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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2021

PRONOUNCED ON : 17.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.33221 of 2018

J.Manoharakumari

..Petitioner

Vs.

1. The Tax Recovery Officer - 1,
Income Tax Department,
Office of the Tax Recovery Officer-1,
67-A, Race Course Road,
Coimbatore - 18.

2. The Sub Registrar,
The Office of the Sub-Registrar,
Gandhi Puram, Coimbatore.

3. Anitha

4. Suvetha

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the relating to the impugned order in A.O.No.P86/2018 dated 6.7.2018 on the file of the 2nd respondent. Quash the same and further direct the 2nd respondent to release the registered sale deed dated 29.6.2018 in Document No.86 of 2018 on the file of the Sub Registrar's Office, Gandhipuram, Coimbatore) in favour of the petitioner pertaining to the site No.45, Sri Ram Co-operative Colony, in Town Survey No.12/156 and in S.F.No.391/1, Sanganoor Village, Coimbatore Taluk and District (Prayer Amended as per Order dated 3/10/2019 in WMP.No.28195/2019 in W.P.No.33221/2018)

For Petitioner : Mr.V.Ravi

For First Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

For Second to Fourth
Respondents : No appearance



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O R D E R

This writ petition has been filed by a senior citizen who is now aged about 70 years. She has been in litigation since 1994 to have the property registered in her name.

2. The petitioner has challenged the impugned communication dated 06.07.2018 issued by the second respondent in this writ petition. By the impugned communication, the petitioner has been informed that the said property has been attached in respect of arrears of tax due to the Income Tax Department and therefore the petitioner should obtain a certificate to the effect that there are no tax due in respect of the aforesaid property from the first respondent Income Tax Department.

3. Though the writ petition was originally filed for a writ of certiorari to quash the impugned communication dated 27.03.2017 of the first respondent, later the prayer was amended for a Writ of Certiorarified Mandamus to call for the records of the second respondent in the impugned communication dated 06.07.2018 and for a consequential direction to the second respondent to release the registered sale deed dated 29.6.2018 vide registered document No.86/2018 to the petitioner.

4. The facts are not in dispute. The petitioner had entered into a sale agreement with the mother of the third and fourth respondents late Mrs.J.Padmini wife of late .Mr.D.Jayaraman during her lifetime on 30.06.1994. The third and fourth respondents were minors at the time of execution of sale agreement.

5. The said property is a house property. It was originally belonged to the said third and fourth respondents' father's family. Late Mrs.J.Padmini the mother of the third and fourth respondents along with the third and fourth respondents became subsequent owners of the said property.

6. At the time of execution of the aforesaid sale agreement dated on 30.06.1994, the sale consideration for the property was fixed at Rs.16,75,000/-. The petitioner is said to have paid an advance amount of Rs.3,20,000/- to the said late Mrs.J.Padmini at the time of the execution of the sale agreement dated 30.06.1994. After execution of the sale agreement dated 30.06.1994, late Mrs.J.Padmini however refused to execute the sale deed in favour of the petitioner.

7. Since sale deed was not executed by late Mrs.J.Padmini in favour of the Petitioner, despite receipt of advance under the sale agreement dated 30.06.1994, the petitioner filed O.S.No.632 of 2004 before the Additional District Court and Sessions Court,



Coimbatore for specific relief to direct the said late Mrs.J.Padmini to execute a sale deed in her favour after receiving the balance sale consideration of Rs.13,55,000/-.

8. During the pendency of the above suit, third and fourth respondents' mother Mrs.J.Padmini died. Thus, the third and fourth respondents were impleaded in the aforesaid suit who had by then attained majority.

9. The suit was however dismissed by the said Court by its judgment and decree dated 18.05.2005 in O.S.No.632 of 2004. Against the judgment and decree dated 18.05.2005, the petitioner herein filed A.S.No.773 of 2005 before this Court.

