BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.17315 of 2022
and
W.M.P.(MD) Nos.12626 and 12628 of 2022

R.Kumar ... Petitioner

/vs./

1.The Joint Commissioner of Commercial Taxes,
Kumbakonam Region,
Tanjavur District.

2.The Assistant Commissioner of Commercial Taxes,
Kumbakonam,
Tanjavur District.

3.The State Tax Officer,
Commercial Tax Department,
Kumbakonam Rural,
Kumbakonam.

4.The Sub Registrar,
Joint I Sub Registrar Office,
Kumbakonam,
Tanjavur District.

5.D.Mythili ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining the impugned order of the 3rd respondent in Na.Ka.No.561/2015/A6 dated 05.02.2021 and 01.09.2020 and Na.Ka.No.952/2021/A6 dated 22.02.2022 and quash the same and consequently directing the 4th respondent to remove the encumbrance of the attachment in the petitioner's property in survey No.368/7A1 of Koranatu Karupoor Village of Kumbakonam of Thanjavur District.

For Petitioner : Mr.S.Ramsundarvijayraj

For R1 to R4 : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner has filed this writ petition for a Certiorarified Mandamus to call for the records pertaining to the impugned orders of the third respondent in Na.Ka.No.561/2015/A6 dated 05.02.2021 and 01.09.2020 and Na.Ka.No. 952/2021/A6 dated 22.02.2022, to quash the same and to direct the fourth respondent to remove the encumbrance of the attachment in the petitioner's property in S.No.368/7A1 at Koranatu Karupoor Village, Kumbakonam, Thanjavur District.

2.The petitioner has purchased an immovable property, which was used by the fifth respondent for the commercial business by a sale deed dated 30.03.2017. Both the petitioner and the fifth respondent are in the same business ie., the sale of glazed tiles. The specific case of the petitioner is that the petitioner is a *bona fide* purchaser of the property from the fifth respondent and is therefore entitled to immunity under proviso to Section 43 of TNVAT Act, 2006. The learned counsel for the petitioner would draw attention to the copy of the encumbrance certificate that was obtained by the petitioner at the time of registration of the sale deed in favour of the petitioner by the fifth respondent. Specifically a reference is made to Coloumn 9 to the encumbrance certificate dated 28.07.2022 for the search period between 01.07.1975 and 27.07.2022 to substantiate the case of the petitioner that the petitioner is a *bona fide* purchaser. Specifically, it is submitted that the charges created over the subject property as against the arrears for the assessment year 2013-2014 and 2014-2015 were cancelled, as the fifth respondent had discharged the tax liability and that at the time of purchase of the property on 30.03.2017, there was no encumbrance reflected against the property. It is therefore submitted that the impugned proceedings seeking to attach the property purchased by the petitioner on 30.03.2017 from the fifth respondent are liable to be quashed.

3.Defending the impugned order, the learned Additional Government Pleader for the respondents 1 to 4 would draw attention to paragraph No.8 to 11 of the counter affidavit, which reads as under:-

> *"8. I submit that while the matters for 2013-14 and 2014-15 responding the assessment made on self-assessment basis for the assessment year 2015-16 was revised on 27.09.2019 based on the suppression detected at the time of shop inspection by team of enforcement wing officers on 12.05.2015 and 12.06.2015 and the following demands were raised:-*
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> | | |
> |---|---|
> | *Tax* | *Rs. 16 ,65,246/-* |
> | *27(9)b penalty* | *Rs. 8,88,176/-* |
> | *Total* | *Rs. 25,53,422/-* |
>
> *The demand notices were served on the dealer, Thirumathi D.Mythili on 25.11.2019 and the collection was pending. In the meanwhile, the defaulter had stopped the trade and left the business place.*
>
> *9. I submit that the respondent No.3 had attached the above said immovable property on 17.08.2020 (which was already encumbrance on 24.10.2020 and released on 10.02.2017) against the following orders and informed the fact to this Sub-Register Kumbakonam.*
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> *1. 2013-14 and 2014-15 demand raised on passing of fresh assessment order as per the order of the appellate authority to the sum of Rs. 19,12,340/*
>
> *2. Demand raised on revised of assessment of Rs.25,53,422/-. There was no reply from the Sub-Registrar against the attachment. The respondent was in the bonafide belief that the property stands in the name of the defaulter Thirumathi.D.Mythili.*
>
> *10. I submit that Thiru. R.Kumar as per his affidavit had stated that he has purchased the immovable property on 30.03.2017 for*

valuable consideration. I submit that the petitioner might have known that certain documents were pending collection for 2013-14 and 2014-15 and there was a shop inspection by the enforcement wing officials on 12.05.2015 and 12.06.2015 and the case is pending process in the assessment circle and there would be further demand are raisable for the assessment year 2015-16. The Petitioner (purchaser) is a dealer in glazed tiles and he very well knowing the procedure for collection of arrears due in tax by the authority.

