

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 3661 of 2020**

=====

**GAURAVBHAI HARGOVINDBHAI DAVE**

Versus

**TAX RECOVERY OFFICER-4**

=====

Appearance:

MR.S.N.SHELAT, SENIOR ADVOCATE WITH MR.VISHWAS SHAH,  
ADVOCATE (11047) for the Petitioner(s) No. 1,2MS MOHINI K SHAH(775) for the Petitioner(s) No. 1,2  
for the Respondent(s) No. 2

MRS MAUNA M BHATT(174) for the Respondent(s) No. 1

=====

**CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA**

and

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Date : 10/02/2020****ORAL ORDER****(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicants have prayed for the following relief(s):-

"9(a) Be pleased to quash and set aside impugned show-cause notice dated 10.11.2017 and impugned order dated 27.12.2017 passed under Section 179 of Income Tax Act, 1961 for the AY 2010-11 by respondent no.2 against the petitioners (Annexure-P1 and P2)

(b) Be pleased to quash and set aside the auction sale conducted on 24.01.2020 by respondent no.1 under second schedule of the Income Tax Act, 1961.

(c) Pending hearing, admission and final disposal of this petition, be pleased to grant

status quo qua properties depicted in the impugned auction Sale Notice dated 23.12.2019.

(d) Cost of this petition.

(e) Any other relief, order or direction which Hon'ble Court may deem just, fit, proper and equitable in the facts of the case."

2. This is a second round of litigation. We take notice of the fact that the writ-applicants had come before this Court by filing the Special Civil Application No.284 of 2019 and the Special Civil Application No.285 of 2019 respectively. In the Special Civil Application No.285 of 2019, the following reliefs were prayed for:-

"(A) YOUR LORDSHIPS may be pleased to issue the appropriate writ, order or direction, quashing and setting aside the impugned orders of attachment dated 01.03.2012 and 19.12.2018, order setting proclamation dated 29.10.2018 and 19.12.2018 and proclamation of sale dated 21.12.2018 as being bad, illegal, unjust, unreasonable, arbitrary, violative of the principles of natural justice and contrary to the law.

(B) YOUR LORDSHIPS may be pleased to stay the implementation, operation and execution of Proclamation of Sale dated 21.12.2018 (Annexure-"E") issued by the Respondent pending the admission, hearing and final disposal of this Petition.

(C ) YOUR LORDSHIPS may be pleased to grant such other and further reliefs as may be deemed fit by this Hon'ble Court, in the interest of justice."

3. Both the writ-applications referred to above came to be rejected by a Co-Ordinate Bench of this

Court vide the judgment and order dated 05.08.2019. While rejecting the two writ-applications, the Coordinate Bench observed in Paragraph No.9 as under:-

"9. Thus, the writ applicant is aggrieved by the action of the revenue department putting the attached properties for sale by issue of proclamation for the purpose of recovery of the tax amount due and payable by the Company, in which, the writ applicant is one of the Directors. As noted above, an order under Section 179 of the Act also came to be passed by the Assessing Officer. The order passed under Section 179 of the Act attained finality. The same was not challenged by the writ applicant at any point of time."

4. The Co-Ordinate bench took notice of the fact that the order under Section 179 of the Income Tax Act-1961 (for short the "Act-1961) had been passed by the Assessing Officer and the same had attained finality. This Court also took notice of the fact that the same was not challenged by the writ-applicants at any point of time. We also take notice of the fact that the proclamation of sale was challenged by the writ-applicants by filing the Special Civil Application No.19670 of 2018 and the Special Civil Application No.19672 of 2018 respectively. A Coordinate Bench of this Court disposed of both the writ-applications vide order dated 22.01.2016. The operative part of the said order reads thus:-

"In light of the order passed in Special Civil Application Nos.284 of 2019 and 285 of 2019, the grievance voiced in the present petitions does not survive. The petitions stand disposed of accordingly. Notice is discharged with no orders as

to costs."

5. The position, as on date, is that the auction proceedings have attained finality. The Department has accepted the entire amount from the auction purchaser towards the sale proceeds.

6. In our opinion, it is too late in the day for the writ-applicants to now challenge the order dated 27.12.2017 passed by the Deputy Commissioner of Income Tax under section 179 of the Act-1961.

7. Mr.S.N.Shelat, the learned Senior Counsel appearing with Mr.Vishwas Shah for the writ-applicants invited our attention to the chart of Approx Book Debts List produced at the Page No.81 of the paper-book. We find reference of the names of few debtors from whom the Company has to recover the amount. According to the writ-applicants, an amount of almost Rs.7 crore, has to be recovered by the Company.

8. In other words, the argument is that instead of recovering the aforesaid amount in tune with the provisions of Section 179 of the Act-1961, the Department proceeded to put the immovable properties to auction. It is too late in the day for the writ-applicants to redress any grievance of any nature having not challenged the order passed under Section 179 of the Act-1961 and having permitted the order to attain finality. At this point of time, it would not

be appropriate for this Court to disturb the entire auction proceedings undertaken by the Department.

9. The company has defaulted in payment of income tax to the tune of Rs.1907.90 Lakh. In such circumstances, even if the say of the writ-applicants is accepted that the company has to recover an amount of Rs.694.60 Lakh, the company would not be in a position to make the payment of the outstanding tax liability. Therefore, when the order dated 27.12.2017 passed under Section 179 of the Act-1961 has attained finality and is implemented with the auction of the immovable properties, no interference is called for at this belated stage. The grievance of the writ-applicants with regard to so called irregularities and illegalities in the auction proceedings conducted by the respondents can be agitated before the appropriate forum. Merely because the company is now a running concern by virtue of the orders passed by the NCLT, Mumbai in the Insolvency Petition filed by the ARCIL, it would not alter the situation with regard to the recovery of the dues of the income tax under the provisions of the Act-1961. The order passed by the NCLT has been quashed by the Supreme Court.

10. In the result, this writ-application fails and is hereby rejected.

11. At this stage, our attention is drawn to the Page No.66 of the paper-book Annexure-P/7 to the

writ-application. It is an application filed by the writ-applicants under Section 154 of the Act-1961 addressed to the Deputy Commissioner of Income, Circle-4(1)(1), Ahmedabad. We may also say that if such an application is preferred, the Deputy Commissioner may look into the same expeditiously in accordance with law.

Direct service is permitted.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

GIRISH

