IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.02.2021
Pronounced On	02.03.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.23574 of 2015
and
M.P.No.1 of 2015

(Through Video Conferencing)

S.Venkatajalapathy ... Petitioner

Vs.

1. The Commercial Tax Officer,
   Tondiarpet Assessment Circle,
   Chennai - 600 081.

2. K.P.Kesavan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent herein in Ma.Ve.Vasa.No.95411/09-10 to 12-13 dated 13.07.2015 and quash the same.

For Petitioner : Mr.R.Sivaraman

For First Respondent : Mr.A.N.R.Jayaprathap, G.A.

O R D E R

In this writ petition, the petitioner has challenged the impugned recovery notice dated 13.07.2015 issued to the petitioner calling upon the petitioner to pay a sum of Rs.1,24,93,648/- being the arrears of tax due from M/s.Kairali Steels Traders for the period between 2009-10 to 2012-13 under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

2. The petitioner had purchased a property for a sum of Rs.13,50,000/- by way of sale deed dated 06.01.2014 from Mr.K.P.Kesavan, the father of the second respondent. The said M/s.Kairali Steels Traders defaulted in paying tax to the Commercial Tax Department.

3. It is submitted that prior to purchase of the aforesaid property from Mr.K.P.Kesavan, the petitioner had also applied for an Encumbrance Certificate from the jurisdictional Sub - Registrar's Office and found that there was no charge registered against the property in the Encumbrance Certificate dated 28.10.2013.

4. It is submitted that only after the Encumbrance Certificate dated 28.10.2013 was received and after satisfying that there are no other encumbrance against the said property, the petitioner purchased the property and registered it on 06.01.2014 for an adequate consideration of Rs.13,50,000/-

5. The petitioner claims to be a bona fide purchaser of the property. The impugned notice is assailed on the ground that the arrears of tax of the said concern cannot be fastened on the petitioner. It is submitted that the petitioner was unaware of the fact that the property purchased from the second respondent's father was offered as a security to the Commercial Tax Officer when second respondent obtained registration for M/s. Kairali Steels Traders under the provisions of the Tamil Nadu General Sales Tax Act, 1959. It is submitted that the petitioner has been wrongly called upon to pay the aforesaid amount even though the petitioner was a bona fide purchaser of the property.

6. It is further submitted that the proposal in the impugned order asking the petitioner to pay a sum of Rs.1,24,93,648/- for having purchased the said property is absurd as the value of the property itself was only Rs.13,50,000/-. The learned counsel for the petitioner submitted that issue is no longer res-integra and therefore the impugned order demanding the aforesaid sum from the petitioner was liable to be quashed. In this connection reliance is placed on the following decisions:-

i. K.Senthil Kumar and Others Vs. Commercial Tax Officer, Erode and another, (2006) 148 STC 204 (Mad).
ii. S.Dilli and Others Vs. Commercial Tax Officer, Velachery Assessment Circle, Chennai and another, (2009) 19 VST 393 (Mad).
iii. Senthil Kumar and Another Vs. Assistant Commissioner (CT) and Others, 2011 (1) CTC 828.
iv. Tvl. K. Senthamil Selvan Vs. The deputy Commercial Tax Officer, vide order dated 20.2.2020 in W.P.No.399390 2005 and 25145 2007, 25830, 30117 & 30118 of 2008 et cetera.

7. Per contra, the learned Government Advocate for the first respondent Commercial Tax Department submits that the vendor of the property had offered the property as a security to the Commercial Tax Department when the second respondent,

the proprietor of M/s.Kairali Steels Traders had obtained registration and had executed Form XIX-B before the first respondent on 23.02.2002. The vendor had furnished a security for a sum of Rs.50,000/- as was required under Section 21 of the Tamil Nadu General Sales Tax Act, 1959 and had created a mortgage of the property.

8. The learned Government Advocate for the first respondent further submitted the decision of the court rendered in Tvl. K. Senthamil Selvan Vs. The deputy Commercial Tax Officer has been appealed before the Division Bench in W.A.No.982 of 2020 and the case would be taken up for final disposal and therefore the issue cannot be said to have been settled finally.

