IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM

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

W.P.No.4650 of 2018
and
W.M.P.No.5736 of 2018

N.Senthilkumar ..Petitioner

vs

1.The Additional Deputy Commercial Tax Officer-II,
Commercial Tax Department,
Government of Puducherry, Puducherry.

2.M/s.Srinivas Build Tech(India) Pvt Ltd.,
Rep.by its Managing Partner R.Venugopal.

3.M/s.Srinivas Real Estates,
No.107, Vellala Street,
Pondicherry – 605 001.

4.The Sub-Registrar,
Bahour, Pondicherry. ..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 relating to the order dated 7.2.2018 in 1877/CTD/ ADCTO-II/ S.B.T./ 2017-18 of the 1st respondent and quash the same and consequently direct the 1st respondent herein to permit registration of the sale deed in respect of the properties morefully described in the schedule to the petition by the 3rd respondent herein in favour of the petitioner herein by paying the balance sale consideration to the 1st respondent to be adjusted towards the due on behalf of the 2nd respondent herein.

For Petitioner : M/s.AL.Ganthimathi
For Respondents : Mr.TP.Manoharan
Senior counsel
For Mr.J.Kumaran
Government Advocate (Puducherry)
[For R1 & R2]
Mr.P.Subba Reddy
[For R3]

O R D E R

The order dated 07.02.2018 passed by the first respondent regarding the payment of Sales tax arrears of M/s.Srinivas Real Estates is under challenge in the present writ petition.

2. The Additional Deputy Commercial Tax Officer-II, Puducherry, in the impugned order, has stated that No Objection Certificate [in short 'NOC'] is to be obtained for registering a property, in view of the fact that the respondents 2 and 3 are the defaulters and not paid sales tax as per the provisions of Puducherry Value Added Tax Act, 2007.[in short 'Puducherry VAT Act']

3. The learned counsel for the writ petitioner contended that the petitioner is an agreement holder, entered into a sale agreement with the third respondent, which is the Partnership Firm on 22.12.2016 for the schedule mentioned property and the said properties are absolutely belongs to the third respondent Partnership Firm. The petitioner states that he has paid a sum of Rs.1,00,00,000/-(Rupees One Crore only) as an advance out of the total sale consideration of Rs.1,86,80,300/-(Rupees One Crore Eighty Six Lakhs Eighty Thousand and Three Hundred only) to the third respondent. However, the sale deed was not executed, in view of the fact that the first respondent insisted for getting NOC for registration of a sale deed as the third respondent has to pay the arrears of Rupees Twenty One Crores towards Revenue Recovery.

4. The learned counsel for the petitioner further states that he being an agreement holder, entered into a valid sale agreement by paying an advance amount and therefore, getting NOC would not arise at all. The petitioner is ready and willing to pay the balance sale consideration for the purpose of execution of sale deed and in view of the intervention by the first respondent, the agreement between the petitioner and the third respondent is unable to be executed. Thus, the petitioner is constrained to move the present writ petition.

5. The learned counsel for the petitioner reiterated that the petitioner is no way connected with the payment of arrears of commercial tax and as far as this property is concerned, he entered into an agreement with the third respondent and therefore, the order of the first respondent is in violation of the Principles of Natural Justice and thus, it is to be set aside and the petitioner may be permitted to pay the balance sale consideration for the purpose of execution of sale consideration in respect of the third respondent in his favour.

6. The learned Senior counsel appearing on behalf of the first and second respondent strenuously objected the contentions by stating that the third respondent / M/s.Srinivas Real Estates has to pay the arrears tax amount of Rs.3,75,33,655/-(Rupees Three Crore Seventy Five Lakhs Thirty Three Thousand Six Hundred and Fifty Five only] and the second respondent / M/s.Srinivas Build Tech(India) Private Limited, has to pay the tax arrears of Rs.46,81,12,988/-(Rupees Forty Six Crores Eighty One Lakh Twelve Thousand Nine Hundred and Eighty Eight only). The arrears to be paid as on 19.12.2020 and it is yet to be paid by the respondents 2 and 3. Therefore, the properties belongs to the respondents 2 and 3 are subject to statutory attachment by the first respondent and therefore, in the event of any sale by the respondents 2 and 3, NOC is to be obtained from the authorities competent of the Commercial Department, in view of the fact that there is a possibility of escape from the payment of arrears of tax by the respondents 2 and 3.

7. As per Section 37(1) of the Puducherry VAT Act, the Commercial Tax Department holds first charge over the property and therefore, the agreement entered into between the petitioner and the third respondent cannot be executed without obtaining NOC from the third respondent. Section 37(1) enumerates "the tax assessed under this Act shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. If default is made in paying according to the notice of assessment, the whole of the amount outstanding on date of default shall become immediately due and shall be a first charge on the properties of the dealer liable to pay the tax under this Act."

8. Thus, the Commercial Tax Department holds first charge over the property belongs to the respondents 2 and 3 and the arrears are very huge and in the event of allowing the respondents 2 and 3 to sell their properties, the same would affect the rights of the Department to recover the arrears of tax to be paid.

