IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15195 OF 2022

Subhash Samudaik Sahakari Shetaki Sangh Ltd. **...Petitioner**

Versus

The Union of India & Ors. **...Respondent**

Dr. Ranjit Thorat, Senior Advocate, i/b. Mr. Pankaj Das, for Petitioner.
Mr. Suresh Kumar, for Respondents-Revenue.
Mr. Rajesh Datar i/b. Ashwin Pimpale, for Respondent No.5.
Mr. Linesh N. Pathak, ACIT, Appropriate Authority, Ahmadabad is present in Court.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 13th December 2023

PC:-

1. Pursuant to our order dated 8th December 2023, Mr. Pathak, who is the Additional Commissioner of Income Tax, appropriate authority, Ahmadabad is present in Court. Mr. Suresh Kumar, on instructions from Mr. Pathak, states that the Department had initially paid Rs.39 Lakhs when it took possession of the property under Section 269UD of the Income Tax Act, 1961 ("**the Act**") to Respondent No.4 and that amount has also been returned to the Department by Respondent No.4. Mr. Suresh Kumar expresses apprehension, on instructions, that Respondent No.4 should not come and state that the property should be handed to Respondent No.4 and should not have been handed over to Petitioner.

2. Mr. Datar supports that the possession of the property was taken by the Income Tax Department from Respondent No.5 and, therefore, even if Respondent No.4 has made the payment, possession should be handed back to Respondent No.5 and when Respondent No.5 has given its no objection to property being returned to Petitioner, the Income Tax Department should hand over the possession of the property to Petitioner.

3. Dr. Thorat states that Respondent No.4 is not traceable. Dr. Thorat states that attempts were made to serve the Petition on Respondent No.4 at two addresses, namely, G1, Ground Floor, Fort Chamber 35, New Marine Lines, Mumbai 400 020 and 205, Marine Chamber, New Marine Lines, Mumbai 400 020 and the packets have come back undelivered with the endorsement ‘left’. Dr. Thorat states that the address given in the cause title being 929, Furguson College Road, Pune 411 004 was the address when Respondent No.4 was previously known as M/s. Mantri Oswal Housing Company Pvt. Ltd. and after it became Indraprastha Pvt. Ltd., the address was of Bombay. Dr. Thorat states that the Bombay address was given in the cause title of another Petition that was filed by Respondent No.4 and that Petition has been disposed. Within one week Dr. Thorat undertakes to file affidavit of service upon Respondent No.4 with all these details.

4. The Court Master took an extract of the Master Data of Respondent No.4 from the website of Ministry of Corporate Affairs. It is taken on record and marked X for identification. This shows the registered address as ‘205, Marine Chamber, 43, New Marine Lines, Mumbai City, Mumbai, Maharashtra, India 400 020. This is one of the address on which Petitioner has dispatched a copy of Petition and the packet has been returned by the Postal Authority with the endorsement ‘left’.

5. Mr. Suresh Kumar states that the Department had also made an attempt to contact Respondent No.4 at the registered address which is mentioned in the Ministry of Corporate Affairs website and those packets were returned undelivered. Mr. Suresh Kumar states that communication wad addressed in view of an order dated 2nd February 2012 read with order dated 4th April 2012 in Writ Petition No.1889 of 1995 whereby Department was initially directed to hand over possession to Respondent No.4. Dr. Thorat states that this order has been recalled on an application that was made by the Income Tax Department itself and a copy of that order dated 4th August 2014 is at Exhibit ‘I’ to the Petition. Mr. Suresh Kumar states that even email sent to Respondent No.4 were not responded.

6. In the circumstances, we see no impediment for Department handing over the property to Petitioner.

7. Mr. Suresh Kumar, on instructions, from Mr. Pathak states that the property will be handed over by following due process by 3rd January 2024.

8. Stand over to 3rd January 2024, for direction.

(DR. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**