10. A.S.No.773 of 2005 was partly allowed by this Court by its order dated 24.03.2010. This Court directed the third and the fourth respondents herein to refund the advance amount of Rs.3,20,000/- paid by the petitioner to late Mrs.J.Padmini at the time of execution of the aforesaid sale agreement.

11. The petitioner therefore filed SLP before the Hon'ble Supreme Court in SLP (Civil) No.26881 of 2010. After admission, the said SLP was renumbered as C.A.No.4827 of 2017. By an order dated 31.03.2017 the aforesaid appeal filed by the petitioner was allowed by the Hon'ble Supreme Court.

12. The petitioner thereafter filed E.P.No.22 of 2017 before the Additional District Court and the Sessions Court, Coimbatore to execute the sale deed. On 07.08.2017, the petitioner also paid the balance sale consideration of Rs.13,55,000/- to the credit of O.S.No.632 of 2004. The aforesaid E.P.No.22 of 2017 was ordered on 22.02.2018.

13. As the third and fourth respondents failed to come forward to execute the sale deed in terms of the aforesaid sale agreement dated 30.06.1994 and order dated 31.03.2017 of the Hon'ble Supreme Court in SLP (Civil) No.26881 of 2010, the Learned III Additional District Judge executed the sale deed in favour of the petitioner on 29.06.2018 and presented it before the second respondent on 29.06.2018 for registration.

14. The learned counsel for the petitioner relied on the following case laws :-

- i. Sanjeev Lal and others Vs. Commissioner of Income Tax, Chandigarh and another, (2015) 5 SCC 775
- ii. Tax Recovery Officer II Vs. Gangadhar Vishwanath Ranade, (1998) 6 SCC 658
- iii. M/s Agasthiya Holdings Pvt., Ltd., Vs. Commissioner of Income Tax, 2018 (403) ITR 288



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15. The first respondent has opposed the prayer in the Writ Petition on the ground that M/s. Beetle Exports and M/s. Ultimate Solutions, two partnership firms of which the fourth respondent and her husband Mr.V.Balasubramaniam were tax defaulters and in arrears of tax for the Assessment Year 2012-13 and 2013 and 14 as detailed below:-

Assessee	Assessment Year	Amount of tax and interest due (in Rs.)
Beetle Exports	2012- 2013	80,49,900/-
Beetle Exports	2013- 2014	40,81,620/-
Ultimate Solution	2013- 2014	26,22,690/-

16. It is submitted that since the two firms were in arrears of tax, on 26.10.2016, the case was referred to the first respondent to recover the tax and interest due from them. Thereafter, a notice dated 07.11.2016 was issued to them as "assessee in default".

17. Since these defaulters still failed to pay the arrears of tax as detailed above, the property in question for which a sale deed has been now executed in favour of the petitioner was attached on 27.03.2017.

18. It is submitted that the property was attached just four days before the Hon'ble Supreme Court pronounced its judgment in Civil Appeal No. 4827 of 2017 on 31.3.2017. Therefore, the purported sale deed executed by the Court was contrary to Section 281 of Income Tax Act, 1961.

19. On behalf of the first respondent, it is further submitted that a copy of the attachment order issued on 27.03.2017 in Form No. ITCP-16 was also served on the office of the second respondent an entry of encumbrance in respect of the said property was also entered on 28.03.2017 as is evident from the reading of the encumbrance certificate. It is therefore submitted that the petitioner cannot perfect the title over the property and the second respondent cannot release the registered sale deed dated 29.06.2018 in favour of the petitioner unless the tax arrears are cleared.

20. Heard the learned counsel for the petitioner and the learned counsel for the first respondent Tax Recovery Officer. I have also perused the impugned order/communication dated 06.07.2018 of the second respondent and the counter and the additional counter filed on behalf of the first respondent and the documents filed in support of the present Writ Petition.



