IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2655 of 2015
and
M.P.No.1 of 2015

D.Gnanapal

..Petitioner

vs

1. The Assistant Commissioner,
   Department of Commercial Tax Office,
   Udumalpet (North)
   Tirupur District.

2. K.Govindasamy

3. V.Muthusamy

(R2 & R3 are impleaded as per order dated 10.11.2016 in W.M.P.No.33552/2016 in W.P.No.2665/2015)

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent under Impugned Notice Na.Ka.No.1831/98/A3 dated 01.12.2014 and quash the same.

For Petitioner	:	Mr.S.Mukunth For M/s.Sarvabhauman Associates
For Respondents	:	R1 – Mr.V.Veluchamy Government Advocate R2 & R3 – No appearance

ORDER

The notice impugned dated 01.12.2014 issued by the 1st respondent is under challenge in the present writ petition.

2. The petitioner states that he purchased a land measuring an extent of 1392 sq.ft in S.F.No.56/A in Udumalpet Village of Tiruppur District from one Mr.Govindasamy, represented by his Power of Attorney Mr.Karuppusamy under a Sale deed dated 13.07.2006. The petitioner constructed a House and building was assessed to property tax and further, obtained Electricity Service Connection, Water Connection and other amenities. The petitioner states that he is in peaceful possession and enjoyment of the said house property till today. The petitioner proposed to sell the property to Mr.S.Senthilkumar and entered into an agreement of sale dated 26.09.2014 through his Power of Attorney Mr.S.Balakrishnan. At that point of time, the respondent issued the impugned notice on 01.12.2014, stating that one Mr.Muthusamy / third respondent, who was a defaulter regarding payment of Commercial tax and therefore, the property cannot be sold without No Objection from the Department. It is contended that the Commercial Department is having charge over the property.

3. The learned counsel for the petitioner made a submission that the third respondent / defaulter namely Mr.V.Muthusamy longback sold the subject property in favour of the second respondent Mr.K.Govindasamy on 25.08.1999 itself. The second respondent, who is the vendor of the petitioner, executed the sale deed in favour of the writ petitioner on 13.07.2006. The impugned notice was issued on 01.12.2014, after a lapse of 8 years from the date of sale in favour of the petitioner by the third respondent and the defaulter even earlier sold the property in favour of the second respondent on 25.08.1999.

4. This being the factum, the petitioner was totally not aware of any such arrears of Commercial Tax to be paid to the Department by the third respondent and further, the charge created by the Department pursuant to the Act was also not intimated either to the vendor of the petitioner or to the petitioner. This being the factum, the impugned order is liable to be set aside.

5. The learned Government Advocate appearing on behalf of the first respondent relying on the counter, said that the dealer / 3rd respondent has not appeared nor produced relevant documents before the Commercial Tax authorities at Pollachi. Consequently, the action was initiated under the Revenue Recovery Act by attaching the immovable property by issue of Form-I and Form No.4 notices as early as 22.03.1999 and was duly served to the dealer. The fact about the distraint property was reported to the Sub Registrar, Udumalpet in office ref.1831/98 dated 22.03.1999. Though letter dated 20.08.1999, the fact of property in dispute now distraint towards the arrears were duly

informed to the Sub Registrar, Udumalpet and served in person. Subsequently Form No.5 notice was issued on 06.09.1999 and served to the said dealer on 07.09.1999. Then Form No.7 and 7A notice was issued on 18.05.2000 and served to the defaulter on 01.06.2000. The fact of the property distraint for arrears was given vide publicity in Coimbatore District Gazette dated 27.07.2000. The copy of the above Coimbatore District Gazette No.7 dated 27.07.2000 was submitted to the Sub Registrar, Udumalpet and also to the defaulter on 09.03.2001. Thus, the Department has taken all actions to recover the attached property for the arrears of tax to be collected.

6. This Court is of the considered opinion that the contentions of the first respondent that the action was initiated under the Revenue Recovery Act, attaching the immovable property in the year 1999, they have failed to continue all further actions in order to auction the property attached and recover the arrears of tax to be collected. Contrarily, the authorities allowed the defaulter to sell the property in the year 1999 in favour of the second respondent. The petitioner is the subsequent purchaser, purchased the property on 13.07.2006. Till such time, no action was taken by the authorities nor further notice was issued to the petitioner, informing about the charge created. In the absence of any such action during the relevant point of time, the impugned notice issued after a lapse of 8 years from the date of purchase by the petitioner, cannot be sustained.

7. The authorities competent, on initiation of action under the Revenue Recovery Act, must ensure that such actions are proceeded with diligently and the arrears of Revenue is collected by auctioning the properties. If they allow the time to lapse for many years and meanwhile, the property was dealt with by the persons by selling the same to other third parties, this Court is of an opinion that the first respondent cannot pursue the matter after long period.

8. In the present case, the subject property was sold by the defaulter / 3rd respondent to the 2nd respondent on 25.08.1999, who in turn, further sold the property to the petitioner on 13.07.2006 and the petitioner has no knowledge about any such charge created by the Department till the impugned orders are issued on 01.12.2004. The long delay in initiating action would defeat the proceedings itself. Even in the impugned notice, it is stated that the arrears of Commercial Tax due was of the year 1992-93. This being the factum, the writ petition is to be considered.

9. Accordingly, the impugned order passed by the first respondent in proceedings in Na.Ka.No.1831/98/A3 dated

01.12.2004 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner,
   Department of Commercial Tax Office,
   Udumalpet (North)
   Tirupur District.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No.29592
+1cc to the Special Government Pleader (Taxes), S.R.No.29672

W.P.No.2655 of 2015

PL(CO)
SU(13/08/2021)