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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR.JUSTICE R.DEVDAS

WRIT PETITON NO.11445 OF 2016 (CS-RES)

BETWEEN

SRI. B. R. PRADEEP KUMAR
S/O. RUDREGOWDA,
AGED ABOUT 36 YEARS,
R/AT NO. 220/J, 10TH MAIN ROAD,
NAGENDRA BLOCK, BSK 3RD STAGE,
BANGALORE-560 050.

...PETITIONER

(BY SRI. JAYAKUMAR S PATIL., SR. COUNSEL FOR
SRI. CHANDRAKANTH R PATEL., ADVOCATE)

AND

- 1 STATE OF KARNATAKA
DEPARTMENT OF CO-OPERATION,
M.S. BUILDING,
BANGALORE-560 001,
REPRESENTED BY ITS
SECRETARY.
- 2 THE JOINT REGISTRAR OF
CO-OPERATIVE SOCIETIES
BANGALORE REGION,
PAMPAMAHAKAVI ROAD,
CHAMARAJPET,
BANGALORE-560 018.
- 3 BANGALORE DISTRICT AND
BANGALORE RURAL DISTRICT
CO OPERATIVE CENTRAL BANK

LTD., NO.5, LAKSHMI SADANA,
CHAMARAJPET,
BANGALORE-560 018.
REPRESENTED BY ITS
SECRETARY.

4 JAWAHAR HOUSE BUILDING
. CO-OPERATIVE SOCIETY
LIMITED,
NO.13, LINK ROAD,
SHESHADRIPURAM,
BANGALOREF-560 020,
REPRESENTED BY ITS
SECRETARY.

....RESPONDENTS

(BY SRI. SESHU V., HCGP FOR R1 & R2
SRI. SOMASHEKAR., ADVOCATE FOR R3
SRI. R. VIJAYAKUMAR., ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ATTACHMENT ORDER DTD.2.5.1994 PASSED
BY THE R-2 VIDE ANNEX-D AND QUASH THE AWARD
DTD.1.3.1997 PASSED BY THE R-2 VIDE ANNEX-D1 AND
QUASH THE ORDER IN APPEAL NO.365/2007
DTD.29.1.2016 PASSED BY THE HON'BLE KARNATAKA
APPELLATE TRIBUNAL PRODUCED AT ANNEX-G AND
QUASH THE ORDER IN APPEAL NO.750/2008
DTD.29.1.2016 PASSED BY THE HON'BLE KARNATAKA
APPELLATE TRIBUNAL PRODUCED AT ANNEX-G1 AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED ON 19.07.2024 AND COMING ON FOR
PRONOUNCEMENT OF ORDERS, THIS DAY, **R.DEVDAS.
J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE R DEVDAS

CAV ORDER

The petitioner is aggrieved of the order of attachment passed by the Joint Registrar of Co-operative Societies, Bangalore region, on 02.05.1994 at Annexure 'D'; the award dated 01.03.1997 at Annexure 'D1'; three orders of the Karnataka Appellate Tribunal in Appeal No.365/2007, Appeal No.750/2008 and Appeal No.297/2009 all dated 29.01.2016.

2. Learned Senior Counsel Sri Jayakumar S.Patil appearing for the petitioner submitted that the petitioner is admittedly not a borrower, nor guarantor or in any way connected to the fourth respondent- Jawahar House Building Co-operative Society Limited (for short 'Jawahar Society'). Neither were the previous owners of the four properties in question, the borrowers or guarantors nor did they have any transaction with Jawahar Society. Nevertheless, on a default committed by Jawahar Society, which had borrowed loan from the third respondent - Co-operative Bank (for short 'BDCC Bank'), the third

respondent - BDCC Bank got the properties in question attached at the hands of the second respondent-Joint Registrar of Co-operative Societies (hereinafter referred to as the 'JRCS' for short), in a dispute raised under Section 70 of the Karnataka Co-operative Societies Act, 1959, by order dated 02.05.1994. At that point of time, Sri Bettaswamaiah was the owner of 2 acres of land in Sy.No.79, New No.174 (Block 5); Smt.Jayamma was the owner of 1 acre and 25 guntas of land in Sy.No.79, New Sy.No.173 (Block 4) and Sri M.Govindarajappa was the owner of 2 acres of land in Sy.No.79, New No.184 (Block 17) and Sri.Siddaiah was the owner of 1 acre and 26 guntas of land in Sy.No.79, New Sy.No.185 (Block 14).

