

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6931 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

PRAJAKTA M SHAH....Petitioner(s)

Versus

TAX RECOVERY OFFICER....Respondent(s)

Appearance:

MR TUSHAR P HEMANI, ADVOCATE for the Petitioner(s) No. 1

MS VAIBHAVI K PARIKH, ADVOCATE for the Petitioner(s) No. 1

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

RULE SERVED for the Respondent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 26/09/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has challenged an order dated 23.3.2009 issued by the Tax Recovery Officer, Bhavnagar. Under such order, he attached an immovable property comprising of office premises no. 234 and 235 admeasuring 96.41 sq. mtrs on first floor in Madhav Darshan complex, Bhavnagar (here-in-after referred to as “the said property”) for the unpaid dues of income-tax department by one Ajaykumar Bhatia, the erstwhile owner.
2. Brief facts are as under. One Ajaykumar Bhatia (here-in-after referred to as “the assessee in default”) was the owner of the said property. He had obtained loan from one the State Bank of Saurashtra by creating equitable mortgage in respect of the said property. Ajaykumar Bhatia and his wife Sarojben A. Bhatia, were the directors of Baldev Ship Breakers Limited. Baldev Ship Breakers Limited had taken the loan but could not repay the borrowed sums of the bank. The bank filed Original Application No.276 and 277 of 2001 before the Debts Recovery Tribunal. Pending such proceedings, the State Bank of Saurashtra assigned its debts in favour of Asset Reconstruction Company (India) Limited (“ARCIL” for short) on 29.3.2007. In turn, ARCIL appointed one Usha Martin Finance Company Limited on 25.4.2007 as its constituted attorney to carry out the recoveries. On 23.10.2007, Usha Martin Finance Company

Limited decided to sell the property of the directors of Baldev Ship Breakers Ltd., the borrowers. The agreement was worked out by joint signing of MOU on 23.10.2007 between the directors of Baldev Ship Breakers Ltd. and Usha Martin Finance Company Limited under which one Arvindsinh V. Jadeja had purchased the immovable properties of the director for consideration of Rs.60 lacs with consent of Usha Martin Finance Company Limited. Usha Martin Finance Company Limited, in turn would release the directors from the personal guarantee as well as the said properties in favour of Arvindsinh V. Jadeja, the purchaser. Under such attachment on 22.4.2008 since ARCIL was paid off its compromised dues, it released the charge over the mortgaged properties. The petitioner was interested in purchasing the said two office premises from Arvindsinh V. Jadeja who had acquired, in all, four properties of the company under the said arrangement. On 22.10.2008, the petitioner therefore, issued a public notice in the local newspaper inviting claim over such properties in case, parties had any. After obtaining title clearance certificate through such process, Arvindsinh V. Jadeja executed a sale deed on 25.11.2008 in favor of the petitioner for a sale consideration of Rs.8 lacs. On 23.3.2009, the respondent - Tax Recovery Officer, issued an order of attachment on the said property, as noted above, for the outstanding tax dues of the erstwhile owner Ajaykumar Bhatia. In such notice, it was stated that for the assessment year 1991-1992 to 1993-1994 and 1998-1999, Baldev Ship Breakers Ltd. was in arrears of tax dues of Rs.1.15 crores (rounded off). Shri Ajay Bhatia was also in arrears of tax of Rs.4 lacs(rounded off) for the A.Y.1992-

1993 and Rs.6.90 lacs (rounded off) for the A.Y. 1990-1991, 1994-1995 till 1996-1997. Properties under attachment included the said office premises no. 234 and 235 of Madhav Darshan complex. It is this order, the petitioner has challenged in the present petition contending that :

- 1) The petitioner is a bona fide purchaser for value without notice.
- 2) In response to the notice for title clearance, department raised no objections. The petitioner had thus acted on title clearance certificate issued by his attorney.
- 3) The department, anyway, has no priority claim over the dues of the bank, for recovery of which the property was sold.
- 4) The sale deed was executed long before the order of attachment was passed.

In this context, counsel relied on the decision of Division Bench of this Court in case of **Tax Recovery Officer v. Industrial Finance Corporation of India and another** reported in (2012) 346 ITR 11.

3. On the other hand, Mrs. Bhatt for the Revenue opposed the petition contending that Baldev Ship Breakers Ltd. and its directors had huge unpaid tax arrears. In terms of rule 48 of the Procedure for Recovery of Tax contained in Schedule-II to the Income Tax Act, the order of attachment

was passed which would relate back to the date on which the notice to pay the arrears was issued to the assessee.

4. As noted, the facts are not seriously in dispute. To summarise the relevant facts, the property in question was owned by the directors of Baldev Ship Breakers Ltd. Baldev Ship Breakers Ltd. as well as both the directors were in arrears of tax. Long before the notice to pay arrears was served on the defaulter, the property was mortgaged with the State Bank of Saurashtra for raising loans. For default in payment of such loans, the State Bank of Saurashtra had instituted suits before the Debts Recovery Tribunal. Pending such suits, the debt was assigned to ARCIL who through his agent sold the property to Arvindsinh V. Jadeja in exchange of releasing the directors from personal guarantee as well. ARCIL having recovered its debts, released the property from mortgage as well. It was only thereafter, Arvindsinh V. Jadeja sold the said property to the petitioner, which, it is not even the case of the department, was without full consideration of market value or with the knowledge that against erstwhile owner, the income tax department had any claim.

5. Learned counsel for the Revenue however, drew our attention to a communication dated 12.1.2007 to the State Bank of Saurashtra made by the Assistant Commissioner of Income-tax, Bhavnagar in which it was conveyed to the said bank that income-tax department had to recover huge amount of tax from Ajaykumar Bhatia, his family HUF and Baldev Ship Breakers Ltd. This mere communication to the bank would not take shape of the attachment of the

property which can be so in terms of rule 48 of the Procedure for Recovery of tax, which happened only on 23.3.2009, that is, long after the property for realisation of the dues of the bank, was sold to Arvindsinh V. Jadeja who in turn, sold part of it to the petitioner. At best, this communication put the bank to notice that the borrower had also other dues. It only guards the bank against a possible future claim from the income tax department. However, in any case, such communication would not make the title of the petitioner imperfect. Despite such communication by income-tax department to the bank, the moot question would be, did the department have a prior charge over the property which before raising of the dues of the department was already mortgaged in favour of the financial institution? Even if the bank had disregarded such a communication of the income-tax department and not shared with the department, proceeds of the sale of such property, at best, it may be a dispute between the income-tax department and the bank and in any case, cannot harm the petitioner who was the subsequent purchaser for consideration without notice.

6. On such grounds, petition is allowed. Impugned attachment is lifted qua the properties in question. We clarify that this would have no effect on the rest of the properties stated to have been purchased by Arvindsinh V. Jadeja which are not the subject matter of this petition.

7. Petition is disposed of.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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