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W.P.No.12134 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2023

PRONOUNCED ON : 19.04.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12134 of 2014

and

M.P.Nos.2 & 3 of 2014

M.Karpagam

... Petitioner

Vs.

1.The Assistant Commissioner of Commercial Taxes
Gandhipuram Circle
Gandhipuram
Coimbatore – 641 018.

2.The Sub Registrar of Assurances
Vadavalli
Coimbatore – 641 041.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the Letter Na.Ka.2181192/2001/02/A3 dated 26.08.2013 on the file of the first respondent herein - quash the same and consequentially direct the second respondent herein to delete the entry of encumbrance made in Document No.L.No.11/2013 on the petitioner's property Door No.12/36 A



Ramalakshmi Nagar, Goundampalayam Road, Idayarpalayam, Coimbatore –
641 044.

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For Petitioner	: Mr.T.Muruga Manickam Senior Counsel For Mrs.Zeenath Begum
For R1 & R2	: Mr.Haja Nazirudeen Additional Advocate General - I Assisted by Mr.M.Venkateswaran Special Government Pleader (Taxes)

ORDER

The order dated 26.08.2013 issued by the Assistant Commissioner of Commercial Taxes is under challenge in the present writ petition.

2. The petitioner states that she has purchased a house property bearing Door No.12/36A Ramalakshmi Nagar, Goundampalayam Road, Idayarpalayam, Coimbatore-44 from one Rangarajan under Sale Deed dated 07.03.2008, which has been registered as Document No.1221 of 2008 before the Sub Registrar, Vadavalli. The petitioner had obtained all parent documents in original starting from the year 1982. Before purchasing the property, she had caused verification of the register of encumbrances



maintained by the 2nd respondent and on being satisfied that there was no encumbrance on the property, the petitioner purchased the same by availing the bank loan, which was also sanctioned after the due scrutiny of all relevant documents. The petitioner states that she is the *bonafide* purchaser of the property, purchased for a valuable consideration. She is residing in the property with her family.

3. The vendor of the petitioner Mr.Rangarajan had obtained the property by way of settlement deed dated 13.02.2008 executed by his son Mr.Gopalakrishnan under Document No.723 of 2008. The said Gopalakrishnan derived this property from his mother Kanthimathi by way of a settlement deed dated 07.05.2004 registered as Document No.1782 of 2004. The said Kanthimathi had purchased the property on 30.09.1996 from one Mr.Krishnaraj.

4. After purchase, the petitioner came to know that the Assistant Commissioner of Commercial Taxes, Gandhipuram Circle, Coimbatore was making enquiries about the property for recovery of the alleged sales tax arrears. The petitioner enquired with the 1st respondent and requested them



to provide details. The petitioner is not a sales tax assessee. She submitted a reply by stating that she came to know subsequently that her vendor Rangarajan and wife Kanthimathi and son Gopalakrishnan had formed a private limited company under the name of 'Maze net Solutions India Private Limited' and the said Kanthimathi had given the property by way of security for the purpose of registration of the said company under the erstwhile Tamil Nadu General Sales Tax Act, 1959 [hereinafter referred to as 'the Act']. The said Kanthimathi has signed the Form 19 B, which is a security bond executed by her for the purpose of registration of her company as contemplated under Section 21 of the Act. The said Kanthimathi has given a personal undertaking to pay the Government of Tamil Nadu the sum of Tax Fee or other amount, which occurs against her or her firm. This security bond nowhere indicates any intention of the said Kanthimathi to offer the property as security for this purpose. The Form 19 B as signed by the Kanthimathi is not in conformity with the prescribed Form as framed under the erstwhile Tamil Nadu General Sales Tax Rules, 1959 [hereinafter referred as 'Rules'].



5. The security created by the said Kanthimathi was only for the purpose of registration of the company 'Maze Net Solutions India Private Limited' as mandated under Section 21 of the Act read with Rule 24 (15A).

Thus, she never intended to mortgage the property for the purpose of security.

6. The 1st respondent after a lapse of long time, addressed a letter dated 26.08.2013 to the 2nd respondent to register the encumbrance, said to have been created by Kanthimathi under the security bond. The 2nd respondent also made an entry of encumbrance in Document No.L.No.11/2013 on 23.09.2013 on the property purchased by the petitioner. Thus, the petitioner is constrained to move the present writ petition.

7. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that Form 19 B signed by the said Kanthimathi would reveal that it is a security bond given by her, personally undertaking to pay the Tax Fee or other amount due that will occur against the said Kanthimathi. Though the property schedule has been mentioned in the



Security bond, no mortgage or charge has been created as contemplated under the Tamil Nadu General Sales Tax Act or under the Rules. Even the security bond is not in conformity with the provisions of the Transfer of Property Act. Thus, the security bond executed is confined only to the extent of the personal undertaking by the said Kanthimathi and cannot be construed as a mortgage for the purpose of attaching the property or creating encumbrance through the 2nd respondent. Thus the actions taken by the respondents are in violations of the provisions of the TNGST Act and also in violation of the Transfer of Property Act.

8. The learned Senior Counsel appearing on behalf of the petitioner drew the attention of this Court that the petitioner had verified all the original documents and all such original documents were handed over to the petitioner by her vendors and she is in possession of the original documents. The petitioner is in occupation of the property and residing along with her family. She was no way connected with the sales tax arrears or otherwise. Even the 1st respondent has not intimated about signing of the security bond by her vendor Kanthimathi. When the petitioner is a *bonafide* purchaser and she was no way connected with the sales tax arrears and further, the



property was mortgaged in accordance with the provisions of the Act and Rules, the Action now taken by the respondents are untenable and liable to be set aside.

9. In support of the contentions, the learned Senior Counsel appearing on behalf of the petitioner relied on the following judgments:

(a) In the case of ***Deputy Commissioner Tax Officer, Thudiyalur, Assessment Circle, Coimbatore and Another Vs. R.K. Steels*** reported in ***[1999 (I) CTC 63]***, wherein, the Hon'ble Division Bench of this Court made the following observations:

“8. On the above provisions of law and on the facts of the case, the following points are raised for our consideration;

- (1) The charge under Section 24(1) of the Sales Tax Act cannot be enforced against a transferee of the property from a defaulter;*
- (2) The Revenue Recovery Act cannot be resorted to against a person, who is not a defaulter;*
- (3) Under Section 100 of the Transfer of Property Act, a bona fide purchaser for value without notice of the sales tax arrears is protected and neither Section 24 nor Section 24A of the Sales Tax Act can be deemed to be an express provision to the contrary; and*



(4) Whether the recovery and proceedings are vitiated by virtue of the technical defects in the issue of the various forms prescribed under the Act.

14. We will now refer to the said Judgment of the Supreme Court which is reported in Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdul Gafur Haji Hussenhai, A.I.R. 1971 S.C. 1201. In that case before the Supreme Court, the party was in arrears of property tax due under the Bombay Provincial Municipal Corporation Act. The said Act imposed a charge over the property held by defaulter. The same was brought to sale in execution of a mortgage decree. When the municipality purported to exercise their charge over the property, the purchaser in Court auction filed a suit for declaration that he was the owner of the property and that therefore, the arrears of municipal taxes due by the transferor were not recoverable by attachment and sale of the property in the hands of the purchaser. A division Bench of the Gujarat High Court accepted the case of the purchaser and decreed the suit, holding that the charge created in favour of the municipal corporation was not enforceable against the property. The Apex court upheld the said Judgment and while doing so, referred to Section 100 of the Transfer of Property Act, which is as follows:

Section 100: "Where immovable property of one person is by



act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property' and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this Section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

The Supreme Court proceeded to say that the Municipal Corporation Act which created a charge does not provide that the charge is enforceable against the property in the hands of a transferee for consideration without notice of the charge. The Supreme Court, however, discussed the issue of constructive notice and came to the conclusion that the purchaser in that case could not be fixed with any constructive notice of the arrears of municipal tax. It was further pointed out that a pertinent and reasonable man was bound to make enquires regarding arrears of municipal tax and that in any event, the question of constructive knowledge or notice has got



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to be determined, on the facts and circumstances of each case. In view of the finding that the purchaser could not be fixed with any constructive notice, the Supreme Court upheld the view of the Division Bench that the purchaser cannot be made liable for the municipal taxes. In our considered view, the Judgment of the Supreme Court is comprehensive in all respect and the same should have been taken note of by this court, while dealing with cases of transferee for value without constructive notice of the sales tax arrears. We are compelled to make the above observation because there is a subsequent Division Bench Judgment of this Court in Coramandel Indigo Products India Ltd v. Commercial Tax Officer, 1993 (3) MTCR 8 dated 29.10.1992. Before the Division Bench of this Court, the very same point was agitated and the Judgment of the Supreme Court above referred to was also cited. All the same, the Division bench has again chosen to follow the earlier Division Bench Judgment of this Court in Dy. Commercial Tax Officer v. Asha Kumari, 1985 (14) STL (Mad.) 164. The latter Division Bench Judgment was rendered on 29.10.1982 in W.A. No. 1019 of 1989 and the facts are almost identical to the facts of the present case. In that case, the assessee company had tax arrears. They sold a property belonging to them on 14.4.1980, when the statutory charge had been fastened on them. When the Revenue proceeded against the transferee and a form No. 7 notice was issued the transferee filed a writ petition against



