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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 6th August, 2024

+ W.P.(C) 3482/2023, CM APPL. 13504/2023, CM APPL. 26175/2024

AMIT ARORA

.....Petitioner

Through: Mr. Ashim Vaccher, Mr. Pawas Piyush, Mr. Abhimanyu Singh, Mr. Justine George and Mr. Surya Kiran Singh, Advocates.

versus

COMMISSIONER OF EXCISE & ORS.Respondents

Through: Mr. Prashant Manchanda, ASC, GNCTD with Mr. Mayank Kamra and Ms. Nancy Shah, Advocates.
Mrs. Neelam Venkatachalam, Assistant Commissioner (Excise).
Ms. Manju Singh Kalshain, SDM (South East).

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, Mr. Amit Arora, claims rightful ownership of the property located at D-240, 3rd Floor, Defence Colony, New Delhi – 110024¹. He contends that the Respondents have arbitrarily and without sanction of law attached and sealed the Subject Property, wrongly identifying it as the registered office of Popular Spirits LLP—a firm with

¹ “Subject Property”



which the Petitioner asserts he has no affiliation. He argues that the warrant of attachment dated 25th January, 2023, is wrongly founded on the recovery certificate dated 4th October, 2022 and notice dated 15th December, 2022, which are both associated with Popular Spirits LLP. Accordingly, the Petitioner seeks judicial intervention under Article 226 of the Constitution of India, 1950, to seek quashing of the impugned notices and directions for the Respondents to de-seal the Subject Property.

2. The factual backdrop leading to filing of the instant petition is summarised hereunder:

2.1. Popular Spirits LLP was issued a license bearing No. L7Z/2021/05910 in Zone 30 for retail vend of Indian and Foreign liquor in the National Capital Territory (NCT) of Delhi under Tender ID 2021_EXC_204932_30 published on 28th June, 2021, at an annual license fee of INR 262 crores.

2.2. As per the records of the Excise Department, Popular Spirits is a Limited Liability Partnership (LLP) Firm under the Limited Liability Partnership Act, 2008. Mr. Sahil Arora and Mr. Bhuvnesh Kumar are its partners. In the bid documents, Mr. Sahil Arora furnished the address of Popular Spirits LLP as D-240, 3rd Floor, Defence Colony, New Delhi-110024, i.e. the Subject Property.

2.3. Popular Spirits LLP did not pay the license fee for the month of July 2022, which resulted in the Delhi Excise Department initiating action under Section 29(2) of the Delhi Excise Act, 2009. According to the Excise Department, an amount of INR 9,82,88,771/- is due and payable by Popular Spirits LLP.

2.4. Following the issuance of recovery certificate dated 4th October, 2022,



bearing No. F.No.ZONE-30/L-72/EX/IMFL/2021-22/3443-44/4117, the Sub-Divisional Magistrate² (Defence Colony), through Deputy Magistrate (South East), was requested to take all steps for realisation of government dues from Popular Spirits LLP, as arrears of land revenue, and make the same available to the Excise Department.

2.5. On the basis of this recovery certificate, the SDM (Defence Colony) issued notice on 15th December, 2022 to Popular Spirits LLP with a direction to deposit the due amounts within thirty days or to file an affidavit of assets. The notice was served through field staff as well as through the SHO, Defence Colony Police Station. In response to the said notice, the defaulter, Mr. Sahil Arora, filed a reply before the Assistant Commissioner (Excise), which is extracted as follows:

3. That in response to notice, the defaulter Sh. Sahil Arora has filed reply before the Assistant Commissioner (Excise) mentioning therein that *"since no licence fee is spending for the month of July, 2022, the recovery certificate issued under section 29 of the Delhi Excise Act 2009 dated 04.10.2022 issued by the Assistant Excise Commissioner, the recovery certificate no.3111 dated 28.10.2022 and writ of demand dated 09.12.2022 issued by the Tehsildar Wazirabad and the notice issued by the Assistant Collector SDM (South-East), New Delhi dated 15.12.2022 must be recalled/withdrawn"*. (Copy annexed as Annexure "C")

2.6. Subsequently, another letter dated 3rd January, 2023, was received by the SDM from the Assistant Commissioner (Excise) with a direction to realise the pending government dues from the defaulters. Accordingly, the SDM issued the impugned warrant of attachment dated 25th January, 2023.

