



Order dated 23.02.2024
in W.P.No.28774 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2024

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.28774 of 2019
and
W.M.P.No.28519 of 2019

--

C.Sowmyaraga

.. Petitioner

Vs.

1. The Inspector General of Registration,
100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalai Puram,
Chennai-600 028.
2. The Sub-Registrar,
Sriperumbudur,
SH 57, Ramanujar Nagar,
Sriperumbudur, Tamil Nadu-602 105.
3. The Tax Recovery Officer 6,
Uthamar Gandhi Salai,
No.46, Nungambakkam High Road,
Nungambakkam,
Chennai-600 034.
4. Sally Thermoplastic India Limited,
No.229 E, C /2, Third Floor,
Raahat Plaza, No.172, Arcot Road,
Vadapalani, Chennai-600 026.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the second respondent to remove

Page No.1/8



Order dated 23.02.2024
in W.P.No.28774 of 2019

the attachment entry of the third respondent over the immovable property of the petitioner ad-measuring 67 cents, comprised in Survey No.238/4 (65 cents) and 238/5C (02 cents) situated at Mevalurkuppam Village, Sriperumbudur Taluk, Kancheepuram District and consequentially direct the second respondent to make appropriate entries stating that the said attachment has been lifted and allow the petitioner to enjoy the property without any hindrance.

For petitioner : Mr.B.Kannan

For respondents: Mr.Yogesh Kannadasan, Spl.G.P. for RR-1 and 2

Mr.R.S.Balaji, Senior Standing Counsel for Income Tax for R-3

No appearance for R-4

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the second respondent to remove the attachment entry of the third respondent over the immovable property of the petitioner ad-measuring 67 cents, comprised in Survey No.238/4 (65 cents) and 238/5C (02 cents) situated at Mevalurkuppam Village, Sriperumbudur Taluk, Kancheepuram District and consequentially direct the second respondent to make appropriate entries stating that the said attachment has been lifted and allow the petitioner to enjoy the property without any hindrance.

2. Learned counsel for the petitioner submitted that the petitioner had

Page No.2/8



Order dated 23.02.2024
in W.P.No.28774 of 2019

WEB COPY

purchased the property on 02.11.2011 and at that time, there was no encumbrance. Subsequently, attachment was made on 31.03.2013 and without any due process of law, entry was made and also twice, the property was attached, which is against law and he is a bona-fide purchaser of notice of defect in title for valuable consideration. He is not aware of either Income Tax proceedings or the CBI investigation. It is however that the entry was made in the Encumbrance Certificate, which is without following due process of law and also the attachment is subsequent to sale and therefore, the said entry has to be removed.

3. Learned Senior Standing Counsel appearing for the third respondent filed counter affidavit and submitted that the CBI conducted raid on 16.12.2010 and at the request of the Income Tax Department, the third respondent investigated the case on the basis of the information received from the CBI Investigation Wing of the Income Tax Department and summons were issued under Section 131 of the Income Tax Act on 17.02.2011 to the fourth respondent herein. They have completed the verification proceedings and forwarded the details before the concerned Assessing Officer on 26.07.2011. The fourth respondent was raided by the CBI on 16.12.2010 and summons under Section 131 of the Income Tax Act was issued on 17.02.2011. The scrutiny notice under Section 143(2) of the Income Tax Act for the assessment years 2009-2010 and

Page No.3/8



Order dated 23.02.2024
in W.P.No.28774 of 2019

WEB COPY

2010-2011, was issued on 30.09.2011. The fourth respondent transferred the immovable property to the petitioner on 02.11.2011.

