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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P. (C) No. 251/2005**

MAYA ..... Petitioner

Through: Mr. Akshay Makhija with Mr. C. P. Puri and Mr. Shivi Sanyam, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Naushad Ahmed Khan, ASC with Ms. Divyani Sehgal, Advocate for GNCTD.
Mr. Mahura Patra, Senior Manager, R-2/Indian Bank.
Mr. Anil Sethi, Advocate with Mr. Arun Arora, Advocate for Respondent No.3.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **16.08.2017**

C.M. No. 29040/2017 (restoration)

1. For the reasons stated in the application, the order dated 19th July, 2017 is recalled. The application is disposed of.

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2. This is a writ petition by Ms. Maya, wife of Ashok Kumar, who is a purchaser of Flats No. 106 and 107, each having an area of 121.44 sq. mtrs. in the LSC-cum-Office Complex at Aurobindo Market, Hauz Khas, New Delhi.

3. The Petitioner purchased the said property pursuant to an order passed by Debt Recovery Tribunal-I ('DRT') on 28th May 1999 in certain proceedings initiated against the erstwhile owner of the said property, Byford Leasing Ltd. (Respondent No.3). The Respondent No.3 had taken a loan from the State Bank of Saurashtra, Connaught Place, New Delhi and in the recovery proceedings initiated by the said bank before the DRT, the aforementioned order was passed.

4. Consequently, it is plain that the Petitioner had purchased the property pursuant to the permission given to Respondent No.3 by the DRT to sell the property. On 8th July, 1999 the Respondent No.3 executed an agreement to sell, General Power of Attorney, Special Power of Attorney and Will in favour of the Petitioner and this was duly registered in the office of the Sub-Registrar, Delhi.

5. Subsequently, on 13th July, 2000 a notice was served on the Indian Bank (Respondent No.2) by the Sales Tax Department ('Department') of the Government of NCT of Delhi (Respondent No.1) seeking to attach the rent payable by Indian Bank to Respondent No.3. On 15th July, 2000 the Indian Bank forwarded to the Petitioner the aforementioned warrant of attachment. By a subsequent notice dated 28th July, 2000, the Respondent No.1 sought to attach the property itself.

6. Despite representations made by the Petitioner and reminders sent thereafter to the Respondent No.1, no hearing was afforded to the Petitioner. By a letter dated 24th March, 2003, the Respondent No.1 informed the Petitioner that Rs.2,97,36,158/- was payable to the Department by

Respondent No.3. Referring to Section 68 of the Delhi Sales Tax Act, 1975 ('DST Act'), the Collector of the Department declared the sale of the aforementioned property in favour of the Petitioner to be null and void.

7. It is stated that despite representation again made by the Petitioner against the aforementioned order, no action was taken by the Respondent No.1. It is under these circumstances, the present petition is filed praying that the aforementioned order dated 24th March, 2003 and the attachment orders issued on 13th and 28th July, 2000 should be quashed.

8. While issuing notice in the present petition on 10th January, 2005, the Court directed that the properties in question will not be sold. An interim order was passed on 20th July, 2006 directing the Indian Bank to deposit the arrears of rent on or before 31st August, 2006 which would be kept in the fixed deposit of the Registry and kept renewed from time to time. The interim order dated 10th January, 2005 was made absolute during the pendency of the writ petition.

9. The Court has heard the learned counsel for the parties. The short question is whether the sale of the property in question in favour of the Petitioner could have been declared by the Collector of the Department to be null and void under Section 68 of the DST Act. The said provision reads as under:

> "**Transfer during pendency of proceedings void**:- where, during the pendency of any proceeding under this Act, any person creates a charge on or parts with the possession by way of sale, mortgage, gift or exchange of 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 such person as a result of the completion of the said proceedings."

10. As far as the Petitioner is concerned, she is a bonafide purchaser of the property in question. The purchase was pursuant to an order passed by the DRT-I which permitted Respondent No.3 to sell the property by private arrangement. The sale documents were duly registered with the Sub-Registrar, Delhi. The Petitioner being a bonafide purchaser and without previous notice of any arrears of sales tax dues owed to the Department by Respondent No.3, cannot be deprived of her valuable property. If she had purchased the property with due notice of the pending sales tax proceedings, and had colluded with Respondent No.3 in defeating the interest of the Department, it would have been a different matter. These aspects were obviously not considered by the Collector of the Department while passing the order dated 28th March, 2003. The sale of the property in favour of the Petitioner having taken place more than a year prior to the attachment orders obviously rendered the attachment orders infructuous and could not have been proceeded with.

11. The Petitioner cannot be made responsible for the sales tax dues of Respondent No.3. The property sought to be attached did not on the date of such attachment belong to Respondent No.3. Therefore, the said property could not have been proceeded against to recover the arrears of sales tax owed by Respondent No.3.

12. For all the aforementioned reasons, the Court quashes the attachment orders dated 13th and 28th July, 2000 issued by the Department as well as the subsequent order dated 24th March, 2003 passed by the Collector of the Department by which the sale of the property in question in favour of the Petitioner was declared null and void. The writ petition is allowed in the above terms but with no order as to costs.

13. The amount deposited in the Court together with the interest accrued thereon will be released forthwith to the Petitioner upon proper identification. Needless to mention that it is open to the Respondent No.1 to proceed to recover the sales tax dues from Respondent No.3 in accordance with law.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 16, 2017
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