BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.18129 of 2021
and
W.M.P.(MD).Nos.14975 & 14976 of 2021

K.Saravanamuthukrishnan ... Petitioner

Vs.

1.The Assistant Commissioner ST-II,
O/o. the Assistant Commissioner ST-II,
Sivakasi, Virudhunagar District.

2.The Sub-Registrar,
O/o. the Sub-Registrar,
Kunnur,
Srivilliputhur Taluk,
Virudhunagar District.

3.N.Mariammal ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records records pertaining to the Impugned Order in Na.Ka.A3/208/2019 dated 25.08.2020 on the file of Respondent No.1 and quash the same as illegal and consequently for a direction directing the Respondent No.2 to remove the encumbrance in respect of the Property of the Petitioner in an extent of 6 Acres 91 Cents situated in S.No.12/1, 12/3 and 17 in Mangalam Village, Sivakasi Taluk, Virudhunagar District, within the time period stipulated by this Court.

For Petitioner : Mr.S.Rajasekar

For R-1 & R-2 : Ms.Jayapriya, Government Advocate

For R-3 : Mr.PR.Boomeerajan

O R D E R

This Writ Petition has been filed challenging the impugned proceedings of the first respondent dated 25.08.2020 and for a consequential direction to the second respondent to remove the entry showing encumbrance with respect to the subject property within the time frame fixed by this Court.

2. Heard the learned counsel on either side.

3. The case of the petitioner is that he had purchased the subject property from the third respondent through a registered sale deed dated 15.02.2018 registered as Document No.301 of 2018 on the file of the second respondent. The petitioner also got the patta transferred in his name in Patta No.3340.

4. The petitioner thereafter verified the Encumbrance Certificate in the office of the second respondent and found that there was an entry made on 13.10.2020 which reflected Document No.07 of 2020. On further verification, the petitioner came to understand that this entry was made pursuant to the order passed by the first respondent dated 25.08.2020 by directing the second respondent to create an encumbrance with respect to the property on the ground that there is a sales tax arrear to be paid by the previous owner of the property, viz., the third respondent in the year 2014-15 to 2017-18. According to the petitioner, no such encumbrance was created at the time of execution of sale deed in favour of the petitioner on 15.02.2018 and no entry was made in the Encumbrance Certificate. Therefore, the petitioner claims to be a bonafide purchaser for value. It is under these circumstances, the present Writ Petition has been filed before this Court seeking for appropriate directions.

5. The issue involved in the present Writ Petition is no longer *res integra* and it is covered by the earlier order passed by this Court in the case of ***Mrs.Anitha Kedia and another Vs. The Government of***

Tamil Nadu, Represented by its Secretary, Commercial Tax Department, St.George Town, Chennai-600 009 and others in ***W.P.Nos.8276 and 8277 of 2007*** dated 17.01.2018. For proper appreciation, the relevant portions are extracted hereunder:

> *"4. Somewhat an identical case has been decided by this Court in the case of Sri Bakgyam Engineering Corporation V. Deputy Commercial Tax Officer, Avrampalayam Circle, Coimbatore reported in [2016] 93 VST 190 (Mad). Wherein, after taking into consideration the earlier decisions including the decision in the case of N.Padma Coffee Works V.Commercial Tax Officer reported in [1999] 114 STC 494 and other decisions, it has been held that :*
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> *"The petitioner therein had purchased the property in question without notice of the charge over the same from his vendor and the same had also not been reflected in the encumbrance certificate issued by the Registration Department. The petitioner was a bona fide purchaser for consideration without notice of the charge over the property. Unless a*

provision was 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 was protected. Section 24(2) of the Sales Tax Act did not provide anything contrary to section 100 of the Transfer of Property Act. Thus the petitioner could not be proceeded against insofar as the arrears of sales tax of his vendor. Therefore, the proceedings of the respondent taken against the petitioner and on the property were liable to be quashed."

5. The above referred decisions would apply with full force to the case on hands. As noticed above under five sale deeds, the petitioners purchased the properties dated 26.09.1998, 25.09.1998, 22.09.1998, 25.09.1998 and 26.09.1998 and registered as document Nos.2717/1998, 2783/1998, 2839/1998, 2758/1998 and 2885/1998 respectively on the file of the Sub Registrar Office, Ponneri and those sale deeds have been registered much prior to the notice of attachment of the properties vide notice dated 02.04.2002 and on

> *that date the said M/s.Sree Jagannath Steels Limited was not the owner of the properties. Thus, the petitioners are bonafide purchasers and therefore the impugned notification cannot be proceeded against."*

6. This Court in cases of this nature ascertains as to whether the petitioner is a bonafide purchaser for value and also as to whether any entry was made in the Encumbrance Certificate pertaining to the sales tax arrears on the date when the property was purchased by the petitioner. In the absence of the same, this Court has consistently held that a bonafide purchaser for value cannot be impacted with a subsequent entry made in the Encumbrance Certificate on the ground of sales tax arrears that is due and payable by the predecessor in interest.

7. In the instant case, the petitioner had purchased the subject property from the third respondent on 15.02.2018 and whereas, the first respondent has issued the order directing the second respondent to create an encumbrance over the property only on 25.08.2020. This is much after the petitioner became the owner of the property. Hence, the

encumbrance that was created by the first respondent will not bind the petitioner and it has to be necessarily reversed.

8. In the result, there shall be a direction to the second respondent to reverse the entry that was made in the Encumbrance Certificate pertaining to the order passed by the first respondent dated 25.08.2020 and this process shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order.

9. This Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

21.12.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
tsg
To
1.The Assistant Commissioner ST-II,
O/o. the Assistant Commissioner ST-II,
Sivakasi, Virudhunagar District.
2.The Sub-Registrar,
O/o. the Sub-Registrar,
Kunnur, Srivilliputhur Taluk,
Virudhunagar District.

N.ANAND VENKATESH, J.

tsg

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