3. A brief narration of how the petitioner came to acquire the lands in question are required to be stated herein.

a) 2 acres of land in Sy.No.79, New No.174 (Block 5)
:- Sri Bettaswamaiah sold the property on 10.11.2006 to Sri Vinu Kumar. The petitioner purchased the property on 28.03.2007.

- b) 1 acre and 25 guntas of land in Sy.No.79, New Sy.No.173 (Block 4) :- The legal representatives of Smt.Jayamma sold the property to Sri Love Mehta on 10.05.2006. The petitioner purchased the property on 28.03.2007.
- c) 2 acres of land in Sy.No.79, New No.184 (Block 17) :- Sri M.Govindarajappa sold the property to Sri Dodda Ashwatha and others on 07.08.1996. Sri Dodda Ashwatha and Others sold the land to Sri Love Mehta on 24.06.2006. The petitioner purchased the property on 10.11.2008.
- d) 1 acre and 26 guntas of land in Sy.No.79, New Sy.No.185 (Block 14) - The legal representatives of Sri Siddaiah sold the property to Sri Rudregowda on 18.12.2007. The petitioner purchased the property on 10.11.2008.

4. Jawahar Society had borrowed loan from BDCC Bank on 06.01.1993. It appears that the loan was sanctioned without obtaining proper security from the borrower. Jawahar Society intended to purchase the lands in question along with the other adjoining lands, for the purpose of formation of a residential layout, for distribution of sites to its members. In that regard, Jawahar Society claims to have entered into

agreements of sale with the then owners of the lands. The task of formation of layout was entrusted to M/s.M.B.Enterprises, a Developer. It would be relevant to notice here that after orders of attachment were passed by the Joint Registrar of Co-operative Societies and after award was passed by the said authority against Jawahar Society, its President Sri N.S.Narase Gowda took over M/s.M.B.Enterprises along with all assets and liabilities.

5. The BDCC Bank commenced recovery proceedings against Jawahar Society by issuing a notice on 15.11.1993. But Jawahar Society requested for renewal of loan account in the year 1994, but the same was rejected. A dispute under Section 70 of the Act was raised before the JRCS. During the pendency of the dispute, an application was filed by BDCC Bank before the JRCS seeking attachment of the lands in question along with several other lands for which agreements of sale were entered into by Jawahar Society. An order of attachment was passed by the JRCS on 02.05.1994. Thereafter, an award was also

passed on 01.03.1997. However, it is contended that BDCC Bank did not take any further action for recovery, for more than ten years. The petitioner purchased two of the lands in question on 28.03.2007 and two others on 10.11.2008, not being aware of the orders of attachment. When the petitioner came to know of the orders of attachment, the petitioner filed an appeal before the Karnataka Appellate Tribunal (KAT for short) in Appeal No.365/2007 on 10.05.2007, in respect of old Sy.No.79, New No.174 (Block 5) – 2 acres and old Sy.No.79, New No.173 (Block 4) – 1.25 acres. The petitioner later filed another Appeal in Appeal No.750/2008 in respect of the other two properties purchased on 10.11.2008.

6. Learned Senior Counsel Sri Jayakumar S. Patil submitted that the KAT dismissed the appeals on the ground of delay and laches. Although it was brought to the notice of the KAT that the petitioner purchased the properties in the year 2007 and 2008 and the Appeals were filed in the years 2007 and 2008 and therefore, there was no delay on the part of the

petitioner in filing the Appeals, nevertheless, the KAT has disregarded such contention.

