



W.P(MD)No.24289 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24289 of 2024

and

W.M.P.(MD)Nos.20540 and 20543 of 2024

G.Alagarraj

... Petitioner

Vs.

1.The State Tax Officer,
State Tax Office,
Bodinayakanur,
Bodinayakanur Assessment Circle,
Theni District.

2.The Sub Registrar,
Bodinayakanur Sub Registrar Office,
Bodinayakanur
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent in Na.Ka.2327/1998-A3 dated 18.09.2024 quash the same and consequently direct the 2nd respondent to delete the Encumbrance Certificate entry in 3/2020 dated 23.10.2020 raised in property in S.No.239, Old Ward 12, New Ward 29, 16 Pattalamman Kovil Street, Survey Ward 3, Survey No.239, Old Door No.218, Municipality



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Tax Receipt 14628, New Tax Receipt 8711, Bodinayakanur Municipal Town, Bodinayakanur Division, Bodinayakanur Taluk, Theni District.

For Petitioner : Mr.K.Sathiya Singh

For Respondents : Mr.R.Sureshkumar,
Addl. Government Pleader.

ORDER

Heard both sides.

2.The writ petitioner purchased the petition mentioned property from the legal heirs of one Sambarasuran vide sale deed dated 07.02.2011. It was registered as Document No.836/2011 on the file of the Sub Registrar, Bodinayakanur. It turned out that the said property was already attached by the Sales Tax Department towards tax arrears of Sambarasuran when he was alive. This attachment made by the first respondent was entered in the encumbrance register vide Entry No. 3/2020 dated 23.10.2020. When the petitioner came to know of the same, he represented to the first respondent seeking release of the property from the attachment. The first respondent vide communication



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dated 18.09.2024 informed the petitioner that the property would be brought to public auction and that steps were being taken. Challenging the said communication, this writ petition has been filed.

3.The petitioner's claim is that he is a bonafide purchaser for value without notice of the attachment. The learned counsel invokes the proviso to Section 24-A of the Tamil Nadu General Sales Tax Act, 1959. He relied on the decision of the Hon'ble Division Bench reported in **2018 (2) TMI 1865 (M.Thirumaran Vs. The Commercial Tax Officer)** in support of his contentions and submitted that the impugned memo issued by the first respondent deserves to be quashed.

4.Per contra, the learned Additional Government Pleader for the first respondent submitted that the impugned communication has to be sustained. He questioned the very maintainability of the writ petition. He took me through the contents of the counter-affidavit filed by the first respondent. According to him, the bona fides of the writ petitioner can be tested only before the jurisdictional Civil Court and that no relief can be granted in exercise of jurisdiction under Article 226 of the



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Constitution of India. He placed reliance on the decisions of the Hon'ble Division Bench reported in **2025 (1) CTC 137 (T.Palanisamy Vs. Commercial Tax Officer)** and **2025 (2) CTC 233 (D.K.Sadasivam Vs. Commercial Tax Officer)**. He would add that the attachment of the petition mentioned property was made way back in the year 2005 and that it was also published in the government gazette on 25.01.2006. He would also add that the communication was contemporaneously sent to the registering authority to enter the attachment in the encumbrance register. He submitted that for the negligence on the part of the registration department, the Commercial Tax Department cannot suffer. He would argue that publication in the gazette made in the year 2006 would operate as constructive notice to the world at large.

5.I carefully considered the rival contentions and went through the materials on record. Two issues arise for consideration. The first is whether this writ petition is maintainable. The second is with regard to the scope of the proviso to Section 24-A of the TNGST Act, 1959. Before answering these issues, let me summarize the facts leading to the filing of the writ petition.



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6.One Thiru.Sambarasuran had committed default and was in sales tax arrears to the tune of Rs.12,83,56,600/-. This liability had accrued during the period from 1993-94 to 1997-98 under TNGST Act, 1959 as well as the CST Act, 1956. Assessment orders had been passed. The Commercial Tax Officer, Bodinayakkanur issued distraint order in Form No.1 under the Tamil Nadu Revenue Recovery Act, 1864 on 17.04.2003. Notice of attachment under Section 27 of the Act was issued on 08.08.2005. It was also published in Madurai District Gazette dated 08.10.2005. Steps were taken to bring the property to sale. It appears that the said efforts did not bear fruit.

