BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.09.2020
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.10489 of 2020, 15212,15213 of 2018 & 25353 of 2019
and
WMP(MD) Nos.13749,13750,13751 &13752 of 2018

W.P.(MD)Nos.10489 of 2020:-

G.S.Nagar Residents Welfare Association,
Rep by its Secretary,
Mr.C.Manoharan,
Plot No.219, GS Nagar,
Seelapadi Village,
Dindigul. ....Petitioner

Vs.

1.The Assistant Commissioner,
Commercial Tax Department-I,
Commercial Tax Office,
Dindigul District.

2.The Joint Sub Registrar -I,
Office of the Joint Sub Registrar,
Collectorate Buildings,
Dindigul.

3.A.Jeyakumar,
4.A.Julfihar,
5.Rani C.Natarajan,
6.K.Karpagam,
7.K.R.Bharat,
8.S.Gomathi Nayaham,
9.M.Navaneedham. ...Respondents

W.P.(MD)Nos.15212 & 15213 of 2018:-

C.Manoharan .. Petitioner in W.P(MD)No.15212 of 2018
P.Ramachandran .. Petitioner in W.P(MD)No.15213 of 2018

Vs

1.The Assistant Commissioner,
Commercial Tax Department-I,
Commercial Tax Office,
Dindigul District.

2.The Joint Sub Registrar -I,
Office of the Joint Sub Registrar,
Collectorate Buildings,
Dindigul.

3.A.Jeyakumar
4.A.Julfihar
5.K.Karpagam
6.Rani C Natarajan
7.K.R.Bharath
8.S.Gomathi Nayaham
9.M.Navaneedham ... Respondents in W.P(MD)Nos. 15212 & 15213 of 2018

W.P.(MD)No.25353 of 2019:-

T.Jameela Beevi ... Petitioner

Vs

1.The Assistant Commissioner,
Commercial Tax Department -I,
Dindigul District.

2.The Joint Sub Registrar -I,
Dindigul District. ... Respondents

PRAYER in W.P.(MD)No.10489 of 2020:- Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 1st respondent dated 31.01.2011 and 19.06.2017 in Na.Ka.No.109/2010/A3 and quash the same as illegal and consequently direct the 2nd respondent to delete the encumbrance entries in their record to this effect.

COMMON PRAYER in W.P.(MD)Nos.15212 & 15213 of 2018:- Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.109/2010/A3 dated 31.01.2011 on the file of the respondent No.1 and its consequent order in Na.Ka.109/2010/A3 dated 19.06.2017 on the file of the respondent No.1 and quash the same as illegal and consequently directing the 2nd respondent to delete the entry in his records to that effect.

PRAYER in W.P.(MD)No.25353 of 2019:- Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the proceedings of the first respondent dated 31.01.2011 and 19.06.2017 in

Na.Ka.No.109/2010/A3 notifying the charge of the first respondent Department in respect of survey No.585/5 situated measuring 2 acres in Seelapadi Village, Dindigul West Taluk in the encumbrance Certificate/book No.1, on the file of the second respondent as arbitrary, incompetent and without jurisdiction and consequently direct the respondent to delete the entry in Book.No.1 on the file of the 2nd respondent based on document No.11 of 2017.

For Petitioner (in W.P.(MD)No.10489 of 2020)	: Mr.S.Parthasarathi for Ms.M.Sudharsana
For Petitioners (in W.P.(MD)Nos.15212,15213 of 2018)	: Mr.T.Lajapathi Roy
For Petitioner (in W.P.(MD)No.25353 of 2019)	: Mr.H.Lakshmi Shankar
For R1 (in all WPs)	: Mrs.J.Padmavathi Devi Special Government Pleader
For R2 (in all WPs)	: Mr.Sathyasingh Additional Government Pleader
For R8 (in W.P.(MD)Nos.10489 of 2020, 15212 & 15213 of 2018)	: Mr.B.Rooban

C O M M O N   O R D E R

Heard the learned counsel for the writ petitioners and the learned Special Government Pleader appearing for the first respondent and the learned Additional Government Pleader appearing for the second respondent in all Writ Petitions.

