IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.3441 of 2013

M.Sundaram ...Petitioner

Vs.

1. The Assistant Commissioner,
   Commercial Tax,
   Erode Rural,
   Erode.

2. M/s.Agilandeeswari Engineering Works,
   Rep. by its Proprietor,
   Perundurai,
   Erode District. ...Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 01.02.2013 made in Na.Ka.No.595/1998/A3 passed by the 1st respondent herein, quash the same.

For Petitioner : Mr.H.Shrish for
M/s.N.Manokaran

For Respondents: Mr.L.M.Venkateswaran
Special Government Pleader for R1

Mr.A.Sundaravadhanan for R2

O R D E R

The subject matter of challenge in the present writ petition pertains to the impugned Auction Notice issued by the 1st respondent, dated 01.02.2013, wherein the subject property was sought to be brought for sale for recovering the sales tax arrears from the 2nd respondent proprietorship concern.

2.The case of the petitioner is that he purchased the subject property from one R.Kuppusamy for a valid consideration through a registered Sale Deed dated 07.02.1996. The further case of the petitioner is that he was in possession and enjoyment of the subject property and infact he had also raised a loan by depositing the title deeds of the subject property with Canara Bank in the year 2005 and the letter evidencing the deposit of title deeds was also registered before the concerned Sub Registrar office. It is further stated that the Chitta, "A" Register and other revenue documents stand in the name of the petitioner and there has been no encumbrance on the subject property prior to the purchase of the property in the year 1996.

3.The grievance of the petitioner is that after nearly 13 years, a Auction Sale Notice came to be issued by the 1st respondent on 01.02.2013 allegedly for recovering the sales tax arrears payable by the 2nd respondent. The petitioner has taken a very clear stand that he never had any knowledge of the arrears of sales tax to the 1st respondent, till he received the impugned Auction Sale notice. Aggrieved by the same, the present writ petition has been filed before this Court challenging the impugned Auction Sale Notice dated 01.02.2013.

4.The 1st respondent has filed a counter affidavit. It is seen from the counter affidavit that the 2nd respondent was originally a partnership firm run by three partners and one of the partner Palanisamy executed a Security Bond in the year 1986, wherein, he had given an extent of 1.64 acres as a security. This partnership firm was dissolved and subsequently in the year 1990, a fresh Partnership Deed was executed. One R.Kuppusamy, who is the vendor of the petitioner and who is the husband of Muthulakshmi, the proprietrix of the 2nd respondent, executed a Security Bond and gave his landed property to an extent of 1.03 acres as security. A further stand has been taken in the counter affidavit to the effect that, the 2nd respondent left behind huge sales tax liabilities and the property that was given as a security was sold to the petitioner in the year 1996, even without informing the assessment authority. The sale came to the knowledge of the 1st respondent much later and immediately on coming to know of the same, proceedings under the Revenue Recovery Act was initiated which ultimately ended in the impugned Auction Notice dated 01.02.2013, which was issued for bringing the property for sale and for recovering the sales tax liabilities.

5.The 1st respondent has taken a specific stand that the transfer of the assets is not binding on the 1st respondent in view of Section 24 A of the Tamil Nadu General Sales Tax Act (TNGST) and it is void, since a charge was already created over the subject property. In view of the same, the 1st respondent has sought for the dismissal of this writ petition as devoid of merits.

6.Heard M/s.H.Shrish, learned counsel appearing on behalf of the petitioner, Mr.L.M.Venkateswaran, learned Special Government Pleader appearing on behalf of the 1st respondent and Mr.A.Sundaravadhanam, learned counsel appearing on behalf of the 2nd respondent.

7.The facts of the present case revolves around the effect of Section 24 A of TNGST Act and for proper appreciation, the provision is extracted hereunder:

> 24A. Transfers to defraud revenue void.--Where, during the pendency of any proceedings under this Act or after the completion thereof, any dealer 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 assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise:
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> Provided that, such charge or transfer shall not be void, if it is made,--
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> i. for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or
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> ii. with the previous permission of the assessing authority.

8.The crux of the issue that is involved in this writ petition pertains to a charge that was created over the subject property and whether the charge that was created over the subject property by the 1st respondent is enforceable against the petitioner who claims to be a bonafide purchaser for value.

9.The charge is dealt with under Section 100 of the Transfer of Property Act, 1882. The provision itself makes it clear that the charge cannot be enforced against a transferee of the property if he had no prior notice of the said charge, unless by law, the requirement of such notice has been waived. This in legal parlance is understood as a constructive notice. There cannot be any presumption as to the transferee having a constructive notice of the charge against the property and there must be some material to show that there was infact sufficient indication for the transferee to take note of the charge created over an immovable property.

