

Amit Ahuja and anr. Vs. Additional Commissioner Trade and Tax Department and O

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Court : Delhi

Decided On : Dec-14-2012

Judge : S.Ravindra Bhat

Appellant : Amit Ahuja and anr.

Respondent : Additional Commissioner Trade and Tax Department and O

Advocate for Def. : Ms. Seema Rao, Ms. Chaitali Jain

Advocate for Pet/Ap. : Shri. Neil Hildreth, Ms. Shruti Sabharwal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON:

06. 08.2012 PRONOUNCED ON:

14. 12.2012 + WP (C) No. 10316/2009 & CM No.8907/2009 AMIT AHUJA & ANR Petitioner Through: Shri Neil Hildreth & Ms. Shruti Sabharwal, Advocates Versus ADDITIONAL COMMISSIONER TRADE & TAX DEPARTMENT & ORS. Respondent Through: Sh. Kailash. K. Ahuja, Govt. Counsel, for Deptt. of Trade and Taxes. Sh. Rakesh Kumar Khanna, Sr. Advocate with Sh. K.K. Ahuja, Ms. Seema Rao and Sh. Harsh Prabhakar, Advocates. Ms. Chaitali Jain, for Sh. V.K. Tandon, Advocate, for Resp. No.5. Sh. S.K. Chachra, Advocate, for Resp. No.6. Sh. L.K. Bhushan and Sh. Anirudh Arun Kumar, Advocates, for Deutsche Bank.

Sh. Sanjay Goswami, Advocate, for Respondent No.7. CORAM: MR. JUSTICE S. RAVINDRA BHAT MR. JUSTICE R.V. EASWAR MR. JUSTICE S.RAVINDRA BHAT WP(C) No. 10316/2009 Page 1 % 1. In the present proceeding under Article 226 of the Constitution, appropriate directions are sought quashing the warrant of attachment, and a notice of eviction, in respect of Plot No. C-190, Defence Colony (suit property).

2. The brief facts of the case are that the suit property was originally owned by Col. Buta Singh; he had acquired it by a Perpetual lease deed dated 29.11.1961. He had constructed a two and a half storeyed residential building and later by a Sale deed dated 05.09.1979, he transferred the suit property to Mrs. Rama Devi Khaitan. After Mrs Rama Devi Khaitans death on 25.02.1994 her husband, Mr.D.D. Khaitan became the absolute and exclusive owner of the said property as her heir. By Conveyance deed dated 26.09.1997, the leasehold property was converted into freehold in Mr. D.D.Khaitans name. After the death of Mr. D.D. Khaitan on 05.03.1999, by his Will dated 12.04.1996, the sixth respondent became the sole owner of the property. Mr D.D. Khaitan was survived by his daughter Mrs. Indu Narain and his son the sixth Respondent, Mr Jagrit Khaitan. The daughter Mrs Indu Narain relinquished all her rights in the property by Relinquishment Deed, dated 20.12.2005; the sixth respondent consequently became the exclusive owner of the suit property.

3. The sixth Respondent, on 01.02.2006 entered into an agreement to Sell the suit property, with M/s. BDR Builders and Developers Pvt. Ltd (through its director, Mr Rajesh Gupta) for `3,00,00,000/- (Rupees three WP(C) No. 10316/2009 Page 2 crores). The Agreement to sell dated 01.02.2006 stated that the property was free from all liens, mortgages, charges, encumbrances and that there were no outstanding government dues. The sixth Respondent also executed a General Power of Attorney in favour of Mr Rajesh Gupta, Director of M/s BDR Builders and Developers Pvt. Ltd. and conferred full powers to enable him to transfer the said property by way of sale.

