BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3612 of 2021
and
W.M.P.(MD)Nos.2930 and 2931 of 2021

M/s.Anamalai Paper Mills Pvt. Ltd.,
Rep. by its Managing Director,
Negin Peter. ...Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Sales Tax Department, Fort St. George,
Chennai - 600 009.

2.The District Collector,
Dindigul District, Dindigul.

3.The Assistant Commissioner of Sales Tax,
(Ma.Va)-2, (Mu.Koo.Po),
Government of Tamil Nadu,
Sales Tax Office, Ramalingam Salai,
Shanmugapuram, Palani,
Dindigul District.

4.The Sub-Registrar,
Sub-Registrar Office, Keeranur,
Palani Taluk, Dindigul District.

5.The Assets & Reconstruction Enterprises Ltd., (ACRE),
Rep. by its Authorised Officer, Arkur Jain.

6.Sri Venkatesa Paper & Board Limited,
Swaminathapuram, Madathukulam,
Udumalaipet Taluk,
Rep. by its Managing Director,
M.Soundararajan. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the 3rd respondent in Na.Ka.No.1357/2004/A3 dated 27.11.2018 and quash the same on the ground that the same is arbitrary, illegal and without legal basis and without jurisdiction consequently directing the respondents to drop all further proceedings pertaining to the properties owned by the petitioner purchased through registered sale deed vide Document No.1458/2013 dated 25.07.2013 on the file of the 4th respondent.

For Petitioner :Mr.Aravindan.R
For Respondents :Mr.G.Arjunan,
Government Advocate for R1 to R4.

ORDER

Heard the learned counsel for the writ petitioner and the learned Government Advocate for the respondents 1 to 4.

2.The sixth respondent was an assessee registered with the third respondent. They were having tax dues. However, the department could not initiate recovery action because their case was pending before the Board for Industrial and Financial Reconstruction. The sixth respondent had also filed W.P(MD)No.846 of 2012 before this Court challenging the order passed by the third respondent herein. The said writ petition was dismissed as infructuous on 01.10.2018. Thereafter, action under the Tamil Nadu Revenue Recovery Act was initiated and the petition mentioned property was attached by the impugned proceedings dated 27.11.2018. The same is challenged in this writ petition.

3.The jurisdictional Assistant Commissioner appeared before the Court through video conferencing and assisted the Court. He submitted that the liability quantified against the sixth respondent is beyond dispute. They date back to the year 1994-95 to 2008-09. It is also not in dispute that the sixth respondent has not cleared the liabilities. At the same time, the department could not initiate action on account of various factors. Only following the dismissal of W.P.(MD)No.846 of 2012 on 01.10.2018, the impugned action could be taken.

4.Though I cannot fault the third respondent, the fact remains that the legal position clearly favours the secured creditor. The property in question was mortgaged by the sixth respondent in favour of a secured creditor and the property was brought to sale by invoking the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002. The petitioner had purchased the property through a private sale arrangement. The sale certificate dated 25.07.2013 is enclosed in the typed set of papers. It can be seen therefrom that the sale of the scheduled property was made free from all encumbrances by the secured creditors. The petitioner's counsel would draw my attention to the decision of the Hon'ble Division Bench of this Court reported in ***(2019) 62 GSTR 459 (Mad) (M.Thirumaran Vs. Commercial Tax Officer, Sengottai Assessment Circle, Sengottai and Another)***. The Hon'ble Division Bench in the said decision has held that the bonefide purchaser is protected against any coercive action taken under the Revenue Recovery Act. The attachment was admittedly made only in the year 2018. Till then, the encumbrance certificate did not contain any charge created over the property of the sixth respondent. When the petitioner purchased the property in the year 2013, they were under the genuine impression that there were no other encumbrance on the property in question. Since the petitioner is a bonefide purchaser and he had purchased the property without notice of tax dues in the year 2013, the petitioner's right cannot be prejudicially affected by the attachment made five years later. In this view of the matter, the order impugned in the writ petition is quashed. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Secretary, Sales Tax Department,
Fort St. George, Chennai - 600 009.
2.The District Collector,
Dindigul District, Dindigul.
3.The Assistant Commissioner of Sales Tax,
(Ma.Va)-2, (Mu.Koo.Po), Government of Tamil Nadu,
Sales Tax Office, Ramalingam Salai,
Shanmugapuram, Palani, Dindigul District.
4.The Sub-Registrar, Sub-Registrar Office,
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