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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.50294 OF 2006

Tvl.Kanagadhara Flat Promoters,
No.38, Parangusapuram Street,
Viswanathapuram Main Road,
Kodambakkam,
Chennai - 24.

... Petitioner

Vs

1. The Commercial Tax Officer,
Ashok Nagar Assessment Circle,
Chennai.

2. Tvl.Madras Oil Tech Engineers Pvt Ltd.,
Chennai.

3. Tvl.S.Gopalan

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the impugned notice in RC 2181/89 A3 and Form 4 demand dated 20-12-2006 in respect of the property bearing Door No.111, Lake View Road, West Mambalam, Chennai - 33 and quash the same as illegal, unlawful and unconstitutional and forbear the respondent (first) from proceeding against the said property for recovery of sales tax arrears from Madras Oil Tech Engineering Pvt.Ltd., Chennai.

For Petitioner : Mr.R.Ganesh Kanna

For Respondents : Mr.V.Veluchamy
Government Advocate for R1

No appearance for R2 & R3



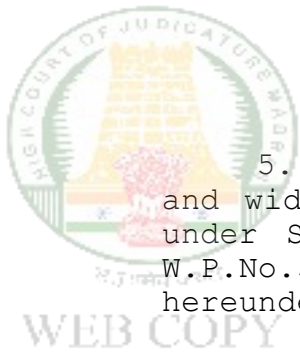
O R D E R

The notice and form - 4 demand dated 20.12.2006 in respect of the property bearing Door No.111, Lake View Road, West Mambalam, Chennai - 33, is under challenge in the present writ petition.

2. The petitioner company is a flat promoter and they have no arrears of sales tax due to the Government. However, the first respondent issued a notice to the petitioner asking him to pay the sales tax arrears amount of Rs.55,89,500/- accrued in the name of Madras Oil Tech Engineers Pvt. Ltd., for the Assessment Year 1992 - 93 under the CST Act, 1956. It is informed to the petitioners that they have purchased the property from one of the Directors. The petitioner sent a reply stating that they are no way connected with the arrears of sales tax and even at the time of their purchase of the said property, there was no such encumbrance or attachment by the Commercial Tax Department and thus any recovery of arrears of sales tax is to be made against the defaulter and not against the petitioner. Instead of the reply narrating the facts and circumstances, the first respondent issued the impugned notice informing that the seller of the property Mr.S.Gopalan/third respondent was a Director of the second respondent Company and as such he is responsible to pay tax arrears accrued in the name of the second respondent Company.

3. The learned counsel for the petitioner made a submission that even as per the encumbrance certificate issued by the Registration Department from 01.01.1997 to 17.02.2006, there is no encumbrance of charge created by the first respondent / Commercial Tax Department. Thus, the petitioner's are the bonafide purchasers of the property and cannot be liable to attachment. This Court is of the considered opinion that the arrears of sales tax was due in for year 1992 - 93 under the CST Act, 1956.

4. The second respondent was the defaulter. The third respondent was the Ex-Director of the second respondent Company and the property was sold jointly by many persons including the third respondent. Such being the facts and circumstances, there is no reason to issue the impugned notice after a prolonged period on 20.12.2006. The arrears of sales tax is to be collected from the second respondent after a lapse of 14 years and meanwhile the property was sold by the third respondent who was one of the Ex-Director of the second respondent Company and other co-owners also there and they are not directors and not connected with the second respondent.



