IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2016

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THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

WP.No.12756 of 2012
and
M.P.No.2 of 2012

Mr.Ansari ... Petitioner

vs.

1.Commercial Tax Officer,
Koyambedu Assessment Circle,
Chennai-600 107

2.Sub-Registrar,
Ambattur Sub-Registrar Office,
Ambattur, Chennai-600 054 ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records on the file of I respondent in Reference No.3864/1995/A3 dated 28.08.2006, attaching the properties Plot No.4A comprised in Survey No.430 admeasuring 3932 sq.feet situated within Sub-Registration district of Ambattur and quash the same being illegal, invalid, violative of principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar

For Respondents :Mr.S.Kanmani Annamalai,
A.G.P.for R1
Mr.S.Diwakar,Spl.G.P.for R2

ORDER

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the first respondent and Mr.S.Diwakar, learned Special Government Pleader for the second respondent and with the consent of parties, the writ petition itself is taken up for final disposal.

2.The petitioner has filed this writ petition praying for the issuance of a writ of certiorari to quash the attachment notice dated 28.8.2006, issued by the first respondent, attaching the petitioner's property for the Sales Tax due of M/s.Siva Shanmugam Chemicals Pvt. Ltd., Chennai. The undisputed facts are that the said company, namely, M/s.Siva Shanmugam Chemicals Pvt. Ltd., had committed default in payment of the loan amount, which was availed by them from the bankers, as a result of which, the bankers approached the Debts Recovery Tribunal and pursuant to the orders passed by the Debts Recovery Tribunal, the property owned by the company was sold to one Mr.P.Ashok Kumar and the certificate of sale dated 25.1.2005 was issued in favour of the said P.Ashok Kumar, which was registered as Document No.817 of 2005, dated 31.01.2005, on the file of the

Sub-Registrar, Ambattur. The petitioner in turn had purchased the property from the said Mr.P.Ashok Kumar by sale deed dated 21.2.2005, registered as Document No.1644 of 2005, on the file of the Sub-Registrar, Ambattur, executed by the Power Agent of the said P.Ashok Kumar. Much thereafter, in 2006, the first respondent has created an encumbrance in the property. The petitioner be a purchaser for valuable consideration much prior to action being initiated by the first respondent cannot be made to suffer by virtue of the impugned attachment.

3. Admittedly, the property was subject matter of mortgage with the bankers, who were secured creditors and they had brought the property for sale, after long drawn litigation and the petitioner's vendor had purchased the same for valid consideration through the Debts Recovery Tribunal and a certificate of sale was issued in his favour. Therefore, as long as the said certificate of sale has not been cancelled or modified, the first respondent Department cannot have any lien over the property, when admittedly action was initiated by the first respondent only in 2006.

4. At this stage, it would be worthwhile to refer to the decision of the Hon'ble Division Bench of this Court in the case in 1.D.Senthil Kumar 2.C.P.Senthil 3.C.P.Sakthivel vs. 1. The Commercial Tax Officer, Brough Road, Erode 2.The Sub-Registrar, No.1, Karungalpalayam, Erode (2006-3-L.W.627), wherein in an identical set of facts, the order of attachment was set aside. Paragraph No.12 of the judgment is usefully extracted hereunder:

> *"12. In the instant case, the property was sold by public auction on 10.03.2003. The sale was conducted in execution of the Recovery Certificates issued by the Debts Recovery Tribunal for recovery of dues to the City Union Bank. The appellants had paid the entire amount due on 25.3.2003 and the sale was confirmed in their favour on 23.4.2003. There is no indication of any sales tax arrears in the advertisement for auction sale and there was no application from any statutory or public authority seeking to set aside the sale. For the first time, by letter dated 25.6.2004, the Commercial Officer required the second respondent to create an encumbrance with regard to the property and consequently an entry was made in the register in respect of encumbrance of the first respondent. Thus, it is evident that the appellants had no actual notice of the charge prior to the transfer. There is*

also no material to show that the appellants had constructive notice of the charge and no submissions were made by the learned Special Government Pleader on this issue. In the circumstances, we are of the view that the appellants were the purchasers for value without notice for the sales tax arrears of the defaulting company or the consequent charge on the property. Thus, the property in the hands of the appellants was free of the charge and it is not open to the first respondent to enforce the liabilities of the defaulting company in this manner against the appellants."

5. Further, in the decision in the case of Senthil Kumar vs. Assistant Commissioner, Chennai and Others, in W.P.No.9928 of 2009, dated 22.12.2010, the Hon'ble Division Bench, in somewhat identical circumstances, has held as follows:

"17. However in this case, the property was sold under the provision of SARFAESI Act for non-payment of dues to the Bank, the Third Respondent which brought the property for auction through tender-cum-auction sale on 19.5.2008; The Sale Certificate was also issued on 19.5.2008 and possession and also stated to be given to the petitioners. The rights already got accrued to the petitioners in view of the sale under the SARFAESI

Act. The First respondent's communication dated 24.12.2008 to the Third Respondent-Bank reads as follows:

"The Sub-Registrar, Virugambakkam has issued an Encumbrance Certificate on 24.12.2008 with the Commercial Tax Officer as one of the purchaser cannot claim the right on the said property."

The aforesaid communication would show that the Encumbrance (tax arrears) Certificate was only reflected on 24.12.2008. Whereas the Encumbrance Certificate dated 15.5.2008 issued by the Sub-Registrar Office, Virugambakkam did not reflect any encumbrance except the Sale Ded dated 9.6.1998 and no claim of the First Respondent was reflected. The sale was conducted on 19.5.3008 and subsequent only the encumbrance of the First Respondent was made on 24.12.2008. It is clear from Sale Notice dated 20.09.2008 by the First Respondent, the sales tax arrears were due from 1991-92 to 1996-97. However, the petitioners had no notice of charge over the property in question, in spite of their due verification of Encumbrance Certificate dated 15.5.2008. Hence, it has to be held that the petitioners are bona fide purchasers without notice of charge under Section 24(2) of th TNGST Act and the rights accrued to them cannot be *interfered with. For the reasons stated above, the respondents 1 and 2 belatedly could not proceed against the petitioner's property for the arrears of sales tax due of the Company which availed the loan from the Third Respondent-Bank."*

6. In the light of the above, the writ petition is allowed and the impugned attachment is quashed and the second respondent is directed to delete the said entry and make appropriate entries stating that the said attachment has been lifted. The above direction shall be complied with by the second respondent within a period of four weeks from the date on which the petitioner approaches the second respondent by way of representation, accompanied by a copy of this order. No cost. Connected miscellaneous petition is closed.

20.07.2016

msk

Internet:Yes

To
1.Commercial Tax Officer,
Koyambedu Assessment Circle,
Chennai-600 107

2.Sub-Registrar,
Ambattur Sub-Registrar Office,
Ambattur, Chennai-600 054

T.S.SIVAGNANAM,J.

msk

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