



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2025

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

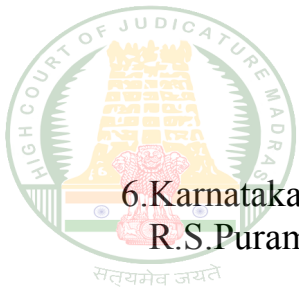
W.P.No.3709 of 2025

A.Mohan

... Petitioner

Vs.

- 1.The Joint Director General of Foreign Trade,
No.1544, India Life Building Annex,
1st Floor, Trichy Road,
Coimbatore 641 018.
- 2.The District Collector,
Collectorate,
Erode District.
Erode – 638 011.
- 3.The Tahsildar,
Bhavani Taluk,
Erode District 638 301.
- 4.The Sub Registrar,
Sub Registration Office,
Ammapettai, Anthiyur Taluk,
Erode 638 311.
- 5.J.M.Financial Arc,
Rep. by its authorized Signatory Ms.Mitaksh Ashar,
Lloyds Center Point, 2nd Floor,
Appasaheb Marathe Marg, Prabadevi,
Mumbai 400 025.



6.Karnataka Bank Limited,
R.S.Puram, Coimbatore.

... Respondents

(R5 and R6 are suo motu impleaded as per order dated 07.02.2025 in W.P.No.3709 of 2025)

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling upon the records culminated in the impugned order in Na.Ka.9664/2014/Ee2 dated 13.12.2024 on the file of the 2nd respondent, quash the same as illegal, null and void, ultra vires, without jurisdiction and without authority and consequently directing the 4th respondent to allow registration of the petitioner's private properties comprised in S.F.No.62/1 ad measuring to an extent of Acre 0.92 ½ cents and S.F. No.62/2D admeasuring to an extent of Acre 4.41 cents situated at Padvalkalvai Village, Bhavani taluk, Erode District and the Petitioner's private properties comprised in S.F. No.144/1B1 admeasuring to an extent of Acre 3.75 cents, S.F.No.144/3 ad measuring to an extent of Acre 4.80 Cents, S.F.No.144/5 admeasuring to an extent of Acre 9.21 cents and S.F. No.145/2 admeasuring to an extent of Acre 0.41 cents situated at Singampettai Village, Bhavanai Tauk, Erode District offered as collateral security offered by the petitioner.

For Petitioner : Mr. Shangar Murali

For Respondents : Mr.A.Kumaraguru
Senior Panel Counsel for R1

Mr.B.Vijay
Additional Government Pleader for R2 to R4

Mr.Pranavacharan for R5

Mr.A.Arumugam for R6



ORDER

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This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 13.12.2024 and for a consequential direction to the 4th respondent to allow the registration of the documents pertaining to the private properties belonging to the petitioner comprised in S.F.No.62/1 ad measuring to an extent of Acre 0.92 ½ cents and S.F. No.62/2D admeasuring to an extent of Acre 4.41 cents situated at Padvalkalvai Village, Bhavani taluk, Erode District and the Petitioner's private properties comprised in S.F. No.144/1B1 admeasuring to an extent of Acre 3.75 cents, S.F.No.144/3 ad measuring to an extent of Acre 4.80 Cents, S.F.No.144/5 admeasuring to an extent of Acre 9.21 cents and S.F. No.145/2 admeasuring to an extent of Acre 0.41 cents situated at Singampettai Village, Bhavanai Tauk, Erode District.

2.Heard Mr.Shangar Murali, learned counsel appearing on behalf of the petitioner, Mr.A.Kumaraguru, learned Senior Panel Counsel appearing on behalf of the 1st respondent, Mr.B.Vijay, learned Additional Government Pleader appearing on behalf of the respondents 2 to 4, Mr.Pranavacharan, learned counsel appearing on behalf of the 5th respondent and Mr.A.Arumugam, learned counsel appearing on behalf of the 6th respondent.



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3.The petitioner was one of the Director of a Company called A.P. Limited Company. This Company obtained an EPCG license to carry on foreign trade business, from the 1st respondent. There is an obligation under the license to export for a particular value within a particular period from the date of issuance of the license. The Company was owning immovable properties in its name to a total extent of 24.48 ½ acres. This Company failed to fulfil the export obligation resulting in the imposition of penalty of nearly Rs.5.23 Crores. Accordingly, a recovery order dated 27.01.2024 came to be issued by the 1st respondent. The penalty was also imposed against the Company under Section 11(2) of the Foreign Trade Development and Regulation Act, 1992 (herein after referred to as “The Foreign Trade Act”).

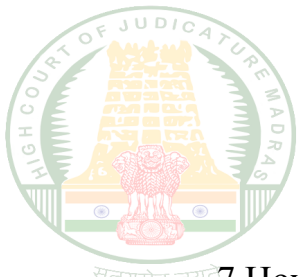
4.The 1st respondent through a letter dated 27.01.2014 directed the 2nd respondent through the Chief Secretary of the Government of Tamil Nadu to recover the said penalty amount as arrears of land revenue by resorting to the provisions of the Tamil Nadu Revenue Recovery Act. Pursuant to the same, the 2nd respondent through letter dated 01.04.2014 directed the 3rd respondent to recover the penalty amount under the Tamil Nadu Revenue Recovery Act.



