

W.A.Nos.1019 of 2020 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 12.08.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

**W.A.Nos.1019 of 2020
and CMP.No.12450 of 2020
and
W.P.No.18840 of 2020
and
W.A.Nos.2903, 2965 & 2912 of 2021
and CMP.Nos.19598, 19711 & 20133 of 2021
and
W.A.Nos.293, 708, 727, 726, 162 & 1761 of 2022
and CMP.Nos.2215, 5045, 4915, 1097,
12870, 18771, 5037 & 5038 of 2022**

W.A.No.2903 of 2021:

The Office of Assistant Commissioner (CT),
Saligramam Assessment Circle,
No.21, G.K.Industrial Estate 1st Main Road,
Alapakkam, Porur, Chennai-600 116.

.. Appellant

VS

1.V.Ramyalakshmi
2.The Sub-Registrar,
Virugambakkam, Chennai.
3.V.Shivakumar

.. Respondents



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Prayer in W.A.No. 2903 of 2021: Appeal filed under Clause 15 of Letters Patent against the common order passed in W.P.No.30458 of 2015 dated 28.02.2020.

AND

W.A.No. 1019 of 2020:

I.Jeyarajhan

.. Appellant

VS

The Commercial Tax Officer
Tondiarpet Assessment Circle
Office of the Assistant Commissioner (C.T)
No.19 & 20, Kummalamman Koil Street
Tondiarpet, Chennai-600 081.

.. Respondent

Prayer in W.A.No. 1019 of 2020: Appeal filed under Clause 15 of Letters Patent to call for the records relating to the order dated 10.02.2020 made in W.P.No.29090 of 2016, set aside the same and consequently allow the writ petition.

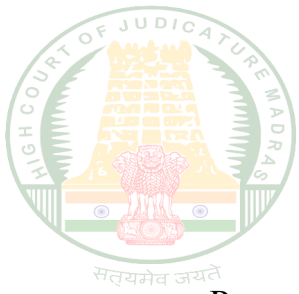
AND

W.P.No.18840 of 2020:

1.V.Sivalingam
2.R.Kamatchi
3.M/s.Sree Saravana Traders,
Rep. by its Partner – N.Vadivel,
No.628-A, Fort Main Road,
Shevapet, Salem 636 002.

.. Respondents

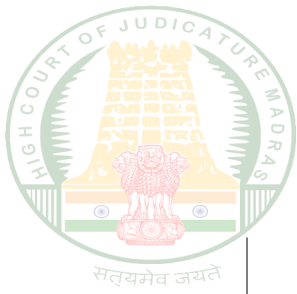
(R3 impleaded vide order dt. 05.04.2022
made in WMP.12364/2021 in WP.18840/2020)



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Prayer in WP.No.18840 of 2020 : PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the first respondent to remove/lift the attachment created in certificate on the petitioner's property situated at Ward D, Block 3, Survey No.71 bearing Door No.20B, Kabini Chetty Street, Arisipalayam, Salem, by addressing suitable communication to the 2nd Respondent.

Case Nos.	For Appellants/Petitioners	For Respondents/ Respondents
WA.1019 of 2020	Mr.M.Ganesh	Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate
W.A.293 of 2022	Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate	Mr.V.Srikanth, for R1 R2 – Insufficient Address
W.A.708 of 2022	Mr.Haja Nazaruddin, Additional Advocate General Assisted by	Mr.N.Prasad, Senior Counsel For Mr.Inbarajan

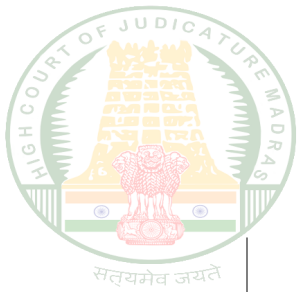


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		Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate	
W.P.18840 of 2020		Mr.G.Murugendran	Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate For R1 & R2 R3 – Tapal returned no such person
W.A.727 of 2022		Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate	Mr.V.Regunathan, for R1 Mr.P.Harish, for R3 Government Advocate No Appearance – for R2 & R4 No such person – (R5 & R6)
W.A.726 of 2022		Mr.Haja Nazaruddin, Additional Advocate General Assisted by	Ms.R.Hemalath, for R1 to R3 R4 – unclaimed

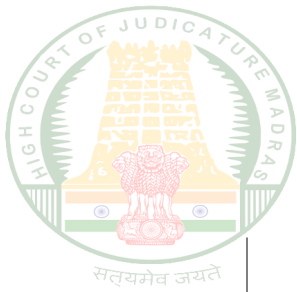


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		Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate	
W.A.2903 2021	of	Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate	Mr.P.Harish, for R2 Government Advocate No Appearance – for R1 and R3
W.A.2965 2021	of	Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate	Mr.G.Krishnakumar, for R1 & R2
W.A.162 2022	of	Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate	Mr.D.Baskar
W.A.1761 2022	of	Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran,	Mr.K.Elango



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		Government Advocate and Mr.P.Hari Babu, Government Advocate	
W.A.2912 of 2021		Mr.Haja Nazaruddin, Additional Advocate General Assisted by Ms.Amrita Dinakaran, Government Advocate and Mr.P.Hari Babu, Government Advocate	Mr.C.Baktha Siromani

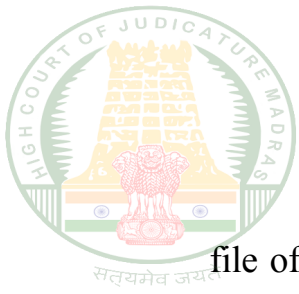
COMMON JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

This is a batch of 10 writ appeals and one Writ Petition. Nine Writ Appeals have been filed by the State challenging common order dated 28.02.2020 passed in W.P.Nos.39939 of 2005 etc. batch and one Writ Appeal, viz., W.A.No.1019 of 2020 has been filed by the purchaser challenging an order dated 10.02.2020 passed in W.P.No.29090 of 2020.

