



W.P.(MD) No.16916 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.16916 of 2024
and
W.M.P.(MD) No.14570 of 2024**

S.Geetha

... Petitioner

/vs./

- 1.The State Tax Officer,
State Tax Office,
Madurai Rural (West),
Assessment Circle,
Madurai.
- 2.M/S.Om Namashivaya Paper and Boards,
through its Partner,
S.Senthil Kumar
- 3.M/S.Om Namashivaya Paper and Boards,
through its Partner,
N.Gowri
- 4.M/S.Om Namashivaya Paper and Boards,
through its Partner,
R.Mohan



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5.M/S.Om Namashivaya Paper and Boards,
through its Partner,
R.Nisha Nirmala

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order of attachment and sale dated 27.05.2024 issued by the 1st respondent and quash the same as illegal in respect of the petitioner and her properties.

For Petitioner : Mr.N.S.Karthikeyan

For R1 : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner has challenged the impugned communication dated 27.05.2024 issued under Section 81 of the respective GST Act, 2017.

2.The petitioner has purchased two parcels of land by two separate sale deeds both dated 03.08.2022 for a sum of Rs.2,41,600/- and Rs.1,55,000/-, measuring a total extent of 1.25 acres from the private respondents, partnership firm represented by four partners, namely S.Senthil Kumar, his wife, N.Gowri, R.Mohan and his wife, R.Nisha Nirmala.



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3.It appears that the partnership firm and the partners are in arrears of a sum of Rs.9,81,867/- and the demand order bearing Ref.No.220709200141770 appears to have been served on them on 23.08.2021 and a recovery notice in Ref.No.ZD330821002631Z dated 03.12.2021 for the arrears of tax for the period immediately after the implementation of the respective GST enactment was served on them.

4.It is the case of the petitioner that the impugned order of attachment and notices are in gross violation of principles of natural justice, as no notice was issued to the petitioner before the attachment was made. It is further submitted that the petitioner is a *bona fide* purchaser, as there was no encumbrance reflected at the time of purchase on 03.08.2022.

5.The learned Additional Government Pleader for the first respondent on the other hand would submit that the writ petition is devoid of merits and is liable to be dismissed, as the sale is hit by Section 81 of the respective GST enactment. It is submitted that the petitioner has to prove that the petitioner is a *bona fide*



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purchaser, which cannot be determined in a summary proceeding under Article 226 of the Constitution of India.

6. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the first respondent, this Writ Petition is disposed of without notice on the private respondents and counter of the official respondent, as no adverse orders are proposed to be passed at this stage.

7. Under Section 81 of the respective GST enactment, there is an embargo on the assessee, who is in default from transferring or alienating the assets with a view to defeat the interest of the Government Revenue. The proviso carves out an exception. It is similar to the provisions that prevailed under the erstwhile provisions under the TNVAT Act, 2006 as also TNGST Act, 1959. The petitioner has to establish the *bona fide* in the manner known to law. Mere reliance to encumbrance certificate is not sufficient.



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8. Further, the sale consideration of Rs.3,96,600/- (Rs.2,41,600/- and Rs. 1,55,000/-) for an extent of 1.25 acres of land appears to be far too low. It is therefore for the petitioner to file a suit to establish that the petitioner was a *bona fide* purchaser in accordance with the proviso to Section 81 of the respective GST enactment. Therefore, I do not wish to express any other opinion at this stage. There cannot be any interference with the impugned order of attachment.

9. However, the respondents shall not escalate the issue by bringing the property to the sale provided, the petitioner files a suit for a declaration before the competent Court to establish that the petitioner is a *bona fide* purchaser of land from the private respondents and the purchase was not with an intention to defeat the rights of the Government revenue.

10. Such suit should be filed within a period of 30 days from the date of receipt of a copy of this order. The petitioner may also file an interim order to stay any further coercive measures by the official respondents.



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11. Subject to the above, the first respondent shall keep all the recovery proceedings in abeyance for a period of three months. All further action will be subject to the final outcome of the suit to be filed by the petitioner within the aforesaid period. It is made clear that if the petitioner fails to file a suit as directed above, the first respondent are at liberty to proceed against the petitioner in the manner known to law.

12. With such liberty, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No
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25.07.2024

To

The State Tax Officer,
State Tax Office,
Madurai Rural (West),
Assessment Circle,
Madurai.

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C.SARAVANAN, J.

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