IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.13639 of 2015

Arvind C.Srinivasan ... Petitioner

Vs

1. Inspector of Police,
Crime Branch CID,
Metro Wing, Egmore,
Chennai-600 008.

2. Joint Sub Registrar-II,
Thindivanam ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the impugned communication dated 29.01.2015 from the first respondent to the second respondent informing the second respondent not to permit transaction of the schedule mentioned property belonging to the petitioner and quash the same as illegal.

For Petitioner : Mr.V.Prakash, SC for
for Mr.K.Shubharanjani Ananth

For Respondents : Mr.P.Sanjay Gandhi, AGP

O R D E R

The petitioner is aggrieved over the communication dated 29.01.2015 sent by the Inspector of Police/first respondent herein to the Joint Sub Registrar-II, Tindivanam, in and by which, it is infomed that no transaction in respect of the property belonging to the petitioner should be undertaken unless clearance of the Court is received since necessary proceedings were intiated for attachment of the same.

2. The brief facts, necessary for disposal of the writ petition, are as follows:

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According to the petitoner, he owns about 27.30 acres of vacant land situated at Bonkolathur village, Tindivanam taluk, Villupuram District, which got registered in the office of the second respondent. While so, on 13.04.2015, when the petitoner approached the second respondent for the purpose of registration of certain plots formed in the above said property, the second respondent informed him that the petitioner could create encumbrance over the property only with the permission of the learned XI Metropolitan Magistrate, Saidapet since he received a communication dated 29.1.2015 from the first respondent informing that there were attachment proceedings initiated by the frist respondent. It is stated by the petitioner that he has not received any information or notice of initiation of any attachment proceedings in respect of his property from the first respondent no such application is pending before the learned XI Metropolitan Magistrate, Saidapet, Chennai. Hence, the petitioner approached the second respondent and requested him to provide particulars of the communication received from the first respondent. The second respondent has provided the impugned communication dated 29.1.2015 to the petitioner. It is also stated by the petitioner that a criminal case was registered against the petitioner and others in Crime No.3 of 2013 for the offences under Sections 120 B read with Section 420 and Sections 409 and 109 read with Section 465 and 109 read with Section 471 and 467 IPC, wherein, after completion of investigation, the first respondent filed a final report before the concerned Court which was taken on file as C.C.No.3456 of 2014 and it is pending for trial.

3. Now challenging the said impugned communication, dated 29.1.2015 of the first respondent, the petitioner has come forward with the present writ petition.

4. Heard the learned senior counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the entire materials placed on record.

5. Challenging the impugned communication, dated 29.1.2015 of the first respondent, the learned senior counsel would contend that absolutely there were no attachment proceedings initiated or no permission under Section 173(8) of Cr.P.C. for attachment of the property was obtained by the first respondent from the learned XI Metropolitan Magistrate, Saidapet and therefore, the impugned communication is ex facie illegal and liable to be quashed. The learned senior counsel would also contend that the first respondent, by couching the impugned communication in a camouflaged language, has indirectly attached the property of the petitioner, which is not permissible in law.

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He would also contend that if at all the first respondent has reason to believe that the property in question belonging to the petitioner was procured from and out of the fund misappropriated from the defacto complainant, he ought to have taken steps to send a report to the Government for intiating action under Section 3 of the Criminal Law (Amendment) Act, 1944 and therefore, the first respondent cannot by himself be empowered to prohibit the transaction of the property by sending the communication to the concerned Sub Registrar office and thereby interfere with the petitioner's right to property. Therefore, the learned senior counsel seeks to quash the impugned proceedings. In support of his contentions, the learned senior counsel relied upon a decision rendered by this Court in "V.Sundaram versus The Deputy Superintendent of Police, Economic Offences & Wing, Kancheepuram District" vide order, dated 27.07.2015 in W.P.No.11221 of 2015.

