IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-04-2021

CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.24760 of 2018
And
WMP Nos.28782 and 28783 of 2018

K.Parimalam .. Petitioner

vs.

The Assistant Commissioner (ST),
Podanur Assessment Circle,
Coimbatore-641 018. .. Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein in ROC/Ref.3205/98-A3 in Form No.5, Form No.7 and Form No.7A dated 31.05.2002 under the Tamil Nadu Revenue Recovery Act, 1864, read with Section 29 of the Tamil Nadu General Sales Tax Act, 1959 and to quash the same and direct the respondent herein to raise the encumbrance created by way of Intimation in Nk.3205/98/A3, dated 12.12.2007.

For Petitioner: Mr.N.Inbarajan
For Respondent: Mr.R.Swarnavel,
Government Advocate (Taxes)

O R D E R

The order passed by the respondent in ROC/Ref.3205/98-A3 in Form No.5, Form No.7 and Form No.7A dated 31.05.2002 under the Tamil Nadu Revenue Recovery Act, 1864 read with Section 29 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as “TNGST Act” in short), is sought to be quashed and a direction is sought for to raise the encumbrance created by way of Intimation in Nk.3205/98/A3, dated 12.12.2007.

2. The petitioner states that her husband Mr.V.Kadhirvel filed an application for registration on 27.08.1992 under Section 21 of the Act, as a Proprietor concern for carrying on the business of buying and selling cotton waste in the name of Sri Angalamman Traders.

3. As per Section 21(1-A) of the TNGST Act, 1959, the respondent directed to furnish security, which shall not exceed one and half of the tax payable on the estimated taxable

turnover disclosed in the application for registration, which is only Rs.2,500/-. Accordingly, the petitioner executed a security bond on 02.09.1992 in Form XIX B, by furnishing her properties in Singanallur as a security towards the sum due by the firm, whenever occurs.

4. It is admitted that the petitioner was not a partner of the firm and not participated in the business conducted by the Proprietor Mr.V.Kadhirvel. It is contended that she purchased the property, which was given by way of security from her own savings and the same was not inherited from any other person, including Mr.V.Kadhirvel.

5. It is further contended that the security bond was executed only on a contractual basis. As per Explanation I to Rule 24(15-A) of the Tamil Nadu General Sales Tax Rules, the said property was not registered by way of a registered mortgage of the property of land as security as per Section 58 of the Transfer of Property Act, 1882. Thus, the security given cannot be subjected to revenue recovery under the provisions of the Revenue Recovery Act.

6. Learned counsel appearing on behalf of the petitioner mainly contended that under the Indian Contract Act, a 'contract of guarantee' is a contract to perform the promise and in the case on hand, admittedly, security bond was executed by the petitioner. However, such execution of security bond is for a limited purpose and not in respect of the entire property and it is in respect of registration. Therefore, as per the Statute, now the respondent has no authority to bring the entire property for auction sale by invoking the provisions of the Revenue Recovery Act.

7. In support of the said contention, the learned counsel appearing on behalf of the petitioner, solicited the attention of this Court with reference to Section 24(2) of the TNGST Act and by relying on the said provision, the learned counsel submits that it is to be read along with Rule 24(15-A) of the Tamil Nadu General Sales Tax Rules, the registration of mortgage property, which is given by way of security as mandatory.

8. In the present case on hand, admittedly, there was no mortgage of property registered and therefore, the actions initiated against the entire property belongs to the petitioner is void ab initio.

9. Learned counsel appearing on behalf of the respondent disputed the contentions by stating that, while registering the business by Mr.V.Kadhirvel, the petitioner executed a security bond. The nature of security is well enumerated in the security

bond itself. The security bond was executed in clear terms, so as to recover the entire dues, if not paid and therefore, there is no ambiguity in the language adopted in the security bond as well as the undertaking given by the petitioner.

10. The security bond was executed while registering the business under the provisions of the TNGST Act. Thus, it is a statutory registration for all purposes and such a registration of the business as well as the security bond, are falling under the statutory provisions of the TNGST Act and there is no further necessity to register the mortgage of property under the provisions of the Registration Act.

11. In this regard, the learned Government Advocate brought to the notice of this Court regarding Section 17(2)(v) of the Registration Act, 1908. Section 17 stipulates documents of which registration is compulsory. Section 17(2)(v) enumerates that "any document other than the documents specified in sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest". Thus, the security bond given by the petitioner require no compulsory registration even under the Registration Act.

