

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.12540 of 2013

M/s.Sree Foundation,a registered Partnership firm,
represented by its Partner Mr.Chimanlal, Chennai-3

Petitioner

Vs.

1.The Tax Recovery Officer-I, Company Range I,
"Aayakar Bhavan", Nungambakkam, Chennai-600 034.

2.The Sub-Registrar, No.11, Davidson Street,
Sowcarpet, Chennai-600 079.

3.M/s.Cosmo Foundation Limited,
"Cosmo Nest", No.16, Bank Street,
Halls Road, Kilpauk, Chennai-600 010.

Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India,
for the relief as stated therein.

For Petitioner : Mr.R.Gopinath

For Respondent : Mr.T.Pramodkumar Chopda, SC-RR1&2

Mr.A.Thiagarajan, SC for Mr.S.Nagarajan-R3

ORDER

This Writ Petition is filed to issue a writ of Mandamus, directing the first respondent to remove the charge and lift the attachment created in respect of immovable property at Old No.510, New No.6, Mint Street, Sowcarpet, Chennai-79 and comprised in Old Survey No.6072, 6073 and 6075 and re-survey No.602, measuring an extent of 8 grounds and 1290 sq.ft.

2. The case of the Petitioner is as follows:-

a. The Petitioner firm had entered into an agreement of sale dated 20.01.2010 registered as Document No. 101/2010 in the Sub Registrar's Office of Sowcarpet for purchase of immovable property situated at old No. 510, New No., 6, Mint Street Sowcarpet, Chennai-79 and comprised in old survey No. 6072,6073 and 6075 and re-survey No. 602 measuring an extent of 8 grounds and 1290 sq.ft with the third respondent herein, namely M/s Cosmo Foundations Ltd. At the time of entering into agreements of sale with the third respondent, there were only two encumbrances/charges over the aforesaid property viz., (a) Mortgage Deed dated 01.02.2007 registered as Document No. 109 of 2007 and (b) Mortgage Deed dated 28.08.2007 registered as Document No. 883 of 2007. The petitioner firm, from and out of the sale consideration on 29.1.2010 and 30.1.2010 has paid the entire dues to the said mortgagees and had cleared the entire dues of the third respondent. Necessary full discharge receipts viz., Receipt dated 30.01.2010 registered as Document No.109/2010 and Receipt dated 30.01.2010 registered as Document No. 110/2010 were also executed and registered in the Sowcarpet registration office. At the request of the 3rd Respondent, the entire sale consideration for purchase of the aforesaid property was paid by them in the following manner:-

a. Rs.19,00,000/- (Rupees Nineteen Lakhs only) paid by Cheque No.589552 dated 20.01.2010 drawn on Bank of Baroda, Sowcarpet Branch, Chennai at the time of execution and registration of agreement of sale dated 20.01.2010;

b. Rs5,50,00,000/-(Rupees Five Crores Fifty Lakhs Only) paid by Pay Order No. 447004 dated 27.01.2010 issued by Bank Baroda, Sowcarpet Branch, Chennai to discharge the loan availed by the 3rd Respondent under Mortgage Deed dated 28.08.2007 registered as document No. 883 of 2007 in Sub

Registration Office of Sowcarpet;

c. Rs. 5,29,91,128/- paid by Cheque No.589557 dated 30.01.2010 drawn on Bank of Baroda, Sowcarpet Branch, Chennai to discharge the loan availed by the Vendor under Memorandum of Deposit of Title Deeds dated 01.02.2007 registered as Document No.109 of 2007 in Sub-Registration Office of Sowcarpet;

d. Rs.1,08,872/- paid by Cheque No.589558 dated 10.02.2010 drawn on Bank of Baroda, Sowcarpet branch, Chennai;