10.In the present case, the subject property was purchased by the petitioner on 07.02.1996 through a registered Sale Deed. It is seen from the Sale Deed that the petitioner had paid a total sale consideration of Rs.1,36,000/- to the vendor and had purchased an extent of 1.08 ½ acres. There is no material to show that the petitioner was even aware about the charge over the property and that is evident from the fact that the petitioner had raised a loan by deposit of title deeds of the subject property before Canara bank in the year 2005. The petitioner became aware about the charge over the property, only when he received the impugned Auction Sale Notice after nearly 12 years from the date of purchase.

11.The 1st respondent has relied upon Section 24 A of the Tamil Nadu General Sales Tax Act which speaks about certain transfers being rendered void if such transfer had taken place, after a charge has been created over the property. While dealing with the said provision, it is appropriate to take note of the first proviso to Section 24 A of the Act. This proviso acts as an exception to the main provision and it specifically provides that such a transfer shall not be void, if it was made for adequate consideration and without notice of the pendency of any proceedings under the Act. Once the transfer of property falls within the first proviso to Section 24 A of the Act, the transfer cannot be rendered to be void if the petitioner is able to satisfy that the transfer took place for an adequate consideration and without notice.

12.The counter affidavit filed by the 1st respondent shows that the husband of Muthulakshmi had sold the subject property to the petitioner. Neither the petitioner was aware about the security given to the 1st respondent nor was the Department aware about the transfer of the property in favour of the petitioner. Immediately on coming to know of the transfer of the property in favour of the petitioner, the 1st respondent proceeded to issue the impugned Auction Notice on 13.02.2013 for the purpose of bringing the property for sale and for recovering the sales tax arrears.

13.This Court had an occasion to deal with the scope of Section 24 A of TNGST Act in Rukmani vs. Deputy Commercial Tax Officer I reported in MANU/TN/2674/2012. The relevant portions in the judgment are extracted hereunder:

> 13. The issue to be considered is when a bona fide purchaser of a property would be protected from the proceedings under Revenue Recovery Act, under Section 24-A of the Act. In N.Padma Coffee Work's case, cited supra, the Tamil Nadu Special Taxation Tribunal, Chennai, considered a claim made by a subsequent

purchaser, for protection under Section 24-A of the Act. After considering Section 24-A of the Act, Section 3 of the Transfer of Property Act, 1882, Section 101 of the Indian Evidence Act, 1872, the earlier decisions of this Court, as well as the decision of the Hon'ble Supreme Court in Ahmedabad Municipal Corporation of the City of Ahemedabad Vs. Haji Abdul Gafur Haji Hussebhai reported in AIR 1972 SC 1201; Chogmal Bhandari Vs.Deputy Commercial Tax Officer, reported in (1977) 40 SCC 207 and Deputy Commercial Tax Officer Vs. R.K.Steels reported in (1998) 108 STC 161 (Mad); the Tamil Nadu Special Taxation Tribunal, Chennai, at Paragraph Nos.2,4 and 6 held as follows:-

> 2.It is no doubt true that an honest and a bona fide purchaser who had no knowledge about the encumbrance of the tax liability of the original owner is protected under the proviso (i) to Section 24-A of the Act, which reads as follows:-
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> > 24-A. Transfers to defraud revenue void.- Where, during the pendency of any proceedings under this Act or after the completion thereof, any dealer 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 assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise" Provided that, 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 under the Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or
> > >
> > > (ii)with the previous permission of the assessing authority."

...

> 4.Under Section 19 of the Tamil Nadu General Sales Tax Act, 1959, [hereinafter referred to as "the Act"], when the firm is liable to pay tax

under the Act, the firm, and each of the partners of the firm shall be jointly and severally liable for such tax. Under this Section, for the liability of the firm, the partners also are made liable and therefore, their properties cannot escape for the tax liability. When such a person has effected transfer of his property during the pendency of the proceedings under the Act or after the completion thereof, it cannot be stated that he did not intend to evade the tax and therefore, if the sale was to defraud the Revenue, the sale will be ab initio void. But, at the same time, the Legislature has intended to protect an honest person who had purchased the property from such a seller, if he had not colluded with the seller and he had no notice of the liability of the vendor. Under the proviso (i) to Section 24-A of the Act, not only adequate consideration, but also the want of notice, are the two ingredients to safeguard the purchaser.

...