2. W.P.No.18840 of 2020 has been filed by the purchasers seeking a direction to the first respondent/assessing officer to lift the attachment created on the petitioners' property.

3. In common, the issue relates to a challenge to encumbrances on various properties (in common referred to as 'properties'/'subject properties') owned by the respondents (referred to as purchasers) on the



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file of the various Sub Registrars within whose jurisdiction the properties are located. The basis of the encumbrance was pending arrears of dues either under the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act) or Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act').

4. The submissions of the Respondents who are the writ petitioners (in short and in common, 'respondents'), before the writ Court had been that they are bonafide purchasers of the subject properties, had paid valid consideration for the same and had exercised due diligence by verifying the encumbrance prior to purchase. In no case was there any charge created by the Commercial Taxes Department in respect of the subject properties. They had referred to and relied upon the provisions of Sections 24 and 24A of the TNGST Act, Sections 42 & 43 of the TNVAT of Act, Section 3 and Section 100 of the Transfer of Property Act (TP Act) and several decisions, in consideration of which the Writ Court had allowed the writ petitions.

5. The auction sale notices that had been issued were set aside and the matters had been remanded to the concerned authorities to consider whether there was any encumbrance of the charge reflected on the subject



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properties before the concerned jurisdictional registering offices. The Court held that in the absence of such encumbrance of charge, the properties shall be released free from charge created, if at all, under the provisions of the TNGST Act or TNVAT Act and the entirety of the exercise shall be completed within a period of four weeks from date of receipt of that order.

6. Liberty had been granted to the purchasers to produce all necessary documents and representations for release of the properties. Liberty was also granted to the Commercial Taxes Department to approach the Civil Courts, if at all they were in a position to establish that the transfer of the property was fraudulent and malafide with the intention of defrauding the revenue. Likewise, in order dated 10.02.2020 passed in W.P.No.29090 of 2016. It is as against those orders that the State and the purchaser are in appeals.

7. The following are the submissions of Mr.Haja Naziruddin, learned Additional Advocate General assisted by Ms.Amrita Dinakaran, learned Government Advocate, and Mr.P.Haribabu, learned Government Advocate appearing for the State. Firstly, they point out that the vendors have not been made as parties to the proceedings. Since the vendors in



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whose names the tax dues stand are both proper and necessary parties to the proceedings, they ought to have been impleaded, and hence, the writ petitions were itself not maintainable.

8. We do not agree. The challenge laid by the Respondents is as against the encumbrances created upon the subject properties. They are admittedly unconnected with the sales tax assessments framed and demands raised. The Department has not brought on record any material to establish collusion between the defaulters and the Respondents, and in fact, there are no allegations/averments/pleadings in this regard. The bonafides of the purchasers/the purchasers has never been questioned by the Department at any point in the proceedings.

9. There are really no disputed facts at play and the only act of commission by the Respondents is that they have purchased the subject properties from the defaulting assesseees for valuable consideration and after exhibiting due caution as is expected from a purchaser. Such a challenge does not, in our view, require the presence of the sales tax defaulters.

10. We draw support in this regard from a judgment of the Supreme Court in *The General Manager, South Central Railway, Secunderabad*



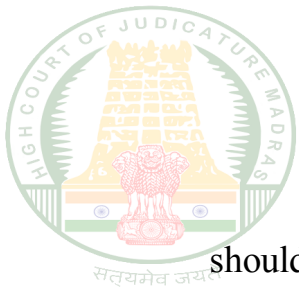
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and another v. A.V.R.Siddhantti and others¹ in the context of a similar prayer, where the position is made clear that in such cases, the vendor is not a necessary party. It thus follows that unless the department specifically alleges in the pleadings that there has been fraud, connivance or collusion, in which case the vendor would have to be part of the proceedings, there is no necessity for the vendor to be arrayed as a party.

11. Learned AAG takes us through the scheme of the TNGST, TNVAT and TP Acts relying on the same provisions that have been highlighted by the purchasers before us. The provisions under the aforesaid Sales tax enactments exonerate only a bonafide purchaser of the subject properties and the question of bonafides or otherwise is not a matter for examination by the writ court as it involves marshalling of various necessary facts to arrive at such a determination.