6. As per Section 3 of the Criminal Law (Amendment) Act, 1944, if a person is involved in an offence under Section 406 or 420 IPC and the victim is a private person, proceedings can be invoked for attaching the properties of the offender where it is believed that such properties have been procured from and out of the fund misappropriated by the offender. The Act provides certain procedure to effect attachment. It is only the State Government that can initiate action by approaching the District Judge of the area where the offender ordinarily resides or carries on business. In fact, the police officer or investigating agency has no role to paly in this regard. They can, at the most, submit a report to the State Government, requesting the State Government to initiate action for attaching the property of the offender under the provisions of the Act.

7. In the present case, as could be seen from the impugned communication, the first respondent has identified the properties of the petitioner to initiate action for attachment under the provisions of the Act. But even prior to the Government passed necessary order, the first respondent sent a communication, dated 29.1.2015 to the second respondent stating that the property of the petitioner should be undertaken only on the clearance of the Court. If at all the first respondent feels it appropriate in order to safeguard the interest of the defacto complainant who was cheated by the petitioner and to ensure that the petitoner shall not derive benefits from the property, which he procured by means of misappropriated funds, he could very well take steps by sending a report to the State Government seeking to intiate action under Section 3 of the Act for attaching the property. Therefore, as rightly contended by the learned senior counsel, the first respondent cannot arrogate to himself the power to issue such a veiled threat to the Sub-

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Registrar/second respondent and thereby prohibit the transaction in respect of the property. In this regard, it is worthwhile to refer the decision of this Court rendered in very similar circumstances, in "V.Sundaram versus The Deputy Superintendent of Police, Economic Offences & Wing, Kancheepuram District" vide order, dated 27.07.2015 in W.P.No.11221 of 2015, wherein, after following the decisions of the Full Bench of Bombay High Court and the Kerala High Court, it has been held as under in para 12 and 13:

> "12. This Court is in complete agreement with the law laid down by the Full Bench of the Bombay High Court and the Kerala High Court with regard to the power of the police office to seize immovable properties under Section 102 Cr.P.C. The Deputy Superintendent of Police, by couching the impugned communication in a camouflaged language, is in fact, indirectly attaching the properties of the accused via the backdoor, which is not permissible. If the Deputy Superintendent of Police is desirous of safeguarding the interest of the depositors, he should have immediately taken steps to send a report to the Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance and not through such a subterfuge.
>
> "13. The order impugned is indeed arbitrary exercise of power and is therefore, violative of Article 14 of the Constitution of India. It is always open to the Investigating Officer to call for the information from the Sub Registrar about the property holdings of an accused. He can also ask the Sub Register to inform him, if any transaction concerning the properties of the accused is registered. He cannot prohibit the Registrar from registering a document."

8. In view of the above discussion, I am of the view that the impugned communication, dated 29.1.2015 of the first respondent is liable to be quashed. Further, if a document is presented for registration in compliance with the provisions under the Registration Act, the Sub Registrar cannot deny the registration of the same unless there is interim order from the competent Court restraining him from registering the document and he is empowered to deny the registration of the document

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within the frame of provisions of the Registration Act and Rules framed thereunder, particularly, on the grounds enunciated under Rule 55, viz., if the document is forged, impersonation by the parties, if the executing party is a minor or a lunatice, etc. Therefore, in the absence of any interim order from the competent Court nor any of the grounds available under Rule 55, the Sub Registrar cannot deny the registration.

The Writ Petition is allowed and the impugned communication, dated 29.01.2015 is hereby set aside. No costs.

Sd/
ASSISTANT REGISTRAR(CS-VI)

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SUB-ASSISTANT REGISTRAR

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To,

1. The Inspector of Police,
Crime Branch CID,
Metro Wing, Egmore,
Chennai-600 008.

2. The Joint Sub Registrar-II,
Thindivanam

+1 CC to MR.K.Shubharanjani Ananth Advocate. SR.NO.66372
+1 CC to MR.J.Ramkumar Advocate. SR.NO.65341

Pre delivery order in
W.P.No.13639 of 2015

CO-SVJ
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