

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.16147 of 2016

and

W.M.P.No.13944 of 2016

Mrs.Saraspathy Sundaraj

...Petitioner

Vs.

1. The Assistant Commissioner,
Nandanam Assessment Circle,
Greenways Road,
Chennai - 600028.

2. The Joint Commissioner (CT),
Chennai (Central) Division,
PAPJM Buildings IVth Floor,
Greams Road,
Chennai - 600006.

3. Mr.W.Navin Raj
(R3 impleaded as per order dated
23.06.2016 in WMP.17282/2016
in WP.16147/2016)

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to impugned order issued by the 1st respondent in RC.No.2825/2001/A3 dated 04.03.2015 and quash the same and consequently direct the respondents to raise the attachment of the petitioner's property situated in Survey No.156/1 and 156/2, T.S.No.6056, Block No.135, Theyagaraya Nagar Division, measuring 5623 sq.ft, New Door No.11, Old Door No.29, Sarojini Street, T.Nagar, Chennai - 600017, Mambalam Guindy Taluk, Chennai District.

For Petitioner : Mr.Srivatsav
for Mr.K.Rajasekaran

For Respondents: Mr.R.Swarnavel
Government Advocate

O R D E R

Today, the matter is listed through Video Conferencing. By consent of both the parties, the Writ Petition is taken up for final disposal.

2. The petitioner is aggrieved against the attachment created in her property situated in Survey No.156/1 and 156/2, T.S.No.6056, Block No.135, Theyagaraya Nagar Division, measuring 5623 sq.ft, New Door No.11, Old Door No.29, Sarojini Street, T.Nagar, Chennai - 600017.

3. Through the impugned letter dated 04.03.2015, the first respondent herein had furnished particulars of the attachment made in the subject property. The facts, as revealed in the said letter, states that one Thiru.T.C.Wilson (late), proprietor of M/s.New Nelson Watch Company, was in arrears of sales tax for the assessment year 1996-97 under TNGST Act, 1959, to the tune of Rs.1,75,830/-. The order dated 26.02.1999 levying tax and penalty was communicated to the assessee and served on him on 19.04.1999. In this background, the assessee had sold the subject property to the petitioner on 27.01.2000 and the petitioner herein had subsequently settled the property in favour of her son on 25.04.2003. The encumbrance of the charge over the subject property was recorded in the registers of the Registration Department on 10.09.2007.

4. The learned counsel for the petitioner would submit that the petitioner herein is a bona fide purchaser, who had purchased the property prior to the encumbrance being created and therefore is entitled to protection from the charge created over the subject property. According to him, there was no encumbrance registered in the Sub-Registrar Office on the date when the petitioner had purchased the subject property.

5. The learned Government Advocate appearing on behalf of the respondents, on the other hand, submitted that the encumbrance made by the assessee in favour of the petitioner as well as the subsequent encumbrance to her son, was with an intention to defraud the revenue and in view of Section 24-A of The Tamil Nadu General Sales Tax Act, 1959, the sale itself is void.

6. Section 24-A of the TNGST Act reads as follows:

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.

7. As per the provision, any transfer of title or creation of a charge by the dealer with an intention to defraud the revenue, is deemed to be void. The exceptions to such a provision is only when the charge or transfer is made for adequate consideration and without notice of the pendency of the tax proceedings or when the previous permission of the assessing authority is obtained. The intention of the dealer to defraud the revenue, is the qualifying clause, in order to render the transfer of title or charge void.

8. In the present case, the arrears of sales tax of the assessee, namely Thiru.T.C.Wilson, was for the year 1996-97. The order dated 26.02.1999, in this regard, was served on the assessee on 19.04.1999. Thus, there is a clear presumption that the dealer was aware of the arrears of sales tax as on 19.04.1999.

9. The assessee, late T.C.Wilson, is the son of V.T.Chinnaraj Nadar, who also had two other sons, namely C.Dhanraj and C.Sundaraj. The two sons of V.T.Chinnaraj, namely C.Wilson and C.Dhanraj, had executed a deed of Power of Attorney in favour of their brother, namely C.Sundaraj, to sell the subject property. The assessee's brother and Power Agent, namely C.Sundaraj had then sold the property to his own wife, who is the petitioner herein, through a registered Sale Deed dated 28.01.2000. Thus, the entire transaction is between the family members themselves and the sale has happened within a close proximity from the knowledge of the tax arrears of the assessee, which is about less than six months. After that, the petitioner had created further encumbrance in the property on 25.04.2003 through a Settlement Deed.

10. Under Section 24 of the TNGST Act, the arrears of the tax will 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. As seen earlier, Section 24-A of the TNGST Act provides that all charges or transfers made by the dealer during the pendency of any proceedings under the Act, shall be void. The intention to defraud the revenue requires to be derived from the manner in which the defaulter transfers the title of the property. When the transfer of title of the property is made within a reasonably short period from the knowledge of the tax arrears or whenever such a transfer of title is done among the family members of the defaulter, there can be a strong presumption that such transfer has been made to defraud the revenue.

11. Since the defaulter had transferred the property in favour of his brother's wife, by appointing his own brother as the Power Agent to act on his behalf and such a sale has happened within six months from the date of which the demand of arrears of tax was made, it can be said there are no bona fides in such a transfer. Accordingly, in view of Section 24-A of the TNGST Act, the transfer itself is deemed to be void. Consequently, the department may be entitled to recover the sales tax arrears of the later dealer, namely Thiru.T.C.Wilson, by enforcing the charge against the subject property in the manner provided under the Act.

12. It is seen that the assessee was liable to pay a total sum of Rs.1,75,830/-, which includes the sales tax as well as penalty under Sections 12(3)(b) and 24(3) of the TNGST Act and possibly with an interest. Since the value of the property, as evidenced in the sale deed, seems to be much higher than the actual arrears, I am of the view that the petitioner herein can be given an option to pay the entire liability of the original assessee, so as to release her property from the charge.

13. In the result, the Writ Petition stands dismissed. The respondents 1 and 2 are at liberty to enforce the charge over the subject property for recovery of the arrears of tax due from the assessee, namely Thiru.T.C.Wilson (late), proprietor of M/s.New Nelson Watch Company, in a manner known to law. However, if the petitioner is of the view that they are willing to settle the entire arrears together with penalty to the department, liberty is hereby granted to the petitioner to approach the first respondent herein, together with the entire sales tax arrears and penalty and applicable interest, along with a representation. On receipt of the same, the first respondent herein shall consider the request favourably, instead of proceeding against the subject property. The petitioner shall make such a representation, enclosing the entire arrears,

atleast within a period of 30 days from the date of receipt of a copy of this order. The respondents 1 and 2 shall keep in abeyance the proceedings for enforcement of the charge against the property, till the expiry of the 30 days from the date of receipt of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner,
Nandanam Assessment Circle,
Greenways Road,
Chennai - 600028.
2. The Joint Commissioner (CT),
Chennai (Central) Division,
PAPJM Buildings IVth Floor,
Greens Road,
Chennai - 600006.

+1cc to the Special Government Pleader, in SR.NO..30804

W.P.No.16147 of 2016
and
W.M.P.No.13944 of 2016

LN(CO)
RV(14/10/2020)

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