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By Nidhi, Advocate



Judgment No.: 167
Dt.:13-08-2024



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Judgment Deals With

Section 81 prohibits an assessee in default from transferring assets to defeat government revenue interests. Thus, the assessee must prove bona-fide purchase beyond mere reliance on an encumbrance certificate.

Section/Rule	Section 81
Authority	Madras High Court
Case Name	S. Geetha Vs The State Tax Officer
Dated	25 th July, 2024
Citation	W.P.(MD) No.16916 of 2024 and W.M.P.(MD) No.14570 of 2024

Brief facts of the case:

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 partnership firm represented by 4 partners.

The partnership firm and the partners were in arrears of a sum of Rs.9,81,867/- and the demand order was served on them on 23.08.2021 and a recovery notice 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.

Contention of the Petitioner:

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. The petitioner is a bona-fide purchaser, as there was no encumbrance reflected at the time of purchase on 03.08.2022.

Contention of the Department:

The sale is hit by Section 81 of the GST enactment. The petitioner has to prove that the petitioner is a bona-fide purchaser, which cannot be determined in a summary proceeding under Article 226 of the Constitution of India.

Findings & Decision of the Court:

Under Section 81, 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 petitioner has to establish the bona-fide in the manner known to law. Mere reliance to encumbrance certificate is not sufficient.

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. Thus, there cannot be any interference with the impugned order of attachment.

However, the Department 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 firm and the purchase was not with an intention to defeat the rights of the Government revenue.

The Department shall keep all the recovery proceedings in abeyance for 3 months. If the petitioner fails to file a suit as directed above, the Department is at liberty to proceed against the petitioner in the manner known to law.