b. As the entire sale consideration was paid to the 3rd respondent, the

3rd respondent handed over vacant possession and all the original documents pertaining to the said property and also executed a power of attorney dated 11.02.2010 registered as Document No.41/2010 in the Sub-Registrar's Office of Sowcarpet. The 3rd respondent executed power of attorney to enable the Petitioner to execute and register the sale deed in their favour or in favour of their nominees as and when required by them. Further, a supplementary agreement of sale dated 18.02.2010 was also executed evidencing all the aforesaid facts. Therefore, the entire sale transaction was completed on 18.02.2010 itself as per Section 2(47) of the Income Tax Act, 1961. After completion of entire transaction with the 3rd respondent on 18.02.2010 and after he became owner of the aforesaid property, the 1st respondent after a span of over one year had attached the aforesaid property on 08.04.2011. In the mean while, based on the power of attorney dated 11.02.2011, a sale deed dated 21.12.2011 was executed and registered as Document No.P87/2011 before the Sub-Registrar's Office at Sowcarpet. The 2nd respondent did not give regular number for registration of the aforesaid sale deed and refused to release the sale deed due to attachment on the aforesaid property. The sale deed is still

lying with the 2nd respondent. In fact, the 2nd respondent also wrote a letter dated 22.01.2013 to the petitioner in this regard and a suitable reply dated 07.02.2013 was also sent to the 2nd respondent. While the matter stood thus, the firm had received summon dated 13.06.2011 under Section 131 of the Income Tax Act, 1961 from the first respondent. Thereafter, the petitioner firm made enquires from the third respondent and ascertained that the Income Tax Department had initiated action against the 3rd respondent M/s.Cosmo Foundations Ltd under Section 147 of the Income Tax Act, 1961 and Assistant Commissioner of Income - Tax, Company Circle I(32), Chennai-600 034 has passed an order dated 31.12.2009 alleging that the assessee has concealed taxable income and raised a demand calling upon the 3rd Respondent to pay a sum of Rs.1,63,08,463/- towards the arrears of Income Tax for the assessment year 2006-2007. The 3rd respondent further informed the petitioner that he has preferred an appeal against the said order and the same is pending before the Commissioner of Income Tax (Appeals III), Chennai. Without disclosing the aforesaid facts, the 3rd respondent had sold the aforesaid property to the petitioner. The Petitioner is a bona fide purchaser of the aforesaid property and as a prudent purchaser, had done all the scrutiny and verification of title of the aforesaid property before purchasing the property. It will also be pertinent to note that the petitioner had also conducted a search with respect to any encumbrance on the aforesaid property with the registrar of companies before purchasing the property and no encumbrance was reflected on the aforesaid property.

c. The petitioner also ascertained that M/s.Cosmo Foundation, 3rd respondent herein was issued with a notice of demand as early as on 31.07.2010 under ITCP No.1 to pay the dues to the Department within 15 days. The aforesaid notice was issued much after the entire sale transaction with respect to the aforesaid property was completed between the petitioner and the 3rd respondent. Similarly, the first respondent created a charge and attached the immovable property at Old No.510, New No.6, Mint Street, Sowcarpet, Chennai-79 only 08.04.2011 through intimation to the second Respondent that M/s.Cosmo Foundation had failed to pay the dues to the department on time and hence, the property is being attached. The first respondent do not have any right to create charge on the aforesaid property because the petitioner firm had completed the entire sale transaction as contemplated under Income Tax Act, 1961 as early as on 18.02.2010 itself and the property belonged to the petitioner and the 3rd respondent was no longer the owner of the aforesaid property. In such circumstances, the first respondent ought not to have attached property belonging to the petitioner. The Assistant Commissioner of Income Tax, Company Circle I(3), Chennai had issued summons on 13.06.2011 to the petitioner company for verification of the transaction regarding the sale of the immovable property. A reply through the petitioner Company's authorized representative was duly submitted, furnishing all the particulars with regard to the above said transaction. A notice under Section 226(3) of the Income Tax Act dated 22.11.2011 and another letter dated 7.12.2011 were issued by the first respondent to the petitioner company asking certain particulars with regard to

the sale transaction and to furnish all the documents connected therewith. The petitioner furnished all the documents and particulars as required by the first respondent along with their letter dated 16.12.2011.

