

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.1801 of 2023 (O&M)
Date of decision: 24.05.2023**

Apika Jain

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Rakesh Bhatia, Advocate,
for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

Mr. Neeraj Khanna, Advocate,
for respondent No.4.

Ritu Bahri, J.

1. Petitioner is seeking a writ in the nature of mandamus directing respondent Nos.2 and 3 to release the personal property of the petitioner, measuring 4 Kanals 4 Marlas, Khewat No.172, Khatauni No.234, Khasra No.8//25 (8-4) kita 1 to the extent of 37261/72324 (2557 sq. yards), situated at village Chajpur Kalan, Tehsil Bapoli, District Panipat, from attachment, which was attached vide roznamcha dated 22.10.2016 (Annexure P-6) given by respondent No.3.

2. Brief facts of the case, as per petitioner, are that she (petitioner) is proprietor of M/s Paras Nath Enterprises, 462, New Grain Market, Karnal

and is doing the trading of rice bran and rice. The business premises, which

are being used as godown, measuring 2557 sq. yards, were purchased by the petitioner from one Subhash Jain-respondent No.4, resident of Muzaffarnagar (U.P.) vide registered sale deed dated 17.12.2015. Earlier, the said godown was given on rent to M/s Shankar Industries by respondent No.4, who was promoter of Shanti Chemsteel (P) Ltd. (its unit was Shankar Industries) and he was having 1000 shares of Shanti Chem Steel (P) Ltd. He was neither a director nor partner of any of the firms. This property was purchased by Subhash Jain in his personal capacity in the year 2010 vide registered sale deeds (Annexures P-1 and P-2). The same property was purchased by the petitioner vide sale deed dated 17.12.2015 (Annexure P-3).

3. On 17.01.2023, when petitioner approached Subhash Jain-respondent No.4 for issuance of certified copy of Jamabandi for the year 2019-20 (Annexure P-7), she came to know that respondent No.3, vide roznamcha dated 22.10.2016 (Annexure P-6), had attached the property for want of payment of arrears of tax from M/s Shankar Industries. As per petitioner, at the time of purchase of said godown from respondent No.4, the same was free from any encumbrances. However, after more than 10 months, respondent Nos.2 and 3 had attached the property on 22.10.2016.

4. Upon notice, initially, respondent Nos. 1 and 2 filed their written statement dated 10.04.2023. Respondent No.3 filed his separate written statement dated 10.04.2023. Later on, amended written statement dated 09.05.2023 was filed on behalf of respondent Nos.1 and 2, stating therein that the department has no concern with the present petitioner as neither she is partner nor director of the firm-M/s Shankar Industries, Panipat. It is further stated that Mr. Subhash Jain, whose property has been attached, is silent and is not trying to get it released. Earlier, a petition i.e. CWP-25751-

2019 was filed by Mr. Sachin Jain, partner/Director of M/s Shankar Industries, wherein proceedings against the individual partner were stayed. The said petition was not filed by the firm. During the pendency of said litigation on 28.01.2020, learned State counsel had specifically conceded that recovery notices could not be executed against the petitioner (therein) in his private capacity only on the ground that he was a Director in the defaulting company.

5. Learned counsel for the petitioner has referred to the judgments passed in **Narinder Singh vs. Union of India and others**, CWP No.27217 of 2015 (decided on 14.02.2019), **Krishan Kumar vs. Union of India and another**, 2015 (66) Rcr (Civil) 853, **Arun Kapoor Vs. Assistant Collector and another**, 2002 Sales Tax Cases (Vol. 128) 339 and **The Ashoka Brick Kiln Co-operative Industrial Society Ltd., Faridabad vs. State of Punjab and another**, 1969 Sales Tax Cases (Vol. XXIII) 43, on the proposition that the Director/partners in their private capacity are not liable to discharge the liability of the company.

