IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.03.2022

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.NO.23410 OF 2007
AND
M.P.NOS.1 & 2 OF 2007

K.Md.Sagheer Ahmed ..Petitioner

Vs.

1. Union of India,
   rep.by the Secretary,
   Ministry of Labour,
   Shram Shakthi Bhavan,
   Rafi Marg, New Delhi – 110 001.

2. The Director General,
   Employees' State Insurance Corporation,
   "Panchdeep Bhawan", C.I.G. Road,
   New Delhi – 110 002.

3. The Regional Director,
   E.S.I.Corporation,
   143, Sterling Road, Nungambakkam,
   Chennai – 600 034.

4. The Recovery Officer,
   E.S.I.Corporation,
   143, Sterling Road, Nungambakkam,
   Chennai – 600 034.

5. M.A.Rashid
6. Rahim Bakshi ..Respondents

(R5 & R6 impleaded as per the order dated 04.01.2011 made in MP.No.1 of 2011 in W.P.No.23410 of 2007)

Prayer: Writ Petition filed Under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the 4th respondent connected with the impugned order bearing No.TN/RECY45(G)-51/19025-11 CCR No.37764, 37763 dated 26.03.2007 for Rs.7,50,159/-, followed by taking illegal possession of the subject property by locking and sealing and quash the same.

For Petitioner : Mr.P.Ravishankar Rao
for Mr.Syed Jaffer Ahmed
For R1 : Mr.J.Madhanagopal Rao
For R2 to R4 : M/s.S.Jeyakumari
For R5 & R6 : No appearance

ORDER

For the default committed by M/s.Rabak Industries, Chennai - 05, the property situated at 275, Triplicane High Road, Tamil Nadu, Chennai - 05, came to be attached under Section 45 (C) to 45 (I) of the ESI Act, through an order of attachment dated 28.10.2003. The petitioner herein had purchased the subject property on 16.08.2004, through a registered sale deed from Mr. M.A.Rashid, who was a proprietor of M/s.Rabak Industries. According to the petitioner, the attachment of the immovable property by the ESI Corporation, was not reflected in the Encumbrance Certificate dated 11.08.2004, which prompted him to buy the property. The fact of the attachment came to the petitioner's knowledge through a notice under Section 45-G of the ESI Act, dated 26.03.2007. Aggrieved against the same, the present Writ Petition has been filed.

2. According to the learned counsel for the petitioner, the petitioner is a bonafide purchaser of the subject property and that he was not aware of the ESI dues of M/s.Rabak Industries, when he had purchased the property.

3. According to the learned Standing Counsel for the respondents, the dues of the defaulter can be covered from the subsequent purchasers also and that the transfer of the property through a sale deed is fraudulent transfer to defeat the dues of ESI Corporation.

4. The issue as to whether the authorities like the ESI Corporation are entitled to resort to the provisions of the Revenue Recovery Act for the default committed by the original establishment, was dealt by me in a batch of writ petitions passed in W.P.Nos.39939 of 2005 etc., dated 28.02.2020, whereby I had placed reliance on various decisions of the Hon'ble Supreme Court in this regard, including the decision of the Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenbhai reported in 1971 (1) Supreme Court Cases 757 and ultimately held that there is inherent duty on the tax authorities to inform the Registering Officers of the statutory charge created and that the bonafide purchasers of the subject property will not have any constructive knowledge of the statutory arrears of their vendor. The relevant portion of the order reads as follows:

“.......

26. On a co-joint reading of the law laid down by the Hon'ble Apex Court in the Ahmedabad Municipal Corporations case, the following propositions of law emerge and which are summarized below:

(a) The bona-fide purchaser has no constructive knowledge of the local tax arrears;
(b) Wilful Abstention is conscious or deliberate abstention and gross negligence is indicative of a higher degree of a neglect or omission to do something which a reasonable or prudent man would not do;
(c) Constructive notice on account of willful abstention or gross negligence construed from the aforesaid point of view, are mixed questions of facts and law.
(d) The mixed question of law is not where the purchaser had means of obtaining knowledge of the charge or with prudent caution could have obtained, but whether in not doing so, he acted with willful abstention or gross negligence, which question the Courts should consider in the background of Indian conditions;
(e) Failure to enquire with tax authorities will not amount to willful in W.P.Nos.39939 of 2005 & 25145 of 2007, 25830, 30117 & 30118 of 2008, 3211 & 4827 of 2009, 24690 of 2010, 28104 of 2013, 25602, 30458 & 36010 of 2015 and 35988 of 2016 abstention;
(f) Cases which fall under the three explanations to Section 3 of the Transfer of Property Act and cases where enquiries made with vendors but failure to make enquires with the tax authorities,
cannot impute the purchasers with constructive notice of tax arrears;

61. Nevertheless, in the light of the observations made in this order, in W.P.Nos.39939 of 2005 & 25145 of 2007, 25830, 30117 & 30118 of 2008, 3211 & 4827 of 2009,24690 of 2010, 28104 of 2013, 25602, 30458 & 36010 of 2015 and 35988 of 2016 and after the pronouncement of the order in Ahmedabad Municipal Corporations case, I am constrained to hold that there is an inherent duty on the tax authorities to inform the registering officers of the statutory charge created and therefore, in the absence of such information being made, purchases effected pursuant to the statutory charge created under the tax laws, will not be enforceable against the properties in the hands of the subsequent purchasers. Above all, this Court

> has also substantiated that there is no constructive notice of the charge created either under Section 24 of the TNGST Act or under Section 42 of the TNVAT Act and therefore, all the petitioners herein, who had purchased the properties for consideration and without notice of the charge, would be entitled to the benefit of the saving clause under Section 100 of the TP Act. Accordingly, all the writ petitions deserve to be allowed in the light of the above discussions.”

5. The aforesaid extract is self-explanatory. The ESI Act does not provide for initiating recovery proceedings against a subsequent purchaser. Furthermore, when there is inherent duty cast on the authorities to inform the Registering Authorities about the attachment created and in the absence of any provision in the Act enabling them to proceed against the authorities, this Court is of the view that the impugned notice itself under Section 45-G of the Act, cannot be sustained. However, if the Authorities are of the view that the amount of the original defaulter can be recovered from the petitioner herein, they are at liberty to initiate civil proceedings before the Competent Civil Court, within a period of three (3) months from the date of receipt of a copy of this order.

6. In the light of the above observations, the impugned order dated 26.03.2007 stands quashed and the writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Secretary,
   Union of India,
   Ministry of Labour,
   Shram Shakthi Bhavan,
   Rafi Marg, New Delhi – 110 001.

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   Employees' State Insurance Corporation,
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+2ccs to Mr.Syed Jaffer Ahmed, Advocate, S.R.No.15681

W.P.No.23410 of 2007

RSV(CO)
PM/01/04/2022