IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.29721 of 2014
and
M.P.No.1 of 2014

1.F.Nissar Ali

2.F.Sadik Ali

3.F.Jafar Ali

4.A.Mohamed Sirajudin

5.A.Mohamed Sihabudin .. Petitioners

Vs.

1.The Assistant Commissioner,
Commercial Taxes Department,
Panruti Town, Cuddalore District.

2.P.A.Seenuvasa Babu .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the file of the 1st respondent in Na.Ka.No.A3/10986/90 dated 07.10.2014 and quash the same.

For Petitioners	:	Mr.S.Vijayakumar for Mr.P.Kannan Kumar
For R1	:	Mr.V.Nanmaran Government Advocate
For R2	:	Not ready in notice

ORDER

The Auction notice dated 07.10.2014 is under challenge in the present Writ Petition.

2.The petitioners state that they have jointly purchased the subject property measuring about 2000 sq.ft in Town Survey No.20 & 21, Ward No.A, Block No.48 and Old Survey No.34(1)(a) within Panruti Municipal Limits vide Document No.1084 of 2011 dated 28.03.2011 from the 2nd respondent. The Revenue records are changed in the name of the petitioners.

3.The learned counsel for the petitioners made a submission that the petitioners are the *bonafide* purchasers in respect of the property mentioned as Item No.1 in the impugned Auction notice and the said purchase was made on 28.03.2011. At the time of purchase of the said property, the petitioners have verified the Encumbrance Certificate and other relevant documents and on satisfaction, paid the sale consideration and purchased the property.

4.The learned counsel for the petitioners reiterated that the 1st respondent issued the impugned Auction notice on 07.10.2014, after a lapse of about 3 years from the date of purchase of the said property by the petitioners. Thus, the petitioners are to be considered as *bonafide* purchasers for all purposes and the impugned Auction notice with reference to Item No.1 has to be set aside as far as the petitioners are concerned.

5.The learned Government Advocate appearing on behalf of the 1st respondent opposed the said contention by stating that it is not as if, the impugned Auction notice was issued in the year 2014 as first instance. The action against the tax defaulter was initiated in the year 1998 itself. The Auction sales details were published in Cuddalore in Pg.No.46 - 47 of District Gazette published on 28.04.1998 and the date of Auction sale was fixed on 14.05.1998. Tmt.A.Bakyalakshmi filed a Writ Petition before this Hon'ble High Court and this Hon'ble High Court passed an order of conditional stay by order dated 05.11.1998 in W.P.No.3426 of 1998 dated

13.05.1998. The said Tmt.A.Bakyalakshmi was a partner of the two firms, namely Tvl.Srinivasa Oil Mills and Tvl.Srinivasa and Co. The defaulter had not fullfiled the condition stipulated in the interim order and thereafter, this Court dismissed the Stay petition by order dated 07.09.2000. Thus, the action under Revenue Recovery Act was initiated and therefore, Auction sale was conducted on 19.12.2001, but no bidder participated in the said Auction sale. In the mean time, the legal heir of the 2nd respondent has filed a Civil Petition before the competent Civil Court at Panruti, which was also dismissed on 03.01.2002. Then, the action was taken by conducting Auction sale. The fact regarding the attachment of the property was also intimated to the Sub-Registrar, Panruti and Pudupet on 07.03.2002, vide publicity was made about the auction sale of immovable property that was fixed to be held on 13.03.2009.

6.It is further contended by the 1st respondent that the legal heir of the defaulter Thiru A.Srinivasa Babu had applied for one time settlement 'Samadhan Scheme', and get relief to an extant of Rs.17,46,383/- and an amount of Rs.11,185/- was waived as per G.O.Ms.No.88 CT & R (D1) dated 10.10.2009. As such, the dealers were in arrears of Tax of Tvl.

Srinivasa Oil Mill Rs.19,58,284/- and Tvl.Srinivasa Traders Rs.3,90,758/-, respectively. Therefore, further action was proceeding under Revenue Recovery Act, by bringing the immovable property by auction sale. From the verification of the records, it is found that the petitioners purchased the immovable properties building at S.No.20, Panruti Town, Cuddalore. Therefore, they were requested to the pay arrears of tax relating to Tvl.Srinivasa Oil mill and Tvl.Srinivasa Traders, on 20.03.2014, and again on 27.08.2014. Lastly, auction sale was posted on 27.11.2014 and the same was published in the notice board and sent to the Department, for wide publicity was made and also sent to the purchasers of petitioners.

7.Section 24-(2) of the Tamil Nadu General Sales Tax Act, 1959 enumerates that "*Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it under section 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934(Tamil Nadu Act X* *of 1934), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered:- (a) as land revenue, or (b) on application to any Magistrate by such Magistrate as if it were a fine imposed by him"*

8.The above provision of the Tamil Nadu General Sales Tax Act shall clarify that the tax arrears gets priority over all other claims against the property of the said dealer or the person. In the present case, admittedly, the petitioners had purchased the said property on 28.03.2011, however, the 1st respondent could able to establish that an Auction sale details were published in the District Gazette on 28.04.1998 itself. Thereafter, Writ Petition was filed and Civil Litigation was also instituted and Auction notices were issued in between. No doubt, the petitioners may claim a right. However, such a right is to be claimed against the sellers of the property, which was the subject matter of the tax recovery and therefore, the petitioners are at liberty to initiate appropriate action against the sellers of the property, who had failed to inform true and full facts to the petitioners at the time of selling of the subject property. As far as tax arrears are concerned, the provision of the TNGST Act contemplates priority for the revenue and in the present case, even before the date of purchase of the said property by the petitioners, the 1st respondent initiated action and publications were made on 28.04.1998 itself and therefore, the relief as sought for in the present Writ Petition cannot be granted.

9.Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

06.08.2021

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-speaking order

To
The Assistant Commissioner,
Commercial Taxes Department,
Panruti Town, Cuddalore District.

S.M.SUBRAMANIAM, J.

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