

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2010

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.4343 of 2004

M.Amirdin

... Petitioner

vs.

1. State of Tamil Nadu,
rep. By its Secretary,
Department of Registration,
Fort St. George,
Chennai - 9.

2. Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai - 4.

3. Sub Registrar,
Sirkali, Nagapattinam District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the proceedings made in Na.Ka.No.427/2000 dated 06.02.2004 issued by the 3rd respondent and quash the same as arbitrary and unsustainable and consequently direct the 3rd respondent to register the pending document No.1/2002 on the file of the 3rd respondent and pass such further orders.

For Petitioner : Mr.G.Thangapandian

For Respondents : Mr.B.Vijay, GA

ORDER

The present writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records of the proceedings made in Na.Ka.No.427/2000 dated 06.02.2004 issued by the 3rd respondent and quash the same as arbitrary and unsustainable and consequently direct the 3rd respondent to register the pending document No.1/2002 on the file of the 3rd respondent.

2. The petitioner, M.Amirdin, purchased the property situated in Door No.17, 17A, 17B and in Natham Survey No.43/9 (3014 sqft.) in Thadalam South Street, Thadalan Koil Vattam, Sirkali, by paying the entire sale consideration of Rs.1,40,000/- to one N.S.Arumugam, the owner of the property. The same was presented on 09.01.2002 before the 3rd respondent for registration. But, the 3rd respondent placed the document as pending document No.1/2002 and refused to accept the document for registration for the reason that there is some arrears due to the Income Tax Department by the above said N.S.Arumughan and some of his properties are under attachment. The petitioner explained to the 3rd respondent, Sub Registrar, that there was no attachment of the property, but the same went in vain. Therefore, the petitioner approached the 3rd respondent for registration and the same was not considered favourably by the 3rd respondent. However, in view of the frequent representation and pressure mounted on the 3rd respondent, the 3rd respondent issued the impugned notice Na.Ka.No.427/2000 dated 06.02.2004 and also directed the petitioner to pay a sum of Rs.4,59,809/- to the Income Tax Department and produce 'No Objection Certificate' from the Income Tax Department, failing which, it was informed that the registration would not be done. Aggrieved by the said order, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submits that the petitioner was a bonafide purchaser. Therefore, on 09.01.2002, when the property was purchased from N.S.Arumughan, there was no attachment proceedings nor any proceedings initiated against the property of his vendor N.S.Arumughan. In his further submission, it was also urged that in view of Section 17 of the Registration Act, 1908, the duty of the Registration Officer is to register the document as and when the document is presented. But, the refusal by the 3rd respondent is contrary to Section 17 of the Registration Act, 1908. On that basis, prayed for quashing the impugned order.

4. In reply, the learned Government Advocate appearing for the respondents submits that the Income Tax Department had already initiated proceedings under Section 281 of the Income Tax Act, 1961 in the year 2000 itself against the property purchased by the petitioner by addressing a letter to the vendor of the property, N.S.Arumughan. Subsequently, the petitioner has also written a letter to the 3rd respondent, requesting them not to carryout any registration in respect of the property, which he came to purchase from the vendor. Therefore, it was argued that the petitioner cannot say that he was a bonafide purchaser. Further, the proceedings under Section 281 of the Income Tax Act, 1961 was initiated against the property and, therefore, any registration of the alienated property would become null and void and hence, the Income Tax Department has rightly addressed a letter to the 3rd respondent asking them not to register the petitioner's property on the ground that the department

had already initiated proceedings under Section 281 of the Income Tax Act against the original vendor of the petitioner's property. On that basis, prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. Well before the purchase of the property from the original owner N.S.Arumugham by the petitioner, the Income Tax Department had already initiated proceedings under Section 281 of the Income Tax Act, 1961. The notice dated 28.07.2000 addressed to the petitioner's vendor N.S.Arumugham by the Income Tax Officer, Ward I(2), Kumbakonam, informing that transfer of this property and other properties in favour of any other person, shall be void as against arrears of tax or any other sum payable by N.S.Arumugham and his family members in view of the Section 281 of the Income Tax Act, 1961. The vendor of the petitioner's property in an effort to sell the property, has attempted to alienate the property by way of present sale deed. Therefore, the Income Tax Department, once again after coming to know that the petitioner's vendor is attempting to alienate the property, in which the Income Tax Department is also having a charge towards arrears of income tax, has rightly addressed a letter dated 07.01.2002 directing the 3rd respondent asking it not to carryout any registration. In view of the letter received by the Income Tax Department dated 07.01.2002, the Sub Registrar has declined to register the sale deed presented by the petitioner. Therefore, the contention of the petitioner that there was no charge or attachment as on 09.01.2002, against the said property cannot stand to reason, for the simple reason that the department of Income Tax had already initiated proceedings under Section 281 of the Income Tax Act, 1961, which indicates that a charge had already been made in the year 2000 itself.

6. For the purpose of better understanding, Section 281 of the Income Tax Act, 1961, extracted hereunder:-

Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee 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, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding.

A mere reading of the above, indicates that the document presented by the petitioner cannot be registered. Therefore, this

Court does not find any merit in the present writ petition and accordingly, the present writ petition is liable to be dismissed and the same is dismissed. No Costs.

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

rkm

To

1. The Secretary,
State of Tamil Nadu,
Department of Registration,
Fort St. George,
Chennai - 9.

2. Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai - 4.

3. Sub Registrar,
Sirkali, Nagapattinam District.

1 cc to Government Pleader, Sr.No.21686

1 cc to Mr.G.Thangapandian, Advocate, Sr.No.21305

W.P.No.4343/2004

JSV {CO}
TP/1.6.2010.

सत्यमेव जयते

WEB COPY