NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 24/01/2019

Order delivered on: 26/02/2019

WP No. 1672 of 2001

- M.P. Dravya Minerals and Smelting Ltd. A Company incorporated under companies Act To its Director Nilesh Mehta S/o Late N.D. Mehta,aged 35 years. R/o Plot No.5, Urla Industrial Area, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. The State of Chhattisgarh through Secretary, Department of Revenue Mantralay, Raipur, Chhattisgarh.
2. Dy. Labour Commissioner, Raipur, Balashram Building, Near Kacheri Chowk, Raipur, Chhattisgarh.
3. Collector, Raipur.
4. Naib Tahsildar, Dharsiva, District-Raipur.

---- Respondent

For the Petitioner : Shri Animesh Verma, Advocate.
For the Respondent/State : Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

26.02.2019

Heard.

1. This petition has been brought under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus certiorari and other appropriate writs.
2. Learned counsel for the petitioner submits, that petitioner had purchased a manufacturing unit from the Dravya Industrial Chemicals Ltd. by a sale-deed dated 16.12.1998. The said property has been attached by respondents No.3 & 4 for recovering of certain dues with respect to wages of the employees of the vendor company. The DICL

had earlier made purchase of 2 plots namely-Plot No.5 and Plot no.11, out of which the petitioner has purchased only one the Plot No.5, and he has invested huge amount in developing the same and this property did not carry any charge or any encumbrance contractual or statutory liabilities at the time of such transfer. The recovery proceedings initiated by respondent No.2 against the DICL has been challenged and the petition is pending before the High Court, therefore, the attachment of the properties is uncalled for against this petitioner, hence, relief be granted accordingly.

3. In reply, the respondents have raised preliminary objection that the property in question did not entirely belonged to DICL, it was a joint venture property of DICL and M.P. State Mining Corporation known as M.P. Dravya Mining Corporation Ltd. and DICL had no authority to transfer the same. Therefore, the sale so made to M.P. Dravya Mining Smelting Ltd. is unauthorized and illegal, as no consent was obtained from the joint venture partner. It is denied that the property was free from encumbrances. In additional pleading it is submitted that the DICL and M.P. Dravya Mining Smelting Limited belonged to group of HEMCO owned by Shri D.M. Patel, who had been indulged in illegal activities and has defrauded Rs.1200/- crores of the Indian banks and Rs.900/- crores from credit notes, regarding which a CBI inquiry has been initiated. It is also submitted that the petitioner M.P. Dravya Mining Smelting is the same company created with intent to defraud the creditors. The know how for the JVC was to be promided by Bhabha Atomic Research Centre (in short 'BARC'), therefore, this property could not have been transfered without the prior approval and

concurrence of BARC, therefore, the petition is not maintainable which may be dismissed.

4. I have heard learned counsel for the parties and perused the documents.

5. On perusal of the Annexure-P7, it has appeared that M.P. State Mining Corporation Limited had parted with possession of property in favor of M/s DICL by a sale-deed dated 16th August, 1995, therefore, the first objection raised that the property in question was joint property of M.P. State Mining Corporation and DICL does not find any support. Further, no such documentary evidence has been produced by the respondent side to establish that BARC had any interest in the same property and the consent and concurrence of BARC was also necessary for the transfer of the same. Therefore, the objection raised on this point is unsustainable.

6. The ground raised in the petition, that the property was free from encumbrances when it was transfered, needed to be challenged by the respondent side by pleading with clarity that it was petitioner company that had liabilities for which the property was needed to be attached. Sale-deed dated 16.12.1998 in clause-4 clearly makes statement that property hereby sold is free from all encumbrances. It may be so that DICL might be having liabilities, but the same was in the knowledge of this petitioner company, has to be mentioned in the pleadings and have to be supported with proof documentary or otherwise. Further, the statement and pleading of the respondents that petitioner is a fake company belonging to HEMCO group is further not established with any proof in support of the same, therefore, no

reason can be found with the action taken by the respondent No.3 & 4 against the petitioner by attaching the property belonging to him on 2.7.2001 whereas the transfer of property had already been made on 16.12.1998, hence, without there being any justification for the attachment proceedings, I feel inclined to allow this petition.

7. Accordingly, the petition is allowed. The impugned order of attachment passed by respondent No.4 is hereby quashed.

8. The petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha