BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2025

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.18196 of 2025

S.Sivakumar ...Petitioner

Vs.

1.The Principal Commissioner of Income Tax,
Income Tax Department,
Aayakar Bhawan, 121, M.G. Road,
Nungambakkam, Chennai – 600 034.

2.The Tax Recovery Officer - 2,
Income Tax Department,
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai - 625 002.

3.S.Rajendran ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a **Writ of Mandamus**, directing the Respondents 1 and 2 to remove the charge and lift the attachment in respect of the immovable property in S.F.Nos. 463/5, to an extent of 3.34 acres situated at Pallapatti Village, Nilakottai Taluk, Dindigul District, based on the petitioner's representation, dated 17.06.2025.

For Petitioner : Mr.B.Prasanna Vinoth
for M/s.M.Anbarasan

For Respondents : Mr.N.Dilipkumar
Senior Standing Counsel for R1 & R2
Mr.C.M.Arumugam for R3

* * * * *

ORDER

The third respondent is merely the vendor of the petitioner from whom the petitioner purchased the property on 09.06.2011. It appears that the third respondent is an Assessee in default under the provision of the Income Tax Act, 1961, and therefore, the department has taken steps to attach the property in terms of Section 281 of the Income Tax Act, 1961.

2.The learned Counsel appearing for the writ petitioner has submitted that the petitioner is a bonafide purchaser of the property and therefore, the attachment of the property is contrary to law. The learned Counsel for the petitioner has placed reliance on the decision of the judgment of Hon'ble Supreme Court in ***Tax Recovery Officer Vs. Gangadhar Vishwanath Ranade,*** reported in ***1998 235 ITR 188,*** wherein it has been held as under:-

> *"Section 281 declares as void any transfer made by the assessee during the pendency of proceedings under the Act, with the intention to defraud the Revenue. The powers of the Tax Recovery Officer, however, under Rule 11 of the Second Schedule to the Income Tax Act are somewhat different. Under Rule 11(1), where any claim is preferred to or any objection is made to the attachment or sale of any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection. Under Rules 11(4),(5) and (6), it is provided as follows:*

"11. (4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5)Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6)Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute;

3.This Court had an occasion to deal with Section 281 of the Income Tax Act as it stood when the decision was rendered by the Hon'ble Supreme Court and the provision as amended subsequently, in the light of the Rule framed under the Act in Paragraph Nos.29 to 34, in ***K.Elango Vs. Principal Commissioner of Income Tax-6 and 4 others.***

4.This Court in W.P.No.5986 of 2017, in the case of one ***K.Elango Vs. Principal Commissioner of Income Tax-6 and 4 others,*** considered the position in the light of amendment to the above provision of the Income Tax Act, 1961.

5.Considering the same, there shall be a direction to the official respondents 1 and 2 to consider the petitioner's representation for vacating the order of attachment in the light of the discussion in ***K.Elango Vs. Principal Commissioner of Income Tax-6 and 4 others***. This exercise shall be completed preferably within a period of six weeks from the date of receipt of a copy of this order. The petitioner shall be heard before the final orders are passed.

6.Accordingly, this Writ Petition stands disposed of. No costs.

06.08.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR

C.SARAVANAN, J.

RJR

To

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