4. The Petitioners, (Amit Ahuja and Shalini Ahuja) were interested in buying the said property and therefore applied for a housing loan of `2,00,00,000/- (Rupees

Two Crores) to Deutsche Bank, New Delhi. The bank by letter dated 23.03.2006 principally agreed to the grant of loan subject to certain terms and conditions as specified in the letter. One of the conditions precedent to the grant of loan was that amount would be disbursed only after due verification of the legal documents of the said property and after being satisfied that the said property has a clear and marketable title. Subsequently the home loan of `2,00,00,000/- (Rupees Two Crores) was granted. The Petitioners jointly purchased the said property from the sixth Respondent, through his General Power of Attorney Holder Mr. Rajesh Gupta. The terms and conditions of the Sale were recorded in two registered sale deeds dated 26.04.2006. These contained a specific representation by the sixth respondent with respect to clear title of the said property and it being free from all liens, mortgages, charges, encumbrances and government dues. At the time of registration of the Sale deeds with the office of Sub-Registrar V, New Delhi, no objection to the registration was made and no encumbrance with respect to the said property, of any kind was disclosed. WP(C) No. 10316/2009 Pag

5. The Petitioners intended to demolish the existing structure and build a new residential house and applied for sanction of building plans on 04.04.2008. However, on 30.04.2008 they found a show cause notice by the Department of Trade and Taxes pasted on the walls of the suit property. The show cause notice stated that the said property was attached by the Department by order dated 09.03.2004 on account of failure on part of M/s Jagannath Dudadhar to pay sales tax demands of `17,12,06,276/- and `8,67,820/- for the assessment year 1998-99. Upon receiving the show cause notice the Petitioners after inspecting the file, on 12.05.2008 filed an application seeking copies of the Writ of Demand and Warrant of Attachment of the said property. The Petitioners were not provided the documents requested. They accordingly, on 24.06.2008 filed an application under the Right to Information Act (RTI) before the Trade and Tax Department. The Petitioners received some information/documents in response to RTI application filed by them. Amongst the documents provided there was an assessment order dated 19.03.2001 in which demand of tax, interest and penalty was raised. The proprietorship M/s Jagannath Dudadhar filed an appeal before the Appellate Tribunal and then preferred a writ before this Court, which was dismissed; an SLP was also dismissed. One of the documents the Petitioners received from the

Department of Trade and Tax was the copy of the warrant of attachment dated 09.03.2004. From the record it appeared that the warrant of attachment had been served upon the sixth respondents driver. On 27.08.2008 the Petitioners filed their reply to the Show Cause Notice (SCN) resisting the demand and the attachment. They WP(C) No. 10316/2009 Page 4 received no response to their reply to the SCN and therefore the Petitioners sent a reminder to Respondent No.1 on 17.11.2008. The Petitioners were then served with an Eviction Notice dated 16.12.2008, directing them to vacate the property within 15 days. On 19.12.2008 the Petitioners wrote a letter to the first Respondent seeking withdrawal of the Eviction Notice. The Petitioners then approached this Court under Article 226 of the Constitution,(WP (C) No. 9146/08) seeking directions to quash the warrant of attachment dated 09.03.2004, SCN dated 30.04.2008 and Eviction Notice dated 16.12.2008. This Court granted an interim stay of the Eviction Notice by order dated 31.12.2008. The Petitioners inspected the departments files/record on 14.07.2009 and due to the new information/subsequent developments; withdrew WP (C) No. 9146/08 and filed the present writ petition.

6. The Petitioners argued that they were the bona-fide purchasers of the suit property and if the attachment of the property was permitted and they are evicted, it would cause them immense loss. The terms and conditions of the Sale were recorded in two registered Deeds dated 26.04.2006 which contained specific representations from the sixth Respondent with respect to the clear title of the said property and the property being free from all liens, mortgages, charges, encumbrances and government dues. The relevant clause of the sale deeds dated 26.04.2006 is reproduced below: That the Vendor hereby further assures the Vendee that the said portion of the said property is free from all encumbrances such as prior sale, gift, mortgage, disputes, litigation, WP(C) No. 10316/2009 Page 5 acquisition, requisition, attachment in the decree of any court, lien, court injunction, lease, loan, surety, security, stay order, notices, claims, demands, Will, Trust, Exchange, prior agreement to sell etc. and if it is ever proved otherwise, or if; the whole or any part of the said portion of the said property is ever taken away or goes out from the possession of the Vendee on account of any legal defect in the ownership or title of the Vendor, then the Vendor will be liable and responsible to make good the loss suffered by the Vendee and shall keep the Vendee saved,

harmless and indemnified against all such losses, costs, damages and expenses accruing thereby to the Vendee.