7.Sambarasuran passed away and from his legal heirs, the petition mentioned property which belonged to the assessee-in-default was purchased by the writ petitioner on 07.02.2011. The petitioner had verified the entries in the encumbrance register and only thereafter, purchased the property. The attachment made by the Commercial Tax Department came to be entered in the encumbrance register only in the year 2020. The question is whether the petitioner can be said to be a bona fide purchaser without notice of the aforesaid assessment proceedings or attachment.



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8. Section 24-A of the TN GST Act, 1959 reads as follows:-

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"24-A Transfers to defraud revenue void :-

Where, during the pendency of any proceeding 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-

(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."

9. The above provision must be read in the light of Section 100 of the Transfer of Property Act, 1882 which states that no charge shall be enforced against any property in the hands of a person to whom such



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property has been transferred for consideration and without notice of the charge. This protection would not be available if anything contrary has been “expressly provided by any law for the time being in force”. In other words, if the particular statute contained provision to the contrary, this benefit cannot be claimed by the innocent purchaser.

10. Section 24A of the TNGST Act, 1959 declares that transfers to defraud revenue are void. But the proviso is to the effect that such transfer shall not be void if it is made for adequate consideration and without notice of the pendency of such proceeding or liability under the Act. The writ petitioner fulfills the first requirement. The transaction was for adequate consideration. It is not the case of the department that adequate consideration did not pass. On the other hand, the accent is more on the notice part. According to the learned AGP, on account of the publication of the attachment notice in the District Gazette on 08.10.2005, the petitioner should be imputed with constructive notice.

11. The Hon'ble Supreme Court in the decision reported in **(2011) 1 SCC 330 (Collector (LA) v. J.Sivaprakasam)** delineated



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the difference between the actual, implied and constructive notice in the following terms :

- "1. When notice is directly served upon a party in a formal manner or when it is received personally by him, there is actual notice.
2. If from the facts it can be inferred that a party knew about the subject-matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.
3. Notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. For example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property effected by registered instruments till the date of his acquisition. Or, where the statute provides for publication of the notification relating to a proposed acquisition of lands in the gazette and newspapers and by causing public notice of the substance of the notification at convenient places in the locality, but does not provide for actual direct notice, then such provision provides for constructive notice; and on fulfilment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition."



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12. Admittedly, the petitioner did not have any actual notice before he purchased the property. Nor had he any implied notice. That leaves me with the question whether the petitioner had constructive or deemed notice. The petitioner can be imputed with such notice only by invoking some legal presumption which can be rebuttable or irrebuttable. There can be presumption of law either by virtue of a statutory provision or settled legal principle.

13. Section 27 of the Tamil Nadu Revenue Recovery Act, 1864 sets out the mode of attachment. It states that attachment shall be effected by affixing a notice to some conspicuous part of the land and notified by public proclamation of the land and by publication of the notice in the district gazette. The question is whether attachment carried out in the said mode would by itself constitute constructive notice. A learned Judge of this Court in the decision reported in **(2009) 2 L.W 962 (Indian Bank v. Commercial Tax Officer)** held that it would so operate. But this decision was reversed by the Hon'ble Division Bench in the decision reported in **(2009) 25 VST 187** on another point. There is a distinction between overruling and reversing. When a



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decision is overruled on a particular point, the decision may be referred to on points not overruled. But when a decision has been reversed, it goes out of the window lock, stock and barrel. Therefore, as on date, there is no judicial postulate to the effect that publication in the gazette would operate as constructive notice. Admittedly, there is no legal provision or rule holding that once an attachment has been made as per Section 27 of the Revenue Recovery Act, it would operate as a notice to any prospective buyer.

14. On the other hand, there is abundant judicial authority for the proposition that entry of the attachment in the encumbrance register maintained by the registration department alone would operate as notice. If there is no such entry, any person who purchases the property after making due enquiries would be deemed as an innocent or bona fide purchaser (***TCS v. CTO, 2012 SCC Online Mad 1127***), (***2018 SCC Online Mad 13921, Gupta & Co v. CTO (DB) & (Rukhmani v. DCTO, 2012 SCC OnLine Mad 3896)***).



