IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15837 of 2024
W.M.P.Nos.17263, 17265 & 17267 of 2024

M.Senthil Kumar,
S/o.Mylsamy ... Petitioner

Vs.

1. The Joint Commissioner of Income Tax,
   Office of the Tax Recovery Officer,
   No.63, Race Course Road,
   Coimbatore – 641 018.

2. The Sub-Registrar,
   Office of the Sub-Registrar,
   Pollachi Taluk, Coimbatore District.

3. K.A.Radhakrishnan,
   S/o.Late Ayyasamy .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the impugned order dated 10.04.2024 vide DIN & Order No.ITBA/COM/F/17/2024-25/1064030731(1) and quash the same and thereby direct the 2nd respondent to delete the entries made in encumbrance certificate No.32/2019 dated 21.06.2019.

For Petitioner : Mr.C.Veeraraghavan

For Respondents : Dr.B.Ramasamy
Senior Standing Counsel [R1]

ORDER

In this writ petition, the petitioner has challenged the proceedings dated 10.04.2024 of the Tax Recovery Officer initiated under Rule 2 of the second schedule of the Income Tax Act, 1961.

2. The case of the petitioner is that the petitioner had purchased a property on 13.07.2018 from the 3rd respondent namely, Shri KA Radhakrishnan. Thereafter, the 1st respondent had attached the said property on 21.06.2019 purportedly for the arrears of income tax due from the 3rd respondent Shri KA Radhakrishnan for the Assessment year 2008-2009.

3. It is submitted by the learned counsel for petitioner that a demand for income tax due was made as early as on 18.01.2012 on the 3rd respondent Shri KA Radhakrishnan. Therefore, in the light of Rule 68 B in the second schedule of the Income Tax Act, 1961, the impugned proceeding attaching the property of the petitioner is unsustainable.

4. The learned counsel for the respondent on the other hand would draw the attention of this Court to Rule 16 and 51 in the second schedule of the Income Tax Act, 1961 and submitted that the impugned proceedings does not warrant any interference.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

6. Section 281 of the Income Tax Act, 1961 embargo on the transfers of assets and the same reads as under:

> ***281. [Certain transfers to be void _(1)*** *Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee 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, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee 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-*
>
> *(i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee; or*
>
> *(ii)with the previous permission of the[Assessing Officer]*
>
> *(2)[This section applies to cases where the amount of tax or*

other sum payable or likely to be payable exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value."

7. This was the issue that was under consideration before the Hon'ble Supreme Court in ***Tax Recovery Officer Vs. Gangadhar Vishwanath Ranade, (1998) 234 ITR 188.***

8. The aforesaid provision as it stood then and the provision as it stands now are materially different. Therefore, the petitioner has to discharge the burden of purchase made by him on 13.07.2018 from the 3rd respondent to show that the petitioner is a bonafide purchaser of the attached property.

9. Considering the same, liberty is granted to the petitioner to prove his bonafide by filing a suit seeking declaration before the competent Civil Court. The petitioner, being purchaser of the subject property from the 3rd respondent on 13.07.2018, shall necessarily seek for interim relief within a period of four months from today.

10. Pending such exercise, further coercive steps in respect of the subject property shall be kept in abeyance.

This writ petition is disposed of with the above observation. No costs. Connected miscellaneous petitions are closed.

15.12.2025

Neutral Citation : Yes / No

mp

To

1. The Joint Commissioner of Income Tax,
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   No.63, Race Course Road,
   Coimbatore – 641 018.

2. The Sub-Registrar,
   Office of the Sub-Registrar,
   Pollachi Taluk, Coimbatore District.

C.SARAVANAN, J.

mp

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