

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH DAY OF SEPTEMBER 2012/27TH BHADRA 1934

WP(C).No. 21028 of 2012 (C)  
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PETITIONER :  
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M/S.DAMAC HOLDINGS PVT. LTD  
32/2241 A, CIVIL LANE ROAD, PALARIVATTOM  
KOCHI-682 025, REPRESENTED BY ITS DIRECTOR  
C.BALASUBRAMANIAM.

BY ADVS.SRI.HARISANKAR V. MENON  
SMT.MEERA V.MENON  
SRI.MAHESH V.MENON

RESPONDENT(S):  
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1. DEPUTY COMMISSIONER OF INCOME TAX  
CENTRAL CIRCLE-I, ERNAKULAM-682 015.
2. COMMISSIONER OF INCOME TAX (APPEALS)  
ERNAKULAM-689 013.
3. TAX RECOVERY OFFICER  
OFFICE OF THE ADDITIONAL COMMISSIONER OF INCOME TAX  
RANGE-I, C.R.BUILDINGS, I.S.PRESS ROAD  
ERNAKULAM-682 018.
4. COMMISSIONER OF INCOME TAX (CENTRAL)  
6TH FLOOR, KANDANKULATHY TOWERS, M.G.ROAD  
ERNAKULAM, KOCHI-11.
5. INCOME TAX APPELLATE TRIBUNAL  
KOCHI BRANCH, 1ST FLOOR, KENDRIYA BHAVAN  
KAKKANADU, KOCHI-682 037  
REPRESENTED BY ITS ASST. REGISTRAR.

BY ADV. SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)  
BY ADV. SRI.JOSE JOSEPH, SC, INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 18-09-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 : COPY OF ASSESSMENT ORDER ISSUED BY THE 1ST RESPONDENT  
DTD.28.12.2009.
- EXT.P2 : COPY OF APPELLATE ORDER ISSUED BY THE 2ND RESPONDENT  
DTD.28.5.2012.
- EXT.P3 : COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD.27.6.2012.
- EXT.P4 : COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD.14.8.2012.
- EXT.P5 : COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 5TH  
RESPONDENT DTD.14.8.2012.
- EXT.P6 : COPY OF ORDER ISSUED BY THE 3RD RESPONDENT DTD.27.12.2011.
- EXT.P7 : COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 4TH  
RESPONDENT DTD.18.7.2012.
- EXT.P8 : COPY OF LETTER SUBMITTED BY THE PETITIONER BEFORE THE 4TH  
RESPONDENT DTD.22.8.2012.
- EXT.P9 : COPY OF ORDER ISSUED BY THE 4TH RESPONDENT DTD.4.9.2012.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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**ANTONY DOMINIC, J.**  
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**W.P.(C) NO. 21028 OF 2012**  
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**Dated this the 18<sup>th</sup> day of September, 2012**

**J U D G M E N T**

Heard the learned counsel for the petitioner and also the learned standing counsel appearing for the respondents.

2. Petitioner is a private limited company engaged in real estate development. For the assessment year 2008-09, Ext.P1 order was passed by the 1<sup>st</sup> respondent fastening liability on the petitioner. Against that order, petitioner filed appeal in which Ext.P2 order was passed by the appellate authority reducing the liability to a considerable extent. That order was implemented and accordingly, Ext.P3 revised order was passed. That was subsequently rectified and Ext.P4 was issued. As a result of the whole exercise, now the liability of the petitioner according to them is around ₹2.15 crores. Against Ext.P2, the petitioner has filed Ext.P5 appeal which is pending consideration of the 5<sup>th</sup> respondent Tribunal. In the meantime, by Ext.P6 order issued by the 3<sup>rd</sup> respondent, the properties mentioned therein were attached. According to the petitioner, they want to utilise the property and therefore they made Ext.P7 requesting to lift the

attachment. There was no response to Ext.P7 and therefore they made Ext.P8 reiterating the request for lifting the attachment but however offering the property having an extent of 98.664 cents comprised in R.S.Nos.303/5, 303/6, 303/7, 303/8 and 303/9 covered by document No.4044/07 and situated in Thengode, Kakkanad as alternate security. Petitioner also pointed out that according to them, the value of the property is more than ₹2.95 crores. However by Ext.P9 dated 4/9/12, they were informed that the request for release of the property attached by Ext.P6 accepting the property offered in Ext.P8 cannot be considered "at this stage". It is in these circumstances, the writ petition is filed.

3. I heard the learned counsel appearing for the respondents also.

4. Admittedly, the appeal filed by the petitioner against Ext.P2 order is pending consideration of the Tribunal. The intention of attaching the property mentioned in Ext.P6 is only to secure the interest of the respondents pending disposal of the appeal. If that interest of the respondents could be secured by making available other property or by other means or by both, there is no reason why the request of the petitioner shall not be

considered.

5. In this case although the valuation of the property mentioned in Ext.P8 has not been done by any external agency, still going by the statements contained in Ext.P8, the property mentioned therein is worth ₹2.95 crores. Therefore, there is no reason to continue the attachment covered by Ext.P6 once the petitioner furnishes adequate security to take care of the interest of the respondents. With this in mind, I dispose of the writ petition with the following directions:-

- (1) That the petitioner shall deposit an amount of ₹75,00,000/- (Rupees Seventy five lakhs only) within one month.
- (2) Petitioner shall also deposit the title deeds pertaining to the property mentioned in Ext.P8 with the 1<sup>st</sup> respondent.
- (3) I record the submission made on behalf of the petitioner that the property is free from encumbrance and that they will not deal with the property in any manner until the appeal is decided and the documents are released.

(4) Once the petitioner complies with the above directions, the attachment effected as per Ext.P6 will be lifted.

(5) The 5<sup>th</sup> respondent Tribunal is directed to dispose of Ext.P5 appeal with notice to the parties concerned and as expeditiously as possible.

**ANTONY DOMINIC, JUDGE**

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