9. The learned Government Advocate also refers to the decision rendered in W.P.No.29090 of 2016 dated 10.02.2020 in the case of I.Jeyrajan Vs. Commercial Tax Offc. and the decision of the Court in W.P.No.29253 of 2016 dated 30.01.2020 in the case of C.D.Gajendran Vs. Asst. Commercial Tax Offc. It is therefore submitted that there are conflicting views and therefore it cannot be said that the decision in Tvl. K. Senthamil Selvan Vs. The deputy Commercial Tax Officer is binding.

10. It is further submitted that before purchasing the property, the petitioner should have made enquiry from the Commercial Tax Department as to whether there was any arrears of tax for which the said property had been offered as a security.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the first respondent.

12. The second respondent, the proprietor of M/s.Kairali Steels Traders was an assessee in default. While obtaining registration under the provisions of the Commercial Tax Department, the father of the second respondent Mr.K.P. Kesavan, the vendor who sold the property to the petitioner had offered the said property as a security for a sum of Rs.50,000/- as is evident from a reading of Form XIX-B.

13. Copy of Form XIX-B executed by the second respondent's father along with the second respondent on 23.02.2000 clearly states that the mortgage/charge for the specified schedule property was to secure the interest of the Commercial Tax Department for a sum of Rs.50,000/- only under Section 21 of the aforesaid Act.

14. The petitioner has not bought a property of the second respondent. Therefore, defence under Section 24-A of

the Tamil Nadu General Sales Tax Act, 1959 that the purchase was for adequate consideration and without notice of arrears of tax is available to the petitioner.

15. The two decisions cited by the learned Government Advocate for the respondent which were authorized by me are distinguishable on facts. In I.Jeyrajan Vs. Commercial Tax Offc. case referred to supra, the Court dealt with a situation where there were layers of transactions carried out in quick succession. It was therefore held that merely because the charges created in favour of the Commercial Tax Department were not reflected in the Encumbrance Certificate was not sufficient. There the Commercial Tax Department had indeed registered the charge but same was not reflected in Encumbrance Certificate when the transferee purchased the property.

16. Therefore, it was held that whether the purchase was bona fide or not could not be determined in a summary procedure under Writ jurisdiction. The petitioner therein was however given liberty to approach a Civil Court within 30 days to work out the remedy.

17. Though the decision I.Jeyrajan Vs. Commercial Tax Offc. case referred to supra dealt with a somewhat identical situation, there the property was sold by the assessee in default himself along with his wife. I.Jeyrajan Vs. Commercial Tax Offc. case referred to supra, it was observed that the burden of proof was on the buyer to establish that the purchased was bona fide and therefore it fell within the exception provided under Section 24-A of the Tamil Nadu General Sales Tax Act, 1959. There also liberty was given to the petitioner therein to work out the remedy before a Civil Court to establish that the purchase was bona fide. There, copy of Form XIX-B was not filed.

18. In this case, copy of Form XIX-B is available. The petitioner has purchased the property from the second respondent's father K.P.Kesavan. The property was not purchased from the second respondent. The property was mortgaged to the Commercial Tax Department for a maximum sum of Rs.50,000/- only. Therefore, the facts are different.

19. I therefore find no reasons to sustain the impugned order asking the petitioner to pay the arrears of tax of M/s.Kairali Steels Traders. The petitioner cannot be saddled with liability of the arrears of tax of the second respondent's proprietary concern, namely M/s.Kairali Steels Traders. However, since the property was mortgaged for a sum of Rs.50,000/-, the petitioner is directed to pay the aforesaid amount to the first respondent herein, within a period of thirty days from the date of receipt of a copy of

this order. On such payment, the property purchased by petitioner vide Sale Deed dated 06.01.2014 shall stand free from any encumbrance.

20. Liberty is given to the petitioner to recover the aforesaid amount from the estate of the father of the second respondent. Liberty is also given to the first respondent to initiate appropriate proceedings against the second respondent to recover the arrears of tax in the manner known to law.

21. This writ petition is partly allowed by quashing the impugned order by directing the petitioner to pay a sum of Rs.50,000/- to the first respondent being the value of the security offered by the petitioner's vendor/ second respondent's father in Form XIX-B. No cost.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Tondiarpet Assessment Circle,
Chennai - 600 081.

+1cc to the Government Pleader, S.R.No.13560.

W.P.No.23574 of 2015
and M.P.No.1 of 2015

VSN-II(CO)
CSR 22/03/2021