the recovery proceeding. The transferee contended that they are the bona fide purchasers for value without notice of the charge. When the decision of the Supreme Court in Ahmedabad Municipality, A.I.R. 1971 S.C. 1201 was brought to the notice of the Division Bench, they purported to distinguish the same by the following observation:

“Section 141 (1) of the Bombay Provincial Municipal Corporation Act, 1949 merely creates a charge for the property tax. There is no provision in the Bombay Provincial Municipal Corporation Act, similar to Section 24(2) of the Tamil Nadu General Sales Tax Act, 1959, providing for enforcement of the charge created under Section 141 (1) of the Bombay Provincial Municipal Corporation Act. Therefore, the ratio of the decision of the Supreme Court in Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdul Gafur Haji Hussenhbai, AIR 1971 SC 1201 cannot be applied to the facts of the present case. We are inclined to follow the decision of the Division Bench of this Court in Deputy Commercial Deputy Commercial Tax Officer, v. Asha Kumari, 1985 WLR 240 and hold that the charge created for arrears of sales tax over the properties of the defaulter under Section 24(1) of the Act can be enforced in the hands of the transferee by invoking the provisions of the Revenue Recovery Act as provided in Section 24(2) of the Act.”



In our view, the above reasons given by the Division Bench to steer clear of the Apex Court Judgment does not appear to be justified. The emphasis laid down by the Supreme Court to avoid Section 100 of the Transfer of Property Act was to have an express provision, providing for the contrary. The mere enforcement of the charge by resorting to the Revenue Recovery Act as provided for in Section 24(2) of the Sales Tax Act is not an answer to Section 100 of the Transfer of Property Act. In other words, Section 24(2) of the Sales Tax Act does not provide any thing contrary to Section 100 of the Transfer of Property Act. Similarly, the Division Bench held that Section 24-A of the Sales Tax Act had no application because the Sales tax arrears were sought to be recovered by proceeding against the charged property by invoking Section 24(2) of the Sales Tax Act read with the relevant provisions of the Revenue Recovery Act. Thirdly, the Division Bench held that even if the transferee is not to be taken as a defaulter, the properties in his hands can be proceeded against the relevant provisions of the Revenue Recovery Act in view of the statutory directions contained in Section 24(1) read with Section 24(2) of the Sales Tax Act. In this connection, they purported to follow the Division bench Judgment of this Court in Dy. Commercial Tax Officer v. Asha Kumari, 1985 (14) STC Mad. 164. We have already pointed out that the earlier Division Bench Judgment in Asha Kumari's case, 1985 (14) STL Mad. 164 had not



adverted to Section 100 of the Transfer of Property Act or the Judgment of the Supreme Court in Ahmedabad Municipality v. Haji Abdul, AIR 1971 SC 201.

15. Having regard to the clear and categorical views expressed by the Supreme Court in Ahmedabad Municipality v. Haji Abdul, AIR 1971 SC 1201, we are not inclined to accept the two Division Bench Judgments of this Court in Dy. Commercial Officer's case, 1985 (14) STL (Mad.) 164 and Coromandel Indigo Products India Ltd's case, 1993 (3) MTCR 8. We would have normally referred the issue for decision by a Full Bench, but for the fact that the judgment of the Supreme Court is crystal clear. To repeat unless a provision is made in any statute contrary to the Rule of Section 100 of the Transfer of Property Act, a bona fide purchaser for consideration without notice of the charge is protected. This proposition of law is too very clear and so categorically emphasised by the Supreme Court that we are inclined to follow the rule decidendi of the Supreme Court in Ahmedabad Municipality case. We therefore with respect differ from the views expressed by the two Division Bench Judgments referred to above and propose to follow the Judgment of the Supreme Court."