3. In the aforementioned background, Mr. Ashim Vaccher, counsel representing the Petitioner, has advanced the following submissions to argue that the orders for sealing the Subject Property are without jurisdiction,

² "SDM"



unreasonable and arbitrary, and therefore are liable to be set aside:

3.1. The Petitioner is the lawful owner and titleholder of the Subject Property, which was transferred to the Petitioner *vide* sale deed dated 21st August, 2014 executed by the Petitioner with Mr. Ashok Chawla and Mr. Lalit Chawla (erstwhile owners of the Subject Property). The copy of the said sale deed executed in the name of Mr. Amit Arora has been presented to the Court and a copy thereof is filed as Annexure P-1 to the petition.

3.2. By virtue of a mutual understanding, the Petitioner had leased out the Subject Property to Popular Spirits LLP in the year 2018 for use as their registered office. The said arrangement continued till July 2021, when Popular Spirits LLP vacated the Subject Property, and since then they have not used the Subject Property for any of its business operations or any other work. In this regard, attention is drawn to the Third Supplementary Agreement of Popular Spirits LLP dated 21st July, 2021, wherein it is categorically mentioned that the address was to be changed from the Subject Property to S- 363, First Floor, Greater Kailash-2, New Delhi – 110048, which is also mentioned as the registered address of Popular Spirits LLP in the ROC Master Data.

3.3. The Respondent Authorities have initiated attachment proceedings without any due diligence to establish the title and ownership of the Subject Property. The warrant of attachment dated 25th January, 2023 contained directions for the SHO, P.S. (Defence Colony) to attach moveable and immovable properties of Mr. Sahil Arora, who is a designated partner of Popular Spirits LLP. Although he is a distant cousin of the Petitioner, neither Mr. Sahil Arora, nor Popular Spirits LLP are the owner and titleholder of the sealed Subject Property. Therefore, Excise Department has



erroneously proceeded to seal the Subject Property on the basis of an incorrect presumption that the Subject Property, which was previously mentioned as the communication address of the LLP, was owned by Mr. Sahil Arora and was an asset of the LLP.

3.4. The Excise Department has issued the recovery certificate mentioning the Subject Property as the registered address of Popular Spirits LLP and the SDM (Defence Colony) initiated attachment proceedings against the Subject Property. However, no intimation was given to the Petitioner. Thus, both, the Excise Department and SDM (Defence Colony) have violated principles of natural justice and equity by initiating the recovery proceeding and issuing the warrant of attachment against the private property of the Petitioner without providing any opportunity to make any representation before the concerned authority and clarify that the sealed property was under the ownership of the Petitioner and not that of the LLP.

3.5. Petitioner is the sole owner and titleholder of the Subject Property, and no charge exists in favour of the Excise Department. The sealing and attachment of the Subject Property is *ex facie* illegal.

3.6. Reliance is also placed on an order dated 14th February, 2023, passed in LPA 92/2023 titled '*Sahil Arora v. Commissioner of Excise, GNCTD*'. The said decision was rendered in a challenge made by Mr. Sahil Arora against the recovery certificate issued by the Delhi Excise Department. In the said proceedings, after taking note of the statutory protection to the personal assets of a partner in an LLP, this Court observed that the Excise Department cannot go beyond the assets of the defaulter, i.e. the LLP. The Court accordingly observed that the direction given to a partner of the LLP to make a deposit from his personal assets was not warranted. In the instant



case, the Petitioner is better placed as he is not even a partner of the LLP, and therefore the Excise Department could not have proceeded against the personal assets of the Petitioner.

4. *Per contra*, Mr. Prashant Manchanda, counsel for Respondents, vehemently opposed the present petition and urged the following contentions:

4.1. Popular Spirits LLP failed to fulfil its obligations by not depositing the due license fees for July 2022, leading to the suspension of their operational permissions from 15th July, 2022. Despite repeated communications and opportunities provided to the LLP to clear their dues, there was persistent non-compliance. Consequently, the actions undertaken by the SDM, pursuant to the recovery certificate dated 4th October, 2022, in strict adherence to Section 29 of the Delhi Excise Act, 2009, aimed at recovering government dues exceeding INR 9 crores. These measures were thus fully compliant with the procedural mandate of the law.

