IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.08.2020
Pronounced on	17.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.33424 of 2018
and
W.M.P.Nos.38790 & 38792 of 2018

D.Moorthy ...Petitioner

Vs

1.The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi,
Thiruvarur District.

2.The Sub-Registrar,
Office of the Sub-Registrar,
Mannargudi,
Thiruvarur District. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in Na.Ka.No.1517/2014/A3 dated 30.10.2015 addressed to the second respondent and quash the same as issued contrary to the provisions of the Tamil Nadu Value Added Tax Act and against the principles of natural justice and further direct the first respondent to remove/lift the encumbrance created on the petitioner's property i.e., House sites to the extent of 1981 Sq.ft located in Ward No.1, Block No.44, Survey No.2453/2 and to the extent of 4482.5 Sq.ft in ward No.44, Survey No.2454/3 in Mannargudi Town.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.R.Swarnavel
Government Advocate for R1
Mr.T.M.Pappiah,
Spl. Government Pleader for R2

O R D E R

The Writ Petition was called through video conferencing on 07.08.2020. By consent of both the parties, this writ petition is taken up for final disposal.

2. The brief facts of the case are as follows:

The petitioner herein had purchased a house site property on 25.11.2014, admeasuring an extent of 1981 Sq.ft located in Ward No.1, Block No.44 comprised in Survey No.2453/2 and to an extent of 4482.5 Sq.ft in Ward No.44 comprised in Survey No.2454/3 in Mannargudi Town, for a sale consideration from Mr.S.Kesavan, Proprietor of M/s.Vasudevan Timbers. At the time of purchase, the petitioner had conducted due diligence over the title of the property, including verification of the Encumbrance Certificate. The respondent had created an encumbrance over the subject property on 30.10.2015, by creating a charge, for the sales tax arrears of Mr.Kesavan, the vendor of the petitioner, for the assessment years 2011-12 and 2012-13

3. The petitioner claims that he is a bona-fide purchaser for a valid sale consideration and since the encumbrance of charge over the subject property, was not reflected on the date of his purchase and also since no notice of the charge was ever served on him, the demand of tax arrears made requires to be quashed.

4. The learned Government Advocate appearing for the department has raised several grounds substantiating as to the legality of the department in creating the charge, as well as claiming the arrears from the subsequent purchaser.

5. All these grounds have already been raised in a batch of Writ Petitions in the cases of K.Senthamil Selvan vs. The Deputy Commercial Tax Officer, Tiruchengode, Namakkal District, etc., in an order dated 28.02.2020 passed in W.P.Nos.39939 of 2005, etc., and this Court had held that when the purchasers have verified the Encumbrance Certificate of the subject property and produced the same after due diligence and on payment of a valid sale consideration, there cannot be a constructive knowledge of the charge and they would be entitled to the saving clause provided under Section 100 of the Transfer of Property Act. While holding so, this Court, had set aside the demand made for the tax arrears of the vendor/assessee from the subsequent purchasers and directed for release of the properties from the charges credited.

6. In view of the decision rendered by me in the aforesaid batch of cases, which answers all the grounds raised by the respondents and the facts of the petitioner's case also being one of a bona fide purchaser without notice, the petitioner

would be entitled to succeed.

7. Accordingly, the impugned proceedings of the first respondent in Na.Ka.No.1517/2014/A3 dated 30.10.2015 is quashed and the first respondent is directed to remove/lift the encumbrance created on the petitioner's property i.e., House sites, admeasuring to an extent of 1981 Sq.ft located in Ward No.1, Block No.44 comprised in Survey No.2453/2 and to an extent of 4482.5 Sq.ft in ward No.44 comprised in Survey No.2454/3 in Mannargudi Town.

8. The Writ Petition stands thus allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi,
Thiruvarur District.

2.The Sub-Registrar,
Office of the Sub-Registrar,
Mannargudi,
Thiruvarur District.

+1cc to Government Pleader, Advocate S.R.No.26999

Pre-delivery order made in
W.P.No.33424 of 2018
and
W.M.P.Nos.38790 & 38792 of 2018

MG (CO)
RV (14/09/2020)