7. Learned Senior Counsel Sri Jayakumar S.Patil drew the attention of this Court to Section 103 of the Act and submitted that the Registrar, in terms of sub-section (2) of Section 103 of the Act, was required to issue notice calling upon the person whose property is so attached to furnish security which he thinks is adequate, within a specified period and if the person fails to provide the security so demanded, the Registrar may confirm the order. Rule 35 of the Karnataka Co-operative Societies Rules, 1960, prescribes the procedure for execution of an award passed under the Act. The procedure prescribed therein is that firstly, the moveable property of the judgment debtor should be proceeded against. Clause (ii) of sub-Rule (i) of Rule 35 of the Rules, 1960 provides that if the sale proceeds of the moveable property are sold and are insufficient to meet in full the demand of the decree-holder, only then the immoveable property mortgaged to the decree-holder

or other immoveable property belonging to the judgment-debtor may be proceeded against. At any rate, the properties in question, not belonging to Jawahar Society, could not have been attached at the hands of the JRCS. It was also the bounden duty of the JRCS to verify as to whether the proposed immoveable properties belonged to the judgment-debtor, if not mortgaged to the decree holder. This exercise was not undertaken by the JRCS. Moreover, no notice was issued to the owners of the properties and therefore, the KAT has erred in coming to a conclusion that the appeals filed by the petitioner were hit by delay and laches. The appeals filed by the petitioner were in time from the date of knowledge of the orders of attachment, since the petitioner purchased the properties in the years 2007 and 2008.

8. Learned Senior Counsel further submitted that merely because the order of attachment passed by the JRCS is notified in the Gazette, it cannot be contended that there was notice to the true owner of the property. Moreover, no such encumbrance were

notified in the office of the jurisdictional Sub-Registrar, which is a known mode of information to a person who seeks to deal with the property. In this regard, learned Senior Counsel sought to place reliance on a decision of the Hon'ble Supreme Court in the case of ***M/s. J.K.(Bombay) Private Ltd., Vs. M/s.New Kaiser-I-Hind Spinning and Weaving Co. Ltd.***, reported in **AIR 1970 SC 1041**, wherein it was held that the distinction between a charge and a mortgage is, that in case of a charge there is no transfer of property or any interest therein, but only creation of a right of payment out of the specified property. However, in case of a mortgage, it effectuates transfer of property or an interest therein. It was therefore contended that since the properties in question were not mortgaged to the BDCC Bank, there was no transfer of the property. Although it was contended by Jawahar Society that it had entered into an agreement of sale with the owners of the properties, the JRCS could not have passed an order of attachment in respect of the properties in question. The petitioner is

legitimately entitled to challenge the order of attachment, since such an order of attachment was not binding on the owners of the property at the time when the order of attachment was passed. The petitioner has entered into the shoes of the previous owner and therefore, he is entitled to raise a challenge to the order of attachment. The learned Senior Counsel also placed reliance on ***Suraj Lamp and Industries Private Limited Vs. State of Haryana and Another (2012) 1 SCC 656***, to contend that the Apex Court has held that transactions such as General Powers of Attorney, Sale Agreements along with Power of Attorney will not convey or transfer immoveable property and they do not convey title and do not amount to transfer, nor can they be recognized as valid mode of transfer of immovable property. Courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property, in terms of the provisions of the Transfer of Property Act.

9. Per contra, learned Counsel for respondent No.3-BDCC Bank sought to sustain the impugned order passed by the KAT. Learned Counsel submitted that the petitioner herein cannot contend that he is a *bona fide* purchaser. The petitioner was aware of the order of attachment passed against the properties in question and the neighbouring properties for which the borrower, Jawahar Society had entered into agreements and had paid substantial amounts as advance. Moreover, admittedly the petitioner herein filed an appeal in No.365/2007 on 10.05.2007, complaining of the illegality committed by the JRCS in passing orders of attachment. However, after the appeal was filed, the petitioner herein purchased two more properties under sale deeds dated 10.11.2008, knowing fully well that such common order of attachment were passed in respect of those properties also. The petitioner thereafter filed Appeal No.750/2008 and Appeal No.297/2009. It is therefore contended that the petitioner cannot claim that he was a *bona fide* purchaser, without notice.