4.2. Contrary to the Petitioner's claims, there was no formal communication or intimation to the Respondents regarding any change in the registered address of Popular Spirits LLP. The actions against the Subject Property were based on its listing as the official address in the tender documents submitted by the LLP. Therefore, the measures taken were based on the last known details provided to the Respondents, validating the legal action of attachment against the subject property.

4.3. Further, it has also come to light that the Petitioner, Mr. Amit Arora, is the *de facto* owner of Popular Spirits LLP. In this regard, reliance is placed on the prosecution complaint under Sections 44 and 45 of the Prevention of Money Laundering Act, 2002 filed by the Enforcement



Directorate. This complaint also discloses that all the affairs of Popular Spirits LLP were being run through Mr. Amit Arora, as also evidenced by his statements made to the Enforcement Directorate.

Analysis and Findings

5. The Court has considered the aforementioned contentions and also perused the original files which have been presented by Mrs. Neelam Venkatachalam, Assistant Commissioner (Excise) as well as Ms. Manju Singh Kalshain, SDM (South East), who are present before the Court in compliance with the previous order.

6. On the basis of the submissions advanced, it emerges that as on the date of issuance of the warrant of attachment, there was no material on record to indicate that the Subject Property belonged to Popular Spirits LLP or to any of its partners. This discrepancy raises substantial questions about the due diligence conducted prior to initiating enforcement actions. Moreover, on the basis of the documents shown, the Petitioner is evidently the owner of the Subject Property. Mr. Vaccher has stated that the original title documents of the Subject Property are mortgaged with Standard Chartered Bank, DLF Cyber City Branch, Gurgaon.

7. Despite the compelling evidence favouring the Petitioner, the Respondents argue that the attachment order is legally tenable, heavily citing the Petitioner's alleged role as a *de facto* owner of Popular Spirits LLP and the use of the Subject Property as its correspondence address. However, this assertion is unsustainable for several reasons. Firstly, the mere fact that the Subject Property was listed as a correspondence address does not, in itself, confer ownership of the property on Popular Spirits LLP or justify its



attachment under the LLP's liabilities. The Petitioner has been conclusively proven to not be a partner of the LLP, nor is there any credible evidence suggesting otherwise. This distinction is critical as Section 27 of the Limited Liability Partnership Act clearly stipulates that liabilities of an LLP are solely that of the partnership and do not extend to third parties who are not legally bound as partners. Furthermore, the assertion that the Petitioner acted as a *de facto* owner lacks substantiation and is not supported by any concrete legal or documentary evidence. Such a claim requires a thorough and independent assessment which has not been conducted. The Respondents' reliance on an unsubstantiated claim to justify the drastic measure of attaching and sealing private property is not only legally untenable but also constitutes a serious procedural lapse. The impugned actions cannot be justified based on the Petitioner's alleged indirect association with the LLP.

8. The Court notes that there is a discrepancy between the claims made by the Petitioner regarding the sealing of the Subject Property and the account provided by Ms. Manju Singh Kalshain, the SDM. Ms. Kalshain clarifies that the action taken by her office was merely of attachment, not sealing. She further asserts that the field staff found the Subject Property already locked/ sealed by unknown parties, leading them to affix the warrant of attachment to the property's door. This assertion is substantiated by a Status Report submitted to the Court, which includes photographs evidencing the pre-existing sealed condition of the property. In such circumstances, it is imperative to clarify that the Court is not making any observations with regards to the sealing of the Subject Property if done by any other authority. The Court's jurisdiction is limited to considering only whether the attachment done by the SDM under the recovery certificate



issued by the Excise Department is valid in eyes of law.

9. In light of the foregoing discussion and analysis, the Court finds that the impugned action of attachment taken against the Subject Property owned by the Petitioner, who is not a partner of Popular Spirits LLP, cannot be sustained in law. Accordingly, the following directions are issued:

9.1. The warrant of attachment dated 25th January, 2023 stands quashed.

9.2. As observed above, it is clarified that the Court has not directing quashing of any other action taken against the Subject Property by any other authority or institution.

10. The petition is disposed of along with pending applications.

SANJEEV NARULA, J

AUGUST 6, 2024

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