21. In this case, the petitioner has been fighting for her rights over the property in terms of a sale agreement dated 30.06.1994. The Hon'ble Supreme Court ultimately accepted the contention of the petitioner that the third and fourth respondent's mother late Mrs.J.Padmini ought to have executed a sale deed in favour of the petitioner in terms of the aforesaid sale agreement dated 30.06.1994.

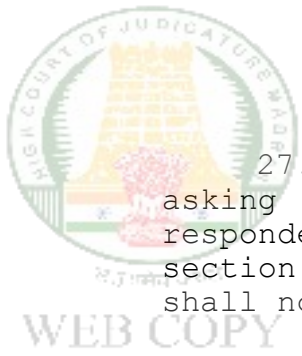
22. The third and the fourth respondents who were minors at the time of execution of the sale agreement on 30.06.1994 ought to have executed the sale deed in favour of the petitioner. Therefore, the subsequent tax liability of the fourth respondent and her husband for the Assessment Years 2012-13 and 2013 -14 cannot be to the disadvantage of the petitioner, since the petitioner has been diligently litigating since 2004. Therefore, fruits of the decree in a contested suit cannot be denied merely because the seller or one of the persons had incurred subsequent tax liability. The fruits of a decree will date back to the date of the suit.

23. In fact, the records also indicate that earlier an application in H.M.G.O.P No.433 of 1994 was filed by late Mrs.J.Padmini before the Principal District Court, Coimbatore to obtain court's permission to execute the sale deed. If IT was however withdrawn by her. Thus, the attachment of the property on 27.03.2017 by the officer of the 1st respondent cannot override the commitment under sale agreement dated 30.6.1994.

24. Section 281 of the Income Tax Act, 1961 applies only to a situation where an assessee during the pendency of any proceeding under the Act, or after completion thereof, but before the service of a notice under Rule 2 of the Second Schedule, creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his/her assets in favour of any other person.

25. Only such charge or transfer is void as against any claim in respect of any tax or any other sum payable by the assessee as a result of completion of the said proceedings or otherwise.

26. In this case admittedly the transfer was on account the final culmination of the litigation by the order of Hon'ble Supreme Court on 31.03.2017 in Civil Appeal No.4827 of 2017. There was only a delay in the execution of sale deed due to the pendency of the proceedings as the third and fourth respondent's mother declined to execute sale deed under the sale agreement dated 30.6.1994.



27. Therefore the impugned communication dated 06.07.2018 asking the petitioner to obtain clearance from the second respondent cannot be countenanced. Further as per proviso to section 281 of Income Tax Act, 1961 such charge or transfer shall not be void if it is made—

- (i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee ; or
- (ii) with the previous permission of the Assessing Officer.

28. The tax liability of the aforesaid firms of which the fourth respondent and her husband were the partners are subsequent to the commitment in the sale agreement dated 30.6.1994. Therefore, there is no justification in not releasing the registered sale deed in favour of the petitioner as the petitioner is a bonafide purchaser who has purchased the property after a long drawn litigation .

29. Therefore, this Court is inclined to allow this writ petition as prayed for. Thus, this writ petition deserves to be allowed. The second respondent is directed to release the sale deed dated 29.06.2018 registered vide Document No. 86 of 2018 in favour of the petitioner within a period of two weeks from date of receipt of this order.

30. The second respondent is also directed to cancel all the encumbrances recorded against the property in respect of tax arrears of the firms of the fourth respondent and her husband namely Mr.V.Balasubramaniam.

31. The writ petition stands allowed with the above observation. No cost.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jen /kkd



To

1. The Tax Recovery Officer - 1,
Income Tax Department,
Office of the Tax Recovery Officer-1,
67-A, Race Course Road,
Coimbatore - 18.

2. The Sub Registrar,
The Office of the Sub-Registrar,
Gandhi Puram, Coimbatore.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.23724

W.P.No.33221 of 2018

PVS (CO)
RGA (09/08/2021)