

A.F.R.
Reserved Judgment
Reserved On: 23.07.2024
Delivered On :09.08.2024

Case :- CRIMINAL MISC. WRIT PETITION No. - 5205 of 2024
Petitioner :- Siraj Ahmad Khan Thru. Farheen Naz And Another
Respondent :- The Addl. Chief Secy. Home, Govt. Of U.P. And Others
Counsel for Petitioner :- Jyotiresh Pandey, Ashish Kumar Jain
Counsel for Respondent :- G.A.

Coram : Hon'ble Vivek Chaudhary, J.
Hon'ble Narendra Kumar Johari, J.

(Delivered by : Hon'ble Narendra Kumar Johari, J.)

1. Heard learned counsel for the petitioners, learned A.G.A. for the State/respondents and perused the record.
2. Having considered the facts, circumstances and submissions of learned counsel for the petitioners and learned A.G.A., we do not considered necessary it to call for the counter affidavit from the respondents.
3. By means of this writ petition, the petitioners have sought following main reliefs :-

"(i) to issue a writ, order or direction in the nature of Certiorari, for quashing the order dated 10.06.2024 passed by Respondent No.2, annexed with the petition as annexure No.1 & 2,

(ii) to issue a writ, order or direction in the nature of Mandamus, commanding the Respondent No.2 & 3, to release the seized properties attached by him,

(iii) to issue a writ, order or direction in the nature of Mandamus, to the Respondent No.2 & 3, to permit the Representative of the Petitioners, for taking the Mango Crop at the seized Agricultural Farm of the Petitioners,

(iv) to issue a writ, order or direction in the nature of Mandamus, to the Respondent No.2 & 3, for ensuring the videography of the Mango Orchard and Residential House at the time of the release."

4. The facts of the case, in short, are that informant Fareed Ahmad Khan lodged an F.I.R. with the contention that on 02.02.2024 at 15.30 hours, accused Siraj Ahmad @ Lallan Khan reached at the place of occurrence with his persons by Mahendra Thar vehicle and started threatening and abusing his family members. Accused Siraj Ahmad @ Lallan Khan who is an old history-sheeter was carrying a loaded rifle in his hands. Having heard the noise, the cousin of the informant, namely, Munir Khan, who was present at his house, tried to pacify Siraj Khan but Siraj and his son Faraz Khan started exhorting by saying that kill all the family members. Thereafter, Siraj Khan opened fire on Hanjla Khan, who was the minor son of the informant. Having seen the occurrence, cousin of informant, Munir Khan tried to stop him but the accused fired upon him also. When his wife Farin Khan tried to stop them, then Faraj Khan snatched the gun from his father and shot fire at Farin Khan. Consequently, all the three persons died on the spot. He further submitted that above occurrence has been recorded in Camera, which was installed in his residence. Accordingly, an F.I.R. under Sections 302, 504, 506 I.P.C. vide Crime No.0030/2024 was registered at Police Station Malihabad, Lucknow against the accused persons. During investigation, Section 34 I.P.C. as well Section 27/30 of Arms Act were also added. As a result of investigation, prima facie, commission of offence was found. Consequently, the Investigating Officer has submitted charge sheet against named accused persons on 17.02.2024.

5. The S.H.O., Police Station Mall, Lucknow/Investigating Officer of the case submitted his report on 04.03.2024, which was forwarded by the Deputy Commissioner (Upayukt) of Police (West), Lucknow to Police Commissioner, Lucknow. Upon perusal of the report of S.H.O./Investigating Officer along with the documents annexed with the report, the fact came into knowledge of the Police Commissioner that the accused petitioner No.1-Siraj Khan @ Lallan Khan is a vicious offender and under his leadership, a well organized gang is being run. The accused/petitioner No.1 himself along with other members of his gang, is engaged in criminal activities. Infact the accused Siraj Khan was born in an ordinary family and he was brought up by his parents in normal ways. Desirous of lavish life, the accused entered into the field of crime. Thereafter, he established a well organized gang and to get the temporal pecuniary, material or other advantage for himself, started committing offences. The accused has committed offences like Mar-peat, abusing, loot, attempt to murder and murder, just to create his fear and terror in public. Feared by his terror, people could not dare to come