11. The respondent No.5 is also a dealer in glazed tiles and the purchaser (Petitioner) would be aware of the business activities of the respondent No.5. It is submitted that both of them collide each other and done to transfer of the immovable property with intention to defraud the revenue of the Government. This transfer void as per the section 43 of TNVAT Act 2006. If the petitioner as well as respondent No.5 are in the evasion mood they ought to have approached the respondent No.3 and might have received assessment of the respondent No.5 for the sales of the property."

4.Specifically, it is submitted that even for the assessment years, 2013-2014 and 2014-2015, the assessment was revised subsequently on 27.09.2019 for the fifth respondent and that the demand notices were served on the fifth respondent on 25.11.2019. It is in this background, the attachment has been made by the third respondent on 17.08.2020, which was already encumbered on 24.10.2010 and released on 10.02.2017.

5.It is further submitted that both the petitioner and the fifth respondent are in the same business and the property that was purchased by the petitioner was a business premises used by the fifth respondent and therefore, the petitioner ought to have been aware of the fact that the fifth respondent may have pending proceedings and therefore, the petitioner ought to have approached the Commercial Tax Department before proceeding to purchase the property. Further reference was made to paragraph No.5 of the counter, which reads as under:-

> *"5. I submit that Thirumathi. D.Mythili subsequently filed two Writ petitions before the Hon'ble High Court of Madras Bench at Madurai against the installment, stay granted by the Appellate Deputy Commissioner (CT), Thanjavur for the year 2013-14 & 2014-15 in WP.No.23355/2016 and WP.No.23356/2016 respectively.*
>
> *The Hon'ble High court in their orders dated: 02.12.2016 as under.*
>
> *Para 6(1) "For the balance Amount of disputed tax and penalty, the petitioner firm in both the cases shall execute personal bond with the Appellate Authority with a period of two weeks from the date of receipt of a copy of this order.*
>
> *Following the orders of the Hon'ble the High Court, the Appellate Deputy Commissioner (CT), Thanjavur had received the personal security bond and passed revised stay orders for both years (2013-14 and 2014-15) and communicated to this office and the appeal were pending."*

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 4.

7.Section 43 of the TNVAT Act, 2006, reads as under:-

*"**43. 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 -

(a) 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

(b)with the previous permission of the assessing authority."

8.Under Section 43 of TNVAT Act, 2006, there is a clear embargo. Any transfer during the pendency of any proceedings or after the completion of the proceedings, while a dealer creates a charge on or parts with the possession by way of sale, mortgage, gift exchange or any other mode of transfer of his assert in whatsoever manner in favour of any person with an intention to defraud the revenue, such transfer is 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 proceedings. In this case, assessment was completed for the assessment year 2015-2016 on 27.09.2019 during the pendency of the proceedings for completion of the assessment for the assessment year 2015-2016. Further, the earlier charge that was created was cancelled pursuant to the directions of this Court in W.P.Nos. 23355 and 23356 of 2016 dated 02.12.2016. Para 6 of the order reads as under:-

> *"Para 6(1) "For the balance Amount of disputed tax and penalty, the petitioner firm in both the cases shall execute personal bond with the Appellate Authority with a period of two weeks from the date of receipt of a copy of this order.*
>
> *Following the orders of the Hon'ble the High Court, the Appellate Deputy Commissioner (CT), Thanjavur had received the personal security bond and passed revised stay orders for both years (2013-14 and 2014-15) and communicated to this office and the appeal were pending."*

9.The petitioner can rely only on the proviso to Section 43 of the TNVAT Act, 2006, which reads as under:-

"***43. 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 -
(a) 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

(b)with the previous permission of the assessing authority."

10.In the facts and circumstances of the case, it is evident that the petitioner and the fifth respondent are known to each other and are in the same business. The petitioner ought to have obtained the certificate or for prior permission from the Commercial Tax Department before purchasing the property as to whether the property was fully free from any encumbrance. Instead, the petitioner has blindly purchased the property perhaps colluding with the fifth respondent to defraud the revenue. Therefore, the challenge to the impugned communications dated 05.02.2021, 01.09.2020 and 22.02.2022 issued by the third respondent cannot be quashed. The petitioner will have to establish his *bona fide* before the trial Court by filing a suit establishing that the purchase of the property from the fifth respondent was *bona fide*. It is needless to state that in such proceeding, the petitioner will have to array the Officials of the Commercial Tax Department, namely the respondents 1 to 3 as defendants. Subject to the petitioner's establishment of his *bona fide* in the trial Court, further orders can be passed in this regard.

11.The Writ Petition stands dismissed with liberty to the petitioner to approach the trial Court. If the petitioner chooses to file a suit, the trial Court shall independently come to its own conclusion on facts and decide the case on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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08.04.2024

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C.SARAVANAN, J.

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