BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.06.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.12450 of 2011
and
M.P.(MD)No.1 of 2011

R.Srinivasan ... Petitioner

Vs.

1. The Secretary to Government of Tamil Nadu,
Commercial Taxes Department,
Ezilagam, St.George Fort,
Chennai.

2. The Commissioner of Commercial Taxes,
Eziligan, Chepauk, Chennai.

3. The Joint Commissioner of Commercial Taxes,,
District Court Campus,
Tiruchirapalli Division,

4. The Deputy Commissioner of Commercial Taxes,
Pudukottai.

5. The Chairman and Managing Director,
Tamil Nadu Industrial Investment Corporation,
No.473, Anna Salai, Nandanam,
Chennai - 35.

6. The Branch Manager,
Tamil Nadu Industrial Investment Corporation Limited.,
Meena Complex, First Floor,
No.2430/31, West Main Street,
Pudukottai. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, against the fifth and sixth respondents to clear the subsisting encumbrance of TIIC and hand over the prior title deeds which are with the sixth respondent that was purchased by the petitioner in Revenue Public auction immediately.

For Petitioner : Mr.S.Vinayak
for Mr.P.Jayaprakash Narayan
For Respondent : Mr.N.Muthuvijayan
Special Government Pleader

ORDER

The present writ petition has been filed seeking a Mandamus directing the respondents No. 5 and 6 to clear the subsisting encumbrance of Tamil Nadu Industrial Investment Corporation (TIIC) and hand over the prior title deeds which are with the sixth respondent that was purchased by the petitioner in Revenue Public auction.

2. It is the case of the petitioner that the property was originally mortgaged to the fifth respondent Corporation. One M/S Winner Chlorates Private Limited, had not paid the statutory dues to the Commercial Taxes Department. The sixth respondent had sent a letter to the Commercial Taxes Department, Pudukottai circle on 02.08.2009, handing over the assets of the unit to the Commercial Taxes Department. The TIIC had requested the Commercial Taxes Department to take over possession of the land, building and machinery and proceed with the auction of the assets of the unit. The TIIC had also requested that any surplus amount if it is available after adjusting the dues of the Commercial Taxes Department, may be handed over to TIIC. Accordingly the Commercial Taxes Department proceeded to conduct the sale on 25.08.2009 and the writ petitioner was the successful bidder. A sale certificate was also issued by the Commercial Taxes Department in favour of the writ petitioner. Thereafter, the TIIC had raised an issue with the Commercial Taxes Department that unless the entire amount that was received through the public auction is deposited with the TIIC, they will not part with the parent documents and they will not clear the encumbrance. On 06.04.2011, the Joint Commissioner of Commercial Taxes Department, Trichy has addressed a communication to the fifth respondent herein intimating the fact that only on the basis of their letter dated 02.08.2009, the Commercial Taxes Department has proceeded with the public auction. He further pointed out that the question of priority would not arise and he requested the fifth respondent to give suitable instructions to the sixth respondent to clear the encumbrances and to part with the parent documents with the writ petitioner. Since the fifth and sixth respondent have not responded to the said letter, the writ petitioner has filed the present writ petition seeking a Mandamus for clearing the encumbrance and for handing over the parent documents.

3. Heard the learned Counsel for the petitioner and the respondents.

4. Admittedly, the writ petitioner is the auction purchaser under the Revenue Recovery Act initiated by the Commercial Taxes Department held on 25.08.2009. Though the said property had been mortgaged to TIIC, prior to that, TIIC had issued a letter on 02.08.2009, to the Commercial Taxes Department requesting them to proceed with the public auction and the surplus amount after adjusting the dues of the Commercial Taxes Department may be handed over to TIIC. Only based upon the said communication of the TIIC, the Commercial Taxes Department has proceeded to conduct the public auction. Hence, after the public auction was conducted, the Officials of the TIIC cannot be heard to contend that they have got priority on the ground that they are secured creditors which is anterior in point of time to the statutory dues of the Commercial Taxes Department. However, the learned Counsel appearing for the TIIC submits that the issue whether the secured creditors is having priority or the statutory dues of the Government department is having priority is issue pending before the Supreme Court. Hence he contends that though in view of the letter dated 02.08.2009, the properties have been auctioned, still the TIIC has got right to contend that they are the secured creditors which is anterior in point of time. However, the dispute between the TIIC and the Commercial Taxes Department cannot stand in the way of the auction purchaser who has proceeded to purchase the property based upon the letter issued by TIIC dated 02.08.2009. Hence, let the issue relating to the interse dispute between TIIC and Commercial Taxes Department is left open and the same could be decided based upon the judgment of the Honourable Supreme Court with regard to the priority between secured creditor and statutory dues of the Commercial Taxes Department.

5. In view of the above said discussion, I find that the writ petitioner has got a legal right to claim the clearance of encumbrances and handing over of the parent documents from the TIIC. The writ petition stands allowed. However, the interse rights of the TIIC and statutory dues of the Commercial Taxes Department is left open.

6. With the above said observations, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

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To

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   of Tamil Nadu,
   Commercial Taxes Department,
   Ezilagam, St.George Fort,
   Chennai.

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   Eziligan, Chepauk, Chennai.

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+1 CC to M/s.SPL.GP (SR-25819[F] dated 15/06/2022)

Order made in
W.P.(MD).No.12450 of 2011
14.06.2022

SG(CO)
GC(23.06.2022) 4P 8C