forward to lodge complaints or to witness his activities. Petitioner No.2 Faraz Ahmad Khan is the active member of his father's gang and continuously involved in the criminal activities of his father. He has also developed his terror in the area. Further to get in the dispute of possession of land both the accused persons, i.e. Siraz and Faraz along with their companions committed murder of three persons on 02.02.2024 in day light. Consequently, the public order and general life of the people got disturbed. A case under Case Crime No.0030/2024, under Sections 302/504, 506, 34 IPC and Section 27/30 of Arms Act was registered against the above offence. The Commissioner of Police also mentioned in his order dated 10.06.2024 under the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 (hereinafter referred to as "the Act of 1986") that petitioner No.1 has acquired 35 piece of land having entire area 3.0779 Hectare having market value of Rs.3,66,00,000/-. He has also built a house No.57/602 situated in revenue village Begaria, Mohalla Adnan Palli, Dubagga, P.S. - Dubagga, Lucknow having area 55000 Sq.Ft. including covered area 17,000 Sq.Ft. having market value of Rs.25.00 Crores. He has also purchased a Mahindra Thar vehicle having registration No. UP 54 AC 9393 for the value of Rs.16.00 Lacs and also a S-Cross Smart Hybrid Car having registration No. UP 32 KX 6396 having value Rs.15,00,000/- which has wrongly been shown to be sold in the name of his brother-in-law Saifulla Khan, whereas the co-accused in above Crime No. 30 of 2024, petitioner No.2 - Faraz Ahmad Khan has acquired 27 immovable properties having total area 3.503 Hectare, whose value, according to the circle rate is Rs.87,58,000/- and the market value is approximately Rs.4,16,18,016/-. It has been alleged that that the above immovable properties have been gifted to petitioner No.2 by his father-petitioner No.1 and his mother Khusnuma Begum. Apart from that, motorcycle bearing UP 32 MY2437 (HF Delux), having value of Rs.50,000/- has been purchased by petitioner No.2. Petitioner No.2 is not having his separate income. The immovable properties which have been gifted to petitioner No.2 by his parents, they could not show their valid source of income as to how they purchased/acquired the aforesaid immovable properties which have been mentioned at Serial No.1 to 37 in the order dated 10.06.2024, all the above immovable properties have been purchased by petitioner No.1 in his and his wife's name, which subsequently have been gifted to petitioner No.2. Petitioner No.1 and his wife have not produced any documentary evidence of their income, and income tax returns of relevant years showing the income for purchase of the properties or details of bank account in which the

amounts of income were deposited and from which the amount was used as consideration money. It has also been mentioned in the impugned order that although the petitioner No.2 has submitted the ITRs of Poland for the year 2022, but the same is required to be proved in accordance with law. The motorcycle which is registered in the name of petitioner no.2 has also been purchased by the income of crimes.