(b) In the case of ***D.Senthil Kumar and Others Vs. The Commercial***

Tax Officer reported in ***[2006-3-L.W.627]***, the Hon'ble Division Bench of this Court held as follows:

“5. It appears that the property belonged to one S.K. Veerappa Chettiar & Company and others and since the said Company was in arrears of sales tax under the TNGST Act, by letter dated 25.06.2004, the Commercial Tax Officer, Erode, the first respondent herein, required the second respondent herein to create an encumbrance with regard to the property and an entry was made in the register in respect of the encumbrance of the first respondent. Immediately on coming to know about the encumbrance created, a legal notice had been sent on 04.04.2006 by the appellants to the first respondent, but however, no action was taken to rectify the mistake. Since the respondents were not willing to relent, the appellants moved Writ Petition No. 11900 of 2006 seeking to issue a writ of certiorarified mandamus to quash the proceedings of the first respondent in Na.KA. No. 1707/2000/A3 dated 25.06.2004 and to direct the respondents to remove the encumbrance of sales tax dues entered in respect of the appellants' property. The writ petition was dismissed in limine by the learned single Judge holding that the appellants will have to prove that they were bona fide purchasers of the property in a civil suit.



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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. v. 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 1976-1977 to 1979-1980. 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.

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



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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 defaulting 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.

14. In the circumstances, the appellants herein, as transferees of the property for valuable consideration without notice of the charge, are entitled for protection and consequently, the proceedings of the first respondent in Na.KA. No. 1707/2000/A3 dated 25.06.2004 are liable to be set aside and are accordingly set aside. The writ appeal is accordingly



allowed. No costs. Consequently, W.A.M.P. No. 1 of 2006 is closed.”

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(c) In the case of ***State of Karnataka and Another Vs. Shreyas Papers Private Limited and Others*** reported in ***[2006 (1) CTC 290]***, the Hon'ble Supreme Court of India ruled as follows:

“20. As the section itself unambiguously indicates, a charge may not be enforced against a transferee if she/he has had no notice of the same, unless by law, the requirement of such notice has been waived. This position has long been accepted by this Court in Dattatreya Shanker Mote v. Anand Chintaman Datar [(1974) 2 SCC 799, 811 (para 18)] and in Ahmedabad Municipal Corpn. of the City of Ahmedabad v. Haji Abdulgafur Haji Hussenhbai [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] (hereinafter “Ahmedabad Municipal Corpn.”). In this connection, we may refer to the latter judgment, which is particularly relevant for the present case.

21. Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] was a case where a person was in arrears of property tax, due under the Bombay Provincial Municipal Corporation Act, 1949. Consequently, the Municipal Corporation created a



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charge over the property of the defaulter. However, the property was sold in execution of a mortgage decree. When the Municipal Corporation purported to exercise their charge over the property, the purchaser in court-auction filed a suit for a declaration that he was the owner of the property and that the arrears of municipal taxes due by the transferor were not recoverable from him by proceeding against the property purchased in the auction. In the appeal before this Court, the Municipal Corporation's main argument was that where the local law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive knowledge of any charge created against the properties that they had purchased. This argument was, however, rejected. This Court held that while constructive notice was sufficient to satisfy the requirement of notice in the proviso to Section 100 of the TP Act, whether the transferee had constructive notice of the charge had to be determined on the facts and circumstances of the case. [Ibid., at SCC pp. 765-66 (para 12) : AIR pp. 1207-08(para 8)] In other words, this Court held that there could be no fixed presumption as to the transferee having constructive notice of the charge against the property. In fact, the principle laid down in Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] has been correctly applied in a sales tax case similar to the



present case. [CTO v. R.K. Steels, (1998) 108 STC 161 (Mad)]

23. In these circumstances, we are of the view that the first respondent was a purchaser for value without notice of the sales tax arrears of the defaulting company or the consequent charge on the property. This would, therefore, attract the principle laid down by this Court in Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04(para 3)] which is also embodied in the proviso to Section 100 of the TP Act. Thus, the property in the hands of the first respondent was free of the charge and it is not open to the appellants to enforce the liabilities of the defaulting company in this manner against the first respondent.”

(d) In the case of **State of Haryana and Others Vs. Narvir Singh and Another** reported in [(2014) 1 SCC 105], the Apex Court observed as follows:

“10. A mortgage by deposit of the title deeds is sanctioned by law under Section 58(f) of the Transfer of Property Act in specified towns, the same reads as follows:

“58. ‘Mortgage’, ‘mortgagor’, ‘mortgagee’, ‘mortgage money’ and ‘mortgage deed’ defined.—(a)-(e)

(f) Mortgage by deposit of title deeds.—Where a person



in any of the following towns, namely, the towns of Calcutta, Madras and Bombay and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds.”

