IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.3313 of 2022

R.Vijayasamundeeswari ...Petitioner

-Vs-

1 The Commissioner of commercial Taxes
Commercial Taxes Department
Ezhilagam, Chennai.

2 The Commercial Taxes Officer
Commercial Taxes Office, Madipakkam circle
Integrated Building for Commercial Taxes and
Registration Department (South tower)
Saidapet, Government Farm Village, Chennai.

3 The Sub Registrar
Office of Sub Registrar, Pallavaram, Chennai

4 M/s.Chennai Sai Krishna Engineering Pvt Ltd.,
Rep. by its Managing Director Hemalatha
No.1/130 12th Street, Viduthalai Nagar
S.Kolathur, Chennai 600 117.

5 J.Vinayakam ...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 1 and 2 herein to remove the commercial tax arrears which was wrongly entered in the encumbrance certificate of the 3rd respondent within the stipulated time fixed by this Court.

For Petitioner : Mr.G.Murugesan
For Respondent : Mr.Richardson Wilson
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Mandamus directing the respondents 1 and 2 herein to remove the commercial tax arrears which was wrongly entered in the encumbrance certificate of the 3rd respondent within the stipulated time fixed by this Court.

2. In respect of a landed property to the extent of 6300 Sq.ft in S.No.309/I.F, 309/1 Part 31/11 at Keezhkattalai Village, Tambaram Taluk, Kancheepuram District, it is claimed that the property belonged to the petitioner originally. Out of this total extent of 6300 Sft, the petitioner sold 2400 Sq.ft to the fourth respondent by a sale deed dated 24.08.2009. However, since the fourth respondent has to pay the due to Bank of Maharashtra, the Bank since had been the secured creditor, approached the Debts Recovery Tribunal under the SARFAESI Act and ultimately a sale certificate was issued on 17.11.2017. By thus, the Bank executed a sale deed dated 23.11.2017 in favour of (the said property) one J.Vinayakam. From the said Vinayakam, the petitioner again re-purchased the property by a sale deed dated 03.12.2020.

3. In the meanwhile, in order to pay the tax due to the first and second respondents, they charged the property in question and the said charge, since has so far not been removed or withdrawn, the petitioner, in order to remove such a charge created on the property and for issuance of a writ of Mandamus to the second and third respondent to that effect, has approached this Court by filing the present writ petition with the aforesaid prayer.

4. Heard Mr.G.Murugesan, learned counsel appearing for the petitioner, who, having reiterated the afore stated facts, would submit that, since the petitioner has become the owner of the property by virtue of the aforesaid transactions, the charge created on the property for the alleged tax dues by the fourth respondent in favour of the first and second respondents has to be removed, because the property has now become the absolute property of the petitioner. Therefore, in order to remove such charge, a direction can be issued by way of a Mandamus, the learned counsel for the petitioner contended.

5. Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondents 1 and 2, on instructions would submit that, there has been an arrears of tax due payable

by the fourth respondent to the first and second respondent Department to the extent of more than Rs.52 Lakhs. Since the same has become default and the fourth respondent has become a defaulter, the respondents 1 and 2 / Revenue has invoked Section 42(1) of the TNVAT Act, 2006 (In short 'the Act'), under which a charge has been created on the property.

6. However, the property seems to have been mortgaged to a Bank against which, the fourth respondent obtained a loan and subsequently the matter has gone to the Debts Recovery Tribunal under the SARFAESI Act and ultimately the property had been sold in public auction.

7. Then only the issue had come to the knowledge of the respondents 1 and 2 and ultimately the issue was brought to the notice of the Debts Recovery Tribunal, where the sale was set aside and the appeal filed against the order passed by the Debts Recovery Tribunal before the Debts Recovery Appellate Tribunal is pending. Therefore, as on date since the property has been charged in the year 2017 itself invoking Section 42(1) of the Act as stated above, that charge continues till the entire tax due payable by the fourth respondent is fully recovered. The subsequent development under which there might have been some sham and nominal sale transaction between the parties, under which a claim is made by the petitioner that she has purchased back the property and therefore the charge created by the Revenue has to be removed, cannot be countenanced and hence, the learned Additional Government Pleader seeks dismissal of the writ petition.

8. I have considered the submissions made by the learned counsel appearing for the parties and have perused the materials placed on record.

9. As has been pointed out by the learned Additional Government Pleader, a sum of more than Rs.52,00,000/- and odd is payable by the fourth respondent and since he has become a defaulter, under Section 42(1) of the Act, the date on which he became default, the default shall become immediately due and shall be charged on the properties of the person or persons liable to pay the tax or penalty or interest under the Act.

10. Here in the case in hand, since there was a default on the part of the fourth respondent towards the first and second respondent, under Section 42(1) of the said Act, the properties of the fourth respondent can be charged and accordingly the charge had automatically been created in the

year 2017 itself. Moreover, the subsequent development had taken place, where sale made by the Bank subsequent to the SARFAESI proceedings is claimed to have been set aside and therefore the claim made by the petitioner that she has again purchased the property back by a sale deed dated 03.12.2020 may not give any right to the petitioner as of now, unless and until the issue is decided by the Debts Recovery Appellate Tribunal, before whom it is stated that the appeal is pending.

11. Therefore, at this juncture, the petitioner cannot seek for a Mandamus from this Court to issue a direction the first and second respondents to remove the charge created on the property belongs to the fourth respondent and therefore, the said prayer is not feasible for grant. Accordingly, this writ petition fails and it is dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KST
To
1 The Commissioner of commercial Taxes
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+1 CC to The Special Government Pleader sr 12076
+1 CC to M/s.G. Murugesan, Advocate sr 12498.

W.P.No.3313 of 2022

PMK(CO)
SP(08/03/2022)