6. The Commissioner of Police, Lucknow in his above order has further mentioned that the accused petitioner No.1 - Siraj Ahmad Khan acquired the aforesaid properties which have total market value of Rs.28,97,00,000/-, and the value of the property which is in the name of petitioner No.2, its market value is Rs.4,16,18,016/- (immovable) and Rs.50,000/- (movable). The accused Siraj Ahmad Khan has acquired the above properties by the criminal activities and he and his family members are trying to sell out the above properties. As it has been apprised by the S.H.O., Police Station Mall, District - Lucknow. It has also been apprised to the Commissioner of Police, Lucknow that both the accused/petitioners were not having any known and valid source of income, therefore, the S.H.O., Police Station - Mall, Lucknow proposed to attach the above properties of both the accused/petitioners which were procured by them by the proceeds of crime. The Commissioner of Police, Lucknow having satisfied with the report of the S.H.O. of concerned Police Station, passed its two separate orders dated 07.03.2024 to attach the above mentioned properties of petitioners provisionally. The Commissioner of Police also appointed Tehsildar, Malihabad as receiver of the land of petitioner No.1 mentioned in order dated 07.03.2024 at Serial No.1 to 35 and for land of petitioner No.2 as mentioned in the order dated 07.03.2024 at serial no.1 to 27 and for the properties of petitioner No.1 mentioned at Serial Nos. 36 to 37 and property of petitioner No.2 mentioned at serial no.28, S.H.O., Police Station Malihabad has been appointed as receiver. He also directed to provide a copy of the attachment order to accused Siraj Ahmad and Faraz Ahmad to enable them to submit their representation within three months of the service of the orders dated 07.03.2024.

7. Aggrieved by the order of provisional attachment, the petitioners had approached this Court vide Criminal Misc. Writ Petition No.2875 of 2024, challenging the order dated 07.03.2024, passed by the Police Commissioner under Section 14 (1) of the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986. The Court after hearing the

arguments of the petitioners as well as learned A.G.A. passed order dated 24.04.2024, which is reproduced herein below :-

"Heard learned counsel for the petitioners and learned A.G.A. for the State.

2. Petitioners have approached this Court challenging the order dated 7.3.2024 passed under Section 14(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 whereby the property of the petitioners is attached by the Commissioner of Police, Lucknow.

3. Learned counsel for the petitioners submits that the said order is passed without giving any opportunity of hearing to the petitioners. He further submits that on the said property, there are mango orchards and mangoes are ripping every day, which need to be taken off from trees, otherwise there would be huge loss to the petitioners.

4. Learned A.G.A. draws the attention of the Court to Section 15 of the said Act, which provides an opportunity of hearing to the claimant of the property to submit a representation before the authority concerned within a period of three months from the date of his getting knowledge of such attachment, on which the authority concerned is to pass appropriate orders taking into consideration the reply submitted by the claimant.

5. Learned counsel for the petitioners submits that the reply/representation would be filed by the petitioners within one week from today to the impugned order dated 7.3.2024.

6. The Commissioner of Police, Lucknow is expected to decide the said reply/representation of the petitioners within a period of three weeks thereafter in accordance with law by a reasoned and speaking order after giving opportunity of hearing to the petitioners.

7. With the aforesaid, present writ petition stands disposed of."

8. The petitioners after passing the orders dated 07.03.2024 submitted their representations, both dated 29.04.2024 to the Commissioner of Police, Lucknow with the prayer to review and recall the orders dated 07.03.2024 and for release of the properties seized and

attached. The Court of Commissioner of Police, Lucknow after providing the opportunity of hearing to the counsel for the petitioners, considered the representation of the accused/petitioners and passed his detailed, well discussed and reasoned orders dated 10.06.2024. Vide orders dated 10.06.2024 in the matter of petitioner No.1, the Commissioner of Police, Lucknow has released the vehicle having registration No.UP32 KX 3696 in favour of Shaifulla Khan. So far as the other provisionally attached properties of both the petitioners are concerned, the Court of Commissioner of Police, Lucknow was not satisfied with the genuineness of the claim of the petitioners/accused persons made under sub Section (1) of Section 15 of the Act of 1986. The Court of Commissioner of Police, Lucknow confirmed the provisional attachment under Section 15 of the Act of 1986 as the petitioners could not satisfy the court regarding the source of acquisition of above properties. Accordingly, the Court referred the matter to the Court which was having jurisdiction to try the offence under the Act of 1986.

