

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.28927 of 2012

And

MP No.1 of 2012

G.E.Govindaraj

Petitioner

vs.

1.The Assistant Commissioner (CT),
Arisipalayam Assessment Circle,
Salem.

2.D.Govindarajan

3.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort Saint George,
Chennai-600 009

4.The Principal Secretary/Commissioner of
Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai-600 005 .

(R-3 and R-4 are suo motu impleaded vide
order of Court dated 20.07.2021) ..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the first respondent in his impugned notice in Na.Ka.221/2006/A3 dated 04.10.2012 and quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondent-1 : Mr.P.Nanmaran,
Government Advocate.

ORDER

The writ on hand is filed questioning the validity of the notice issued by the first respondent in proceedings dated 04.10.2012.

2. The petitioner states that as per the impugned order issued by the first respondent, the second respondent Mr.D.Govindarajan is a defaulter and liable to pay the sales tax arrears for the years 2000-2001 and 2001-2002. For the recovery of the above arrears of sales tax due, actions were taken under the Revenue Recovery Act against the petitioner and the subsequent notice issued in the year 2012, is under challenge in the present writ petition.

3. The learned counsel for the petitioner states that he had purchased the property through Sale Deed bearing No.1869/2006 dated 03.04.2006 over an extent of 3017 $\frac{3}{4}$ sq.ft., with building from the second respondent. The second respondent, in fact, purchased the subject property on 23.11.1983 by way of Sale Deed No.2113/1983.

4. In this context, the learned counsel for the petitioner reiterated that the petitioner was a bona fide purchaser and purchased the subject property in the year 2006 itself. The impugned notice was issued after a lapse of about 11 years for the sales tax arrears due and six years after the purchase of the subject property by the petitioner.

5. The petitioner, at the time of execution of sale, paid the sale consideration and on verification of the encumbrance certificate, found that there was no charge created and accordingly, purchased the property. Thus, the interest of the bona fide purchaser is to be protected.

6. It is contended that there was a failure on the part of the first respondent in initiating action to recover the sales tax arrears, within a reasonable period of time. Now after a lapse of six years from the date of purchase of the subject property by the petitioner, impugned notice was issued and therefore, the said notice is liable to be set aside.

7. The learned Government Advocate, appearing on behalf of the first respondent, made a submission that from the year 2006 onwards, several letters were communicated to the second respondent/defaulters and there was no proper response from the second respondent/defaulters. Finally, the first respondent has initiated action under the Revenue Recovery Act and issued notice, directing the petitioner to pay the sales tax arrears, within a period of seven days, failing which the subject property will be attached under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the 'TNGST Act', in short).

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8. This Court is of the considered opinion that the petitioner purchased the subject property on 31.06.2006. The sales tax defaulter has to

pay the arrears of sales tax within a period of 30 days, as contemplated under the provisions of the Act. If the arrears of sales tax is not paid by the defaulter and if no appeal was filed against the order passed by the Original Authority, then the Authority Competent is empowered to initiate action against the defaulter to recover the arrears of sales tax by following the procedures contemplated under the TNGST Act.

9. However, in the present case, no such action was taken. Contrarily, the arrears of sales tax for the years 2000-2001 and 2001-2002, is sought to be recovered by issuing notice to the third party purchaser of the property in the year 2012. Thus, there is a blatant lapse on the part of the Competent Authorities of the Commercial Tax Department in pursuing the matter for recovery of arrears of sales tax.

10. Let us now consider as per Section 24 of the TNGST Act, wherein sub-clause (1) states that “save as otherwise provided for in sub-section(2) of section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this

Act shall be paid in such manner and in such installments, if any and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. The tax under sub-section (2) of section 13 shall be paid without any notice of demand. In default of such payments the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act”.

11. Section 24-A stipulates 'Transfers to defraud revenue void'. Accordingly, “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”.

12. However, Section 24-A further contemplates “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”. Therefore, the sale made for adequate consideration and without notice of pendency of such proceedings, then such sale shall not be void.

13. In the present case, undoubtedly, the second respondent was aware of the proceedings, which were pending before the first respondent. However, he sold the property in the year 2006 probably on the impression that no action was taken by the first respondent for more than six years regarding the sales tax arrears due for the years 2000-2001 and 2001-

2002. Ultimately, the delay caused at the instance of the first respondent-Department is the reason for loss of revenue to the State.

