IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.14499 of 2013
and
M.P.No.1 of 2013

A.Suganthi ... Petitioner

Vs.

1. The Commercial Tax Officer (FAC)
   Tiruchengode (Town) Assessment Circle,
   Tiruchengode,
   Namakkal District.

2. Pappathi

3. K.Ramasamy

4. S.AR.Somasundaram
   Power of Attorney Holder ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the 1st Respondent from in any way bringing the petitioner's property situate in S.V.S.Extension Street No.1, Survey No.113- Door No.33-B/5; Survey No.115 Door No.38/4 and Survey No.117 Door No.38/4-B for public auction to be held on 22.05.2013 at 11.00 AM for the realization of arrears of sales tax due of the 2nd Respondent pursuance of the proceeding in Na.Ka.1482/2010/A3 dated 18.03.2013.

For Petitioner	:	Mr.S.Rajasekar
For R1	:	Mr.V.Veluchamy Government Advocate
For R2 and R4	:	No appearance
For R3	:	Not ready in notice

O R D E R

The writ petition is filed to forbear the 1st respondent from in any way bringing the petitioner's property situate in S.V.S.Extension Street No.1, Survey No.113, Door No.33-B/5; Survey No.115, Door No.38/4 and Survey No.117, Door No.38/4-B, for public auction to be held on 22.05.2013 at 11.00 a.m., for realization of arrears of Sales Tax due of the 2nd respondent, pursuant to the proceedings in Na.Ka.1482/2010/A3, dated 18.03.2013.

2.The petitioner states that she was a bona fide purchaser of the subject property from one Mr.S.AR.Somasundaram, through a sale deed dated 23.09.2010. The petitioner paid a valid consideration for the purchase of the said property and she is in possession and enjoyment of the same without any interruption, and on the date of purchase, there was no encumbrance in favour of the Commercial Taxes Department and the property was purchased free from encumbrance by the writ petitioner in the year 2010. The vendor of the petitioner purchased the said property from the 3rd respondent, who is the husband of the 2nd respondent/tax defaulter, on 13.02.2006. The husband of the 2nd respondent subsequently sold the property to the 4th respondent and the petitioner purchased the property from the 4th respondent.

3.A perusal of the order impugned, dated 18.03.2013, would reveal that the 2nd respondent/Mrs.Papaathi, wife of Mr.K.Ramasamy, Proprietor of C.K.Rock Drills Spares at No.4, Municipal Building, Tiruchengode, is liable to pay the arrears of Sales Tax. However, the notice impugned did not contain any details regarding the attachment, if any, made by invoking the provisions of the Act. Contrarily, the said notice states that, auction is proposed to be conducted on 22.05.2013 at 11.00 a.m.

4.The learned counsel for the petitioner reiterated that, at the time of purchase of the property by the writ petitioner, there was no encumbrance or otherwise with reference to the Sales Tax arrears or by the Commercial Taxes Department. This apart, the petitioner is the second purchaser and the petitioner has not purchased the said property from the defaulter/2nd respondent, thus, the right of the petitioner is to be protected.

5.This Court is of the considered opinion that, only if the property was attached by the competent authorities of the Commercial Taxes Department by invoking the provisions of the Statute, they are entitled to initiate appropriate further action. If the Department is unable to establish any such attachment, the auction notice cannot be sustained in view of the fact that, well before the issuance of the auction notice by the Commercial Taxes Department, the property was sold by the defaulter in favour of the 4th respondent in the year 2006, and the 4th respondent, in turn, sold the property in favour of the petitioner in the year 2010.

6.This being the factum, the impugned notice suffers from legal sanction and cannot be sustained. Accordingly, the relief sought for in the present writ petition is granted and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mkn

To

The Commercial Tax Officer (FAC)
Tiruchengode (Town) Assessment Circle,
Tiruchengode,
Namakkal District.

+1cc to Mrs.R.Hemalatha, Advocate, S.R.No.31119
+1cc to the Government Pleader, S.R.No.31103

W.P.No.14499 of 2013

UM(CO)
HS(30/07/2021)