9. The Commissioner of Police, Lucknow in his orders dated 10.06.2024 also discussed that the petitioner - Siraj Ahmad @ Lallan Khan is engaged in criminal activities since 1973. He has history sheet No.11-A in his credit and has committed 18 criminal offences which have been mentioned in his criminal history. In the year 1984 and 1997, Case Crime No.200/1984, under Sections 394/323 IPC and Case Crime No.111/1997 under Section 307/504/323/506 IPC and Section 25 Arms Act at Police Station Malihabad have been registered against him. He has attached the properties which has been mentioned at serial No.1 to 37 in order dated 10.06.2024 against petitioner No.1 and properties at serial No. 1 to 28 in order dated 10.06.2024 passed against petitioner No.2, by the income of the crime. The properties in the name of petitioner No.2, were given to him by petitioner No.1 and his mother Khushnuma Begam. The petitioners could not show any evidence regarding the purchase of the attached properties, therefore, in the absence of any proof of source of income, it can be concluded that the above properties were obtained by the petitioners by the proceeds of crime as petitioner No.1 was engaged in criminal activities since 1973.

10. The petitioners have challenged the above order dated 10.06.2024 of Police Commissioner, Lucknow in the present writ petition.

11. Learned counsel for the petitioners have submitted that the order passed by the court of Police Commissioner, Lucknow is bad in the eyes of law, as the petitioners have not been provided the opportunity of hearing before the provisional attachment of the properties. There is nothing on record which may prove the ground for satisfaction of the Police Commissioner. The burden of proof was on Police Commissioner regarding "acquisition of property through proceeds of crime". There was sufficient income of the petitioners to purchase the properties as the two sons of petitioner No.1 are residing abroad have given money to purchase the properties. The petitioner No.2 also doing the business in Poland. He has submitted his income tax return for the year 2022, which proves that he earns the income. The Police Officers have wrongly shown 18 criminal cases in the credit of the petitioner as the crime number of the cases have not been mentioned in history sheet. The petitioner No.1 has submitted his supplementary written argument dated 13.05.2024 before the Police Commissioner, Lucknow in which he has mentioned that in Case Crime No.200/1984 and Case Crime No.111/1997, Police Station Malihabad, Lucknow, the petitioner No.1 was acquitted long back and regarding the criminal history, the petitioner No.1 has obtained a report/reply from the Police Station Malihabad, Lucknow under the Right to Information Act. Replying the question dated 21.03.2015 that "whether any criminal case is registered against the petitioner No.1 at Police Station - Malihabad", the S.H.O., Police Station Malihabad has informed that the "information is Nil". Hence, it is wrong to say that 17 criminal cases are registered against him in Register No.8 and H.S. Khaka of Police Station Malihabad, Lucknow. As a base case of gang chart, only one case of 2024 has been mentioned against the petitioners and on the basis of that very case, neither the petitioners can be detained under the provisions of the Act of 1986, nor their properties can be attached under the provisions of the Act of 1986.

12. Learned A.G.A. has vehemently opposed the submissions of learned counsel for the petitioners and submitted that history sheet No.11-A is being maintained by the police against the petitioner No.1. There are 17 criminal cases mentioned in the history sheet, including heinous offences as mentioned in Chapter 16, 17 and 22 of the Indian Penal Code, 1860. The petitioner No.1 could not produce any order of the court showing his acquittal from the offence under Case Crime No.200/1984 and Case Crime No.111/1997. As per the working as prevailed till 1980, prior to the year 1980, except the year of offence, no crime number was being entered in the Register No.8, that is why the