11. A mortgage inter alia means transfer of interest in the specific immovable property for the purpose of securing the money advanced by way of loan. Section 17(1)(c) of the Registration Act provides that a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. A mortgage by deposit of title deeds in terms of Section 58(f) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument. In the face of it, in our opinion, when the debtor deposits with the creditor title deeds of the property for the purpose of security, it becomes a mortgage in terms of Section



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58(f) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. The essence of a mortgage by deposit of title deeds is the handing over, by a borrower to the creditor, the title deeds of immovable property with the intention that those documents shall constitute security, enabling the creditor to recover the money lent. After the deposit of the title deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage. A memorandum reducing other terms and conditions with regard to the deposit in the form of a document, however, shall require registration under Section 17(1)(c) of the Registration Act, but in a case in which such a document does not incorporate any term and condition, it is merely evidential and does not require registration.

14.....

14.1.

14.2. But the question is whether a mortgage by deposit of title deeds is required to be done by an instrument at all. In our opinion, it may be effected in a specified town by the debtor delivering to his creditor documents of title to immovable property with the intent to create a security thereon. No instrument is required to be drawn for this purpose. However, the parties may choose to have a



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memorandum prepared only showing deposit of the title deeds. In such a case also registration is not required. But in a case in which the memorandum recorded in writing creates rights, liabilities or extinguishes those, the same requires registration.”

(e) In the case of ***M/s.Sree Foundations Vs. The Tax Recovery Officer-I and Others*** reported in reported in ***[2015-5-L.W.244]***, the learned Single Judge of this Court considered the judgments and held as follows:

“11. At this juncture, it is relevant to refer to the decision of the Honourable Supreme Court rendered in the case of Mysore Minerals Ltd. v. CIT (JUDGMENT 1999 (1) Supp. SCR 192), wherein it has been held that a person who had taken possession and made payment of the consideration was the owner though he had not obtained the deed of conveyance. In the case on hand, the Petitioner, having purchased the property in question, by paying the entire sale consideration, became the absolute owner of the property in question.

12. The Calcutta High Court in the case of Electro Zavod (India) Pvt. Ltd. v. Commissioner Of Income-Tax and ((2005) 199 CTR Cal 612 : 2005 278 ITR 187 Cal) has held that on the date of passing the order of attachment, the



property in question did not belong to the assessee and on that date, there was no interest because such interest has already been passed on to the petitioner therein and accordingly, held that the order of attachment of the property claimed and held by the petitioner was not sustainable under the law.

13. In the case on hand, the Petitioner has become the owner of the property in question, to put it differently the 3rd Respondent ceased to be the owner on and from 08.02.2010, when everything for transfer of the property excepting the execution and registration of conveyance was completed. Admittedly, alleged dues are recoverable from the 3rd Respondent. Under the Income-tax Act, the dues of the Revenue do not form charge on the property and this can only be recovered under the method and mode as provided under the Income-tax Act and the Rules framed thereunder.

14. Since the 3rd Respondent failed to pay the dues to the department on time, the property in question has been attached. In the proceedings between the Department and the 3rd Respondent, the tax liability was reduced by CIT(Appeals) and the same was also paid by the 3rd Respondent. By virtue of the completion of the entire sale transaction and registration of the same, the Petitioner became the absolute owner of the property in question. While so and when the 3rd Respondent



was not the owner of the property and when on the date of passing the order of attachment, the property in question did not belong to the assessee, namely, the 3rd Respondent, the attachment of the property in question, which has been in absolute possession and enjoyment of the Petitioner by virtue of the completion of the entire sale transaction, made by the 1st Respondent for the dues payable by the 3rd Respondent, is not binding on the Petitioner and hence, unsustainable and accordingly, the impugned attachment has to be lifted and consequently, the sale deed has to be released, after numbering the same. If at all the 1st Respondent can proceed on the other property of the 3rd Respondent for the tax liabilities if any payable by the 3rd Respondent.”

