IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1474 OF 2015
WITH
WRIT PETITION NO.1479 OF 2015

Mrs.Neelam Thakur Mulani Petitioner
versus
Union of India and others Respondents

WITH
WRIT PETITION NO.1549 OF 2015

Thakur Naraindas Mulani and another Petitioners
versus
Union of India and others Respondents

Mr.R.V.Desai, Senior Advocate, with Mr.Kunal R. Chaudhari, Mr.R.V.Shetty for Petitioners.

Mr.Pradeep s. Jetly with Mr.Jitendra B. Mishra for Respondents.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 7 December 2015

PC :

This petition under Article 226 of the Constitution of India questions the attachment of the flat which is situate at a co-operative housing society at Mulund, Mumbai.

2. The Petitioner states that she is a citizen of India. She is a legal heir of Late Naraindas Mulani. Flat No.37-B, `D' Wing, 13/14th Floors, Konark Indraprastha Co-operative Housing Society, Jain Mandir Road, Mulund, Mumbai-400 080 (`Subject Flat') has been transferred to her in her capacity as a legal heir and nominee in the records of the housing society. The Respondents are authorities exercising powers under Central Excise Act, 1944 and rules thereunder.

3. The father-in-law of the Petitioner Mr.Naraindas Mulani in his lifetime carried on business in the name and style as M/s.S.G.International. He had earned substantial amount of foreign exchange. The business faced difficulties due to a raid by Central Excise Department in the year 1995. That is how the father-in-law suffered losses resulting into closing down his business activities. The Petitioner disassociates herself from any business activities of her father-in-law and according to her, she is not connected with the activities of M/s.S.G.International.

4. The Petitioner claims that an order passed on 28 November 1997 by the Commissioner of Central Excise, Mumbai-I and notice dated 30 November 2004 results in an apprehension that the Petitioner's rights in the subject flat would be jeopardized. If there are dues, according to the Commissioner of Central Excise from M/s.S.G.International and

that is how the order-in-original dated 28 November 1997 proceeds, then, according to the Petitioner, there are further proceedings in the form of an order passed by the Customs, Excise Gold (Control) Appellate Tribunal, Mumbai. The Petitioner traces the title to the property in paragraphs 7 and 8 of the petition and thereafter states that the share certificate in respect of the subject flat was transferred in her name and she is the rightful owner thereof. However, being a joint family, Flat Nos.37-A and 37-B were combined with the flat of the Petitioner (subject flat). However, for all practical purposes, they are separate and independent units. Flat No.37-A which was adjacent to the Petitioner's subject flat, though owned by her husband Thakur Mulani, that was not transferred in her name. The Petitioner has purchased Flat No.37-C from her own funds and that stands in her name. Flat No.37-B has been transferred to her name in the manner stated above.

5. That is how the Petitioner through out resisted the attachment and consequential sale of the property to recover the dues from the defaulter. She submits that the Government dues cannot be recovered by attaching her flat and that is wrongful and illegal.

6. On several occasions, we had granted adjournments so that the Department and Petitioner can come to some workable solution.

7. Now, it is agreed that the Commissioner of Central Excise can cause a valuation of flat No.37 (combined) to be done from a Government authorized valuer. Thereafter proportionate value of Flat No.37-B would be taken and the same would be paid by the Petitioner to the Department whereupon as far as Petitioner is concerned, the right of the Department to recover any sum from her would not survive.

8. As far as the defaulter and other properties are concerned, the Department of Central Excise can proceed against the same in accordance with law.

9. Needless to state that the arrangement that has been proposed by parties is only qua the Petitioner in this petition and none others can claim any benefit thereof.

10. Further needless to clarify that it will be open for the Commissioner of Central Excise to stipulate the time within which the Petitioner will deposit the amount/proportionate value of the flat referred above. In the event the Petitioner defaults in depositing such amount and within the time stipulated by the Commissioner, then, the Department can proceed in respect of said property of Petitioner and in accordance with law.

11. With the above directions, the Petition is disposed of with no order as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

MST