7. It is argued, furthermore that at the time of registration of the sale deeds the Sub Registrar-V, New Delhi did not disclose any encumbrance/attachment of the suit property and therefore it was duly registered in their favour. The Petitioners further submitted that they applied for a home loan from the bank and before the loan amount of `2,00,00,000/- (Rupees two crores) was sanctioned the Bank carried out due diligence of the said property. The Bank would not grant a home loan on a property with encumbrances and therefore upon sanction of their loan, the Petitioners believed that the said property had a clear title. The Petitioners submitted that stipulations in the Sale deed assuring them of a clear title combined with the registration of the property in their name at the Sub Registrars office led them to believe that the property was free of all encumbrances; even the Bank believed the property to be free from all encumbrances and therefore granted the Petitioners a home loan.

8. It is further argued by the petitioners counsel that they were shocked and surprised on receiving the SCN dated 30.04.2008. It was WP(C) No. 10316/2009 Page 6 through this SCN that they, for the first time became aware that the property was sought to be attached by the Department of Trade and Taxes by an order dated 09.03.2004; before the SCN dated 30.04.2008 they were unaware of any encumbrances on the said property. On receipt of the SCN the Petitioners filed an application seeking permission to inspect the file with regard to the attachment of the said property however second respondent did not provide the file and therefore they filed a RTI application on 24.06.2008. The Petitioners submit that in response to their RTI application they received some documents amongst which one was a copy of the warrant of attachment dated 09.03.2004. From the records it appeared that the warrant had been served upon the sixth Respondents driver (there was a handwritten acceptance by the driver). The Petitioners urge that service of the warrant on the driver does not constitute valid service under Section 136 of the Delhi Land Reforms Act, 1954 read with Section 21 and 22 of the Punjab Land Revenues Act, 1887.

9. The Petitioners further submit that in response to their RTI application they also received a copy of the warrant of attachment dated 09.03.2004 which was allegedly served upon the Registrar/Sub-RegistrarV, New Delhi. However the records of the Sub-Registrar, New Delhi do not reflect any such service and therefore at the time of registration of the said the property no encumbrances appeared with respect to the said the property. The Petitioners urged that on inspection of the records of the Sub-Registrar-V in August 2008, it was discovered that the Sales Tax Department had issued a letter dated 08.11.2007 to the Sub-Registrar-V stating that the said property was attached by order dated 09.03.2004. WP(C) No. 10316/2009 Page 7 Therefore, submit the Petitioners, that they did not have any notice of attachment of the said property at the time of purchase i.e. 26.04.2006.

10. The Petitioners submitted that they were bona-fide purchasers and were not aware of any encumbrances/attachments on the properties and they believed it to have a clear title. The Petitioners took all reasonable steps to ensure that the title was clear however due to lapses on the part of the Department on serving notice to the Sub-Registrar timely they were unable to get the correct picture of the said property. Therefore submitted the Petitioners that the attachment of the said property should be declared illegal and void ab initio. The Petitioners urged that the warrant of attachment, SCN and Eviction Notice be set aside.

11. The concerned respondents, i.e. the tax authorities urge that they had followed the due process of law in regard to the attachment of property by issuing notice of demand which was in turn followed by the writ of attachment. It was contended that the notice of demand and attachment were served not only upon the defaulter (the sixth respondents) representative but the latter even had the knowledge of it. In this regard, the said respondent relied upon the fact that on 05.03.2004, the defaulters bank account, i.e. with the Punjab National Bank (PNB) Shivaji Park as well as with the State Bank of Mysore, Punjabi Bagh were attached. It relies upon the notices issued to the banks in this regard. Further, the letter written by the defaulter M/s. Jagannath Dudadhar, of which the sixth respondent was the sole proprietor, to the Sales Tax Commissioner dated 19.03.2004, evidencing deposit of considerable WP(C) No. 10316/2009 Page 8 sums of money, is relied upon.

The defaulter/sixth respondent had tendered a sum of `2,06,69,711/- through Pay Order and Post-dated Cheques, while requesting for release of bank account and the properties. It is urged that consequent to this request, the Assistant Collector of Sales Tax accepted the payments and released the accounts from attachment. The respondents, therefore, argued that it is too late in the day now for the writ petitioners to contend that they are innocent third-party purchasers without knowledge. Learned counsel for the tax authorities also contend that the counter affidavit clearly avers that the attachment warrant was served upon the Sub-Registrar and other registering authorities under provisions of law and consequently, this is a clear case of applicability of Section 68 of the Delhi Sales Tax Act, which nullifies any transaction or transfer which seeks to defeat the claims of the Revenue.