4. Therefore, the transfer made by the fourth respondent in favour of the petitioner is after receiving the summons and after initiating the proceedings by the Income Tax Department, and therefore, the alienation made by the fourth respondent in favour of the petitioner itself is void and it will not bind the Income Tax Department. Subsequently, there are also no proceedings and they were already completed. The assessment details of the fourth respondent, viz., M/s.Sally Thermoplastics India Limited for the Assessment Years 2005-06 to 2010-11 are given below:

<i>A.Y.</i>	<i>Notice issued under Section</i>	<i>Date of issue of notice</i>	<i>Date of completion of assessment</i>	<i>Tax</i>	<i>Interest</i>	<i>Total</i>	<i>Remarks</i>
2009-10	143(3)	29.09.2011	30.12.2011	4,35,075/-	1,95,985/-	6,31,060/-	Normal assessment
2010-11	143(2)	29.09.2011	31.03.2013	1,12,221,204/-	40,45,637/-	1,52,66,841/-	-do-
2005-06	148	26.03.2012	30.03.2013	10,23,531/-	11,05,412/-	21,28,943/-	Re-opened Assessment
2006-07	148	26.03.2012	30.03.2013	24,12,847/-	23,16,332/-	47,29,179/-	-do-
2007-08	148	23.03.2012	30.03.2013	14,78,812/-	12,43,615/-	27,22,427/-	-do-
2008-09	148	23.03.2012	30.03.2013	19,16,215/-	14,04,890/-	33,21,105/-	-do-
Total				1,84,87,684/-	1,03,11,871/-	2,87,99,555/-	



Order dated 23.02.2024
in W.P.No.28774 of 2019

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<i>A.Y.</i>	<i>Notice issued u/s</i>	<i>Date of issue of Penalty Notice</i>	<i>Date of penalty order</i>	<i>Penalty levied u/s 271(1)(c)</i>
2009-10	271(1)(c)	30.12.2011	29.06.2012	19,435/-
2010-11	271(1)(c)	31.03.2013	30.09.2013	1,10,34,132/-
2005-06	271(1)(c)	30.03.2013	30.09.2013	15,55,393/-
2006-07	271(1)(c)	30.03.2013	30.09.2013	16,98,280/-
2007-08	271(1)(c)	30.03.2013	30.09.2013	14,51,398/-
2008-09	271(1)(c)	30.03.2013	30.09.2013	12,65,398/-
Total				1,70,24,036/-

It is also stated in the counter affidavit filed by the third respondent that the total demand determined for the above said Assessment Years comes to Rs.4,58,23,591/- and the assessments of the fourth respondent, viz., M/s.Sally Thermoplastics India Limited for all the above assessment years were completed ex-parte. Since the petitioner's sale deed itself is void, the petitioner is not entitled to the relief sought for.

5. The learned Special Government Pleader appearing for the respondents 1 and 2 made his submissions by relying upon the counter affidavit and also prayed that the petitioner is not entitled to the relief sought for.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the fourth respondent is the original owner of the property and there was a complaint against the fourth respondent before the CBI and they have also conducted raid on 16.12.2010 and they have also requested the



Order dated 23.02.2024
in W.P.No.28774 of 2019

WEB COPY

investigation wing of the third respondent to investigate regarding the evasion of the Income Tax. They have also issued summons on 17.02.2011 under Section 131 of the Income Tax Act and issued scrutiny notice under Section 143(2) of the Income Tax for the assessment years 2009-10 and 2010-11 on 30.09.2011. Subsequently, the petitioner purchased the land from the fourth respondent only on 02.11.2011. Later, summons were issued by the third respondent and therefore, the transaction made by the fourth respondent is void. Since the sale made by the fourth respondent in favour of the petitioner is not valid one, the petitioner is not entitled to the relief sought for in the Writ Petition.

8. Hence, for the reasons stated above, the Writ Petition is dismissed.

There shall be no order as to costs. Consequently, W.M.P. is closed.

23.02.2024

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To

1. The Inspector General of Registration,
100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalai Puram,
Chennai-600 028.
2. The Sub-Registrar,
Sriperumbudur,

Page No.6/8



Order dated 23.02.2024
in W.P.No.28774 of 2019

SH 57, Ramanujar Nagar,
Sriperumbudur, Tamil Nadu-602 105.

3. The Tax Recovery Officer 6,
Uthamar Gandhi Salai,
No.46, Nungambakkam High Road,
Nungambakkam,
Chennai-600 034.

P.VELMURUGAN, J

Page No.7/8



WEB COPY



Order dated 23.02.2024
in W.P.No.28774 of 2019

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W.P.No.28774 of 2019

23.02.2024

Page No.8/8