d. The third respondent had also requested the first respondent vide letter dated 27.03.2012 to remove the charge and lift the attachment on the immovable property at Old No.510, New NO.6, Mint Street, Sowcarpet, Chennai-769 as it has already been sold to the petitioner company and the 1st respondent has also attached another adjacent property of the 3rd respondent on 7.7.2011 being all that piece and parcel of premises bearing Municipal Door No.512, Mint Street, Sowcarpet, Chennai measuring an extent of 8992 sq.ft or thereabouts to satisfy the tax dues of the department. The Petitioner further submitted that this property itself is sufficient to discharge the tax arrears, if any, of the 3rd respondent. In spite of the fact that the first respondent had no charge over the property at Old No.510, New No.6, Mint Street, Sowcarpet, Chennai, till the entire sale transaction was completed, he had without any right and authority created a charge over the said property with the second respondent and deny the petitioner firm's enjoyment of the property that rightfully and legally belonging to them. The petitioner firm had meticulously checked the documents related to the property at Old No.510, New No.6, Mint Street, Sowcarpet, Chennai and only after being satisfied that there were no attachments on the said property, paid the entire consideration. In fact, the 3rd Respondent had not informed anything about the demand from the Income Tax Department and the petitioner is a bona fide purchaser for valuable

consideration. Hence, the attachment made by the first respondent is not binding on the petitioner firm. Out of the entire sale consideration of Rs.11 crores, only a sum of Rs.20,08,872/- was paid to the 3rd respondent and the balance sale consideration of Rs.10,79,91,128/- was paid only to clear the encumbrance and charge created over the aforesaid property in 2007 itself and this clearly proved that the entire transaction is bona fide and proper. In such circumstances, this Writ Petition has been filed.

3. The 1st Respondent has filed a counter affidavit, wherein it is averred as follows:-

a. The property at old No.510, New No.6, Mint Street, Chennai-79 and comprised in old Survey No.6072, 6073 and 6075 and re-survey No.602 measuring an extent of 8 grounds and 1290 sq.ft. was attached on 08.04.2011 itself as against the tax arrears to the tune of Rs.162.86 lakhs pertaining to the assessment year 2006-07 of the 3rd Respondent Company. The above tax arrears was certified on 30.07.2010 for recovery action by the Assessing Officer viz. Asst. Commissioner of Income-tax, Company Range I, Chennai-34 and Form No. 57/ITCP-I dated 31/07/2010 was issued to the 3rd Respondent. When a certificate has been drawn up by the Tax Recovery Officer, for the recovery of arrears under the Second Schedule to the Income-tax Act 1961, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of notice and intimating that in default steps would be taken to realise the amount under this Schedule. The Assessment for the

assessment year 2006-07 was completed on 31-12-2009 raising a demand of Rs. 1,63,08,463/- and the 3rd Respondent company failed to pay the tax dues to the department. Therefore, the tax arrears to the tune of Rs. 162.86 lakhs pertaining to the assessment year 2006-07 was certified on 30/07/2010 for recovery action. The above notice was duly served on the 3rd Respondent. As the 3rd Respondent failed to pay the income-tax dues to the department on time, the above property was attached vide ITCP-16 dated 05-08-10 on 08-04-2011. Though the 3rd respondent was well aware of its tax arrears payable to the department it has entered into a sale transaction without the previous permission of the Assessing Officer. Hence, the action of the 1st respondent is proper under the provisions of the Income Tax Act.