12. The dues in the hands of the assesseees i.e., the vendors are statutory demands that must be discharged by either the vendors themselves, if they failed to do so, by the purchasers of the property. All latent and patent defects to the title to the property should have been verified by the purchasers prior to the purchase of the property and for this purpose he relies on the principle of caveat emptor i.e., the purchaser

¹ (1974) 4 SCC 335



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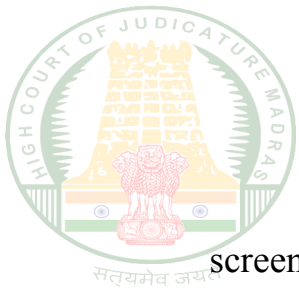
should beware of any defects in the title and either protect himself by abstaining from the transaction or by making good the title to the property.

In such circumstances, the remedy of the purchasers is not as against the Commercial Taxes Department but as against the vendors, and that too, after settlement of the outstanding tax dues.

13. He makes a distinction between a charge created by act of the parties and charge created by operation of law. In the present case, according to him, it is a charge that is created by operation of law as per the statutory provisions of the TNGST/ TNVAT Act from which the purchasers cannot escape.

14. The Respondents rebut this argument stating that even in such an event, where a charge could be said to have been created by operation of law, the legal position was that the mere creation of such a charge would not automatically infer presumption of knowledge on the intending purchasers. Hence they reiterate there was no liability that could be attributed to them in respect of the dues of their vendors.

15. Learned AAG would object to this submission, arguing that constructive notices are deemed to have been issued to them by virtue of Section 3 of the TP Act and they cannot hence hide behind the smoke



screen of principles of natural justice which are deemed to have been satisfied in the present cases.

16. In summary, he would say that the purchase of the subject properties by the purchasers is tainted and conditional upon the satisfaction of the charge on the property by the Commercial Taxes Department which they would have to satisfy. He relies on the following judgements:

1. *Shailesh K. Bothra and Others v. State of Maharashtra and Others*²
2. *S.Sundaram Pillai and Others v. V.R.Pattabiraman and Others*³
3. *K.Saradambal v. Jagannathan and Brothers (Automobile Engineers & Motor Works (P.) Ltd.)*⁴
4. *R.Balasubramanian v. Additional Deputy Commercial Tax Officer-III, Office of the Deputy Commercial Tax Officer-III, Thoothukudi*⁵
5. *Balkishen Goenka v. Special Assistant Commercial Tax Officer for Sales Tax Collection, Thanjavur*⁶
6. *State Bank of Bikaner & Jaipur v. National Iron & Steel Rolling Corporation and Others*⁷
7. *Commissioner of Customs (Preventive) v. Aafloat Textiles India Private Limited and Others*⁸
8. *Jan Pieter Le Roux v. Christiaan Frederik Zietsman and another*⁹
9. *Sher Singh Kartar Singh and Another v. The Tehsildar (Sales Tax) Tis Hazari, Delhi, and others*¹⁰
10. *Mithilesh Kumar v. Manohar Lal*¹¹

2 2023 SCC OnLine Bom 1394

3 (1985) 1 SCC 591

4 1971 SCC OnLine Mad 273

5 (WA(MD)No.130 of 2005 dated 07.02.2008)

6 1971 SCC OnLine Mad 430

7 (1995) 2 SCC 19

8 (2009) 11 SCC 18

9 [2023] ZASCA 102

10 1964 SCC OnLine Punj 363

11 (1997) 9 SCC 54



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17. The Respondents rely on the following decisions to buttress their submissions:

1. *Deputy Commercial Tax Officer, Triplicane Division, Mount Road, Madras, and another v. The Cosmopolitan Club, represented by the Honorary Secretary, P.M.Balasubramania Mudaliar*¹²
2. *East India Commercial Co., Ltd., Calcutta and Another v. Collector of Customs, Calcutta*¹³
3. *D.Senthil Kumar and Others v. Commercial Tax Officer, Erode and Another*¹⁴
4. *N.Padma Coffee Works and Others v. Commercial Tax Officer, Rockfort Assmt. Circle, Trichy*¹⁵
5. *Tax Recovery Officer II, Sadar, Nagpur v. Gangadhar Vishwanath Ranade (Dead) Through Shobha Ravindra Nemiwant (smt)*¹⁶
6. *M.Thirumaran v. Commercial Tax Officer, Sengottai Assessment Circle, Sengottai and another*¹⁷
7. *The Ahmedabad Municipal Corporation of The City of Ahmedabad v. Haji Abdulgafur Haji Hussienbhai*¹⁸
8. *Nawal Kishore v. The Municipal Board, Agra*¹⁹
9. *B.Suresh Chand v. State of Tamil Nadu rep. by the Secretary Revenue Department, Fort St. George, Madras-9 and another*²⁰
10. *Showtech Stone International Private Limited v. Deputy Commercial Tax Officer-I, Saroornagar Circle, Hyderabad and Others*²¹
11. *Deputy Commercial Tax Officer, Thudiyalur Assessment Circle, Coimbatore and another v. R.K.Steels*²²
12. *Shyam Telelink Ltd. now Sistema Shyam Teleservices Ltd. v. Union of India*²³
13. *M/s.Sri Bakgyam Engineering Corporation by its Managing Partner*

12 (1955) 68 LW 132

13 1962 SCC OnLine SC 142

14 (2006) 148 STC 204 (Mad)

15 (1999) 114 STC 494

16 (1998) 6 SCC 658

17 (2019) 62 GST 459 (Mad)

18 1971 (1) SCC 757

19 ILR 1943 ALL 453

20 2006-4-L.W. 409

21 (2015) 77 VST 226 (T and AP)

22 1998 (1) CTC 124

23 (Civil Appeal No.7236 of 2003 dated 05.10.2010)



A.Radhakrishnan Coimbatore 641 037 v. The Deputy Commercial Tax Officer Avrampalayam Circle, Coimbatore²⁴

14.R.Dakshinamoorthy v. The Deputy Commercial Tax Officer, Tirupur (Bazaar Street), Tirupur²⁵

15.Rukmani v. Deputy Commercial Tax Officer I, Pattukottai I, Assessment Circle, Pattukottai²⁶

16.Gupta & Company v. Commercial Tax Officer, Alandur Assessment Circle, Alandur, Chennai and Others²⁷

17.Suraj Lamp and Industries Private Limited Through Director v. Stae of Haryana and Another²⁸

18.Philips India Ltd. and Another v. Asstt. Commr., Commercial Taxes, Calcutta and others²⁹

19.Oriental Bank of Commerce, Overseas Branch, represented by its Chief Manager, A.Srinivas Sharma, Padma Complex, 467, Mount Road, Chennai-600 035 v. The Commercial Tax Officer, Moore Market (North) Assessment Circle, 191, NSC Bose Road, Chennai-600 001 and others³⁰

20.Chogmal Bhandari and others v. Deputy Commercial Tax Officer, II Division, Kurnool³¹

21.The General Manager, South Central Railway, Secunderabad and another v. A.V.R.Siddhantti and others³²

18. We have heard both sides keenly and have also perused the material papers, the relevant statutory provisions and the case law.

19. The provisions of both the TNGST as well as TNVAT Acts set out the scheme by which assessments are framed on dealers/assesseees, and demands statutorily raised for settlement within the time frame provided.

In the absence of compliance by the assesseees, which is an admitted

24 (WP.No.37309 of 2002 dated 16.12.2015)

25 (WP.No.36469 of 2006 dated 26.03.2019)

26 (2013) 62 VST 369 (Mad)

27 (2019) 67 GSTR 399 (Mad)

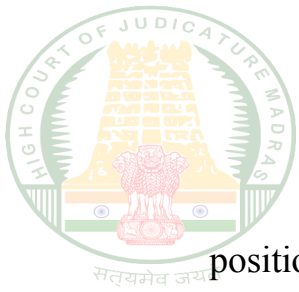
28 (2009) 7 SCC 363

29 (2004) 10 SCC 436

30 (WP.21496 of 2008 dated 20.01.2025)

31 (1976) 3 SCC 749

32 (1974) 4 SCC 335



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position in the present cases, it falls upon the Revenue to ensure that their interests are protected by securing properties of those assesseees in order to liquidate and fulfil the statutory demands.

20. The defaulting assesseees have sold properties to purchasers who are before us as respondents. The case of the Revenue before us is that the sales to these purchasers are compromised as void in view of Section 24-A/43 of the sales tax enactments, whereas the purchasers would argue that they are bonafide purchasers who have purchased the properties for valuable consideration.

21. It is hence necessary for us to appreciate the scheme of the Sales tax enactments. Under the TNGST Act, assessments are completed following the procedure set out under Section 12. Section 13 provides for advance payment of tax by an assessee, Section 24 refers to payment and recovery of tax and Section 24-A deals with transfers to defraud the revenue and states that such transfers shall be void. Section 24-A based on which the impugned attachments have been made, reads as under:

'Section 24-A 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



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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-

(i) 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

(ii) with the previous permission of the assessing authority.

Explanation- In this section, “assets” means land, building, machinery, plant, shares, securities and fixed deposits in banks to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the dealer.'

22. The TNVAT Act contains provisions in pari materia with

Section 24-A of the TNGST Act. Assessments are made under Section 22,

Section 42 deals with payment and recovery of tax and penalty and

Section 43, in line with Section 24-A of the TNGST Act, states that

transfers to defraud the revenue would be void. Section 43 reads as

follows:

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



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said proceeding or otherwise:

Provided that, such charge or transfer shall not be void if it is made-

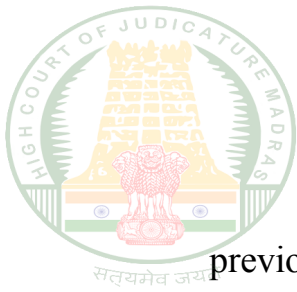
(a) for adequate consideration and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the dealer; or

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

23. Barring W.A.1019/202 that falls under the provisions of the

TNVAT Act, all other writ appeals fall under the provisions of the TNGST Act. Both Section 24A of the TNGST Act and Section 43 of the TNVAT Act state that, where a charge is created by an assessee, or the assessee parts with the possession of his assets by way of sale, mortgage, gift, exchange or any other mode of transfer, in favour of another person, pending proceedings under the Act or after completion thereof, such charge or transfer, shall be void as against the statutory demand. The caveat is that such transfer should have been with the intention of defrauding the revenue.