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5. The grievance of the petitioner is that there are private properties owned by the petitioner in S.F.Nos.62/1, 62/2A, 62/2B and 62/2D measuring an extent of eight acres situated at Padvalkalvai Village at Erode District. That apart, the petitioner also was owning properties in S.F.Nos.144/1B1, 144/3, 144/5 and 145/2 admeasuring an extent of 16 acres at Singampettai Village, Erode District. Out of these properties, the petitioner had already sold the properties in S.F.Nos.62/2A and 62/2B.

6. The petitioner had availed loan from a private party and for that purpose, the petitioner had created security with respect to some of his private properties. That apart, the petitioner also availed loan from the 6th respondent Bank and executed a Memorandum of Deposit of Title Deeds in favour of the Bank along with his wife and daughter-in-law through a Document dated 31.03.2012 which has been registered as Document No.1192/2012. Thus, the 6th respondent Bank is a secured creditor with respect to the private properties which were given as security. The 6th respondent Bank has assigned the secured assets in favour of the 5th respondent. Thus, the petitioner claims that the liability of the Company towards the penalty that is payable to the 1st respondent is only confined to those properties owned by the Company and the individual/private properties belonging to the petitioner were not a subject matter in those proceedings.



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7. However, pursuant to the communication made by the 3rd respondent to the 4th respondent, apart from including the properties belonging to the Company, the private properties belonging to the petitioner in S.F.No.62/1 and 62/2D situated at Padvalkalvai Village and the properties situated in S.F.Nos.144/1B1, 144/3, 144/5 and 145/2 at Singampettai Village were also included. The communication dated 17.09.2021 sent by the 3rd respondent to the 4th respondent does not mention anything about the private properties belonging to the petitioner. In spite of the same, the 4th respondent has included the private properties belonging to the petitioner and as a result, the private properties belonging to the petitioner is not permitted to be dealt with and registered before the 4th respondent. In view of the same, the petitioner made an application dated 21.12.2022 before the 2nd respondent to remove the private properties belonging to the petitioner from attachment and to communicate to the 4th respondent to allow the registration of the private properties belonging to the petitioner which was already mortgaged in favour of the 6th respondent Bank. An enquiry was conducted and the 3rd respondent intimated the 2nd respondent that the private properties belonging to the petitioner has already been mortgaged in favour of the private individual as well as the 6th respondent Bank. In spite of the same, the 2nd respondent through the impugned proceedings dated 13.12.2024 declined the request made by the petitioner and refused to



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allow the petitioner to deal with the private properties before the 4th respondent, which was already mortgaged in favour of the 6th respondent Bank and which was assigned in favour of the 5th respondent Company.

8. Section 11(5)(d) talks about the recovery of the penalty for contravention of the provisions of the Foreign Trade Act. It specifically talks about the property belonging to the person proceeded against for recovery of the penalty. The person in the present case is the Company and the property that belongs to the Company has already been identified and it is a total extent of nearly 24.48 ½ acres. What is sought to be recovered from the Company is nearly Rs.5.23 Crores. It is brought to the notice of this Court by the learned counsel for the petitioner that the petitioner can have no objection in the 1st respondent proceeding against the property belonging to the Company and recovering the penalty and that the property that has now been attached and which belongs to the Company, is more than sufficient to recover the penalty amount due and payable by the Company.

9. This Court also takes into consideration the fact that the private properties belonging to the petitioner has already been mortgaged by Deposit of Title Deeds in favour of the 6th respondent Bank and the 6th respondent Bank has assigned the secured



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assets in favour of the 5th respondent Company. Hence, if those private properties belonging to the petitioner is also brought under the revenue recovery proceedings, it will directly affect the rights of the 5th and 6th respondents in recovering the loan amount availed by the petitioner. Thus, the petitioner by filing this writ petition has actually safeguarded the interest of the 5th and 6th respondents to whom the loan amount has to be repaid.

10.The materials placed before this Court clearly shows that the property belonging to the Company has been earmarked and properly identified and there is no reason to roping in the private properties belonging to the petitioner. For the penalty amount that is due and payable by the Company, the private properties of the petitioner who happens to be one of the Director cannot be attached and brought for sale under the Revenue Recovery Act.

11.In the light of the above discussion, the impugned proceeding of the 2nd respondent dated 13.12.2024, is hereby quashed. It is made clear that the 2nd respondent can proceed further to bring the properties belonging to the Company for sale for the purpose of recovering the penalty amount due and payable by the Company. A rectification shall be made to that effect in the notification issued under the Revenue



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Recovery Act by deleting the private properties belonging to the petitioner. This process shall be completed, within a period of four weeks from the date of receipt of copy of this order. Thereafter, whatever property has been given as security by the petitioner to the 6th respondent Bank and which has been assigned in favour of the 5th respondent Company, can be individually dealt with for the purpose of recovering the loan amount availed by the petitioner from the 6th respondent Bank. This clarity will sufficiently take care of the interest of the 1st respondent and also the 5th and 6th respondents.

12. In the result, this writ petition stands allowed in the above terms. No Costs.

25.02.2025

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
ssr

To

1. The Joint Director General of Foreign Trade,
No.1544, India Life Building Annex,
1st Floor, Trichy Road,
Coimbatore 641 018.

2. The District Collector,
Collectorate,
Erode District.
Erode – 638 011.



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N. ANAND VENKATESH, J.

SSR

3.The Tahsildar,
Bhavani Taluk,
Erode District 638 301.

4.The Sub Registrar,
Sub Registration Office,
Ammapettai, Anthiyur Taluk,
Erode 638 311.

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