HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION Nos.24731, 24736 AND 24833 OF 2017

COMMON ORDER: *(per V. Ramasubramanian, J)*

All these three Writ Petitions impugn the orders of attachment passed by the Tax Recovery Officer in terms of Rules under the Second Schedule to the Income Tax Act, 1961 (for short 'Act, 1961'). While the first writ petition is filed by the purchasers of individual plots, the other two writ petitions are filed by the landlords, on whose properties, residential plots were developed by the assessee in default, who is arrayed as 6th respondent, in all the three writ petitions.

2. Heard Sri B. Chandrasen Reddy, learned counsel appearing for the petitioners and Ms. K. Mamatha, learned senior standing counsel appearing for the respondents.

3. The case of the petitioners in the first writ petition is that they are the *bona fide* purchasers of individual house sites, located in a layout promoted by a Company, viz., M/s. 21st Century Investments and Properties Private Limited, which is arrayed as 6th respondent in all three writ petitions. It appears that the house sites were developed in a land that belonged to certain individuals, who are the petitioners in the second and third writ petitions. The development activity alone was carried out by the 6th respondent.

4. It appears that the 6th respondent committed default in payment of the tax dues. As per the counter affidavit filed by the Tax Recovery Officer, assessment proceedings were initiated against the 6th respondent under Section 153C of the Income Tax Act, 1961, for the assessment years 2003-04 to 2008-09. Pending assessment proceedings, the 2nd respondent viz., the Assistant Commissioner of Income Tax, Central Circle - I, ordered the attachment of the properties that were the subject matter of the development agreement that the 6th respondent had with the petitioners in the second and third writ petitions. The order of attachment was passed on 07.06.2010 in exercise of the power conferred by Section 281B of the Act, 1961.

5. Pursuant to the order of attachment passed on 07.06.2010, letters were issued to the Sub-Registrar, Quthbullapur under Section 22-A of the Registration Act, 1908, directing him not to register the properties covered by the order of attachment. Aggrieved by the said action, the petitioners came up with the above writ petitions.

6. After notices were ordered in the writ petitions, the department came up with a counter pointing out that the assessment proceedings initiated against the 6th respondent culminated in orders of assessment passed on 30.12.2010, giving rise to a total tax demand to the tune of Rs.9,52,94,498/-. This amount became unpaid and hence a certificate in T.R.C. No.248, dated 24.08.2011, was issued. Pursuant to the same, the Tax Recovery Officer - I, issued orders, dated 07.10.2011, under Rule 48 of the Second Schedule to the Act, 1961, prohibiting the defaulter from transferring or charging the

property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

7. In the light of the stand taken by the department in the counter affidavit, the petitioners sought amendment of the prayers in the writ petitions. The applications for amendment were allowed and the reliefs that the petitioners now seek in their writ petitions, is to *set aside* the orders of attachment dated 7.10.2011 passed under Rule 48 of the Second Schedule.

8. Insofar as the challenge to the orders dated 07.10.2011 passed under Rule-48 is concerned, the main contention of the petitioners is that neither on the date of the provisional order of the attachment nor on the date of order of attachment passed under Rule 48, was the sixth respondent the owner of the property and that therefore the orders of attachment and the consequent directions issued under Section 22-A of the Registration Act, 1908 were null and void.

9. Before going into the said question, it must be pointed out that under Rule 68-B (1) of the Second Schedule to the Act, 1961, no sale of immovable property can be made after the expiry of three years from the end of the financial year in which the order giving rise to a payment of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached. The period of three years from the date of the order of attachment had already passed. The properties attached were not brought to sale

within three years. Therefore, the orders of attachment dated 07.10.2011, have lost their potency.

10. In addition, the counter proceeds on the footing that what was ordered to be attached was the property that was the subject matter of development agreement. In other words, whatever was the subsisting interest that the sixth respondent had on the date of the order of the attachment alone could be the subject matter of attachment. The petitioners in the first writ petition appear to have purchased the individual plots, even before the provisional order of attachment was passed.

11. Therefore on both grounds viz., (a) that under Rule 68-B (1), no further steps were taken within three years and (b) that on the date of order of attachment, the petitioners in the first writ petition had already purchased the properties, the petitioners are entitled to succeed.

12. Accordingly, all the writ petitions are allowed. Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

February 04, 2019
gkv/Mgr