10. Learned Counsel for respondent No.3-BDCC Bank further contended that the predecessors-in-title were also aware of the order of attachment passed by the JRCS. The petitioner has been informed of the order and despite such knowledge, the petitioner has proceeded to purchase the properties in question which were under attachment. Learned Counsel submitted that the petitioner has no *locus standi* to challenge the order of attachment, since he purchased properties which were attached in contravention of Rule 39 of the Rules, 1960 which bars any private transfer or delivery of the property attached or of any interest therein. Rule 39 also provides that any payment to the judgment debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

11. It is also contended that the KAT has taken note of the fact that the order of attachment was also published in a newspaper, Vijaya Karnataka on 07.11.2005, much prior to the petitioner purchasing the properties in question. Therefore, the petitioner

cannot contend that he had no notice of the order of attachment.

12. The learned Counsel would further submit that the Department of Co-operation, Government of Karnataka, has issued a Government Order dated 27.03.2008, which is produced as Annexure 'R3B' along with the statement of objections, wherein the Government has authorized the BDCC Bank to collect Rs.15 lakhs per acre in respect of the properties under attachment and release the properties from attachment. In that view of the matter, learned Counsel would submit that it is still open for the petitioner to pay Rs.15 lakhs per acre and get the properties released.

13. Learned Counsel Sri Vijayakumar, appearing for respondent No.4-Jawahar Society submitted that the word 'belonging to the judgment debtor' as found in Clause (ii) of sub-rule (1) of Rule 35 should be read as 'including a property under an agreement of sale'. The learned Counsel would therefore submit that no

fault can be found in the action of the Jawahar Society offering the properties in question for attachment.

14. Heard the learned Senior Counsel Sri Jayakumar S.Patil for the petitioner, learned Counsel Sri Somashekar for respondent No.3, learned Counsel Sri R.Vijayakumar for respondent No.4, learned HCGP for the respondent-State and its authorities and perused the petition papers.

15. The question that is required to be considered is whether respondent No.4-Jawahar Society could have offered the properties in question for attachment; whether the JRCS could have passed orders of attachment in respect of properties not owned by the borrower/judgment debtor and whether the KAT was right in dismissing the appeals filed by the petitioner on the ground of delay and laches.

16. To answer the questions, this Court should look into the relevant provisions contained in the Act and the Rules governing the procedure for attachment of immovable properties. Rule 35 of the Karnataka Co-operative Societies Rules, 1960, reads as follows:

35. Procedure in execution.- Unless the decree-holder has expressed a desire that proceedings should be taken in a particular order as laid down in sub-rule (2) of Rule 34 execution shall ordinarily be taken in the following manner,-

(i) moveable property of the judgment-debtor shall be first proceeded against; but this shall not preclude the immovable property being proceeded against simultaneously in case of necessity;

(ii) if there is no moveable property, or if the sale proceeds of the moveable property or properties attached and sold are insufficient to meet in full the demand of the decree-holder the immovable property mortgaged to the decree-holder, or other immovable property belonging to the judgment-debtor may be proceeded against.

17. It is clear from the said provision that the authority competent of passing an order of attachment and execution of award is required to firstly proceed against the moveable property of the judgment debtor. It is no doubt true that clause (i) of sub-Rule (1) of Rule 35 permits proceeding against moveable as well as immovable property simultaneously, in case of

necessity. However, clause (ii) of sub-rule (1) of Rule 35 clearly provides for proceeding against immovable property 'mortgaged to the decree holder', or 'other immovable property belonging to the judgment debtor'. The provisions of the Transfer of Property Act, more particularly, Sections 54 and 53A have been considered by the Hon'ble Apex Court in the case of ***Suraj Lamp*** (supra), cited by the learned Senior Counsel appearing for the petitioner and it has been held that sale agreements, General Power of Attorney do not convey any title nor do they create any interest in an immovable property. It was held and reiterated that immovable property can be legally and lawfully transferred/conveyed only by a registered Deed of Conveyance. The Courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act.