12. This apart, the respondent-Department has no direct right to deal with the property, which is given by way of security and admittedly, the petitioner is the owner of the immovable property mentioned in the security bond and she has got an absolute right. Only in the eventuality of non-payment by the Proprietor of the business, then alone the respondent-Department gets the right to invoke the provisions and initiate action to recover from the person, who has given security and against the immovable property. Thus, there is no direct right vest on the respondent-Department to initiate action against the property given by way of security bond. Under those circumstances, the registration is not required and therefore, the very contention raised by the petitioner, in this regard, is unsustainable.

13. This Court is of the considered opinion that in respect of certain documents, compulsory registration is not required. In the present case, admittedly, registration is done to commence the business under the provisions of the TNGST Act and such a registration under the TNGST Act itself is a statutory registration.

14. This apart, the petitioner, in her capacity as a third person, executed a security bond only with an undertaking that in the event of non-payment of dues to the respondent-Department, the respondent-Department is at liberty to initiate action under the provisions of the Act. Thus, in the eventuality of non-payment of dues, the respondent-Department gets the right to initiate action and not otherwise. Under these circumstances, when there is no direct right vested on the respondent-Department to deal with the immovable property, the registration of mortgage of an immovable property is not required and therefore, the submission of the learned counsel for the petitioner, made in this regard, is to be rejected.

15. This Court is of the considered opinion that the petitioner is none other than the wife of Mr.V.Kadhirvel, who died.

16. Learned counsel for the petitioner made a submission that the petitioner, in her capacity as a legal representative, the respondent-Department cannot recover the entire dues from and out of the security bond executed by her.

17. It is relevant to consider that she is the wife of the Proprietor, who registered the business under the provisions of the TNGST Act. But the security bond was not executed in her capacity as wife of the Proprietor and she executed the same in her capacity as an 'individual person' and she has given an undertaking that in the event of non-payment of statutory dues, the immovable property given by way of security can be attached.

18. This being the very spirit of the security bond, now the petitioner cannot turn around and say that her liability is limited and this even incidental also, the wife being Class I legal heir successor, she is entitled both right to acquire the property and liable to clear the dues under the Law. However, the said ground is unnecessary with reference to the facts and circumstances of the present case is concerned.

19. As far as the facts on hand is concerned, it is clear that where the security bond is executed as an individual person and further as per Section 21(2-B) of the TNGST Act, where it appears necessary to the authority granting a certificate of registration under this Section, so to do for the proper realisation of the tax payable under this Act, it may, at any time, while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security or, if the dealer has already furnished any security in pursuance of an order under this sub-section or sub-

section (1-A) such additional security, as may be specified in the order for the aforesaid purpose.

20. Relying on the said provision, the learned Government Advocate, reiterated that whenever there is increase of dues and the respondent-Department is of an opinion that the security bond already executed is sufficient to realise the said increase of dues, no additional security needs to be obtained, which would cause unnecessary inconvenience to the persons concerned and in the present case, the security bond executed by the petitioner is sufficient enough to meet out the dues to be recovered from the Proprietor of the business concerned and therefore, the question of obtaining additional security would not arise at all.

21. In view of the fact that statutory dues are recoverable and no one should be allowed to escape from the payment of statutory dues, this Court is of an opinion that the provisions are to be interpreted pragmatically and constructively, so as to ensure that the purpose and object of the Statute are meted out and the public interest is protected. Thus certain Rules or guidelines formulated for the purpose of implementing the provisions of the Act and time limits or certain procedures, guidelines contemplated are to be construed as directory and cannot be held as mandatory.

22. Certain guidelines, procedures and rules are made for the convenience of the authorities to maintain consistency in implementation of the provisions of the Act and such procedures are to be interpreted with reference to the spirit of the provisions of the Act and the same cannot be read in isolation.

23. This being the constructive interpretation to be adopted for the purpose of the Act, which will prevail over, this Court is of the considered opinion that the petitioner is not entitled for the relief, as such, sought for in the present writ petition. The respondent-Department has got every right to initiate appropriate actions for the recovery of the dues as determined and accordingly, the writ petition is devoid of merits and the same stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

The Assistant Commissioner (ST),
Podanur Assessment Circle,
Coimbatore-641 018.

+1 cc to M/s.N.Inbarajan,Advocate SR No.22042
+1 cc to Special Government Pleader(Taxes) Sr No.22092

WP No.24760 of 2018
07-04-2021

PL(CO)
RG.28.04.2021(6P/3C)