offence which have been mentioned at Serial No.12 to 15 in Register No.8 of Police Station, Malihabad, are not having case crime number, although the offences before 1980 as mentioned in Register No.8 and H.S. Khaka contains the sections of criminal law under which the criminal cases were registered against the petitioner No.1. In his application for information under the Right to Information Act, the petitioner No.1 has not prayed for the information from the record of history sheet. The petitioner No.1 has wrongly mentioned that in history sheet of Police Station Malihabad, no criminal case exists against him. Apart from the cases of Police Station Malihabad, the list of case history contains criminal cases which have been lodged against the petitioner No.1 at Serial No.1 to 11 belong to different Police Station of Lucknow and Hardoi. The same has not been denied by the petitioners specifically. The petitioners could not produce the source of income for acquiring the properties. They have not produced any certificate of their regular income, like proof of income tax for the relevant year of purchasing/acquiring the properties and ITRs of subsequent years, showing the income from agriculture/vegetation or from other sources. They could not produce the proof of transaction of money in their bank account from Poland at the stage of hearing of argument. After preliminary attachment as per rule 37(4) of the Act of 1986, the burden of proof was upon the petitioners to prove that the properties attached have not been acquired by the proceeds of crime committed by petitioner No.1. The petitioners could not submit any cogent and relevant proof before the Court of Commissioner of Police, Lucknow at the stage of hearing of their representation under Section 15 of the Act of 1986. The petitioners have statutory right for redressal of their grievance and to take part in the inquiry under Section 16 of the Act of 1986 before court concerned, as the grounds taken by learned counsel for petitioners, require appreciation of evidence. This Court has no jurisdiction to adjudicate the dispute by entering into the facts and evidence. Accordingly, the writ petition is liable to be dismissed.

13. We have heard learned counsel for the petitioners, learned A.G.A. for the State/respondents and perused the material brought on record.

14. Petitioners have challenged the validity of the orders dated 10.06.2024 in present writ petition. Vide orders dated 10.06.2024, the Court of Police Commissioner, Lucknow has confirmed the attachment of 35 immovable properties of petitioner No.1 and one residential house

and one vehicle having registration No.UP54 AC 9393 and 27 immovable properties of petitioner No.2 and one motorcycle. The orders against both the petitioners were passed by the Commissioner of Police, Lucknow under Section 15 of the Act of 1986. The record indicates that before passing the above orders dated 10.06.2024, the Police Commissioner, Lucknow had passed orders dated 07.03.2024 for provisional attachment of the properties of the petitioners. The said orders were challenged by the petitioner before this Court in Criminal Misc. Writ Petition No.2875 of 2024. The court disposed of the said writ petition with a direction to the petitioners to approach the Court of Police Commissioner, Lucknow under Section 15 of the Act of 1986. This Court had also directed the Police Commissioner, Lucknow to provide an opportunity to the petitioners to submit their representations as well as to provide opportunity of hearing and decide the representations/replies by a reasoned and speaking order, in accordance with law. The order dated 24.04.2024 has not been challenged by the petitioners further and it has attained finality.

15. The record indicates that the petitioners have submitted their representation/counter reply on 29.04.2024 for review of the order dated 07.03.2024, written arguments as well as supplementary written arguments dated 13.05.202 and rejoinder reply dated 03.06.2024 against the parawise comments of S.H.O., Police Station Mall, District Lucknow dated 11.05.2024 before the Court of Police Commissioner, Lucknow. Accordingly, the Police Commissioner, Lucknow after providing the opportunity to submit representations and opportunity of hearing, passed the orders dated 10.06.2024. The orders dated 10.06.2024 contains the discussion in detail, the points of objections of petitioners against the attachment under Section 14 (1) of the Act of 1986. The Court of Police Commissioner, Lucknow passed reasoned and speaking orders after discussing the representations of petitioners properly.

16. Learned counsel for the petitioners has submitted that the Court has not provided any opportunity of hearing before passing the order under Section 14 of the Act of 1986. The provisions of Section 14 of the Act of 1986 reads as under :-

"14. Attachment of property - (1) If the District Magistrate has reason to believe that any property, whether movable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such

property whether or not cognizance of such offence has been taken by any Court.

(2) The provisions of the Code shall mutatis mutandis apply to every such attachment.

(3) Notwithstanding the provisions of the Code the District Magistrate may appoint an Administrator of any property attached under sub-section (1) and the Administrator shall have all the powers to administer such property in the best interest thereof.

(4) The District Magistrate may provide police help to the Administrator for proper and effective administration of such property."

