

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 1144 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE S.H.VORA**

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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 ?	

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JASHIBEN VISHNUBHAI PATEL....Petitioner(s)

Versus

ASSISTANT OF SALES TAX,....Respondent(s)

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Appearance:

MR KEYUR A VYAS, ADVOCATE for the Petitioner(s) No. 1

SHRI CHITAN DAVE, AGP for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE M.R. SHAH**  
**and**  
**HONOURABLE MR.JUSTICE S.H.VORA**

**Date : 30/04/2015**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1. Rule. Shri Chintan Dave, learned AGP waives service of notice of rule on behalf of the respondent State.

2. In the facts and circumstances of the case and with the consent of learned advocates appearing on behalf of the parties, the present petition is taken up for final hearing today.

3. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the auction proceedings issued by the respondent – department pursuant to the notice at Annexure A dated December, 2014, by which the properties of the petitioner is sought to be auctioned for the recovery of the dues of her husband – dealer Patel Vishnubhai Bholabhai.

4. That for the dues of the dealer Patel Vishnubhai Bholabhai – husband of the petitioner of Rs.1,29,73,658/- for the assessment period 19989-99 and 1999-2000, by impugned auction notice, the property of the petitioner situated at village Charada is sought to be auctioned. Hence, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

5. Shri Keyur Vyas, learned advocate appearing on behalf of the petitioner has vehemently submitted that as such, the property in question, which is sought to be auctioned is in the name of the petitioner since 1995. It is submitted that as

such, the husband of the petitioner started business for the first time in the year 1998 and obtained the sales tax registration in the year 1998. It is submitted that thereafter, for the first time, a demand notice came to be issued in the year 2014 and now the property belonged and owned by the petitioner is sought to be auctioned. It is submitted that for the dues of the husband of the petitioner, the property owned and belonged to the petitioner cannot be put to auction. In support of his above submission, he has heavily relied upon the decision of the Division Bench of this Court in the case of Jayesh Vadilal Parekh Vs. Commercial Tax Officer and others rendered in Special Civil Application No.2320 of 2014.

6. Shri Chintan Dave, learned AGP has opposed the present petition. He has relied upon the Affidavit-in-reply filed on behalf of the respondent. It is submitted that as such, at the time of getting registration certificate by the dealer Patel Vishnubhai Bholabhai – husband of the petitioner, he had shown or declared the property in question. It is submitted that there are huge dues to the extent of Rs.1,29,73,658/- due and payable by the husband of the petitioner. It is submitted that to recover the aforesaid amount, notice in form No.35 has already been issued against the husband of the petitioner. It is submitted that no sooner if the notice in form No.35 was issued upon the husband of the petitioner, he filed an application for declaration of insolvent under section 10 of the Insolvency Act, which came to be rejected by the concerned Court on 14.11.2011. It is submitted that therefore, there was a delay in proceeding further with recovery proceedings. It is submitted that after the insolvency proceedings came to be terminated, the recovery proceedings are once again initiated

by the respondent authorities. It is submitted that therefore, for the period between 2002 to 2011, the respondent authorities were unable to initiate recovery proceedings against the husband of the petitioner. It is submitted that the husband of the petitioner at the time of registration provided the details of the immovable property in question, however without informing the respondent authorities, the husband of the petitioner transferred the said property in the petitioner in order to defraud the revenue authorities with regard to outstanding sales tax liabilities. It is submitted that therefore, the respondent authorities have rightly initiated the proceedings for auction of the immovable properties in question. It is submitted that as such, the respondent authorities are duly empowered under section 47 of the erstwhile Gujarat Sales Tax Act. Making above submissions, it is requested to dismiss the present petition.

7. Heard learned advocates appearing on behalf of the respective parties at length.

8. At the outset, it is required to be noted that the dealer for whose dues the property in question of the petitioner is sought to be auction started business in the year 1998. He obtained the sales tax registration in the year 1998. The dues against the dealer are for the period between 1998 and 2000. It is true that when the amount due and payable by the husband of the petitioner was sought to be recovered and a notice was issued in form No.35, immediately, the husband of the petitioner – concerned dealer initiated the insolvency proceedings, which came to be disposed of/dismissed/terminated in the year 2011 only. However, what is required

to be considered is whether for the dues of the husband of the petitioner under the Sales Tax Act, whether the property of the petitioner can be auctioned? It is required to be noted that the property has been transferred in the name of the petitioner by her husband in the year 1995. It is required to be noted that the husband of the petitioner started business, for which he obtained the sales tax registration in the year 1998. It cannot be presumed that when the immovable properties in question came to be transferred in the name of the petitioner in the year 1995, it was only with a view to defraud the tax dues of the husband of the petitioner. It would be too much to presume that in anticipation of the sales tax dues in future, the dealer might have transferred the property in name of the petitioner. It cannot be presumed that at the time when the husband of the petitioner transferred the property in question in name of the petitioner, the husband of the petitioner had a knowledge that in future as and when he will start the business, there will be loss and/or tax dues. Under the circumstances, in the facts and circumstances of the case, to put the immovable property in question of the petitioner to auction for dues of the husband of the petitioner is not justified. However, still, it will always be open for the State revenue to institute the proceedings/suit to declare the transfer between the dealer husband of the petitioner and the petitioner with respect to immovable property in question as Benami and/or with the intention to defraud the revenue, if at all, the same is permissible under the law. However, till any such declaration and more particularly, when the immovable property in question has been transferred in the name of the petitioner as far as back in the year 1995 and the dues are for the AY 1999-2000 and

2000-2001, the immovable property in question, which belonged to the petitioner and which is in the name of the petitioner since 1995 cannot be put to auction for the dues of her husband - Patel Vishnubhai Bholabhai.

9. In view of the above, reserving the liberty as above, if any permissible under law, the impugned notice at Annexure A to the petition to put to auction the immovable property in question of the petitioner is hereby, quashed and set aside. Rule is made absolute to the aforesaid extent. No costs.

**(M.R.SHAH, J.)**

**(S.H.VORA, J.)**

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