*JPP*

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***
***APPELLATE CIVIL JURISDICTION***

***WRIT PETITION NO. 6048 OF 2019***

Satish D. Sanghavi … Petitioner

V/s.

The State of Maharashtra through
Govt. Pleader, High Court and Ors. ... Respondents

Mr. Prakash Shah a/w. Mr. Jas Sanghavi i/b. PDS Legal for the Petitioner

Mr. V.A. Sonpal, Spl. Counsel a/w. Ms. Shruti Vyas 'B' Panel Advocate for Respondents 1 to 3

***CORAM : NITIN JAMDAR &***
***M.S. KARNIK, JJ.***

***DATE : 16 JANUARY 2020.***

***P.C.*** :-

Heard learned Counsel for the parties.

2. The Petitioner has challenged the notices dated 10 October 2018 and 15 November 2018 issued by the Respondent No.2 – Commissioner of Sales Tax.

3. It is the case of the Petitioner that the Petitioner was a director of a private limited company known as Twin City Organics

Pvt. Ltd. According to the Petitioner, the said Pvt. Ltd. Company was declared as a Sick Company and a Scheme of Rehabilitation was formulated by the BIFR. It is the further contention of the Petitioner that from 30 July 2003 the Petitioner ceased to be the Director of the Company and was not aware of the position in the company. A notice came to be issued to the Petitioner as the Director of Twin City Organics Pvt. Ltd. wherein details were given of outstanding dues of Sales Tax. The dues related for a period 1986 to 1995 and included dues under the Bombay Sales Tax Act and Central Sales Tax Act were amounting to Rs.30201888/-. It was stated in the notice that for non payment of the said amount, action would be taken under Section 38B of the Bombay Sales Tax Act, 1959 and the Maharashtra Land Revenue Code, 1966 and also under Section 9 of Central Sales Tax Act, 1956. Further, a communication was addressed by the Department of Sales Tax to the Chairman of the Housing Society where the Petitioner has a residential flat. By this letter, a Chairman of the Society was directed not to issue No Objection Certificate for transfer or sale.

4. It is the contention of the Petitioner that there is no provision under the Bombay Sales Tax Act for recovery of the dues of the company from the Director. As regard the Central Sales Tax Act are concerned, it is the contention of the Petitioner that representations have already been made to demonstrate how the dues of the private limited company remained unpaid because of the

winding of the company and how the Petitioner is not liable to pay the same. It is also the contention of the Petitioner that there is no such provision of attachment of the property.

5. A reply affidavit has been filed and the position is also explained by the learned Counsel for the Respondents. It is stated that the notice addressed to the Chairman of the Housing Society is not an attachment notice *per se* but since enquiry is contemplated wherein it will be determined whether the Petitioner is liable to pay the dues, a letter is issued to the Housing Society not to issue No Objection. It is also stated by the learned Counsel for the Respondents that the notice dated 10 October 2018 is not a recovery notice but is in the nature of show cause and the liability of the Petitioner, if any, will be determined after the Petitioner is given an opportunity. He submitted that this enquiry would take period of three months to complete.

6. Under Section 18 of the Central Sales Tax Act burden is placed upon a director to show that non-recovery cannot be attributed to him for his gross negligence, misfeasance or breach of duty. The notices state that the dues of the company have remained unpaid. The Petitioner is not in a position to controvert this assertion as according to the Petitioner, he was not aware of the position after he ceased to be the director. Therefore, we have to go by the case of the Respondents that the dues of the private limited

company regarding sales tax have remained unpaid. Whether the non-recovery can be attributed to the Petitioner will be determined in the enquiry which the Respondents have stated will complete within three months.

7. The Petitioner has invoked writ jurisdiction of this Court. We are of the opinion that there is no warrant to lift the embargo placed by the letter dated 15.11.2018 regarding non-issuance of No Objection Certificate. We had called upon the Petitioner whether the Petitioner would make the statement to that effect, however the Petitioner states that there are co-owner of the property. As regard the contention of the learned Counsel for the Petitioner that there is no liability arises under the Bombay Sales Tax Act for lack of statutory provision since the enquiry on that aspect is also contemplated, the Petitioner can put forth all its submissions in the said enquiry.

8. In these circumstances, no interference is warranted in the writ jurisdiction. The Writ Petition is accordingly disposed of.

9. All contentions of the Petitioner raised in this Petition are open to the Petitioner to contend in the enquiry and if the decision of the enquiry goes against the Petitioner.

**M.S. KARNIK, J.** **NITIN JAMDAR, J.**