24. The proviso to Section 24-A thus protects cases of bonafide purchasers where the transfers had been made for adequate consideration and without notice to the purchaser, of either the pendency of the tax proceedings or raising of the tax demand on the defaulting assessee, that is, the vendor. Clause (ii) protects those transactions made with the



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previous permission of the assessing authority which does not apply in the present case.

25. A careful perusal of the pleadings does not reflect allegations of connivance or collusion inter se the purchasers and their vendors, and no material has been brought on record by the Department to incriminate the transfer in any way. Such a pleading/incriminating material, is necessary to enable the Department to take the argument that the protection under the proviso does not apply to a transfer.

26. The existence of collusion/fraud/intent to defraud the revenue, is the very foundation/premise, upon which Sections 24-A/43 stand. Hence, to have the benefit of, or obtain jurisdiction under the aforesaid provisions, it is mandatory for the Revenue to establish the jurisdictional fact of 'intent to defraud' on the part of the purchaser.

27. This issue has been discussed in detail in *Arun Kumar and Ors. Vs. Union of India (UOI) and Ors* (286 ITR 89), and the operational portions of the judgement read thus:

.....

41. It is, therefore, clear that before Section 17(2)(ii) can be invoked or pressed into service and before calculation of concession as per Rule 3 is made, the authority exercising power must come to a positive conclusion that it is a



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concession. 'Concession', in our judgment is, thus a foundational, fundamental or jurisdictional fact. A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

42. In Halsbury's Laws of England, it has been stated; Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive.

The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.

43. In Raja Anand Brahma Shah v. State of U.P. and Ors. MANU/SC/0214/1966 : [1967]1SCR373 , Sub-section (1) of Section 17 of the Land Acquisition Act, 1894 enabled the State Government to empower Collector to take possession of 'any waste or arable land' needed for public purpose even in absence of award. The possession of the land belonged to the appellant had been taken away in the purported exercise of power under Section 17(1) of the Act. The appellant objected against the action inter alia contending that the land was mainly used for ploughing and for raising crops and was not 'waste land', unfit for



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cultivation or habitation. It was urged that since the jurisdiction of the authority depended upon a preliminary finding of fact that the land was 'waste land', the High Court was entitled in a proceeding for a certiorari to determine whether or not the finding of fact was correct.

Upholding the contention and declaring the direction of the State Government ultra vires, this Court stated;

In our opinion, the condition imposed by Section 17(1) is a condition upon which the jurisdiction of the State Government depends and it is obvious that by wrongly deciding the question as to the character of the land the State Government cannot give itself jurisdiction to give a direction to the Collector to take possession of the land under Section 17(1) of the Act. It is well-established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact the High Court is entitled, in a proceeding of writ of certiorari to determine, upon its independent judgment, whether or not that finding of fact is correct.

(Emphasis Supplied)

44. In State of M.P. and Ors. v. D.K. Jadav MANU/SC/0029/1968 : [1968]2SCR823, the relevant statute abolished all jagirs including lands, forests, trees, tanks, wells etc., and vested them in the State. It, however, stated that all tanks, wells and buildings on 'occupied land' were excluded from the provisions of the statute. This Court held that the question whether the tanks, wells etc., were on 'occupied land' or on 'unoccupied land' was a jurisdictional fact and on ascertainment of that fact, the jurisdiction of the authority would depend. The Court relied upon a decision in White & Collins v. Minister of Health (1939) 2 KB 838 : 108 LJ KB 768, wherein a question debated was whether the court had jurisdiction to review the finding of administrative authority on a question of fact. The relevant Act enabled the local authority to acquire land compulsorily for housing of working classes. But it was



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expressly provided that no land could be acquired which at the date of compulsory purchase formed part of park, garden or pleasure-ground. An order of compulsory purchase was made which was challenged by the owner contending that the land was a part of park. The Minister directed public inquiry and on the basis of the report submitted, confirmed the order.

Interfering with the finding of the Minister and setting aside the order, the Court of Appeal stated;

The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact; for, unless the land can be held not to be part of a park or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order. In such a case it seems almost self-evident that the Court which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which the existence of the jurisdiction relied upon depends. If this were not so, the right to apply to the Court would be illusory.

[See also Rex v. Shoredich Assessment Committee (1910) 2 KB 859 : 80 LJ KB 185].

45. A question under the Income Tax Act, 1922 arose in Raza Textiles Ltd. v. Income Tax Officer, Rampur MANU/SC/0333/1972 : [1973]87ITR539(SC) . In that case, the ITO directed X to pay certain amount of tax rejecting the contention of X that he was not a non-resident firm. The Tribunal confirmed the order. A single Judge of the High Court of Allahabad held X as non-resident firm and not liable to deduct tax at source. The Division Bench, however, set aside the order observing that "ITO had jurisdiction to decide the question either way. It cannot be said that the Officer assumed jurisdiction by a wrong decision on this question of residence". X approached this Court.

Allowing the appeal and setting aside the order of the Division Bench, this Court stated;



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The Appellate Bench appears to have been under the impression that the Income-tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen.

(Emphasis Supplied)

From the above decisions, it is clear that existence of 'jurisdictional fact' is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of 'jurisdictional fact', it can decide the 'fact in issue' or 'adjudicatory fact'. A wrong decision on 'fact in issue' or on 'adjudicatory fact' would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present.

