IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.02.2020

Pronounced On: 10.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.29090 of 2016
and
W.M.P.No.25138 of 2016

I. Jeyarajan ... Petitioner

vs

The Commercial Tax Officer,
Tondiarpet Assessment Circle,
Office of the Assistant Commissioner (C.T),
No.19 & 20, Kummalamman Koil Street,
Tondiarpet, Chennai - 600 081. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the proceedings of the respondent dated 02.06.2016 made in CST No.95411/2009-10, 2012-13 and quash the same.

For Petitioner : Mr.M.Ganesh

For Respondent : Mr.A.N.R.Jayaprathap
Standing Counsel.

O R D E R

In the Writ Petition, the petitioner has challenged the impugned notice dated 02.06.2016, calling upon the petitioner to pay a sum of Rs.1,24,93,648/- within a period of 15 days from the date of the notice.

2. The petitioner a purchaser of the property from E.Varadharajan, S/o.Ethirajulu partner of Tvl. Kairali Steel Traders. The said partnership concern was in arrears of tax of Rs.1,24,93,648/- for the Assessment Years 2009-10 to 2012-13. Despite a charge being created under law, the said E.Varadharajan was sold the property to the petitioner. The said property in question was registered vide sale deed Document No.2659, dated 27.08.2002.

3. After the receipt of impugned order, the petitioner has sent a representation stating that the petitioner was not liable to pay tax as the petitioner is a bonafide purchaser of the property without notice of alleged charge created in favour of the respondent Commercial Tax Officer. In this connection, the learned counsel for the petitioner relied on the decision of the Hon'ble Full Bench of this Court in B.Suresh Chand Vs. State of Tamil Nadu and Another, 2006 SCC OnLine Mad 828.

4. Per contra, the learned Standing Counsel for the respondent submits that this writ petition was liable to be dismissed as the petitioner has an alternate remedy to challenge the impugned notice dated 02.06.2016.

5. The learned Standing Counsel for the respondent further submits that as per the provisions of the TNGST Act, 1959, the charge was created in favour of the respondent Commercial Tax Department against the property of the petitioner's vendor and therefore, whether the property purchased by the petitioner without notice or with notice can be established only in a trial and therefore, the present writ petition was liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

7. Section 24 of the TNGST Act, 1959 is applicable to the recovery of tax under CST Act, 1956. If an assessee is in default of tax liability, automatically charge is created in respect of the property dealer. Under Section 24-A of the TNGST Act, 1959, a purchaser can claim the defence stating that the purchase was for adequate consideration and without notice of such tax or arrears. Section 24-A of the TNGST Act, 1959 reads as under:-

> 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.

8. In this case, the respondent Commercial Tax Department had not taken the trouble of registering the charge as was required under law. Therefore, the partner of the defaulting dealer took undue advantage and sold the assets unapologetically in a flagrant violation of the law. The petitioner purchased the property from the said person. Petitioner claims to have made search in the Sub Registrar's Office only to find that the vendor had mortgage the property to Indian Overseas Bank and that the loan had been cleared and that the property in question was free from encumbrance on and from 26.06.2012. Petitioner claims to have made a search for a period of 26 years and found no other entry/encumbrance. Thus, petitioner submits that his purchase of the property on 27.08.2012 was after due verification on payment of Rs.40 lakhs for adequate consideration.

9. Impugned notice calls upon the petitioner to pay for the arrears after a lapse almost four years from the date of purchase of the property shows negligence on the part of the Department in as much as the dealer was in arrears of tax from 2010 onwards.

10. Whether the petitioner had indeed paid Rs. 40 lakhs to the vendor without notice of the charge which was created by operation of law or whether the sale was made to defeat the interest of the respondent or bonafide cannot be decided in a writ court as it would require a detailed trial on facts. The petitioner has to satisfy that the requirement of proviso to Section 24-A of the TNGST Act, 1959 has been met to perfect his title to the property.

11. The burden of proof as is required under the aforesaid provision can be established only in a civil court by filing a suit for a declaration and this would require a trial. As the courts exercising jurisdiction

under Article 226 of the Constitution of India are not Civil Courts for the purpose of such determination, I am of the view that the present writ petition is liable to be dismissed. The petitioner has to perfect his title before a Civil Court and establish that his purchase was for adequate consideration and without notice.

12. Under these circumstances, I am inclined to dispose the writ petition while giving liberty to the petitioner to approach a Civil Court within a period of 30 days from the date of receipt of a copy of this order. The respondent shall not proceed with the distraint notice and/or revenue recovery proceedings against the petitioner and the property for a period of six months from the date of receipt of a copy of this order, provided the petitioner files a suit within period prescribed herein.

13. The respondent may file caveat before the jurisdictional court so that it can contest the suit without further delay for a resolution of the dispute. Needless to state the petitioner has to implead his vendor to the said proceeding as well. Petitioner may also file an application for extension of the protection given by this order and if such application is filed, the trial court may consider the application on the merits and extend the protection for a further period pending disposal of the suit to be filed by the petitioner.

14. It is made clear that if no suit is filed within the aforesaid period, the respondent Commercial Tax Department is at liberty to proceed further with the impugned revenue recovery proceedings.

15. Accordingly, the present Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

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To

The Commercial Tax Officer,
Tondiarpet Assessment Circle,
Office of the Assistant Commissioner (C.T),
No.19 & 20, Kummalamman Koil Street,
Tondiarpet, Chennai - 600 081.

+1cc to Mr.M.Ganesh, Advocate, S.R.No.10341
+1cc to the Spl Government Pleader(Taxes), S.R.No.10975

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and
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SSV(CO)
CB(03/08/2020)