(f) In the case of ***R.Dakshinamoorthy Vs. Deputy Commercial Tax Officer*** reported in ***[2019 (3) CTC 292]***, this Court held as follows:

“9. From a perusal of section 100 of the TPA, it is clear that unless expressly provided otherwise by any law for the time being in force, unlike mortgage, a charge can be enforced against the property in the hands of a transferee only if the transferee had notice of the prior charge and was not a bona fide purchaser. In the instant case, the learned counsel for the respondent admitted that the sub-registrar concerned was not informed about the existence of the charge in favour of the



respondent. It is also clear from the encumbrance certificate, which was obtained by the petitioner in December, 1998, that no charge was reflected in respect of the said property up to December, 1998. The allegation that the petitioner and the erstwhile owner colluded in effecting the sale is not based on actionable evidence and such an inference cannot be countenanced purely on the basis that the parties concerned reside in the same area or even because the original title deeds were missing as per the public notice. Therefore, it cannot be said that the petitioner had prior notice, either actual or constructive, of the existing charge. The honourable Supreme Court in Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdul Gafur Haji Hussienbhai reported in (1971) [AIR 1971 SC 1201](#), held that a charge cannot be enforced against a bona fide purchaser without prior notice unless the relevant statute confers an express right to enforce the charge against a transferee without notice.

10. This leads to the next question as to whether section 24A of the TNGST Act contains a stipulation that the charge can be enforced even against a transferee without notice. For this purpose, it is necessary to also set out section 24(1), i.e., the charge creating section, which reads as under:

Save as otherwise provided for in sub-section (2) of section 13, the tax assessed or has become payable under this



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Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such instalments, if any and within such time as may be specified in the notice of assessment, not being less than twenty one days from the date of service of the notice. The tax under sub-section (2) of section shall be paid without any notice of demand. In default of such payments the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.”

11. From the language of section 24(2), it is clear that a statutory charge is created in favour of the sales tax Department upon failure to pay sales tax within 21 days of the date of receipt of a notice of assessment. Therefore, from the counter-affidavit, it appears that a statutory charge was created over the property on or about June 30, 1996. More importantly, when the language of section 24A is examined, there is nothing therein that suggests that the statutory charge would be enforceable against a transferee without notice. On the contrary, it states that the transfer would not be void if made for adequate consideration and without notice of the pendency of proceedings under the TNGST Act. In fact, this question has already been considered and answered by a Division Bench of this court in Deputy Commercial Tax Officer



v. *R.K. Steels* reported in [\(1998\) 108 STC 161](#) (Mad) wherein the court followed the decision of the honourable Supreme Court in *Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdul Gafur Haji Hussenhbai* (1971) [AIR 1971 SC 1201](#) and held that the decisions of earlier Division Benches of this court in *Deputy Commercial Tax Officer v. Asha Kumari* reported in (1985) WLR 240 and *Coromandel Indag Products India Ltd. v. Commercial Tax Officer* reported in (1993) 3 MTCR 8 did not consider the judgment of the honourable Supreme Court *Ahmedabad Municipal Corporation of the City of Ahmedabad v. Haji Abdul Gafur Haji Hussenhbai* reported in (1971) [AIR 1971 SC 1201](#) and that, therefore, the said decisions could not be followed. Subsequently, in a recent judgment of the Division Bench of this court in *Gupta & Company v. Commercial Tax Officer*, [\(2019\) 67 GSTR 399](#) (Mad), W.P. No. 6267 of 2006, decided on March 9, 2018, the earlier Division Bench judgment in *R.K. Steels* case, [\(1998\) 108 STC 161](#) (Mad) was followed. From the aforesaid discussion and the precedents adverted to above, the principles of law that can be gleaned in respect of the enforcement of charges, including statutory charges, are as under:

(i) *A mortgage is a transfer of interest in property and, therefore, attaches itself to and moves with the property. Accordingly, it would be enforceable in the hands of a*



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transferee without notice, including the ultimate transferee in case of multiple transfers.

(ii) By contrast, there is no transfer of interest in a charge and, therefore, as per section 100 of the TPA, notwithstanding the fact that a charge holder has the same rights as a simple mortgagee, a charge is enforceable against the property in the hands of a transferee only if the transfer was not bona fide and the transferee had either actual or constructive notice of the prior charge.

(iii) If the relevant statute provides that the charge can be enforced against the property in the hands of a transferee without notice, it can be enforced notwithstanding the fact that the transferee is a bona fide purchaser for value without notice of the prior charge.

(iv) Section 24A of the TNGST Act does not stipulate that the charge can be enforced against the property in the hands of a transferee without notice of the prior charge.

