IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.3523 OF 2022

S.Veeramani ...Petitioner

Vs.

1.Commercial Tax Officer,
Panruti (Rural)
Panruti.

2.The Sub Registrar,
Kadampuliyur, Panruti Taluk.

3.K.Mohankumar ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the records pertaining to the impugned order passed by the 1st respondent in R.C.No.A3/1083/2014 dated 12.02.2015 and quash the same and direct the second respondent to remove encumbrance created by entering Doc.No.2/2015 in respect of property in S.No.8/9, Melmampattu Village, Panruti Taluk, Cuddalore District, Kadampuliyur SRO.

For Petitioner : Mr.R.Manivannan

For Respondent : Mr.V.Prasanth Kiran
Government Advocate [R1]
Mr.R.Kumaravel
Additional Government Pleader
[For R2]

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus, call for the records pertaining to the impunged order passed by the 1st respondent in R.C.No.A3/1083/2014 dated 12.02.2015 and quash the same and direct the second respondent to remove encumbrance created by entering Doc.No.2/2015 in respect of property in S.No.8/9, Melmampattu Village, Panruti Taluk, Cuddalore District, Kadampuliyur SRO.

2. That the third respondent one Mr.Mohan Kumar was in arrears of sales tax due to the extent of 95,29,308/-, for the Assessment Years 2008-2009 to 2012-2013 under the Tamil Nadu Value Added Tax Act, 2006 (in short, "TNVAT Act, 2006") and Central Sales Tax Act, 1956 (in short, "CST Act, 1956"), with effect from 05.02.2014.

3. In order to recover the tax due, the first respondent had sent a communication to the second respondent on 12.02.2015, directing the second respondent to create a charge in respect of the two properties belongs to the third respondent.

4. Accordingly, the charge has been created by the second respondent.

5. In this context, now the case of the petitioner is that, the petitioner has purchased the said property from the third respondent as a genuine purchaser or a bonafide purchaser without having any knowledge about the tax due payable by the vendor i.e., the third respondent and also the proposal to create a charge by sending a communication by the first respondent to the second respondent.

6. According to the petitioner counsel, the said fact that there has been a charge created against the property originally belongs to the third respondent, now has been purchased by the petitioner has come to the knowledge of the petitioner only recently. Therefore, the petitioner has given a representation in this regard on 24.11.2021 to the first respondent to consider these aspects by giving the benefit of proviso to Section 43 of the TNVAT Act, as a genuine purchaser and remove the charge created against the property belongs to the petitioner. Since the said request has not been considered, the petitioner has chosen to challenge the very communication dated 12.02.2015 issued by the first respondent to the second respondent that is how the writ petition has been filed.

7. Mr.R.Manivannan, learned counsel appearing for the petitioner having reiterated the aforestated, would seek indulgence of this Court against the impugned order and seek a direction to the respondent to consider the request of the petitioner dated 24.11.2021 and to pass orders thereon within a time frame.

8. Mr.V.Prasanth Kiran, learned Government Advocate appearing for the first respondent, would submit that, this communication had been made on 12.02.2015, of-course under the provisions of the TNVAT Act, by which, the first respondent is entitled to make such a request to the second respondent to

create a charge on the property belongs to the tax payer, who is in tax due or arrears for long time and therefore, the same cannot be questioned by the third party, who is the petitioner herein on the ground that he subsequently purchased the property.

9. The purchase said to have been made by the petitioner from the third respondent in respect of the property in question is concerned, the claim made by the petitioner that he was a genuine purchaser that without having knowledge about the tax due and charge, since the same has been purchased, he shall be given exemption under the proviso to Section 43 of the TNVAT Act, does not hold good in the present circumstances of the case now has been stated, as to how he has been a genuine purchaser in this regard. Therefore, the learned Government Advocate seeks dismissal of this writ petition.

10. I have considered the said rival submissions made by the learned counsel appearing for both parties and have perused the materials placed before this Court.

11. Insofar as the challenge made by the petitioner against the impugned communication dated 12.02.2015 issued by the first respondent to and in favour of the second respondent to make or create a charge in respect of the properties belongs to the third respondent is concerned, that need not be interfered with at this juncture because whether the petitioner is a genuine purchaser or an innocent purchaser without having knowledge about anything, is a matter of factual aspect that has to be established by the petitioner before the concerned authority. Therefore, that aspect cannot be gone into now, without any evidence. Even if any evidence is filed by the petitioner, that cannot be gone into by this Court under the extraordinary jurisdiction of this Court, since it is on a factual matrix.

12. However, the petitioner since has filed a representation dated 24.11.2021 to the first respondent, the said representation can be considered and decided on merits within a time frame by the first respondent, in this regard, a direction can be given.

13. In view of the above, this writ petition is disposed of with the following orders:

- That there shall be a direction to the first respondent to consider the representation of the petitioner dated 24.11.2021 and decide the same on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order, of-course after giving an opportunity of being heard to the petitioner as well as the third respondent by issuing a notice to them.

- It is made clear that once the notice is issued, the petitioner and the third respondent shall without fail appear before the first respondent on the date to be mentioned in this regard. If they failed to appear before the first respondent, it is open to him to proceed and pass orders on the said representation of the petitioner based on the available records.

14. In view of the aforesaid direction, the order impugned can be sustained for the present. Therefore, no interference is called for, accordingly this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

kak/mp

To

1.Commercial Tax Officer,
Panruti (Rural)
Panruti.

2.The Sub Registrar,
Kadampuliyur, Panruti Taluk.

+1cc to Mr.B.Manivannan, Advocate Sr.No.12248

+1cc to the Government Pleader Sr.No.12806

+1cc to the Special Government Pleader (Taxes) Sr.No.12485

W.P.No.3523 of 2022

SJ(CO)
RVM(22/03/2022)