6. A reading of Section 3 of the Transfer of Property Act, 1882, leads to the conclusion that, not only a wilful absention from an enquiry which a person ought to have made, but the gross negligence to make enquiry also would amount to notice of a fact to him. When the prudence of a person requires to make enquiry, but due to his own negligence he failed to make enquiry, he falls in the category of a person, with notice. A purchaser of the property when claims the transaction to be bona fide without notice, the yardstick to be applied for the "notice" is given in Section 3 of the Transfer of Property Act, 1882 and only by the application of this provision, a purchaser who seeks protection under Section 24-A of the Tamil Nadu General Sales Tax Act, is to be identified, whether he is a purchaser for value without notice. The necessity of the purchase, the intention of the transfer, the relationship between the vendee and vendor are all vital factors to find out the reasonableness of the person in purchasing the property. Sometimes unexplained secrecy or the haste in the transactions may also throw some light as to the bona fide or mala fide. To decide whether a transaction was genuine or bona fide or mala fide, all facts relating to the conduct of the parties to the transaction have to be weighed as a whole. Such enquiry on disputed facts is not

possible in the proceedings under Article 226 of the Constitution of India, because the enquiry under these proceedings will be on admitted facts or on the question of law. The controversies as to the facts can be proved only by evidence. For the mere assertions in the affidavit of these petitioners that they are bona fide purchasers, the Court of Tribunal cannot simply nod its head to give the relief as prayed for. The petitioners in these proceedings have not disputed the liability of their vendors to pay the sales tax, even at the time of the sales, but claim protection under the exception clause, for which the parameters of Section 3 of the Transfer of Property Act, 1882, have to applied. This can be done only in a regular suit where there is scope for the evidence to prove the conduct of the parties in making the enquiries with prudence, or utter negligence and the real intention in their mind. Every purchaser from the assessee is naturally interested to protect the property and will claim to be a bona fide purchaser. For the sake of their claim, the Court cannot approve the transaction as a bona fide sale."

14.N.Padma Coffee Works' case, 114 STC 494, cited supra, has been relied on by a Hon'ble Judge of this Court, while dismissing a Writ Petition (MD).No.1277 of 2005, dated 28.02.2005 [R.Balasubramaniam Vs.Additional Deputy Commercial Tax Officer III, Thoothukudi]. The appeal preferred by the subsequent purchaser in W.A.(MD).No.130 of 2005, has been dismissed on 07.02.2008. However, in D.Senthil Kumar's case, reported in (2006) 148 STC 204 (Mad), cited supra, the First Bench of this Court, presided over by the Hon'ble The Chief Justice, who was also a party to the unreported Judgment in W.A.(MD).No.130 of 2005, dated 07.02.2008, has considered a similar issue, as to whether a purchaser of a property in execution of the Recovery Certificate issued by the Debts Recovery Tribunal and who was not aware of the arrears of sales tax dues under the Act, can claim exemption from the action for recovery of the said arrears and whether a charge can be enforced against the transferee, if he had no notice thereof and whether the requirement of such notice had been waived, if there is a bona fide purchase.

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27. Even in N.Padma Coffee Works's case (cited supra) the Special Tribunal has clearly observed that the legislative intent in engrafting proviso to section 24-A of the Act, is to protect a honest person, who had purchased the property from a seller and further observed that there should not be any collusion with the seller, but the necessary ingredients of Section 24-A of the Act should be there, i.e., the sale effected should be for adequate consideration and want of notice. Taking note of Section 3 of the Transfer of Property Act, the Special Tribunal in N.Padma Coffee Works' case has also observed that if there was any wilful absentism or gross negligence in making any enquiry, that would tantamount to notice of fact, by the purchaser of the property, upon which a charge is created by operation of law. As per the version of the petitioner, she had purchased the property from a subsequent purchaser in the year 2004 and it was not a direct purchase from the defaulter. There is nothing on record to indicate that action has been taken against the vendor of the purchaser. There are no averments to suggest collusion of the petitioner with the defaulting dealer. On the contra, there are clear averments made by the petitioner to the effect that she had verified the encumbrance details from the Registration Department, in the year 2004, when she had purchased the property. When the subsequent sale has been effected after six years from the first sale, it is incumbent on the respondent to prove collusion, with the defaulting dealer. There can be a presumption of collusion with the defaulting dealer, if the transactions are in quick succession. But, if there is a long gap of six years between the first sale and the subsequent sale, without there being any action by the Revenue to realise the arrears of tax from the defaulter or against the immediate subsequent purchaser on the facts of this case, this Court is of the view that even collusion cannot be presumed. In the absence of any rebuttal to the bona fides of the purchase, absentism or negligence, in making due enquiry with the Registration Department, prior to purchase, the conduct of the subsequent purchaser cannot be doubted by making any allegation of fraud, being played on the revenue.

