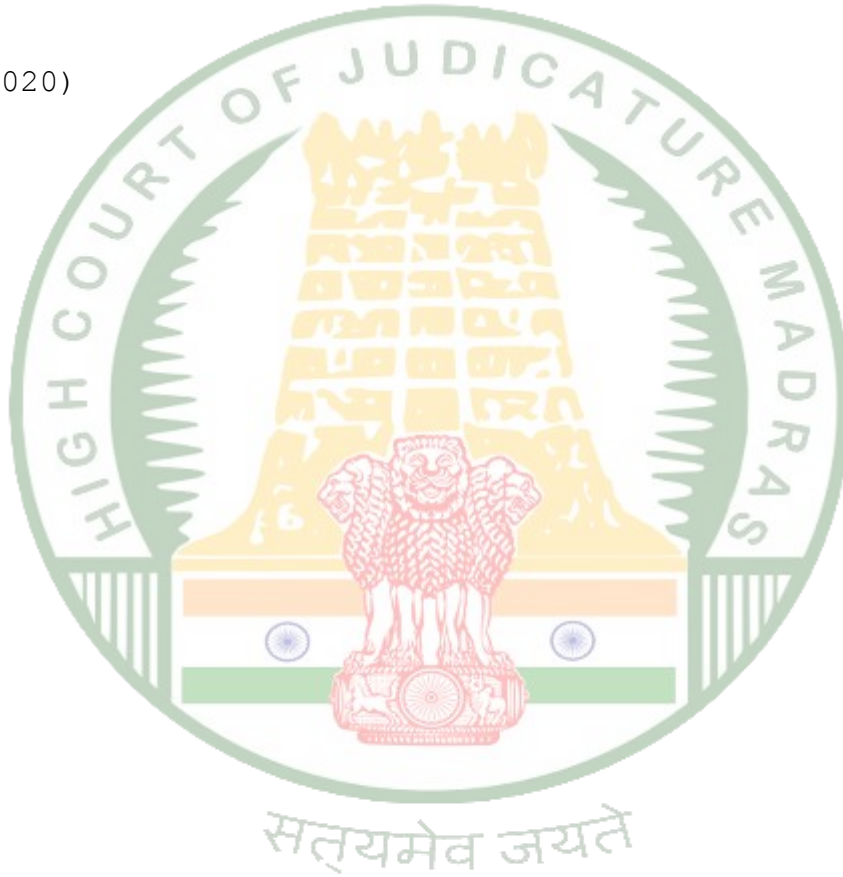
20.The Chief Secretary
Government of Tamil Nadu
Fort. St. George
Chennai

- +1 CC to Mr.S. Ramanathan, Advocate sr 17957
+1 CC to Mr.S. Veeraraghavan, Advocate sr 18210.
+1 CC to Mr.G. Krishna Kumar, Advocate sr 17691
+1 CC to Mr.T. Shanmugam Advocate sr 18700.
+1 CC to Mrs.R. Hemalatha, Advocate sr 18470.
+1 CC to Mr.M.L. Ganesh, Advocate sr 18418

+1 CC to Mr.N. Inbarajan, Advocate sr 17444
+1 CC to Mr.C. Munusamy, Advocate sr 17683.
+2 CC to Mr.A.V. Arun, Advocate sr 17983, 17984
+1 CC to Mr.K. Elango, Advocate sr 17954
+1 CC to The Special Government Pleader(T) sr 18512 to 18518 &
18545 to 18550/2020.

W.P.Nos.39939 of 2005 & 25145 of 2007, 25830, 30117 &
30118 of 2008, 3211 & 4827 of 2009, 24690 of 2010, 28104
of 2013, 25602, 30458 & 36010 of 2015 and 35988 of 2016

VGI (CO)
SP(03/11/2020)



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