5. This Court also elaborately considered the ambit, scope and width of recovery that may be initiated by invoking powers under Section 24 (2) of the Act in order dated 18.10.2019 in W.P.No.5849 of 2014, the relevant paragraphs are extracted hereunder:

"15. Section 24 which deals with payment and recovery of tax provides that where tax is assessed and becomes payable under the Act, it shall be paid within 21 days from date of service of a demand notice. In cases of default, then the entire outstanding shall become a charge on the properties of the assessee or the person upon whom the liability vests. Thus, to this extent, the argument of the revenue that an automatic charge is created upon the assets of the defaulting assessee is correct

16. However, they cannot rest content with this entitlement in the light of the stipulation under Section 24(2), which goes on to say that recovery of such outstanding amounts shall be in the manner stipulated under the RR Act as land revenue. For this purpose, it becomes necessary for us to go into the relevant provisions of the RR Act that stipulates, in great detail, the procedure to be adopted and followed by the authority for recovery of outstanding dues. The procedure set out in Sections 26 and 27 thereof are in the following terms:

26. Procedure when defaulter neglects to pay.-

When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into to the satisfaction of the Collector, or other officer empowered by the Collector in that behalf, he shall proceed to recover the arrear by the attachment and sale of the defaulter's land in the following manner.

27.Mode of attachment.-The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrear, with penalty and expenses be paid within the date therein mentioned, the land will be brought to sale in due course of law. The attachment shall be notified by public



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proclamation on the land, and by publication of the notice in the District Gazette.

17. Thus, the manner in which Section 24 of the Act is to be construed is that while an automatic charge is provided for under the provision, that by itself would not suffice to protect the interests of the Department. The requirement under Section 24(2) is specifically to bring to the notice of the public the fact that such encumbrance has been created upon a specific property, pursuant to statutory dues outstanding either by public proclamation on the land or by publication of such notice in the District Gazette.

18. In the present case, let us assume for a moment that an automatic charge has been created by operation of Section 24(1). Such charge, once created has remained within the domain of knowledge of only the Assessing Authority of the defaulter not having been conveyed to the public at large or converted into a tangible and enforceable charge by registration of an encumbrance with the Sub-Registrar. The orders of assessment passed upon R2 in the present case are dated 22.11.1999 for four periods of assessment, 1994-95 to 1997-98. The first move that the Commercial Taxes Department has made to consolidate their so-called claim upon the property is by issuance of letter to the office of the Sub-Registrar (SRO) on 20.03.2013. On 08.05.2013, the SRO replies confirming the creation of a charge on 24.04.2013 and enclosing an encumbrance certificate. Thereafter on 08.11.2013, a notice in Form 4 was issued to the defaulter. Thus, for the period 31.12.1999 to 20.03.2013 the Commercial Taxes has rested content with the charge stated to have been created by operation of Section 24(1). This charge has no value whatsoever unless it has been followed up by the specific procedure set out under Sections 26 and 27 of the RR Act.

19. This Court in Varuni Biomass Energy Products Private Ltd. (supra), considers the auction of a property for recovery of commercial tax arrears after considering the procedure contemplated under the RR Act and states at para 36 and 37, as follows:

36. On the basis of the rival submissions and the legal precedents the following proposition emerge:



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(i) The procedure under the Revenue Recovery Act for selling the property of the judgment-debtor must be strictly followed.

(ii) The illegalities in procedure will vitiate the sale.

(iii) The land owner whose property illegally sold is entitled to move this court notwithstanding the remedy of the suit under section 59.

(iv) In an auction sale the properties of the company can be brought to sale and not the properties of the directors of the company.

(v) In case of sale of properties of third parties, they are entitled for the notice.

37. In the present case, the procedure for selling the properties by revenue recovery proceedings, the legal procedure, was not followed. No wide publicity was given. The time gap provided under section 36 and 38 of the TNRR Act was not followed. The right of the independent owners including the petitioner in W.P.No. 5324 of 2008 was infringed as no notice was given to him and his brother who were no way connected with the company.

(Though such a notice was given to them when auction notice was issued during the year 2004).

20. The procedure set out under the RR Act, which is applicable to auctions under the Commercial Tax Act, has been enacted bearing in mind the interests of all parties. The interests of the Commercial Taxes Department have been protected under Section 24(1) by providing for the creation of an automatic charge. It is further protected by Section 24-A that envisages a situation where a defaulting assessee may transfer its properties to a third party merely to defraud the interests of the revenue. In such an event, the provisions of Section 24-A would kick in and render any such transfer, which has been effected merely to defraud the revenue, void.

