BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.13441 of 2020
and W.M.P.(MD).No.11220 of 2020

R.Baluram .. Petitioner

Vs.

1.The State Tax Officer,
Nagercoil,
No.131, Meettu Theru, Nagercoil.

2.The Joint Sub Registrar – I,
Kanniyakumari @ Nagercoil,
Nagercoil.

3.Rajiv Radhakrishnan,

4.V.Nagarajan .. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 01.10.2015 in ROC.398/2015/A3, passed by the 1st respondent in respect of Plot No.1 in New survey No.N-7-21/5, Nagercoil Village, Agastheeswaram Taluk, Kanniyakumari Registration District and quash the same as illegal and consequently direct the 1st respondent to release the charge and the prohibitory order considering petitioner's representation dated 21.12.2019.

For Petitioner	:	Mr.C.Arulvadivel @ Sekar
For Respondents	:	Mrs.J.Padmavathi Devi for R1 Special Government Pleader Mr.K.Sathiya Singh for R2 Additional Government Pleader

ORDER

(This writ petition is heard through video conference)

This writ petition has been filed challenging the prohibitory order dated 01.10.2015, passed by the first respondent in respect of the property in Plot No.1 in New survey No.N-7-21/5 in Nagercoil Village, Agastheeswaram Taluk, Kanniyakumari District, purchased by the petitioner from Mr.V.Nagarajan, Power of Attorney of V.S.K.Radhakrishnan and V.S.K.Rajaram, under sale deed dated

02.04.2014, registered under document No.1068/14, on the file of the second respondent.

2.Heard Mr.C.Arulvadivel @ Sekar, learned counsel for the petitioner, Mrs.J.Padmavathi Devi, learned Special Government Pleader, appearing for the first respondent and Mr.K.Sathiya Singh, learned Additional Government Pleader, appearing for the second respondent.

3.It is the case of the petitioner that he is a bonafide purchaser, purchased from Mr.V.Nagarajan, having paid valuable consideration for the same. It is also his case that he only after verifying that there is nil encumbrance, purchased the property from V.Nagarajan. According to the petitioner, he was shocked to know that on 01.10.2015, the second respondent has made an encumbrance by passing the prohibitory order over the subject property on the ground that Mr.V.S.K.Radha Krishnan, who is the Power of attorney holder in the sale deed and who is the dealer registered under the Tamil Nadu Value Added Tax Act, has arrears of property tax to the first respondent. The petitioner has given a representation to the first respondent dated 21.12.2019, requesting them to remove the encumbrance on the ground that they are bonafide purchasers of the property for valuable consideration and the same has not been considered by the first respondent till date. In such circumstances, the petitioner has filed this writ petition, challenging the prohibitory order dated 01.10.2015.

4.The learned counsel for the petitioner, drew the attention of this Court to the copy of the encumbrance certificate for the period from 01.01.1987 to 26.10.2015, the copy of the sale deed dated 02.04.2014, through which the petitioners purchased the said property as well as the petitioner's representation dated 21.12.2019 and would submit that since the petitioner purchased the subject property prior to the impugned order of attachment and further, the petitioner being a bonafide purchaser for valuable consideration, the impugned orders are arbitrary and illegal and it have to be quashed.

5.The learned counsel for the petitioner also drew the attention of this Court to a Division Bench Judgment of this Court reported in *[2019] 62 GSTR 459 (Mad)* in the case of *M.Thirumaran Vs. Commercial Tax Officer, Sengottai Assessment Circle, Sengottai and another* and would submit that in a similar set of facts, the Division Bench has held that the attachment is illegal. He would also submit that the Division Bench has followed the decision of the Honourable Supreme Court in the case of *Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenbhai* reported in *[1971] 1 SCC 757*. Therefore, he would submit that when bonafide purchaser takes the property, he buys free of all charges of which he has no notice either actual or constructive.