46. In our opinion, the submission of Mr. Salve is well founded and deserves to be accepted that "concession" under clause (ii) of Sub-section (2) of Section 17 of the Act is a 'jurisdictional fact'. It is only when there is a 'concession' in the matter of rent respecting any accommodation provided by an employer to his employee that the mode, method or manner as to how such concession



can be computed arises. In other words, concession is a 'jurisdictional fact'; method of fixation of amount is 'fact in issue' or 'adjudicatory fact' . If the assessee contends that there is no 'concession', the authority has to decide the said question and record a finding as to whether there is 'concession' and the case is covered by Section 17(2)(ii) of the Act. Only thereafter the authority may proceed to calculate the liability of the assessee under the Rules. In our considered opinion, therefore, in spite of the legal position that Rule 3 is intra vires, valid and is not inconsistent with the provisions of the parent Act under Section 17(2)(ii) of the Act, it is still open to the assessee to contend that there is no 'concession' in the matter of accommodation provided by the employer to the employee and hence the case did not fall within the mischief of Section 17(2)(ii) of the Act.

.....
28. In *D.Senthil Kumar* (supra), a Division Bench of this Court

considered the recovery of sales tax dues in the context of a charge upon the property of a dealer. In that case, it was an auction sale conducted through the Bank. The short question that had been framed was whether the charge created on a property under the TNGST Act was enforceable as against the purchaser of such property. Noting that the expression of 'charge' was not defined under the TNGST Act, they referred to Section 100 of the TP Act and the definition of 'charge' therein as follows:

“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 simply mortgage shall, so far as may be,



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apply to such charge.

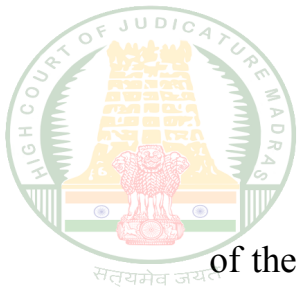
Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to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

29. Even Section 100 of the TP Act would support the position that a charge by the operation of law cannot be enforced against a purchaser, if he or she had no notice of the same unless the requirement of such notice had been waived by law.

30. In *Ahmedabad Municipal Corporation of the City of Ahmedabad V.Haji Abdul Gafur Haji Hussienbhai*³³, the Supreme Court considered whether a transferee of properties, as against which property tax arrears were sought to be enforced by the Municipal Corporation of Ahmedabad, could be imputed with constructive knowledge of charge created as against those properties.

31. The Court rejected the argument holding that while constructive notice was sufficient to satisfy the notice in the proviso to Section 100 of the TP Act, the position whether the transferee had had constructive notice

³³ (1971) 1 SCC 757



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of the charge had to be determined in the facts and circumstances of each case. Hence, there could be no fixed presumption or assumption that the transferee had had constructive notice unless the facts and circumstances established so.

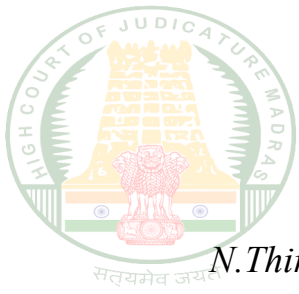
32. In the present cases, the Revenue has not demonstrated, or even averred for that matter, that notice of the pending arrears had been given to the Respondents. The ratio was applied yet again in *State of Karnataka V. Shreyas Papers P. Ltd.*³⁴, which refers to an earlier order of the Division Bench of this Court in *Deputy Commercial Tax Officer V. R.K.Steels*³⁵. In the case of *RK Steels*, where an identical question had been considered by the Court, it was seen that the purchaser of the properties from the default firm had had no notice of the charge over the property, exonerating the purchaser from such a liability.

33. In the facts of the case in *Senthil Kumar* too, the Court noted that no notice of the sale tax arrears of the defaulting assessee had been given to the purchasing company and hence, the liabilities of the defaulting assessee could not be enforced as against such purchasers.

34. A similar conclusion was arrived at in the case of

34 (2006) 144 STC 331

35 (1998) 108 STC 161



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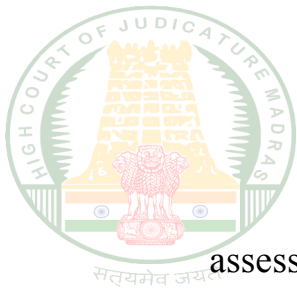
N.Thirumaran (supra), where also after considering the case of *D.Senthil Kumar, Kannamba (P) V. Board of Revenue (C.T.)*³⁶ and *Ahmedabad Municipal Corporation of the City of Ahmedabad* (supra), on facts, the Court held that protection under Section 24A was available to M.Thirumaran as well.

35. As in that case, in the matters before us too, the purchasers have specifically verified the encumbrances prior to purchasing the property, finding no encumbrance created by the Commercial Taxes Department. Hence, the efforts of the purchasers in this regard, and the caution exercised by them are apparent, and we are hard pressed to see what else they could have done to secure their interest in purchasing the properties.