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15.In ***M/s.Sri Bakgyam Engineering Corporation by its***

Managing Partner v. The Dy.Commerical Tax Officer (WP No.

37309 of 2002 dated 16.12.2015), His Lordship Hon'ble Mr.Justice

R.Mahadevan (As His Lordship Then Was) held that a purchaser in

normal course would only verify from the registration department as to

whether the property to be purchased has any encumbrance. Unless

the charge is duly registered in the registration department, it would not

be possible for any prospective buyer to know whether there is any

charge over the property, for any arrears of tax or any statutory dues to

be paid to the government or statutory body.

16.Another Hon'ble Division Bench comprising Their Lordships

Mr.Justice M.Sathyanarayanan and Mrs.Justice R.Hemalatha in

M.Thirumaran v. CTO (2018) 2 TMI 865 held as follows :

“9.The only point to be considered in the writ petition is as to whether the writ petitioner is a bona fide purchaser of the property and would be protected from the proceedings under the Revenue Recovery Act, and under Section 24 (A) of the Tamil Nadu General Sales Tax Act, 1959. In the present case, the encumbrance certificate does not reveal the charge created



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over the property and there is nothing to infer that the appellant / writ petitioner and his vendor with an intention to defraud the tax payable to the first respondent colluded with each other and effected transfer of the property. The business conducted by the vendor of the writ petitioner was actually closed on 01.04.2002 and the property had been purchased by the writ petitioner only in the year 2004. Therefore, it cannot be said that he had actual or constructive notice of the charge created over the property for payment of arrears of sales tax in respect of the business conducted by his vendor.

10.A bona fide purchaser takes the property he buys free of all charges of which he has no notice either actual or constructive. He is said to have constructive notice when ordinary prudence or care would have impelled him to undertake an enquiry which would have disclosed a charge. If for instance, the charge is created by a registered document, then the purchaser would be held to have constructive notice of that charge inasmuch as a prudent purchaser would in ordinary course search the Registers before effecting the purchase. In the instant case, the encumbrance certificate did not disclose any charge created over the property. A reading of Section 3 of the Transfer of Property Act, 1882, shows that a person is said to have notice of a fact when he actually knows that fact or when, but for willful abstention from an enquiry or



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search which he ought to have made or gross negligence, he would have known it. This presumption is known as constructive notice.

11.The correctness of a notice of recovery issued to a specific purchaser came up for consideration before the Division Bench of this Court in D.Senthilkumars case, in which it has been held that the appellant therein was a bona fide purchaser for valuable consideration and therefore, he would be covered within the exempted category, as provided under Section 24 (A) of the Act. It is further held in the said judgment that under Section 100 of the Transfer of Property Act, 1882, a charge may not be enforced against a transferee, if he had notice there of, unless by law, the requirement of such notice had been waived.

13.In fact, the Provisions of Section 100 of the Transfer of Property Act was considered by the Honourable Supreme Court in Ahmedabad Municipal Corporation of the City of Ahmedabad Vs. Haji Abdulgafur Haji Hussenhbai reported in (1971) 1 SCC 757 [LQ/SC/1971/193] . In that case, the Ahmedabad Municipal Corporation created a charge over the property of the defaulter though the property was sold in execution of a mortgage decree in Court auction. When the Municipal Corporation purported to exercise the charge over



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the property, the purchaser filed a suit for declaration that he was the owner of the property and that the Municipal tax which fell in arrears cannot be recovered from him by proceeding against his property. The main contention of the Municipal Corporation was that where the law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive notice. This argument was however, rejected by the Honourable Supreme Court. The Court held that, while the constructive notice was sufficient to satisfy the notice as per Proviso to Section 100 of the Transfer of Property Act, whether the transferee had constructive notice of the charge, had got to be determined on the facts and circumstances of the case. The Honourable Supreme Court has also held that it cannot be presumed that the transferee had constructive notice of the charge against the property. In the present case, as already observed, the encumbrance certificate does not reveal the charge created over the property.