6.Per contra, the learned Special Government Pleader after drawing the attention of this Court to the counter affidavit filed by the first respondent, would submit that V.S.K.Radha Krishnan (dealer), is the owner of a larger extent of land, which has been sub divided into various plots, of which the petitioners are interested only in one plot. There are other plots, which were purchased by various other parties from V.Nagarajan and other family members, subsequent to the order of attachment and hence, the interest of the first respondent with regard to those attachments will have to be protected as the subsequent purchasers are not bonafide purchasers. Excepting for these submissions as regards the case on hand, the respondents have not raised any serious objections with regard to the contentions made by the learned counsel for the petitioner.

7.As seen from the encumbrance certificate for the period from 01.01.1987 to 26.10.2015, it is very clear that on the date of purchase, there was no attachment made by the first respondent. The petitioner purchased the property from V.Nagarajan, under sale deed dated 02.04.2014, registered as document No.1068 of 2014 in Sub Registrar's Office, Kanniyakumari District. As seen from the sale deed dated 02.04.2014, the petitioner has paid a sale consideration of Rs.17,49,500/- for the extent of property 5.16 cents situated at Nagercoil Village, Agasteeswaram Taluk, Kanniyakumari District.

8.Admittedly, the Prohibitory order over the property was passed by the first respondent only on 01.10.2015 for the arrears of property tax payable by V.S.K.Radha Krishnan, the power of attorney holder of the petitioner's vendor V.Nagarajan. The respondents have also not produced any iota of evidence against the petitioner before this Court that the petitioner was aware of the proceedings initiated by the first respondent against the power of attorney holder of the petitioner's vendor for arrears of property tax.

9.The Division Bench Judgment relied upon by the learned counsel for the petitioners in the case of *M.Thirumaran Vs. Commercial Tax Officer, Sengottai Assessment Circle, Sengottai and another* reported in *[2019] 62 GSTR 459 (Mad)* squarely applies to the facts of the instant case. While setting aside the attachment, the Division Bench has observed as follows:

> *"9.The only point to be considered in the writ petition is as to whether the writ petitioner is a bona fide purchaser of the property and would be protected from the proceedings under the Revenue Recovery Act, and under Section 24(A) of the Tamil Nadu General Sales Tax Act, 1959. In the present case, the encumbrance certificate does not reveal the charge created over the property and there is nothing to infer that the appellant/writ petitioner and his*

vendor with an intention to defraud the tax payable to the first respondent colluded with each other and effected transfer of the property. The business conducted by the vendor of the writ petitioner was actually closed on April 1, 2002 and the property had been purchased by the writ petitioner only in the year 2004. Therefore, it cannot be said that he had actual or constructive notice of the charge created over the property for payment of arrears of sales tax in respect of the business conducted by his vendor.

10.A bona fide purchaser takes the property he buys free of all charges of which he has no notice either actual or constructive. He is said to have constructive notice when ordinary prudence or care would have impelled him to undertake an enquiry which would have disclosed a 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. In the instant case, the encumbrance certificate did not disclose any charge created over the property. A reading of Section 3 of the Transfer of Property Act, 1882, shows that 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. This presumption is known as constructive notice."

10.The Division Bench has also followed the decision of the Honourable Supreme Court in the case of *Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenbhai* reported in *[1971] 1 SCC 757.*

11.In the case on hand also the petitioner as seen from the above is a bonafide purchaser and has taken the property free of all encumbrance and he has no notice either actual or constructive about the proceedings initiated by the first respondent against the vendor's power of attorney Mr.Radha Krishnan for arrears of tax.

12.After giving due consideration to the aforementioned factors, this Court is of the considered view that the impugned order dated 01.10.2015 is arbitrary and illegal and they are hereby quashed and consequently, the encumbrance (Attachment) made in pursuance to the prohibitory order dated 01.10.2015 in Roc.398/2015/A3, will have to be removed by the second respondent, within a period of one week from the date of receipt of a copy of this order.

13.Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

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 State Tax Officer,
Nagercoil, No.131, Meettu Street, Nagercoil.

2.The Joint Sub Registrar - I,
Kanniyakumari @ Nagercoil, Nagercoil.

+1 CC to Mr. Special Government Pleader, SR.No. 25405

W.P.(MD).No. 13441 of 2020

11.12.2020

sss(CO)
TR(06.01.2021) 5P 4C