12. The tax authorities also contend in addition that the petitioners have in any event, in separate criminal proceedings, complained against fraud and criminal breach of trust against the vendors, i.e. the sixth respondent, alleging suppression of facts at the time of sale of the suit property in their favour. This has to be necessarily enquired, and prima facie constituted an acceptance of the fact that they were aware about the attachment.

13. The fifth respondent, the concerned Sub-Registrar not V, Mehrauli, New Delhi had filed a short affidavit on 19.01.2010, in which it was stated that the record kept in his office was checked and that the letter dated 09.03.2004 said to have been issued by the Sales Tax Department WP(C) No. 10316/2009 Page 9 could not be traced and was not traceable. The affidavit further states as follows:

4. The answering respondent has gone through the contents of letter dated 9.3.2004, sent by the Sales Tax Department. A bare perusal of the same would indicate that the order/recovery certificate was issued against M/s. Jagannath Dudadhar, 13 KM, Rohtak Road, Shakur Basti, New Delhi, Prop. Shri Jagrit Khaitan for a sum of Rs.172074096/- for the assessment year 1998-99 recoverable as Arrears of Land Revenue under the Delhi Land Reforms Act, 1954. A bare reading of the said order further would indicate that the same has neither been addressed/endorsed to the office of the answering respondent nor any

request/direction has been made/given to the answering respondent by the Sales Tax Department. Further, the objections were also invited from the general public and it was indicated that further steps such as sale of the property in question would take place by public auction.

5. That in the instant case it is pertinent to add that an entry pertaining to attachment of property bearing not C160, Defence Colony, New Delhi has been found recorded in a register.

6. That the above cited entry in a register does not bear either the date of its recording or signature of any of the officer/official of the office of S.R.-V. From the perusal of the said entry it cannot be ascertained as to how, when and by whom the said entry has been made.

7. That the copy of warrant of attachment dated 09/03/2004 is not available in the office of S.R.-V and there is no other record of its proper service in the office of S.R.-V, available in the office of the answering respondent. WP(C) No. 10316/2009 Pag

8. That from the above averments cited above it may be concluded that: (a) It cannot be stated in unequivocal terms that Warrant of Attachment dated 09/03/2004 was properly served upon the office of S.R.-V. (b) It cannot also be conclusively stated as to if served, on which date it was served.

9. It is further respectfully submitted that admittedly no further steps were undertaken by the Sales Tax Department until 8.11.2007 when the department indicated vide its aforesaid communication that the department intended to proceed further in the matter and requested to confirm the exact status of the above said property, i.e. in whose names the property stood as of date.

10. It is respectfully submitted that in reply to the said communication the Sales Tax Department was informed regarding execution of Sale Deed in favour of Smt. Shalini Ahuja and Mr. Amit Ahuja on 26.04.2006.

14. At the time of one of the hearings before this Court in the present writ proceedings, notice of the Court was brought to the above affidavit of the fifth

respondent, i.e. the Sub-Registrar. On 05.01.2012, the Court directed as follows: Divisional Commissioner will file an affidavit in this Court on the following aspects:(1) name of the person and other details who has made entry in the attachment/sale register and the period during which he was working in the office of the Sub-Registrar-V; WP(C) No. 10316/2009 Page 11 (2) Whether the seal/stamp affixed on the attachment notice dated 9.3.2004 is of the office of Sub-Registrar-V and was in use during any period and the period in question; (3) Name and details of the person who has purportedly signed on the attachment notice dated 9.3.2004. The aforesaid affidavit will be filed after making enquiries and verification from persons who were working in the office of the Sub-Registrar-V during the relevant period and on the basis of record. Handwriting/signatures should be verified from the records. Aforesaid affidavit will be filed on or before 11th January,2012.