14.It will also be relevant to take note of the Judgment of this Court in W.P.No.17136 of 2003, dated 27.07.2017 and the relevant portions in the Judgment are extracted hereunder:

4.........The stand taken by the petitioner is clearly supported by the decision of the Hon'ble Division Bench of this Court in the case of D.Senthil Kumar and 2 others Vs. Commercial Tax Officer, Brough Road, Erode & another, reported in 2006-3-L.W.627, wherein the Hon'ble Division Bench after following the decision of the Hon'ble Supreme Court in the case of State of Karnataka Vs. Shreyas Papers (P) Ltd., reported in 2006-3-L.W.269, set aside the order of attachment. At this juncture, it would be worthwhile to refer to the operative portion of the judgment of the the Division Bench of this Court (supra) as follows:

> “11.In Shreyas Paper's case, the Supreme court also referred to the decision of a Division Bench of this Court in C.T.O. Vs. R.K.Steels, (1998) 108 S.T.C.161 (Madras), where this very question arose under Section 24 of the TNGST Act. In that case, the assessee firm was in arrears of tax from the Assessment Years 1976-77 to 1979-80. The assessee firm was closed on 19.10.1979. Thereafter, the land belonging to the firm was sold by one of the partners of the firm on 30.12.1981. The purchaser had no notice of the charge over the property by virtue of sales tax dues. The purchaser challenged the Form -7 notice issued under the Tamil Nadu Revenue Recovery Tax on the ground that he is a bona fide purchaser without notice of charge under the TNGST Act. The Division Bench held that no provision is made in the TNGST Act contrary to Section 100 of the Transfer of Property Act and therefore, a bona fide purchaser for consideration without notice is protected.
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> 12. In the instant case, the property was sold by public auction on 10.03.2003. The sale was conducted in execution of the Recovery Certificates issued by the Debts Recovery Tribunal for recovery of dues to the City Union Bank. The appellants had paid the entire amount due on 25.03.2003 and the sale was confirmed in their favour on 23.04.2003. There is no indication of any sales tax arrears in the advertisement for auction sale and there was no application from any statutory or public authority

seeking to set aside the sale. For the first time, by letter dated 25.06.2004 the Commercial Officer required the second respondent to create an encumbrance with regard to the property and consequently an entry was made in the register in respect of encumbrance of the first respondent. Thus, it is evident that the appellants had no actual notice of the charge prior to the transfer. There is also no material to show that the appellants had constructive notice of the charge and no submissions were made by the learned Special Government Pleader on this issue. In the circumstances, we are of the view that the appellants were the purchasers for value without notice for the sales tax arrears of the company or the consequent charge on the property. Thus, the property in the hands of the appellants was free of the charge and it is not open to the first respondent to enforce the liabilities of the defaulting company in this manner against the appellants.

5.In the light of the above discussion and applying the law laid down by the Hon'ble Division Bench of this Court in D.Senthil Kumar and 2 others Vs. Commercial Tax Officer, Brough Road, Erode & another (supra), the impugned attachment has to be held to be bad in law.

15.It is clear from the above judgments that a bonafide purchaser for value cannot be mulcted with any tax liability and such a transfer cannot be rendered to be non-est on the ground of fraud if the subsequent purchaser never had any notice or knowledge about the charge created in favour of the Department.

16.The first proviso to Section 24 of the TNGST Act is akin to the language used under Section 100 of the Transfer of Property Act, 1882 and the bonafide purchaser for consideration without notice is protected and such transfers are not rendered to be vitiated by fraud.

17.In the instant case, there is absolutely no material to show that the petitioner was aware about the security created over the property in favour of the 1st respondent. The fact that there was no indication to show that a charge was created over the property, is evident when the very same property was taken as a security by a Nationalized Bank when loans were raised by the petitioner, after purchasing the property. It only shows that the petitioner was always under the bonafide belief that the property in question was free from encumbrance and he had dealt with property freely even subsequent to the purchase of the property and all the revenue records also stood transferred in the name of the petitioner. The petitioner has also filed the Encumbrance Certificates for the period from 1970 to 2005 and it is clear from the Encumbrance Certificates that there is absolutely no indication about the charge created in favour of the 1st respondent.

18.The above discussion, leads to the only conclusion that the petitioner is a bonafide purchaser for value without notice and hence, he will fall under the first proviso to Section 24 A of the TNGST Act. In the light of the said finding, this Court has absolutely no hesitation to interfere with the impugned Action Sale Notice dated 01.02.2013 and the same is accordingly quashed.

19.In the result, this writ petition stands allowed. No Costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssr

To

The Assistant Commissioner,
Commercial Tax,
Erode Rural,
Erode.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.38592

+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.38058

W.P.No.3441 of 2013

KK(CO)
RGA(11/07/2022)