12. Based on the aforesaid discussion, binding decisions of the honourable Supreme Court and the Division Bench of this court in Deputy Commercial Tax Officer v. R.K. Steels, (1998) 108 STC 161(Mad) and the principles of law set out above, the impugned notice cannot be sustained. As stated earlier, there is no evidence that there was collusion between



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the petitioner and the erstwhile owner. Equally, from the documents on record, the petitioner appears to be a bona fide purchaser without notice, either actual or constructive, of the prior charge in favour of the respondent.”

10. Relying on the above judgments, the learned Senior Counsel appearing on behalf of the petitioner made a submission that the petitioner cannot be held liable in respect of the sales tax arrears due to the Department and further the security bond relied upon by the 1st respondent is only a personal undertaking given by the vendor of the petitioner only for the purpose of registration and she had not intended to create a mortgage or charge in respect of the property purchased by the petitioner. Thus, the order impugned is to be set aside.

11. The learned Additional Advocate General appearing on behalf of the respondents objected the said contention by stating that it is a statutory security bond created by the vendor of the petitioner and such security bond is binding on the petitioner.



12. The learned Additional Advocate General contended that Tmt.Karpagam, wife of M.Satheesh filed the writ petition against the creation of encumbrance on the property belonging to Tmt. R.Kanthimathi wife of D.Rangarajan, who was on the partner of Tvl.Maze Solutions Private Limited Trader in Computer and its spares, Coimbatore and subsequently purchased the said property in respect of the arrears of tax and penalty of Rs.2,99,525/- for the year 2001-2002.

13. At the time of the taking registration certificate, under the Tamil Nadu General Sales Tax Act, 1956, they have filed a security in Form XVII B in the form of one vacant site, situated at S.F.No.412/ Document No.6070 of 1996 site No.36 1122 Sq.ft Koundampalayam Village, Coimbatore District belonging to Smt.R.Kanthimathi, who was also one of the partners of the said business.

14. As the dealer did not pay the tax arrears of Rs.2,99,525/- action was initiated under the Revenue Recovery Act by initially addressing the Sub-Registrar, Vadavalli by creating encumbrance on the property belonging to the defaulter's wife, which was made as security at the time of



registration. Subsequently, the Department came to know that the writ petitioner / Tmt.M.Karpagam had purchased the property under sale deed dated 07.03.2008. The security bond filed as security has been duly affixed by Court Fee Stamp, duly signed by the owner of the property and therefore, it is a legal document though it was not mortgaged in favour of the Government. The Government usually does not create mortgage at the time of registration. However, such security bonds are executed with the property details and with a personal undertaking and therefore, the said undertaking is binding in respect of the property schedule provided in the bond. Thus, the contentions of the writ petitioner is to be rejected.

15. The learned Additional Advocate General reiterated that with regard to the deemed mortgage charge on the property, which was filed as security bond in favour of the Government, there is no need to execute any separate security on the property and it is a statutory security signed by the assessee Smt.Kathimathi at the time of registration and therefore, the property attached is in consonance with the provisions of the erstwhile TNGST Act. The property was filed as a security in Form 19 B prescribed under TNGST Act, 1959 on behalf of the Maze Net Solution Private



Limited. Such an undertaking was given in order to safeguard the tax revenue and to realise the arrears in the event of default. The said Kanthimathi intentionally transferred the property to her son Gopalakrishnan and thereafter, to her husband D.Rangarajan in order to evade the payment of sales tax arrears and escape from the Departmental actions. Thus, the writ petition is to be rejected.

16. The erstwhile Tamil Nadu General Sales Tax Act, 1959, more specifically Section 21 (2-E) enumerates that “*The Authority granting the certificate of registration may by order and for good and sufficient cause forfeit the whole or any part of the security furnished by the dealer for realising any amount of tax or penalty payable by the dealer*”. Therefore, the security bond has been furnished for the purpose of realising the tax arrears or penalty if any due to the Department. However, this Court has to consider, whether the security bond signed by the sales tax assessee Smt.Kanthimathi by way of mortgage or charge or it is to be construed as personal undertaking.



17. In this context, it is relevant to consider Section 24 (15-A) of the erstwhile Tamil Nadu General Sales Tax Rules, 1959, which stipulates that the security shall be in any of the following forms namely,

1. Immovable property;
2. Deposit in Government Treasury by cash;
3. Government promissory notes duly pledged in the name of the registering authority;
4. Post Office Savings Bank Deposits duly pledged in the name of the registering authority;

18. Explanation-I to Section 24 (15-A) of the erstwhile Tamil Nadu General Sales Tax Rules, 1959, which reads as under:

“Where the security is furnished in the form of immovable property, the person furnishing it may in any town to which sub-section (f) of the section 58 of the Transfer of Property Act 1882 Central Act IV of 1882 is applicable, mortgage such property to the Government by deposit of title deeds. In other cases, the security shall be by means of registered mortgage of the immovable property. The security bond shall be in Form XIX-B and shall be filed in duplicate the original of which should bear appropriate adhesive non-judicial stamps or Court Fee stamps.”