14. Revenue to the State is to be protected. If there is a loss of revenue to the State on account of the lapses, negligence and dereliction on the part of the Competent Authorities, then the Government is duty bound to initiate action against all those erring officials, who all are responsible and accountable for such revenue loss and recover the loss of revenue from those officials after instituting an appropriate action under the Discipline and Appeal Rules and for recovery of loss of revenue.

15. Such a course of action is inevitable. It is in the public domain that large scale and wider allegation of corrupt activities, more specifically, in Department like Commercial Tax Department, are prevailing and, people are lamenting about the corrupt activities in collusion with the traders at large in the State. However, no measures are taken to minimise such corrupt activities of the Commercial Tax Department officials with the traders.

16. The ultimate sufferers on the one end is the common man and the other end is the State revenue. At the cost of the common man and the State revenue, these traders and the officials are not only inactive but not initiating action properly and indulging in corrupt activities. Thus a conjoint and serious actions are required to be taken and in the event of allowing such corrupt activities to continue for a longer period, then the State revenue would suffer, which would impact the implementation of the constitutional principles of equality in economic status and social justice as well as the implementation of various welfare schemes for the benefit of the public.

17. The State revenue, being the backbone of the State's economy, there cannot be any compromise in the implementation of the provisions of the Tax Laws and in the event of any dilution or tolerance towards the inaction and corrupt activities, then the Government is also failing in its duty to uphold the constitutional principles and thus, urgent actions are highly warranted.

18. Common women and men are lamenting and witnessing the corrupt activities of these Commercial Tax Department officials, as they are indulging in demand and acceptance of freebies openly from the business community. Much more freebies and corrupt activities are openly witnessed by the people in general during the festival seasons. It is akin to that of getting mamul by the Police Department officials and this Court dealt with the practice of mamul by the police in a writ petition in the case of **N.Ulagaraj vs. Secretary to Government and Another [pronounced on 05.10.2020 in WP(MD) No.16185 of 2012]**.

19. The evil menace of demand and acceptance of freebies in large scale in a routine manner are causing loss to the State revenue, as these corrupt officials are failing in their duties, to initiate appropriate actions against the illegalities prevailing amongst the traders, businessmen etc. Thus, the higher officials are bound to monitor these aspects effectively and efficiently, so as to control the menace and deal with such officials in a hard manner without showing any misplaced sympathy.

20. Decent amount of salary has been paid to the Government officials. The salary paid by the Government is, undoubtedly, more competitive than that of the salary being offered by the private players. By virtue of Government appointment, the officials are holding a status in the society. Therefore, they are bound to act in the interest of people at large and any failure or illegality must be dealt with strictly in accordance with law.

21. The Government officials are performing the public duties and they play a pivotal role in upholding and achieving the constitutional goals and therefore, there cannot be any compromise in the matter of dealing with such corrupt activities amongst the public servants.

22. This Court is frequently witnessing the cases of this nature, where actions are either not initiated or initiated belatedly allowing the illegality to lapse and allowing the traders to escape from the clutches of law. In these circumstances, painfully the State revenue suffers huge loss.

Revenue loss to the State is the loss to the public at large. The monetary losses are neither compensated nor recovered and therefore, the State is deprived in implementing the public welfare policies in favour of common women and men. Thus, adequate care is to be taken, so as to ensure that the taxes, as applicable, are collected promptly and the officials, who all are not prudent in execution of law, are dealt with mercilessly.

23. The Secretary to Government, Commercial Taxes and Registration Department, Fort Saint George, Chennai-600 009 and the Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai-600 005 are suo motu impleaded as respondents 3 and 4 in this writ petition for a limited purpose of initiating appropriate actions against the erring officials, who all are responsible and accountable for negligence, lapses and dereliction of duty under the Discipline and Appeal Rules and under the Corruption Laws, if required.