15. The Divisional Commissioner complied with the Courts order and filed an affidavit dated 16.04.2012, which states as follows: AFFIDAVIT ON BEHALF OF THE DIVISIONAL COMMISSIONER, DELHI I, Dharmendra, aged about 39 years, Sub-Registrar-V, Old Tehsil Building, Mehrauli, Delhi-110 030, do hereby solemnly affirm and declare as under:(1) That being the incharge of the Office of the SubRegistrar-V, Old Tehsil Building, Mehrauli, New Delhi110030 and as authorised by the Divisional Commissioner, Delhi, I am filing this affidavit before the Honble High Court on behalf of the Divisional Commissioner and the contents of the affidavit have been shown to the Divisional Commissioner of Delhi. (2) That the attachment order of the C-150, Defence Colony, New Delhi was received by Sh. Ajay Kumar Ojha who was posted in SR-V Office in 2004, and handed over to the reader Smt. Madhubala. WP(C) No. 10316/2009 Page 12 (3) That Smt. Madhubala then reader made an entry in attachment register. (4) That at present none of the official can verify the seal/stamp affixed on the receipt of the attachment order. (5) That the said attachment register was not in use after April, 2004 since the latest entry made in the register is dated April 2004, and there is no further entry in this register. (6) That the alleged register was misplaced some time around April 2004. (7) That the registering officer registered the instruments bearing number 6265 and 6266 dated 26.04.2006, after checking the list of the disputed properties available with him and as per the statement no order of

attachment was available in the record of this office. Moreover, the executants of the instruments have declared in both the instruments that the said property is free from all kinds of encumbrances, such as prior sale, gift, mortgage, disputes, litigation, acquisition, requisition attachment in the decree of any court, lien court injunction, irase, loan, surety, security, stay order, notices, claims, demands, will, trust, exchange, prior agreement to sell etc.

16. It is contended that the clear mandate of Section 77 of the Punjab Land Revenue Act, 1887 which stood incorporated by virtue of reference to it under Section 136 of the Delhi Land Reforms Act, was that private alienation of any property or interest of the defaulter in any manner after issuance of proclamation of department is void. It was also contended that the mode and manner of making the proclamation stipulated under Sections 21 and 22 of the Punjab Land Revenue Act, 1887 had been clearly followed in the present case and that the affidavit of the tax WP(C) No. 10316/2009 Page 13 authorities stated that service was made upon the defaulter (the sixth respondent). Furthermore, the sixth respondent was aware of these facts when the proclamation was pasted on the wall of the premises. He even approached the Revenue authorities and sought the vacation of the attachment so far as it concerned the bank accounts by depositing certain amounts. Consequently, the petitioners cannot claim to be new purchasers and cannot say that they were innocent purchasers and claim to defeat the demand of the revenue. It was contended that the precondition for the applicability of Section 100 to defeat the statutory charge is that the third party should not be aware. In the present case, the vendor clearly had awareness of the attachment. The warrant was affixed on the premises and notice was even given to the fifth respondent. As a result, the transfer in the petitioners favour was null and void.

17. The above narrative and discussion reveals that the suit property was originally owned by one Col. Buta Singh, who sold it to the sixth respondents predecessors in interest. Eventually, after their death, the property devolved on him. The materials on record reveal that he is the sole proprietor of the tax defaulter in question, i.e. M/s. Jagannath Dudadhar. It is also evident that at the time of issuance of attachment order, a garnishee order, concerning the proprietorships bank accounts were also issued. He had approached the tax

authorities, and offered to clear some dues, which resulted in the vacation of the order attaching those bank accounts. The materials on record also reveal that contemporaneously, in March-April, 2004, the sixth respondents driver was served the warrant of attachment in respect of the property. All these WP(C) No. 10316/2009 Page 14 can, in a sense, be sufficient material for the court to presume, under Section 114 Evidence Act. In this background of circumstances, the question is whether the Court can accept the argument of the revenue/tax authorities in this case that the Petitioner is not an innocent purchaser, and is deemed to have constructive notice of the encumbrance created by the attachment, which consequently defeats and voids the sale in his favour.