6. Learned counsel for the petitioner has further referred to the certificate dated 11.05.2023 issued by the Garg & Associates and payment receipt in respect of M/s Shanti Chemsteel Private Limited, which are taken on record as Annexure A-1 (colly.). A perusal of these documents shows that Subhash Jain son of Sumat Prashad Jain was never appointed as a Director of the said company since its incorporation. He has further stated that the petitioner is residing separately and has no cordial relations with Subhash Jain, from whom she has purchased the property in question. She was not the Director/partner of M/s Shankar Industries, Panipat, against whom the recovery proceedings have been initiated.

7. In the amended written statement filed by respondent Nos. 1 and 2, it has been highlighted that the total outstanding amount against M/s Shankar Industries, Panipat, was to the tune of Rs.2,05,15,644/-. Copies of the assessment orders for the years 2010-11, 2011-12 and 2012-13 have been attached as Annexure R-2/1. Vide orders dated 20.10.2015 and 16.03.2017 (Annexure R-2/2), the above said outstanding amount has been declared as arrears under the Punjab Land Revenue Act, 1887. On 10.12.2012, 05.02.2016 and 23.05.2016, the assessing authority wrote letters to the Tehsildar, Panipat-respondent No.3 with a request not to execute any sale deed/registration deed in respect of the land and building owned by the said firm i.e. M/s Shankar Industries, Panipat. Thereafter, recovery certificate was issued and the District Magistrate, Muzaffarnagar (U.P.) was requested to recover the outstanding dues against M/s Shankar Industries, Panipat.

8. One of the partner of M/s Shankar Industries, Panipat, approached this Court by filing CWP No.25751 of 2019, wherein vide order dated 07.11.2019, the recovery proceedings were stayed. Later on, vide order dated 28.01.2020, the said petition was disposed of on a clarification given by the learned State counsel that the recovery notices could not be executed against the petitioner, therein, in his private capacity only on the ground that he was the Director in the defaulting company.

9. It is further clarified in the written statement that the department has no concern with the present petitioner as she is neither a partner nor director of the firm, M/s Shankar Industries, Panipat. She does not hold any post in the said firm. At the same time, Mr. Subhash Jain, whose property has been attached, is silent about it. He is not making any effort to get this

property released from attachment. As per revenue record, the property is still in his name. At present, M/s Shankar Industries, Panipat owns no property. Either the property is in the name of partners as their personal property or the same has been got transferred in the name of their relatives just to take escape route from the due liabilities. Since, the name of Subhash Jain is reflected in the revenue record, the petitioner could ask him to make the title clear in her name.

10. It is further stated that the sale deed (Annexure P-3) was executed on 17.12.2015 only after issuance of letter dated 10.12.2015 (Annexure R-2/3), which was written by respondent No.2 to the Tehsildar-respondent No.3 for restraining the sale of property.

11. Heard, learned counsel for the parties.

12. Reference can now be made to the order dated 28.01.2020 passed by this Court in CWP No.25751 of 2019 (**Sachin Jain vs. Secretary to Govt. of Haryana and another**). A perusal of this order shows that at the very outset, learned State counsel had clarified that the notices cannot be executed against the petitioner (therein) in his private capacity only on the ground that he was a Director in the defaulting company. Keeping in view the statement made by learned State counsel, the said petition had been rendered infructuous.

13. In the present case, the petitioner is not even the Director or partner of M/s Shankar Industries, Panipat, against whom recovery proceedings have been initiated. Even if, respondent No.4 was liable to pay anything, the department can avail its independent remedy to initiate proceedings against him. As far as the petitioner is concerned, no case is made out to attach her property, as in the amended written statement, the

respondent-department has admitted that the petitioner is neither a partner nor Director of the firm i.e. M/s Shankar Industries, Panipat.

14. In view of the above discussion, the present petition is allowed and the impugned order of attachment dated 22.10.2016 (Annexure P-6) is set aside.

(RITU BAHRI)
JUDGE

24.05.2023
ajp

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No