19. The explanation above reveals that, where the security furnished in the form of immovable property, the person furnishing it may in any town to which Sub-Section (f) of Section 58 of the Transfer of Property Act, 1882 Central Act IV of 1883 is applicable, mortgage such property to the Government by deposit of title deeds. Therefore, it is necessary to create a mortgage as contemplated under the Transfer of Property Act. In the absence of creating any such mortgage, mere personal undertaking cannot be construed as a mortgage or charge created under Explanation I to Section 24 (15-A) of the erstwhile TNGST Act or under the Transfer of Property Act.

20. The erstwhile TNGST Rules prescribes Form 19 B, which reads as under :

Form XIX-B

[See sub-rule (15-A) of rule 24]

WHEREAS..... (Name of applicant) has filed an application before the registering authority Assessment Circle for Registration and whereas the said registering authority has directed him to furnish security for a



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sum of Rs. as required under Section 21 of the Tamil Nadu General Sales Tax, 1959, (Tamil Nadu Act 1 of 1959). I/We here by 2[mortgage / charge the properties specified in the schedule hereunto annexed for the payment of the sum of Rs. to the Government of Tamil Nadu] under Section 21 of the said Act and covenant that if the security amount due under Section 21 is not required, this bond shall be void and of no effect; otherwise it shall remain in full force and effect.

IT WITNESS WHEREOF I/We have hereunto affixed my / our hands and seal this day of 19 at

Witnesses:

- 1.*
- 2.*

The Security bond should be affixed with adhesive non-judicial stamps or court fee stamps of the value 0.75 p. When the amount secured does not exceed Rs.1,000 and with adhesive non-judicial stamps or court fee stamps of the value of Rs.1.50 when the amount exceeds Rs.1.50. When the amount secured Rs.1,000.

21. The above format also unambiguously portrays that the mortgage / charge the properties specified, is to be executed by the sales tax assessee concerned. However, the format obtained from the vendor of the petitioner Smt.Kanthimahti is not in the said format and it says that “I / We do hereby



personally undertake and kind myself / ourselves today to pay the Government of Tamil Nadu the sum of Tax Fee or other amount due wherever occur against the applicant the said amount against the said firm". Therefore, the Form 19-B security bond signed by the vendor of the petitioner smt R.Kanthimathi is restricted only to the extent of her personal undertaking and there is no mortgage or charge created in respect of the property purchased by the petitioner from the said Kanthimathi. Thus, the security bond executed by the vendor of the petitioner is not in consonance with the Form prescribed under the erstwhile TNGST Rules.

22. When the subject property, which has not been mortgaged or charge has been created in consonance with the provisions of the erstwhile TNGST Act and Rules. The contention of the respondent that they are entitled to create an encumbrance in the office of the Sub-Registrar is untenable and the encumbrance made without creating any mortgage or charge cannot be held as in consonance with the provisions of the erstwhile TNGST Act.



23. This being the factum established, the actions initiated against the petitioner is in violations of the provisions of the TNGST Act and more so the petitioner is not a sales tax assessee and she is the bonafide purchaser of the property from her vendor Smt.Kanthimathi.

24. For all these reasons, the order impugned passed by the 1st respondent in Letter Na.Ka.2181192/2001/02/A3 dated 26.08.2013 dated 26.08.2003 and the consequential entry of encumbrance made by the 2nd respondent / Sub-Registrar of Assurances in Document No.L.No.11/2013 on the petitioner's property Door No.12/36 A Ramalakshmi Nagar, Goundampalayam Road, Idayarpalayam, Coimbatore – 641 044 are quashed and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2023

Jeni/Kak
Index : Yes
Speaking order
Neutral Citation : Yes



To

1. The Assistant Commissioner of Commercial Taxes
Gandhipuram Circle
Gandhipuram
Coimbatore – 641 018.

2. The Sub Registrar of Assurances
Vadavalli
Coimbatore – 641 041.

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S.M.SUBRAMANIAM, J.

Jeni/Kak

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