b. The 1st respondent issued notice u/s 226(3) of the Income Tax Act dated 22.11.2011 and another letter dated 7.12.2011 to the petitioner requesting to furnish certain particulars and the same has been filed by the petitioner vide letter dated 16.12.2011. Vide letter dated 3.5.2012, the 3rd respondent has been informed to pay the entire arrears together with interest to consider their request for lifting of attachment of the above mentioned property. The above property itself is sufficient to discharge the tax arrears is not acceptable, since the property is in dispute and subject to many encumbrances. Hence, in the interest of Revenue, the attachment made in respect of the property at Old No.510, New No.6, Mint Street, Sowcarpet, Chennai, cannot be lifted. Though the 3rd respondent was well aware of its tax liability, he had entered into a sale transaction without the previous permission of the assessing

Officer. Therefore, the action of the 1st respondent is legal and as per law. In such circumstances, this Writ Petition is liable to be dismissed as devoid of merits.

4. The 3rd Respondent has filed a counter affidavit, wherein it is averred as follows:-

a. The third respondent company was the owner of the property bearing Old No.510, New No.6, Mint Street, Sowcarpet, Chennai and comprised in Old Survey No.6072, 6073 and 6075 and resurvey No.602, measuring an extent of 8 grounds and 1290 sq.ft. The aforesaid property was mortgaged to bank and private financier and property was on the verge of being auctioned by the mortgagee at throw away price, therefore, in the interest of the company it was decided to sell the aforesaid property and a resolution dated 21.12.2009 was passed to sell the schedule mentioned property to M/s.Sree Foundation, the petitioner herein. Accordingly, the property was sold to M/s.Sree Foundations for a total sale consideration of Rs.11,00,00,000/- and entered into an agreement of sale dated 20.01.2010 registered as Document No.101 of 2010 in the Sub-Registrar's Office of Sowcarpet and an advance sale consideration of Rs.19,00,000/- was paid by Cheque No.589552 dated 20.01.2010 drawn on Bank of Baroda, Sowcarpet Branch, Chennai. Thereafter, the petitioner paid the balance sale consideration of Rs.10,81,00,000/-. On receipt of the entire sale consideration, on 11.02.2010, the 3rd respondent had handed over all the original documents pertaining to the aforesaid property and vacant possession of the aforesaid property to the petitioner. The aforesaid

facts was also duly recorded under supplement agreement of sale dated 18.02.2010. Further, on receipt of the entire sale consideration, the 3rd respondent had also executed a general power of attorney dated 11.02.2010 registered as Doc.No.41 of 2010 in the Sub-Registrar's Office of Sowcarpet with respect to the aforesaid property in favour of Mrs.Manu Jain and Mrs.Anjana to enable them to execute and register sale deed in favour of petitioner and or their nominee/s and handed over possession of the aforesaid property to the petitioner. Based on the aforesaid power of attorney, sale deed dated 21.12.2011 was duly executed in favour of the petitioner.

b. The first respondent had issued a notice to the 3rd respondent determining his taxable income at Rs.3,32,76,270/- for the assessment year 2006-07 and demanded tax/interest of Rs.1,63,08,463/-. Aggrieved by the said order, the 3rd respondent preferred an appeal in ITA.No.733/09-10/A1. During the pendency of the Appeal, the first respondent has attached aforesaid property bearing Old No.510, New NO.6, Mint Street, Sowcarpet, Chennai, for recovery of the aforesaid amount. It will not be out of place to mention here that the 3rd respondent's adjacent property comprised in Municipal Old Door No.512/1, New No.2/1, Mint Street, Chennai, comprised in O.S.No.600, R.S.No.600/2 of VOC Nagar Division, measuring an extent of 8992 sq.ft has also been attached by the 1st respondent. The 3rd respondent already sold the aforesaid property bearing Old No.510, New No.6, Mint Street, Sowcarpet, Chennai, to the petitioner and the entire transaction including receipt of the entire sale was completed in the year 2010 and handed over the possession of

the property and the property became vested in the petitioner and the third respondent do not have any right, title or interest in the aforesaid property. The order of the Assessing Officer for the year assessment year 2006-07 under Section 144 read with Section 147 of the Income Tax, 1961, resulted in a demand of Rs.1,63,08,463/-. The said order was challenged by way of an appeal instituted on 04.02.2010 against the order passed by ACIT Company Circle 1(3) Chennai (AO) before CIT (A) 1 Chennai. The CIT (A) after hearing the appellant and also the AO by way of remand report and after considering the subsequent submission by the appellant on the remand report, gave substantial relief to the appellant.