14. In the light of the above judgments, it can be seen that even though a charge is created on the properties on the finalisation of the assessment of tax and a demand is raised, the same would not preclude the bona fide purchaser from seeking protection under Section 24 (A) of the Act. The



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specific contention of the appellant / writ petitioner is that prior to the purchase of the property in the year 2004, he had verified the encumbrance details in the Registration Department and finding that there was no encumbrance over the property, he had purchased the same. This would show that the appellant / writ petitioner had made sincere efforts to find out whether there was an encumbrance over the property. A perusal of the encumbrance certificate dated 06.04.2015, reveals that nothing has been mentioned about the charge created over the property. The learned counsel appearing for the first respondent has not averred any mala fides on the part of the appellant / writ petitioner. The first respondent did not also file any materials before this Court to show that steps have been taken by them under the Provisions of the Revenue Recovery Act, against the defaulter from whom the appellant / writ petitioner had purchased the property in the year 2004.”

17.In the case on hand, admittedly, the entry in the encumbrance register was made only in 2020 long after the purchase of the property by the petitioner. Section 24 of the TNGST Act, 1959 states that the tax dues may be recovered as arrear of land revenue. It means that the procedure under the Tamil Nadu Revenue Recovery Act, 1864 has to be followed. Nothing stopped the department from bringing the property



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to sale. But for reasons that are not clear, effective steps were not taken. Section 27 of the Tamil Nadu Revenue Recovery Act, 1864 cannot be construed as a standalone provision. It must be read along with Section 24-A of the TNGST Act, 1959. There is no provision in either TNGST Act or the Tamil Nadu Revenue Recovery Act that if attachment is made in terms of Section 27 of the Revenue Recovery Act, it would operate as constructive notice. Only if such a provision has been engrafted in either of the statutes, the innocent purchaser can be imputed with knowledge and not otherwise.

18. For enforcing a monitory claim, one normally has to avail the common law remedy by filing a civil suit. But a civil litigation can be a lengthy process. That is why, to enforce certain claims, a quicker and speedy remedy is provided by treating such claims as an arrear of land revenue. In that event, the mechanism set out in the Revenue Recovery Act can be resorted to. As far as Tamil Nadu is concerned, there is Act II of 1864 (The Tamil Nadu Revenue Recovery Act, 1864). When a statute provides for a more drastic procedure different from the ordinary procedure, it should not be so harsh or onerous. The



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procedure under the Revenue Recovery Act should also satisfy the principles of reasonableness and fairness. Inspiration can be drawn from Order 21 Rule 58A of CPC (Tamil Nadu Amendment). It reads as follows :

“58-A. Order of attachment to be communicated to the Registering Officer:—Any order of attachment passed under Rule 54 of this Order and any order raising the attachment by removal, determination of release passed under Rules 55, 57 or 58 of this Order, shall be communicated to the Registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such order, is situate.”

This provision was considered in ***Sri Krishna Chit Funds v. R.S.Pillai [2000 (2) CTC 524]***. It was held therein that mere intimation of the attachment to the registering officer would not be sufficient. So long as the attachment order was not entered in the encumbrance register, it would have no effect on the alienation made in favour of an innocent purchaser. Catena of case-laws were cited for coming to such a conclusion by the learned Judge. The said decision was also endorsed by the Hon'ble Division Bench in the decision reported in (***2012) 1 CTC 407 (Humbi Hema Gooda v. TN State Transport Corporation)***).



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19. Section 27 of the Tamil Nadu Revenue Recovery Act, 1864 which sets out the mode of attachment should be applied in the light of Order 21 Rule 58A of CPC particularly because of the Tamil Nadu Amendment made to CPC. What applies to the attachment order passed by a civil court would apply to an attachment order made under Section 27 of the Revenue Recovery Act for the purpose of finding out if the purchaser of the attached property had constructive notice of the attachment. That is why, the Commercial Tax Department in this case also sent a communication to the jurisdictional Registering Officer for making entry in the encumbrance register. The fact that the registering officer failed to give effect to the communication cannot operate to the prejudice of the innocent purchaser, that is, the petitioner herein. The second issue is answered accordingly.