18. To appreciate the submission, it would be essential to notice the relevant statutory provisions. Section 100 of the Transfer of Property Act, 1882, defines charge: "Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge." Section 3 of the Transfer of Property Act (the interpretation clause), states that a person is said to have notice of a fact when he actually knows that fact or when before wilful abstention from an enquiry or search which he ought to have made or gross negligence he would have known it. This definition has three explanations which deal with three situations WP(C) No. 10316/2009 Page 15 when someone acquiring immovable property is to be deemed to have notice of certain facts. The explanations are extracted below: "Explanation I.-Where any transaction relating to immoveable property is required by law to be and has been affected by a registered instrument, any person acquiring such property or any part of. or share of such instrument as from the date of registration or, where the property is not all situated in one sub- district, or where the registered instrument has been

registered under subsection (2) of Section 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated Provided that(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder. (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act and (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act. Explanation II.-Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof. Explanation III.-A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material. WP(C) No. 10316/2009 Page 16 Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

19. The relevant provisions of the Delhi Sales Tax Act are as follows:

67. Transfers during pendency of proceedings void Where, during the pendency of any proceedings under this Act, any person creates a charge on or parts with the possession by way of sale, mortgage, gift or exchange or any other mode of transfer whatsoever, of any of his assets in favour of other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by such person as a result of the completion of the said proceedings. xxxxxxxxxx xxx xxxxxxxxxxxxxxxxxx 70. Application of the provisions of the Delhi Land Reforms Act, 1954 for purposes of recovery of sales tax recoverable as arrears of land revenue For the purpose of recovery of any amount recoverable as arrears of land revenue under this Act, the provisions of the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954), as to recovery of arrears of land revenue shall, notwithstanding anything contained in that Act or in any other enactment, be deemed to be in force throughout Delhi and the provisions of the Revenue

Recovery Act, 1890 (1 of 1890), shall have effect accordingly.

20. The relevant provisions of the Delhi Land Reforms Act, 1954 and the Punjab Land Revenue Act, 1887, are extracted below:

136. Procedure for the recovery of an arrear of land revenue. An arrear of land revenue may be recovered by any one or more of the following processes: WP(C) No. 10316/2009 Page 17 (a) By serving a writ of demand or a citation to appear on any defaulter, (b) By arrest and detention of his person, (c) By attachment and sale of his moveable property including produce, (d) By attachment of the holding in respect of which the arrear is due, (e) By sale of the holding in respect of which the arrear is due or (f) By attachment and sale of other immovable property of the defaulter. ***** 139. Attachment and Sale of movable property (1)

The Deputy Commissioner may , whether the defaulter has been arrested or not, attach and sell his movable property . (2) Every attachment and sale under this section shall be made according to the law in force for the time being for the attachment and sale of movable property in execution of a decree of a civil court. (3) In addition to the particulars mentioned in clauses (a) to (o) of the proviso to section 60 of the Code of Civil Procedure, 1908, articles set apart exclusively for the use of religious worship shall be exempted from attachment and sale under this section. (4) The costs of attachment and sale shall be added to the arrear of land revenue. Provisions of the Punjab Land Revenue Act

21. Mode of service of notice, order of proclamation, or copy thereof: - A notice, order of proclamation or copy of any such document, issued by a Revenue-officer for service on any person WP(C) No. 10316/2009 Page 18 shall be served in the manner provided in the last foregoing section for the service of a summons.

22. Mode of making proclamation: -When a proclamation relating to any land is issued by a Revenue-officer, it shall, in addition to any other mode of publication which may be prescribed in any provisions of this Act, be made by beat of drum or other customary method, and by posting of a copy thereof on a conspicuous place in or near the land to which it relates.

21. The issue arising before this court, has arisen in the past. In Ahmedabad Municipal Corporation v Haji Abdulgafur Haji Hussienbhai AIR 197.SC 120.the question was whether the subsequent purchaser of a property was bound by a prior statutory encumbrance, created in favour of the municipality. The Court repelled the municipality's argument, holding that constructive notice could not be inferred in the absence of any actual notification about the prior charge or liability, on the property. This decision was discussed, and its ratio applied in State of Karnataka v Shreyas Paper Mills [(2006) 144 STC 331.by the Supreme Court, where it held as follows: Ahmedabad Municipal Corporation was a case where a person was in arrears of property tax, due under the Bombay Provincial Municipal Corporation Act, 1949. Consequently, the Municipal Corporation created a charge over the property of the defaulter. However, the property was sold in execution of a mortgage decree. When the Municipal Corporation purported to exercise their charge over the property, the purchaser in court auction filed a suit for a declaration that he was the owner of the property and that the arrears of municipal taxes due by the transferor were not recoverable from him by proceeding against the property purchased in auction. In the appeal before this Court, the Municipal Corporation's main argument was that where the local WP(C) No. 10316/2009 Page 19 law provided for the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive knowledge of any charge created against the properties that they had purchased. This argument was, however, rejected. This Court held that while constructive notice was sufficient to satisfy the requirement of notice in the proviso to Section 100 of the TP Act, whether the transferee had constructive notice of the charge had to be determined on the facts and circumstances of the case. In other words, this Court held that there could be no fixed presumption as to the transferee having constructive notice of the charge against the property. In fact, the principle laid down in Ahmedabad Municipal Corporation has been correctly applied in a sales tax case similar to the present case. In the present case, firstly, no provision of law has been cited before us that exempts the requirement of notice of the charge for its enforcement against a transferee who had no notice of the same. It remains to be seen, therefore, if in the facts of the present case, the First Respondent had notice_actual or constructive of the charge. At the outset, in