17. The wording as mentioned by legislature in the above section provides that if the District Magistrate/Police Commissioner has **reason to believe**, he may pass order for attachment of the property. The Police Commissioner has mentioned in his order dated 10.06.2024 that he perused the report of S.H.O., Police Station Mall dated 04.03.2024 which was forwarded by the Deputy Commissioner of Police (West), Lucknow and also the documents annexed with the report. It shows that S.H.O., Police Station Mall, Lucknow has given the report of the activities and properties of the accused persons/petitioner Siraj Ahmad @ Lallan Khan and his son Faraz Ahmad. The above report of S.H.O. was perused, considered and thereafter forwarded by Deputy Commissioner (Upayukt) of Police (West), Lucknow and the same was the basis of the orders dated 07.03.2024, which were passed by the Police Commissioner, Lucknow under Section 14 (1) of the Act, 1986. In other words, it can be said that the report of S.H.O., Police Station - Mall, Lucknow, which was forwarded by his senior police officer, the Deputy Commissioner (Upayukt) of Police (West), Lucknow, became the reason to believe that said properties of petitioners have been acquired by criminal activities and to pass the impugned orders by the Police Commissioner, Lucknow.

18. It has also been mentioned in the above orders that the accused persons and their family members are trying to transfer the properties which were acquired by them by the proceeds of crime, therefore, the Police Commissioner, Lucknow has passed the provisional attachment orders dated 07.03.2024. In Section 14 of the Act of 1986, nowhere it has been mentioned that before passing the order the District

Magistrate/Police Commissioner shall require to provide an opportunity of hearing to the accused. It appears that the intention of the legislation was to prevent the immediate alienation of properties because if the opportunity of hearing is provided before passing the order under Section 14 (1) of the Act of 1986, the accused may get sufficient time to transfer the property, then in that case, a complication may come on surface in the proceeding under the Act of 1986. Therefore, it is wrong to say that it was mandatory for Police Commissioner to provide the opportunity of hearing to the petitioners before passing the orders under Section 14 (1) of the Act of 1986. It is also to be noted that challenging the orders dated 07.03.2024, the order of this Court dated 24.04.2024 passed in Criminal Misc. Writ Petition No.2873 of 2024 has attained finality.

19. The Commissioner of Police, Lucknow has passed orders dated 10.06.2024 under Section 15 of the Act of 1986. Provisions of Section 15 of the Act of 1986 reads as under :-

"15. Release of property (1) Where any property is attached under Section 14, the claimant thereof may, within three months from the date of knowledge of such attachment, make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.

(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant."

20. It reflects from the orders dated 10.06.2024 that the Police Commissioner, Lucknow has passed the order after providing sufficient opportunity of hearing and after considering the representations of the petitioners. The Court of Police Commissioner, Lucknow has discussed in detail the grounds as mentioned in the representations of the petitioners. The Court of Commissioner of Police, Lucknow has also mentioned that the petitioners could not submit any cogent and relevant documentary evidence to prove the source of money by which the properties under attachments were obtained by the petitioners. In this regard the provisions of Rule 37 (4) of the U.P. Gangster and Anti Social Activities (Prevention) Rules, 1986 provides that the burden of proof that the property attached has not been acquired by committing offence