20. There is a cleavage of judicial opinion regarding invocation of writ jurisdiction to claim the benefit under Section 24-A of TNGST Act, 1959. The Hon'ble Division Bench comprising Hon'ble Mr. Justice R. Suresh Kumar and Hon'ble Mr. Justice C. Saravanan in the decision reported in **2025 (1) CTC 137 (T. Palanisamy Vs. Commercial Tax**



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Officer) had held that the purchaser can establish his bona fides and avail the benefit of Proviso to Section 24-A of TNGST Act, 1959 only before the Trial Court and that relief cannot be obtained by filing a writ petition under Article 226. The purchaser has to file a civil suit.

21.The Hon'ble Division Bench comprising of Hon'ble Dr.Justice Anita Sumanth and Hon'ble Mr.Justice G.Arul Murugan in the decision reported in **2025 (2) CTC 233 (D.K.Sadasivam Vs. Commercial Tax Officer)** by placing reliance on an earlier decision reported in **R.Balasubramanian v Additional Deputy Commercial Tax Officer III, Thoothukudi (W.A (MD) No. 130 of 2005** dated **07.02.2008)** had also taken the view that the remedy is before the civil court.

22.Judicial discipline dictates that I follow the aforesaid decisions. I would have done so if I was optionless. An earlier decision of another Hon'ble Division Bench in **2018 (2) TMI 1865 (M.Thirumaran Vs. The Commercial Tax Officer)** had struck a different note. The Hon'ble Lordships recorded the submission of the writ petitioner that in



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view of the decision of the Division Bench in Senthilkumar's case, he should not be relegated to the civil court. That apart, in a number of decisions, relief was given in writ jurisdiction itself when the purchaser succeeded in bringing his case within the ambit of Section 24-A of TNGST Act, 1959. More than anything else, there can never be a wholesale ouster of writ jurisdiction unless there is statutory or constitutional basis. Of course, if there are disputed facts arising for determination, the litigant would be relegated to go before the civil court. But where the facts are evident from the record and there is no factual controversy and it is only a question of applying settled principles, the writ court need not shy away from exercising its jurisdiction.

23. *D.Senthil Kumar v. CTO (2006) 3 L.W 627* is a decision rendered by the First Bench of this Court. The question related to the liability of an auction purchaser towards the arrears of sales tax due under TNGST Act, 1959. The learned Single Judge dismissed the writ petition on the ground that the contention that the petitioner is a bona fide purchaser has to be established only before a civil court by



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adducing proper evidence and not in a writ petition. The decision rendered in ***N.Padma Coffee Works V. CTO (1999) 114 STC 494*** was followed. But the order of the learned Single Judge was reversed and the writ appeal was allowed. Several earlier rulings were cited on the scope of Section 24-A of the Act as well as what is meant by constructive notice.

24.The question as to whether suit alone would lie or relief can be granted in writ jurisdiction depends on the facts of the case. No hard and fast rule can be laid down. The first issue is answered accordingly.

25.In the present case, it is not the case of the first respondent that the petitioner had actual notice of the charge. Nor have they questioned the petitioner's bona fides on any other ground such as collusion with the vendors. No material has been placed to relegate the petitioner to go before the civil court. Since the attachment was not entered in the encumbrance register before the petitioner purchased the property, I conclude that the petitioner did not have constructive notice also. The petitioner had produced the encumbrance certificate obtained



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by him prior to the purchase and the attachment does not find an entry therein. Thus, there are no disputed facts in this case. The petitioner's case falls under the proviso to Section 24-A of the TNGST Act, 1959.

26.In this view of the matter, the impugned order is quashed and the writ petition is allowed. Once an entry has been made, it cannot be deleted. However, its effect can be undone. I declare that the offending entry will not affect the petitioner's title over the petition mentioned property. The registering officer is also directed to register this order so that it is reflected in the encumbrance register. No costs. Consequently, connected miscellaneous petitions are closed.

24.09.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

- 1.The State Tax Officer, State Tax Office,
Bodinayakanur, Bodinayakanur Assessment Circle,
Theni District.
- 2.The Sub Registrar, Bodinayakanur Sub Registrar Office,
Bodinayakanur, Theni District.



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G.R.SWAMINATHAN, J.

ias/SKM

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