c. Giving effect order to the above said order of CIT (A) has been passed by the DCIT Company Circle 1(3) Chennai dated 11.06.2014 with a final demand of Rs.10,59,259/- inclusive of interest under Section 234B and 234C. The said demand emanating from the giving effect order has been met by the 3rd respondent. Though the said amount has been paid by the 3rd respondent, vide Receipt/Chellan No.ITNS 280 dated 02.01.2015 issued by the 1st respondent, the 3rd respondent has also preferred an appeal before the ITAT Chennai. Similarly, the department has also preferred an appeal before the ITAT Chennai on the same order. However, as on date, there is no tax demand from the Revenue as the demand emanating from the giving effect order is already remitted. In view of the payment of entire amounts due and payable to the first respondent being paid by the 3rd respondent, the 1st respondent may be directed to remove the charge and lift the attachment created in respect of

property bearing old No.510, New No.6, Mint Street, Sowcarpet, Chennai and comprised in Old Survey No.6072, 6073 and 6075 and Resurvey No.602, measuring an extent of 8 grounds and 1290 sq.ft. Further, the 2nd respondent may also be directed to number the sale deed dated 21.12.2011 registered as Doc.No.P87 of 2011 in the Sub-Registrar's Office of Sowcarpet in regular course and release the sale deed to the petitioner and in such circumstances, this Writ Petition is liable to be allowed.

5. The learned counsel for the Petitioner contended that action of the first respondent in so far as attaching the immovable property belonging to the petitioner firm is illegal and violative of the settled principles of law and the action of the respondent in initiating the recovery proceedings by issue of notice under Section 226(3) and initiation of provisional attachment proceeding is without jurisdiction and void ab-initio since the required preconditions for initiating the proceedings under section 281B are not satisfied. There has been a complete transfer of the impugned property as per the definition of the word 'transfer' as provided in Section 2(47) of the Income Tax Act. The 1st respondent has erred in attaching the impugned property after execution and registration of agreement of sale dated 20.01.2010 by the petitioner and the learned counsel for the Petitioner contended that even on date the entire arrears have been settled by the 3rd Respondent as per the appeal order of CIT(A) and hence, the continuance of attachment is illegal and he sought to allow the Writ Petition.

6. The learned standing counsel for the 1st Respondent reiterated the averments made in the counter affidavit filed by them and supported the

impugned attachment.

7. The learned counsel for the 3rd Respondent has supported the case of the Petitioner for removing the charge over the property in question and lifting the attachment created thereon.

8. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

9. The Petitioner had entered into an agreement of sale dated 20.01.2010 for purchase of the property in question with the 3rd Respondent, by paying advance sale consideration of Rs.19,00,000/-, out of the total sale consideration of Rs.11,00,00,000/-. There were two encumbrances/charges over the property by virtue of two registered mortgage deeds dated 01.02.2007 and 28.08.2007. The Petitioner cleared the said two encumbrances on 27.1.2010 and 30.1.2010, by paying the dues to the tune of Rs.10,79,91,128/- by way of pay order and a cheque. Thereafter, the Petitioner paid the balance sale consideration of Rs.1,08,872/- on 10.02.2010 by way of a cheque. Thus, the Petitioner paid the entire sale consideration. Further, a supplement agreement of sale dated 18.02.2010 was also executed evidencing all the aforesaid facts. Therefore, the entire sale transaction was completed as early as on 18.02.2010. Thereafter, a sale deed dated 21.12.2011 came to be executed and registered.