36. In fact, the encumbrance certificates applied for, and obtained by the Respondents at the relevant point in time, have been placed before us and serve to establish in those cases that there were no encumbrances created at the instance of the Revenue. In some cases, there has been no charge registered at all by the Revenue, and in those few cases where the Revenue has created/registered the charge, it has only been post the dates of sale by the present purchasers/respondents.

37. The details of purchasers, periods of assessment, date of

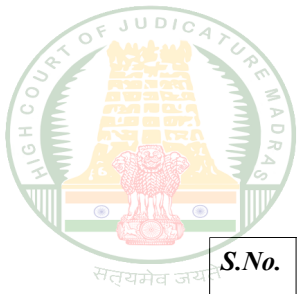
36 (1967) 19 STC 456



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assessment order, dates of sale deed and dates of encumbrances have usefully been provided by the revenue in each case, and are tabulated below:

S.No.	Writ Petition	Assessment Year	Date of Assessment Order	Sale Deed	Encumbrance Certificate
1.	WA.1019/2020 (I.Jeyarajhan v. State)	2009-10 to 2012-13	30.03.2015	27.08.2012	01.09.2015 (01.01.1987 to 25.08.2015)
2.	WA.162/2022 (State v. Sivabagyam)	2003-04 to 2004-05	2003-04 – 19.01.2007 2004-05 – 12.10.2007	05.01.2004	06.05.2009 (Revenue Recovery Proceedings) Form 1 – 16.05.2008 Form 4 – 16.05.2008
3.	W.A.1761/2022 (State v. P.Mohan)	1999-2000	30.11.2001	15.07.2004	(Revenue Recovery Proceedings) Form 1 – 05.03.2002 Form 4 – 09.05.2002 Attachment – 22.02.2002 Letter to Registration Office – 09.04.2002 Auction sale conducted on 11.07.2002 to 25.07.2007
4.	WA.2903/2021 State v. V.Ramyalakshmi	2003-04	27.07.2005	30.3.2012	29.03.2012 (Revenue Recovery Proceedings) Form 4 – 22.09.2015
5.	WA.727/2022 State v. K.Amudha	1993-94	30.03.2000	31.03.2004	21.04.2004 Revenue Recovery



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S.No.	Writ Petition	Assessment Year	Date of Assessment Order	Sale Deed	Encumbrance Certificate
					Proceedings Form 1 – 10.11.2004 Form 4 – 31.01.2005 Gazette Publication for auction sale – 11.09.2006
6.	WA.2912/2021 State v. R.Rajesh	2004-05	15.03.2006	27.11.2006	28.04.2008 Revenue Recovery Proceedings Form 4 - 18.10.2006
7.	WA.293/2022 State v. Tvl.Shyam Fintrade Pvt. Ltd.	1997-98 to 2000-01	TNGST Order: 28.09.2005 CST Order: 17.01.2006	08.09.2007	21.11.2005 Notice issued to dealer 26.11.2008 Revenue Recovery proceedings Form 4
8.	WA.2965/2021 State v. R.Bhagawat Krishna	2005-06 to 2007-08	17.11.2008	02.11.2011	15.02.2012 Revenue Recovery Form 4 – 29.04.2016
9.	WA.708/2022 State v. Karnataka Electrical and Mechanical Systems	1991-92 to 1994-95	19.05.1997 Revised assessment order- 27.08.2008	19.01.2007	Charge created on 19.05.1997
10.	WA.726/2022	1993-94 to 2002-03	31.03.2001 – (1998-99)	02.08.2006	26.03.2008 Letter to Dealer 19.11.2004 Revenue Recovery Proceedings Form 4 – 19.11.2004
11.	WP.18840/2020	2003-04 to 2005-06	31.03.2009	17.06.2010	05.09.2011

38. In both W.A.No.1019 of 2020 and W.A.No.162 of 2022, the



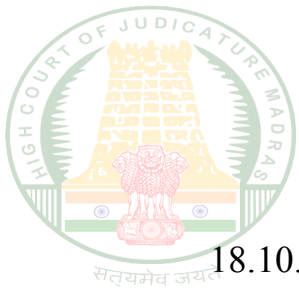
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sales are prior to passing of the assessment orders, i.e., the dates of sale are 27.08.2012 and 05.01.2004 and the orders of assessments are dated 30.03.2015 and 19.01.2007/12.10.2007 respectively. It appears, in the latter case, that the property had only been given as security during registration. Since the sales had transpired prior to the passing of assessment orders, the protection under Section 24A is fully available to the respondents.

39. In W.A.No.1761 of 2022, the purchaser had taken a loan from the LIC Housing Finance and the consideration has been paid by the respondent/purchaser to LIC Housing Finance and the property released only thereafter. Hence, there was a thorough examination, both by LIC Housing Finance and the Respondent of the encumbrances, prior to grant of the housing loan. Admittedly, the encumbrance certificate at the relevant point in time did not reveal creation of charge by the Sales Tax Department.

40. Again, in W.A.No.727 of 2022, no charge has admittedly been registered, and Form 4 has been issued only on 31.01.2005. The date of sale is 31.03.2004, even prior to issuance of Form 4.

41. In W.A.No.2912 of 2021, Form 4 has been issued on



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18.10.2006, and encumbrance has, admittedly, been created by the Sales Tax Department only on 30.10.2009 as reflected by the encumbrance certificate placed on record, whereas, the date of sale is 27.11.2006 even prior thereto.