under the Act and the burden to show lawful source of acquisition of the property shall be on accused whose property in question is attached. In the light of above provision, the burden of proof of both the facts was on petitioners. The proviso to clause (3) of Rule 37, also provides a condition that the criminal cases enumerated in sub clauses (i) to (xxv) of clause (b) of Section 2 of the Act of 1986 should be registered against the petitioner No.1 and the property has been acquired by him by committing such offences. In this regard the Commissioner of Police, Lucknow has discussed in the impugned orders that the petitioner No.1 has been involved in the criminal activities since 1973 and his history sheet No.11-A is entered in Register No.8 of the Police Station - Malihabad. It shows the criminal history of petitioner No.1, and according to that entry total 17 cases are registered since 1974 to 1997 against the petitioner No.1. It has also been brought in the knowledge of Police Commissioner, Lucknow that petitioner No.2 could not submit any cogent and reliable evidence regarding his income to enable him to acquire the properties attached. The properties have been gifted to him by his mother and father (petitioner No.1), although he has submitted his ITR of Poland for the year 2022 but it requires proof. The petitioner No.2 could not show his regular income. The above facts, which have been brought before Police Commissioner also provide a ground for reason to believe that the petitioners have acquired the said properties by the proceeds of crime committed by petitioner No.1 regarding which the petitioners could not submit the documentary proof regarding source of income. Therefore, the orders dated 10.06.2024, passed by the Commissioner of Police, Lucknow cannot be termed arbitrary or baseless. It is in accordance with law, regarding which the Commissioner of Police, Lucknow has jurisdiction conferred in him by the legislation.

21. The further submission of learned counsel for the petitioners that the properties which were attached by the Commissioner of Police, Lucknow were in the names of the family members of the petitioner No.1 and there was no nexus between the commission of offence and acquisition of properties. Some of the properties are ancestral, some of the properties were purchased by the earnings of his sons, Ehraz Khan who is the citizen of Ireland and Shamail Khan who is the citizen of Poland and some property has been purchased by petitioner No.2 from his own income and further submission that the 18 criminal cases have wrongly been shown as registered against the petitioner No.1, the criminal history of petitioner No.1 is not true and the properties under

attachment vide orders dated 10.06.2024 have not been obtained by the proceeds of crime, these are the questions of facts and appreciation of evidence, which cannot be decided by this Court under writ jurisdiction.

22. On the above point, learned A.G.A. has placed reliance upon paragraph 4 of the judgment passed by a co-ordinate Bench of this Court in the case of ***Krishna Murari Agrawal alias Deepak Vs. District Magistrate, Jhansi and others, 2001 CRI. L.J. 949. Paragraph 4 reads as under :***

"4. The question whether the property attached has been acquired by a gangster as a result of the commission of an offence under U.P. Gangsters & Anti-Social Activities Prevention Act, 1986 is a pure question of fact. The claim of the petitioner that the property has not been acquired by commission of an offence or that it is an ancestral property can only be established by appraisal of the evidence. It will be open to the petitioner to lead oral and documentary evidence in support of his claim before the Special Judge (Gangsters Act) where the matter has been referred. Such appraisal of evidence is not possible in the present proceedings under Article 226 of the Constitution of India. The Act provides a complete machinery as against the decision of the Court an appeal lies under Section 18 of the Act."

23. The petitioners have right and statutory remedy under Section 16 of the Act of 1986 in which they will get the opportunity to prove that the properties which have been attached have not been acquired by petitioner No.1 by the commission of the crimes, and further if the petitioners are not satisfied by the order confirming attachment/order of the competent court under Section 17 of the Act of 1986, they shall get opportunity to file appeal under Section 18 of the Act of 1986. According to Section 20 of the Act of 1986, the provisions of the Act of 1986 shall have overriding effect over the inconsistent provisions of general law.

24. It has been held by Hon'ble Supreme Court in the case of ***Raj Kumar Shivhare Vs. Director of Enforcement (2010) 4 SCC 772*** that where a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ jurisdiction should not be entertained ignoring the statutory dispensation.

25. Having considered the legal aspect that extra ordinary remedy under Article 226 of the Constitution of India is not meant to circumvent the statutory remedies, the statutory provisions cannot be bypassed by this court under its supervisory jurisdiction under Article 226 of the Constitution of India.

26. In the light of above discussion, we decline to entertain the writ petition under Article 226 of the Constitution of India.

27. Accordingly, the writ petition is **rejected**. However, the petitioners shall have liberty to raise all the factual and legal issues before the court concerned under Section 16 of the Act of 1986.

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(Narendra Kumar Johari,J.) (Vivek Chaudhary,J.)

Order Date :- 09.08.2024

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