24. The High Court, being the custodian of the Constitution, is duty bound to ensure that the constitutional principles are protected for the welfare of the citizen in general and failure of the authorities in this

regard, are to be suitably dealt with. Accordingly, this Court is inclined to pass the following orders:-

(1) The impugned order passed by the first respondent in proceedings Na.Ka.221/2006/A3 dated 04.10.2012 is quashed;

(2) Respondents 3 and 4 are directed to issue suitable orders to all the subordinate authorities across the State of Tamil Nadu to identify the cases where no actions are taken or actions are taken belatedly after efflux of time regarding collection of tax or arrears of tax and initiate appropriate actions against all the officials, who all are responsible and accountable for such lapses, negligence or dereliction of duty. If the misconduct or otherwise is proved, then further actions are to be initiated to recover the loss of State revenue from those officials;

(3) The respondents are directed to coordinate with the Department of Vigilance and Anti Corruption by conducting frequent surprise raids to control the evil menace of corrupt activities of demand and acceptance of bribe or receipt of freebies from the business community across the State of Tamil Nadu. If any such offenses are identified, then all actions, including criminal action, are to be initiated under the relevant

laws;

(4) Respondents 3 and 4 are directed to issue suitable orders to all the Authorities Competent to verify the service records of the officials of the Commercial Tax Department and make a comparison with the actual assets of the family members as well as the declared assets in the service records and if any disproportionality of wealth is identified, all suitable actions are to be initiated under the Service Rules in force;

(5) Respondents 3 and 4 are directed to ensure that all long pending cases regarding State revenue are reviewed periodically on war foot basis and reports are collected and initiate speedy steps to protect the interest of State revenue, as it is the constitutional mandate and to protect the interest of the public at large.

25. With the above directions, the writ petition stands allowed.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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To

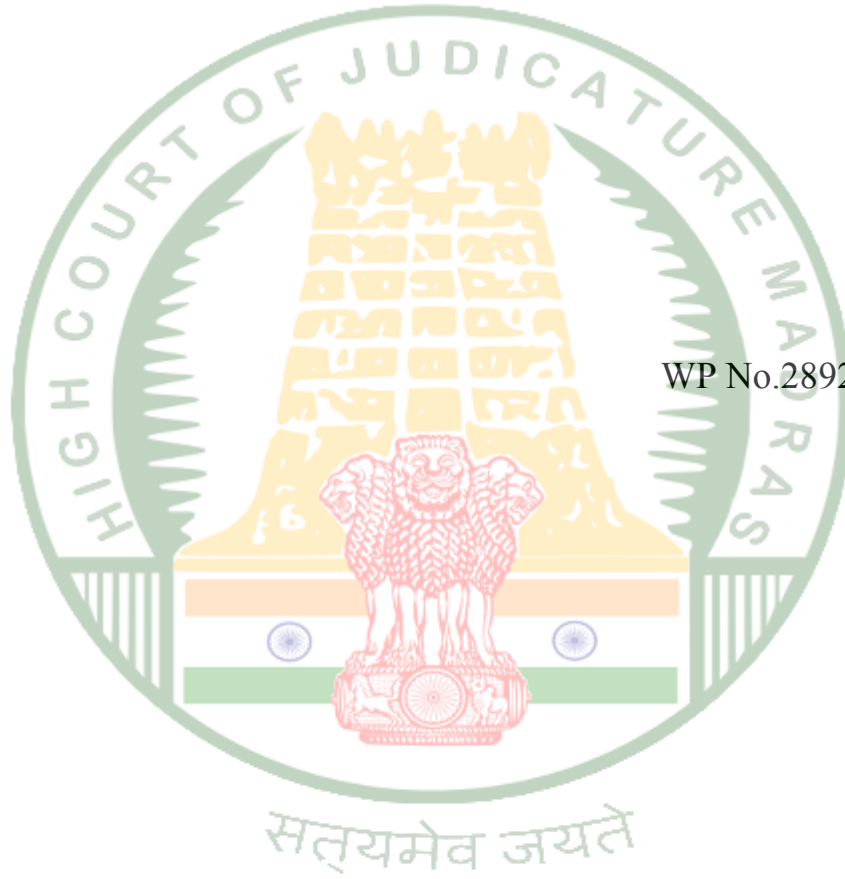
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- Note: 1) **Registry is directed to communicate a copy of this order to R-3 and R-4.**
2) **Registry is directed to make necessary amendments in the cause title of the main writ petition.**

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WP No.28927 of 2012

S.M.SUBRAMANIAM, J.

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WP No.28927 of 2012

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20-07-2021

16/16