

(2008) 07 MAD CK 0125

In the Madras High Court

Case No : Writ Petition No. 5432 of 2008 and M.P. No's. 1 and 2 of 2008

S. Dilli and Others

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Transfer of Property Act, 1882 — Section 100

Citation : (2009) 19 VST 393

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; J. Ganesan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—Though the miscellaneous petition is listed today, by consent of both sides, the writ petition itself is taken up for final disposal.

2. The petitioners are admittedly joint purchasers of the property in a court auction sale conducted by Debts Recovery Tribunal on December 10, 2003. The property is comprised in S. No. 649 measuring 3.2 acres at Pallikka-ranai Village, Saidapet Taluk. The first respondent by his proceedings in R. C. No. 3176/04/A3 dated August 14, 2007 has requested the second respondent to enter an encumbrance in respect of this property in the records. Seeking to quash the said order, the petitioners have come forward with this writ petition.

3. Heard the learned Counsel appearing for the petitioners, learned Counsel for the first respondent and the learned Additional Government Pleader appearing for the second respondent.

4. Admittedly, the property in question was originally owned by a company known as Arrow Pack (P) Ltd. A sum of Rs. 1.45 crores was due from the company towards sales tax under the Tamil Nadu General Sales Tax Act, 1959 and Central Sales Tax Act, 1956 payable to the Commercial Tax Department. But

the said amount was not paid by the said company.

5. In the meanwhile, the Federal Bank of India initiated proceedings against Arrow Pack (P) Ltd., before the Tamil Nadu Debts Recovery Tribunal to recover some amount due to the bank. The suit filed was decreed and the same was executed. In the execution proceedings, the property in question was brought for sale. The sale was conducted by the Tribunal on December 10, 2003 in which the petitioners became the successful bidders. Thereafter, sale deed was also duly executed by the Tribunal in favour of the petitioners on December 24, 2004. The petitioners further claimed that they have been inducted in possession and they are enjoying the said property.

6. While so, the first respondent by his proceedings in R. C. No. 3176/04/A3 dated August 14, 2007, has requested the second respondent to enter encumbrance in the records pertaining to the said property on the ground that the amount due to the Department has a first charge over the said property as per the provisions of the Act. The second respondent has also entered such encumbrance in the records. Now seeking to quash the said order and for a further direction to remove the entries in the records, relating to the encumbrance, the petitioners have come forward with this writ petition.

7. The learned Counsel for the petitioners would rely on a judgment of a Division Bench of this Court in D. Senthil Kumar v. Commercial Tax Officer, Erode [2006] 148 STC 204 wherein an identical question came up for consideration. It was contended before the Division Bench that charge may not be enforced against a transferee if he has had no notice thereof, unless by law, the requirement of such notice has been waived. It is also contended before the Division Bench that there was no notice issued to the petitioners in that case and there was also no materials to infer constructive notice. On those grounds the Division Bench has set aside the impugned order.

8. In paragraph No. 22 of the said judgment, the Division Bench has held as follows:

In the present case, firstly, no provision of law has been cited before us that exempts the requirement of notice of the charge for its enforcement against a transferee who had no notice of the same. It remains to be seen, therefore, if in the facts of the present case, the first respondent had notice-actual or constructive-of the charge. At the outset, in the advertisement/notice dated March 17, 1992, issued by the Corporation, mention is only made of the sale of the defaulting company's assets and there is no indication, whatsoever, of any sales tax arrears. Further, the bid offer made on behalf of the first respondent on June 5, 1992 specifically excludes any statutory liabilities, including sales tax. This offer was accepted by the Corporation on July 15, 1992. Even at that stage, there was no mention of any sales tax arrears. The sale of the assets took place pursuant to the agreement dated August 12, 1992 in which a specific clause was inserted that the first respondent would be liable to pay all property taxes, other

taxes, electricity bills, water taxes and rents from the date of the agreement (i.e. August 12, 1992). For the first time, by letter dated January 8, 1993 of the second appellant to the Mandal Panchayat, Aloor Taluk, the issue of sales tax dues of the defaulting company was brought to the surface. This is further borne out by the correspondence between the first respondent and the Corporation. Thus, it is evident that the first respondent had no actual notice of the charge prior to the transfer. As to whether the first respondent had constructive notice of the charge, no substantive argument on this issue was made, either before the High Court or at any rate before us. Hence, we cannot hold that the first respondent had constructive notice of the charge.

9. Applying the above principles, if the facts of the present case are analysed, admittedly there was no notice issued to the petitioners regarding the charge. There are also no materials available to infer constructive notice. In the counter filed by the respondents, it is nowhere stated that there is either actual notice or constructive notice to the petitioners. In view of the same, as provided u/s 100 of the Transfer of Property Act, and as held by the Division Bench of this Court, the charge cannot be enforced against the petitioners. So the impugned order is liable to be quashed and the encumbrance entries made in the records are liable to be removed.

10. In the result, the writ petition is allowed. The impugned order of the first respondent dated August 14, 2007 is quashed and the second respondent is consequently directed to remove the encumbrances created on the above said property based on the impugned order. No costs. Consequently, connected miscellaneous petition is closed.