42. In W.A.No. 727 of 2022 Form 4 has been issued on 31.01.2005, whereas the date of sale is 31.03.2004 prior to the attachment. In any event, no charge has admittedly been registered with the Sub-Registrar.

43. In W.A.No. 2912 of 2021, Form 4 has been issued on 18.10.2006 and encumbrance has admittedly been created by the sales tax department only on 13.10.2009, as reflected by the encumbrance certificate placed on record. The date of sale is 27.11.2006 even prior thereto.

44. In W.A.No.293 of 2022, the property was mortgaged with the Tamil Industrial Investment Corporation (TIIC) which issued a no-due certificate only on 20.02.2007. The assessee was before the Board of Industrial and Financial Reconstruction and had been de-registered only on 05.04.2007 having been declared sick on 23.09.2003. The property had been sold on 08.09.2007 and the encumbrance certificate dated 21.11.2005 does not reflect any charge having been created by the



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Commercial Taxes Department. Form 4 has been issued only on 28.01.2009, long after the sale.

45. In W.A.No.2965 of 2021, the order of assessment was passed for the period 2005-06 on 16.05.2008 and for the period 2006-07 on 17.11.2008. The property was purchased by the Respondent on 02.11.2011 and it was only on 15.02.2012 that the Sales Tax Department has corresponded with the jurisdictional Sub-Registrar for creation of charge. Hence, and admittedly, there was no charge created as on the date of sale.

46. In W.A.No.708 of 2022, the assessment order was passed initially on 19.05.1997, and taken in appeal to the Appellate Assistant Commissioner, who, by order dated 20.03.2007 remanded the matter. A revised assessment order was passed on 27.08.2008. The sale had taken place on 19.01.2007 and admittedly, no encumbrance has been created/registered by the department.

47. In W.A.No.726 of 2022, an order of assessment has been passed on 31.03.2001 for the period 1998 – 99 and a charge created on 26.03.2008, per the say of learned revenue counsel. No document is however produced. However, the sale has been effected on 02.08.2006,



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even prior thereto.

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48. In W.A.No.1019 of 2020, the learned Judge has, in impugned order dated 10.02.2020, rendered a categorical finding at paragraph 8 to the effect that *'the respondent Commercial Tax Department had not taken the trouble of registering the charge as was required under law'*. The State has not filed any appeal as against this factual finding, that has hence become final. The appellant is hence a bonafide purchaser and hence the detailed discussion and conclusions as in the paragraphs supra would equally apply to the appellant in this writ appeal, as well. In such circumstances, we see no necessity to relegate the appellant in W.A.No.1019 of 2020 to a Civil Court.

49. In W.P.No.18840 of 2020, the order of assessment has itself been quashed by an order of this Court dated 06.11.2019 in W.P.Nos.5306 of 2009. Hence, with the quashing of the assessment order in the hands of the assessee Pollachi Sarvodaya Sangh, the demand stands nullified and as a consequence the attachment itself goes. The first respondent in W.P.No.18840 of 2020 is directed to lift the attachment created on the petitioners' property at Ward D Block 3, Survey No.71, Door No.20B, Kabini Chetty Street, Arisipalayam, Salem, forthwith.



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50. In *Sailesh K.Bothra and others V. State of Maharashtra and Others*³⁷, the Bombay High Court has held that even if the defaulters' property was auctioned by a secured creditor, the attachment would continue as a charge upon the property. The only relevance of this judgment as far as present case is concerned is to enable the Revenue to continue their recovery proceedings as against the assessee.

51. In that case, there are categorical findings of the fact that both the purchaser and seller of the property were fully aware that there was a statutory charge created upon the property created by the sales tax department. In such cases, evidently the proviso to section 24A/43 would not come to the rescue of the purchasers.

52. Not so in the present cases, where the facts as we have culled above speak categorically to the effect that no charge had been created by the Department and the clear title to the properties, had been ascertained by the Respondents prior to the sales.

53. In light of the discussion as aforesaid, we are of the considered view that there is no merit in these Writ Appeals filed by the State and the same are dismissed. W.A.No.1019 of 2020 and W.P.No.18840 of 2020 filed by the purchasers are allowed. No costs. Connected Miscellaneous

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Petitions are closed.

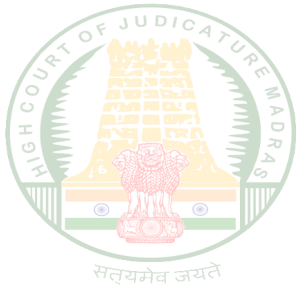
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**[A.S.M., J] [N.S., J]
12.08.2025**

Index: Yes
Speaking Order
Neutral Citation: Yes
Sl

To

The Commercial Tax Officer
Tondiarpet Assessment Circle
Office of the Assistant Commissioner (C.T)
No.19 & 20, Kummalamman Koil Street
Tondiarpet, Chennai-600 081.



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DR. ANITA SUMANTH.,J.
and
N.SENTHILKUMAR.,J.

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W.A.Nos.1019 of 2020 etc. batch

12.08.2025