10. After completion of entire transaction on 18.02.1010, the 1st respondent attached the property in question on 08.04.2011 and another property of the 3rd Respondent on 7.7.2011, for the tax liability due and payable

by the 3rd Respondent. The Registering Authority, without numbering the sale deed, refused to release the sale deed dated 21.12.2011, due to the attachment of the property in question by the Respondent Department. The Petitioner made several representations for release of the sale deed. Thereafter, the Petitioner came to know that the Department initiated proceedings against the 3rd Respondent for recovery of arrears of tax as early as on 31.12.2009. The notice of demand was sent to the 3rd Respondent on 31.07.2010 i.e. after the date of completion of the entire sale transaction on 18.02.2010. Without disclosing the aforesaid facts, the 3rd respondent had sold the aforesaid property to the petitioner.

11. At this juncture, it is relevant to refer to the decision of the Honourable Supreme Court rendered in the case of **Mysore Minerals Ltd. v. CIT (JUDGMENT 1999 (1) Supp. SCR 192)**, wherein it has been held that a person who had taken possession and made payment of the consideration was the owner though he had not obtained the deed of conveyance. In the case on hand, the Petitioner, having purchased the property in question, by paying the entire sale consideration, became the absolute owner of the property in question.

12. The Calcutta High Court in the case of **Electro Zavod (India) Pvt. Ltd. vs Commissioner Of Income-Tax And ((2005) 199 CTR Cal 612:2005 278 ITR 187 Cal)** has held that on the date of passing the order of attachment, the property in question did not belong to the assessee and on that date, there was no interest because such interest has already been passed on

to the petitioner therein and accordingly, held that the order of attachment of the property claimed and held by the petitioner was not sustainable under the law.

13. In the case on hand, the Petitioner has become the owner of the property in question, to put it differently the 3rd Respondent ceased to be the owner on and from 08.02.2010, when everything for transfer of the property excepting the execution and registration of conveyance was completed. Admittedly, alleged dues are recoverable from the 3rd Respondent. Under the Income-tax Act, the dues of the Revenue do not form charge on the property and this can only be recovered under the method and mode as provided under the Income-tax Act and the Rules framed thereunder.

14. Since the 3rd Respondent failed to pay the dues to the department on time, the property in question has been attached. In the proceedings between the Department and the 3rd Respondent, the tax liability was reduced by CIT(Appeals) and the same was also paid by the 3rd Respondent. By virtue of the completion of the entire sale transaction and registration of the same, the Petitioner became the absolute owner of the property in question. While so and when the 3rd Respondent was not the owner of the property and when on the date of passing the order of attachment, the property in question did not belong to the assessee, namely, the 3rd Respondent, the attachment of the property in question, which has been in absolute possession and enjoyment of the Petitioner by virtue of the completion of the entire sale transaction, made by the 1st Respondent for the dues payable by the 3rd Respondent, is not binding on the Petitioner and hence,

unsustainable and accordingly, the impugned attachment has to be lifted and consequently, the sale deed has to be released, after numbering the same. If at all the 1st Respondent can proceed on the other property of the 3rd Respondent for the tax liabilities if any payable by the 3rd Respondent.

15. In view of the discussions and reasons and in the light of the decision cited supra, the impugned attachment of the property in question is directed to be lifted forthwith and the concerned Registering Authority is directed to number the impugned sale deed executed in respect of the property in question and release the sale deed, if it is otherwise in order. However, it is open to the 1st Respondent Department to proceed against the other property of the 3rd Respondent for the tax dues if any payable by the 3rd Respondent, in accordance with law, by keeping the attachment of the other property, pending

R.MAHADEVAN, J.

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disposal of the appeal preferred by the 3rd Respondent as well as the 1st Respondent.

16. With the above directions, this Writ Petition is disposed of. No costs.

13.10.2015

Index:Yes/No
Web:Yes/No
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To:

- 1.The Tax Recovery Officer-I, Company Range I,
“Aayakar Bhavan”, Nungambakkam, Chennai-600 034.
- 2.The Sub-Registrar, No.11, Davidson Street,
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