18. The learned Senior Counsel for the petitioner is also right in his contention that by an order of attachment, a charge is created over a property but that does not either transfer a property or any interest in the property is transferred, but it only creates a right of payment out of the specified property. Admittedly, the fourth respondent-Jawahar Society had not mortgaged the property in question to the third respondent-BDCC Bank. It would have been a different issue if the previous owners had consented for mortgage of the properties at the hands of Jawahar Society. But that is not so in the present case. In that view of the matter, merely because the order of attachment was published in a newspaper in the year 2005, it cannot be held against the petitioner that he had knowledge of the order of attachment. The other important aspect which has to be noticed is that admittedly no notice was issued to the true owners of the property before the order of attachment was passed by the JRCS. Therefore, when the predecessors-in-title had no notice of the application

for attachment and since the said owners were not heard before the orders of attachment were passed nor did the sale officer serve or caused to be served a copy of the demand notice in terms of sub-rule (2) of Rule 38 of the Rules, the order of attachment cannot be sustained.

19. It is also profitable to notice that subsequent to ***Suraj Lamps*** (supra), the Hon'ble Apex Court, in the case of ***Mayadevi Vs. Lalta Prasad (2015) 5 SCC 588*** has held that a duty is cast on Executing Court to comprehensively consider all questions raised by objector on merits in Execution proceedings, particularly when title of judgment debtor to attach property is being questioned and objector is claiming the same. It was also held that on a conjoint reading of Order XXI Rule 58 of CPC and the fasciculus of Order XXI comprising Rules 97 to 104, it becomes clear that all questions raised by the objector have to be comprehensively considered on their merits.

20. It is also essential to notice that Rule 58 of Order XXI mandates that if such objection is raised to

the attachment of any property attached in execution of a decree on the ground that such property is not liable to be attached, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions contained therein. The proviso to sub-rule (1) of Rule 58 of CPC, exempts the Executing Court from entertaining such objection only if the claim is preferred or objection is made after the property attached has already been sold or where the Court considers that the claim or objection was designedly or unnecessarily delayed. Having regard to such express provisions, this Court is of the considered opinion that the KAT could not have dismissed the appeals filed by the petitioner on the ground of delay and laches.

21. However, one of the submissions of the learned Counsel for the third respondent-BDCC Bank merits consideration, viz., that the petitioner herein purchased two of the properties after filing an appeal before the KAT. Admittedly, there is only one order of attachment dated 02.05.1994 and that order is in respect of all the properties, including the four

properties which are the subject matter of this dispute. The petitioner is therefore precluded from contending that he is a *bona fide* purchaser insofar as the two properties purchased under sale deeds dated 10.11.2008. The acquisition of the two properties at the hands of the petitioner is hit by Rule 39 of the Rules, 1960.

22. Nevertheless, it is still open for the petitioner to pay Rs.15 lakhs per acre in respect of the two properties purchased under the sale deeds dated 10.11.2008 and get the properties released from attachment.

23. Consequently, this Court proceeds to pass the following:

ORDER

- i) The writ petition is allowed in part.
- ii) The impugned order dated 29.01.2016 passed by the Karnataka Appellate Tribunal in Appeal No.365/2007 is hereby quashed and set aside. The order of attachment dated 02.05.1994 insofar as the subject matter of the said

appeal is also quashed and set aside. The two properties viz., 2 acres of land in Sy.No.79, New No.174 (Block 5) and 1 acre and 25 guntas of land in Sy.No.79, New Sy.No.173 (Block 4), situated at Machohalli Village, Dasanapura Hobli, Bangalore North Taluk are hereby released from attachment.

- iii) If the petitioner seeks to get the two properties released, which were purchased under sale deeds dated 10.11.2008, he may pay Rs.15 lakhs per acre, in terms of the Government Order dated 27.03.2008 to the third respondent-BDCC Bank. On receipt of the said amount, the third respondent-BDCC Bank shall release the two properties in favour of the petitioner.

Ordered accordingly.

Pending I.As., if any, stand disposed of.

Sd/-
(R.DEVDAS)
JUDGE

JT/-