the advertisement/notice dated 17.3.1992 issued by the Corporation, mention is only made of the sale of the Defaulting Company's assets and there is no indication, whatsoever, of any sales tax arrears. Further, the bid offer made on behalf of the First Respondent on 5.6.1992 specifically excludes any statutory liabilities, including sales tax. This offer was accepted by the Corporation on 15.7.1992. Even at that stage, there was no mention of any sales tax arrears. The sale of the assets took place pursuant to the agreement dated 12.8.1992 in which a specific clause was inserted that the First Respondent would be liable to pay all property taxes, other taxes, electricity bills, water taxes and rents from the date of the agreement (i.e. 12.8.1992). For the first time, by letter dated 8.1.1993 of the Second Appellant to the Mandal Panchayath, Aloor Taluk, the issue of sales tax dues of the Defaulting Company was brought to the surface. This is further borne out by the correspondence between the First Respondent and the Corporation. Thus, it is WP(C) No. 10316/2009 Page 20 evident that the First Respondent had no actual notice of the charge prior to the transfer. As to whether the First Respondent had constructive notice of the charge, no substantive argument on this issue was made, either before the High Court or at any rate before us. Hence, we cannot hold that the First Appellant had constructive notice of the charge. In these circumstances, we are of the view that the First Respondent was a purchaser for value without notice of the sales tax arrears of the Defaulting Company or the consequent charge on the property. This would, therefore, attract the principle laid down by this Court in Ahmedabad Municipal Corporation, which is also embodied in the proviso to Section 100 of the TP Act. Thus, the property in the hands of the First Respondent was free of the charge and it is not open to the appellants to enforce the liabilities of the Defaulting Company in this manner against the First Respondent.

22. The preceding discussion would show that the warrant of attachment in this case, was not appropriately published in accordance with Section 22 of the Punjab Revenue Act, which stipulates that every proclamation shall be made by beat of drum or other customary method, and by posting of a copy thereof on a conspicuous place in or near the land to which it relates. There is no material on record for the court to reasonably deduce that the warrant was made known to the SubRegistrar, under the Registration Act, so that a potential purchaser of the suit

property was alerted in that regard. Indeed, the two affidavits filed on behalf of the revenue- the first by the Sub-Registrar, and the second one by the Divisional Commissioner clarify that there is nothing to show that the attachment was made known to that office. Furthermore, even though the respondents urge that the warrant of attachment was pasted on the WP(C) No. 10316/2009 Page 21 premises, no date or other particulars are forthcoming. In the absence of these basic requirements, it was not humanly possible for anyone, including the petitioners, to ascertain the revenues charge. Therefore, the petitioners were innocent purchasers without notice of any attachment order in respect of the suit property.

23. As a result of the above discussion, it is held that the order issued by the first four respondents, attaching the suit property, dated 09.03.2004, is not binding on them (i.e., the writ petitioners); the same and consequent demands and notices issued to the petitioners are hereby quashed as far as the writ petitioners are concerned. It is however clarified that the respondents are at liberty to recover the dues, from the sixth respondent, in any other manner known to law. The writ petition is allowed in the above terms; there shall, however, be no order as to costs. S. RAVINDRA BHAT (JUDGE) R.V. EASWAR (JUDGE) DECEMBER 14 2012 WP(C) No. 10316/2009 Page 22

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