21. The proviso to section 24-A, however, protects an assessee who has not been intimated about the pendency



of proceedings for assessment or any other proceeding pursuant to which a demand has been made or who has not been issued notice of a demand of tax or any other sum payable by it, from the rigor of Section 24-A.

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22. A holistic reading of both Section 24 and 24A of the TNGST and Section 26 & 27 of the RR Act sets out a scheme for recovery that takes into account, and protects the interests of all concerned parties, the Commercial Taxes Department, the assessee, and an innocent purchaser. Having issued the orders of assessment as early as in December 1999, the Commercial Tax Department has neglected to protect its interests by not resorting to the procedure set out under 24(2). Had the procedure only been complied with, as contemplated under both the TNGST as well as the RR Acts, then the public would have been put to notice of creation of encumbrance and the interests of both the general public and the commercial taxes Department would have been adequately protected.

23. There is no allegation by the Department that the purchase of the property in question by the father of the petitioner from R2 was a collusive transaction. In any event, the petitioner being the third in line of ownership to the property, the question of collusion would not arise in this case and neither is this the case of the Department. The decision in the case of Meenakshi J.Ganesh Kumar (supra) relied upon is distinguishable on facts, since in the aforesaid order the learned Single Judge, holds at para 7, that the transaction as between the petitioner in that case and the defaulting assessee, was collusive in nature.

24. A Full Bench in the case of B.Suresh Chand Vs. State of Tamil Nadu and another [(2006) 4 LW 409], considered the case of a bonafide purchaser in a Letters Patent Appeal. The Suit had been filed by plaintiffs claiming to be bonafide purchasers of the suit property, who had not been put to notice of a third party/statutory claim over the suit property. The question referred to the Full Bench was as follows:

'What is the extent a bonafide purchaser for value is bound by the change for payment of arrears of sales Tax created under Section 24 of the TNGST Act, 1959.'



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25. The Bench examined the provisions of Section 24(1) and (2) of the Act holding that property purchased by a bonafide purchaser without notice of the charge created under Section 24(1) cannot be proceeded against for the recovery of sales tax arrears. Thus, while Section 24(1) creates a charge on the properties of a defaulter to the extent of the dues, sub-section (2) of Section 24 states that those dues would have priority over all other claims against those properties except land revenue and claims of the Land Development Bank in regard to the property mortgaged to it.

26. The priority as above, would come into effect only in the event the authority, in this case, the Commercial Tax Department, had been vigilant enough to put into motion the procedure set out under the RR Act and not otherwise. The meaning of the term 'charge on the property' which is also found in Section 100 of the Transfer of Property Act, 1882 (in short 'T.P.Act') is, a simple mortgage. Section 100 of the T.P. Act reads as follows:

' 100.Charges-Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained (which apply to such charge). Nothing in this Section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, (and save as otherwise expressly provided by any law for the time being in any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge).'

27. Section 100 provides that in the absence of a specific provision in any law, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of such charge.

28. In summation, Section 24(1) of the Act equates commercial tax dues with a simple mortgage over the properties of a defaulter. Section 24(2) elevates the



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charge to the status of an enforceable priority over all other claims against any property except claims for land revenue and of the Land Development Bank subject to the procedure for recovery of such dues as set out under the RR Act, having been followed scrupulously by the Commercial Taxes Department."

6. In view of the facts and circumstances, the first respondent has not collected the recovery of sales tax vigilantly from the defaulters. Thus, the actions initiated after lapse of many years cannot be sustained. Consequently, the impugned notice issued by the first respondent in proceedings RC 2181/89 A3 dated 20.12.2006 is quashed.

7. Accordingly, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Commercial Tax Officer,
Ashok Ngar Assessment Circle,
Chennai.

+lcc to Mr.A.Ravichandran, Advocate, S.R.No.33754

+lcc to the Special Government Pleader(Taxes), S.R.No.34082 &
50294

W.P.NO.50294 OF 2006

PMK (CO)

PBS/12/08/2021