2. One M/s.Uthayam Steel and Tubes, Dindigul was a Partnership firm and registered with the Commissioner, Commercial Tax Department No.I, Dindigul. The petitioners claim that the Partnership firm originally comprised Mr.A.Jeyakumar, Mr.A.Julfihar, Mrs.Rani C.Natarajan, Mrs.K.Karpagam, Mr.K.R.Bharat, Mr.S.Gomathi Nayaham, and Mrs.M.Navaneedham. They would make a further claim that Mr.A.Jeyakumar, Mr.A.Julfihar, Mrs.Rani C.Natarajan, Mrs.K.Karpagam and Mr.K.R.Bharat retired from the Partnership firm on 31.03.1998 and thereafter they sent intimation to the Department in Form X and Form 7 . The Partnership firm fell into the arrears and

became liable to pay certain tax dues to the Department. The Department issued a notice to Jeyakumar on 31.12.2008. It is stated that legal notice was issued to the Department on behalf of Mrs.Rani C.Natarajan in December 2009 informing the Department that the aforesaid persons had already retired on 31.03.1998 and that they cannot be made liable for the subsequent liabilities incurred by the firm. Even according to the Department, the firm is liable for the arrears for three assessment years viz 2003-2004, 2004-2005 and 2005-2006.

3.The learned Special Government Pleader states that the liability of the firm is to the tune of more than crore of rupees. It is seen that Jeyakumar was owning a few acres of property in S.F.No.585/5 in Seelapadi Village. Jeyakumar had formed an approved layout and sold the plots to various persons. An approved layout came into existence in the name and style of G.S.Nagar, Seelapadi Village. Whileso, the respondent Department issued proceedings on 31.01.2011 informing the Joint Registrar that the property in S.No.585/5 measuring two acres had been attached for recovery of the said dues. It is seen from the records that even though the communication was received from wayback in the year 2011, the attachment was entered in the Encumbrance Register only on 19.06.2017. To remove the entry, these Writ Petitions have been filed, out of which, three Writ Petitions were filed by individuals, the last one (W.P.MD No.10489 of 2020) has been filed by the Association. The Association is a registered body (Registration No.19/2014).

4.The first respondent had filed a detailed counter affidavit and the learned Special Government Pleader appearing for the first respondent reiterated all the contentions set out therein.

5.I carefully considered the rival contentions and went through the materials on record. It is seen that the petitioners before this Court had purchased the property for adequate consideration and without notice of the charge claimed by the Department. The relevant provision is Section 24A of TNGST 1959 and it reads as follows:-

> "*24-A Where, during the pendency of any proceeding 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 oher 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 aginst 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 of 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"

6.The petitioner's counsel drew my attention to the decision reported in *2006-3-L.W.627 (D.Senthil Kumar and others Vs.The Commercial Tax officer, Brough Road, Erode and others)*, wherein the Honourable Division Bench held that the transferees of the property for valuable consideration without notice of the charge, are entitled for protection. The said decision is squarely applicable to the case on hand.

7. It is obvious that the impugned order of attachment was entered in the encumbrance Register on 19.06.2017, though the communication was received in the year 2011. But the members of the petitioner Association had purchased long prior thereto.If after the encumbrance was entered in the Register at the instance of the department and the petitioners had purchased thereafter, then they can be said to have had notice. That is not the case here. The transactions are also for consideration. Respectfully following the aforesaid order of the Honourable Division Bench, the Writ Petitions are allowed. The respondents 1 & 2 are directed to delete the offending entry from the encumbrance Register.

8.I have to necessarily express my displeasure over the conduct of Mr.C.Manoharan, who has filed W.P(MD) No.10489 of

2020 on behalf of the association. The said Manoharan had earlier filed Writ Petition before this Court in his individual capacity. He ought to have fairly disclosed this fact to this Court. Not doing so is clearly improper. When this Court expressed its displeasure, Mr.Manoharan submitted that he woud resign his post.This undertaking is recorded.

9. The Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vrn

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Assistant Commissioner,
Commercial Tax Department-I,
Commercial Tax Office, Dindigul District.

2.The Joint Sub Registrar -I,
Office of the Joint Sub Registrar,
Collectorate Buildings, Dindigul.

+1 CC to SGP (SR-15658,15715,15716[F] dated 02/09/2020)
+1 CC to M/s.M. SUDHARSANA, Advocate (SR-15886[F] dated 03/09/2020)
+1 cc to Mr.B.Rooban , Advocate SR.No.15653
+1 cc to Mr.H.Lakshmi Shankar , Advocate SR.No.15650

Common order made in
W.P.(MD)Nos.10489 of 2020, 15212,15213 of 2018 & 25353 of 2019
and
WMP(MD) Nos.13749,13750,13751 &13752 of 2018
01.09.2020

KM (10.09.2020) 6P 7C