9. The learned Senior counsel further contended that the writ petitioner is a third party and he is not the owner of the property. He claims to be the agreement holder and under Section 54 of the Transfer of Property Act, he has no right to file a writ petition for execution of sale deed by filing a writ petition under Article 226 of the Constitution of India. When a statutory right is conferred on the Department, holding first charge to collect the revenue recovery, then an agreement, if at all entered into between the owner and the third respondent party will not have any binding effect for the purpose of recovery of tax arrears as recovery of revenue. Thus, the writ

petition itself is not maintainable.

10. The learned counsel appearing on behalf of the respondents 2 and 3 made a submission that the first respondent has no authority to attach all the properties belongs to the respondents 2 and 3 as well as the properties belongs to the partners of the company individually. Only in the event of allowing the respondents 2 and 3 to sell the property, they will be in a position to settle the arrears of tax. The first respondent is not even allowing to sell the property based on the agreement entered into between the third respondent and the petitioner. Therefore, the respondents 2 and 3 are unable to function and they are not in a position to clear the arrears of tax. It is contended that the respondents 2 and 3 are the builders and they are having properties both in the name of the company as well as in the individual name of the partners and unless they are allowed to deal with the properties, they will not be in a position to clear the arrears of tax. Thus, as per the agreement, they may be permitted to execute the sale deed in favour of the writ petitioner.

11. By way of reply, the learned Senior counsel appearing on behalf of the first respondent made a submission that order of attachment was passed and several other proceedings to pay the arrears of tax were also passed by the competent authorities. However, none of those proceedings are challenged by the respondents 2 and 3 and all those orders in respect of arrears of tax to be paid by the respondents 2 and 3 became final. Thus, there is no reason whatsoever to consider the writ petition as the writ petitioner is no way connected with the payment of arrears of tax to the first respondent by the respondents 2 and 3.

12. This Court is of the considered opinion that regarding the maintainability of the writ petition, admittedly, the writ petitioner is a third party agreement holder. The writ petitioner is no way connected with the arrears of tax to be paid by the respondents 2 and 3 to the first respondent Department. If at all the writ petitioner claims that he entered into an agreement with the third respondent, it is for him to workout his remedy in the manner known to law and not by challenging the proceedings of the first respondent / Commercial Tax Department by filing a writ petition. An agreement for sale of an immovable property is a civil dispute and therefore, in order to execute a sale deed by paying the balance sale consideration, the writ proceedings cannot be entertained. The first respondent Department has initiated various actions against the respondents 2 and 3 and number of orders were passed to pay the arrears of tax, which is running to several crores and as stated in the earlier paragraphs, third respondent /

M/s.Srinivas Real Estates has to pay the arrears tax amount of Rs.3,75,33,655/-(Rupees Three Crore Seventy Five Lakhs Thirty Three Thousand Six Hundred and Fifty Five only] and the second respondent / M/s.Srinivas Build Tech(India) Private Limited, has to pay the tax arrears of Rs.46,81,12,988/-(Rupees Forty Six Crores Eighty One Lakh Twelve Thousand Nine Hundred and Eighty Eight only). Even as per the writ petitioner, the subject property was aggreed to be sold for a sale consideration of Rs.1,86,80,300/-(Rupees One Crore Eighty Six Lakhs Eighty Thousand and Three Hundred only). However, the sale of property is absolutely unconnected with the dispute between the Commercial Tax Department and the respondents 2 and 3. The writ petitioner by filing a writ petition, cannot support the respondents 2 and 3 for the purpose of adjudication of the disputes under the provisions of the Puducherry VAT Act. Thus, the writ petitioner has erroneously filed the writ petition, seeking the remedy to quash the proceedings of the first respondent and for execution of sale deed by the third respondent by receiving the balance sale consideration. Such a remedy cannot be granted nor a writ petition in this regard be maintained before the High Court under Article 226 of the Constitution of India.

13. Even on merits, the respondents 2 and 3 has not disputed about the arrears of tax. Even in case, there is some dispute in respect of the quantum of arrears of tax, the said quantum is to be adjudicated by approaching competent authorities under the provisions of the Act. Further, the proceedings of the Commercial Tax Department is not challenged by the respondents 2 and 3. The Senior counsel also reiterated that various other proceedings initiated for recovery of tax are also not under challenge nor any appeal is filed by the respondents 2 and 3 in this regard. Thus, the arrears of tax became final.

14. This Court is of the considered opinion that even if there is a dispute in respect of arrears of tax to be paid, it is for the respondents 2 and 3 to adjudicate the same before the appropriate Forum under the provisions of the Act. However, under Section 37 of the Puducherry VAT Act, the Department holds first charge over the properties and in order to recover the arrears of revenue, they are entitled to attach the properties and therefore, a NOC is required even to sell the property belongs to the respondents 2 and 3 as well as the individual properties. This being the factum established, the respondents 2 and 3 has to settle the arrears of tax to the satisfaction of the Department and thereafter, proceed with their properties. The first respondent is empowered to attach the property in order to recover the arrears of tax in the manner prescribed and therefore, there is no infirmity as such in respect of the order impugned as well as the reasons assigned.

15. Thus, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Deputy Commercial Tax Officer-II,
Commercial Tax Department,
Government of Puducherry,
Puducherry.

2.The Sub-Registrar,
Bahour, Pondicherry.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.27722
+1cc to Mr.P.Subba Reddy, Advocate, S.R.No.27840
+1cc to the Government Pleader, S.R.No.27788

W.P.No.4650 of 2018

PMK(CO)
CB(20/07/2021)