

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

WRIT PETITION No.5618 of 2015

ORDER:

The petitioners question G.O.Ms.No.1 dated 02.01.2015, whereunder the Government has permitted the Additional Director General of Police, Crime Investigation Department to file an application in the Principal District and Sessions Judge Court, Visakhapatnam, for passing an ad-interim order for attachment of properties under Section 4 of the Criminal Law Amendment Ordinance, 1944 (Ordinance No.XXXVIII of 1944). The petitioners claim to be *bona fide* purchasers, and placed strong reliance on the interims orders of this Court in W.P.Nos.6129 and 7733 of 2012 dated 24.04.2012. By the aforesaid order, the respondents were directed not to demolish or otherwise alter the building that is existing on the site. Later, a further order was passed by this Court, in W.P.No.6129 of 2012 dated 24.09.2012, wherein this Court was informed, through a sealed cover, that action was proposed to be taken by the government; that after perusing the said sealed cover, this Court passed an order leaving it open to the government to take further steps in the matter; that, if any penal action was proposed against any officer or any private person, they shall be given an opportunity of being heard; and continued the interim orders while admitting the Writ Petition. The said Writ Petition is stated to be pending on the file of this Court.

It is contended by Sri O.Manohar Reddy, learned counsel for the petitioners, that the impugned G.O. permits respondents to file an application for passing ad-interim order for attachment and that itself adversely affects the petitioners' interest; hence they ought to be heard before the Government issued the aforesaid G.O.

The third respondent filed an additional counter affidavit wherein it is stated that, on several allegations, including alienation of land of VUDA, against certain officials, who were found to be involved, and to unearth the fraud played on the government, appropriate action has already been initiated by the government and the matters are stated to be pending not only by way of civil

suit filed for cancellation of sale deeds but also by way of proceedings before the III Additional District and Sessions Judge, -cum- Special Judge for ACB Cases, Visakhapatnam, with reference to Crime No.3 of 2013. It is stated that, though the disputed property was alienated in favour of vendees, the said vendees, in turn, entered into further agreement with the developer/builder; that he appears to have constructed 50 flats and sold 21 flats; that the petitioners appear to be some of the purchasers of the flats; and that the Civil Court as well as the competent Court being seized of the matter, permission was granted to the prosecution agency to file an appropriate application for attachment of the properties before the Court. It is stated that a mistake has crept in the G.O. mentioning the name of the Court as Principal District and Sessions Judge, Visakhapatnam instead of III Additional District Sessions Judge – cum- Special Judge for ACB Cases, Visakhapatnam; and though the application, in terms of the G.O, was filed, the same was returned by the Court pointing out the aforementioned mistake; and, hence, steps are being taken for correction of the clerical mistake in the G.O. The locus standi of the petitioner is also disputed in the counter.

Having heard Sri O.Manohar Reddy, learned counsel for the petitioners and the learned Government Pleader, it is evident from the record that a civil suit as well as prosecution is pending with respect to alienation of the subject plots where the petitioners claim to be subsequent purchasers of flats. Though they may be *bona fide* purchasers and may not have any role to play with reference to fraud alleged, at this stage, it is premature to go into that aspect. As the competent Court is seized of the matter, the impugned G.O. merely permits the prosecuting agency to file an appropriate application for attachment and, at this stage, I am unable to see as to how the petitioners are affected. The interim order of this Court dated 24.09.2012, referred to above, which is relied on also does not appear to have attracted in as much as no penal action is taken against the petitioners as on date and, merely, permitting the prosecuting agency to file application for attachment by itself would not amount to ordering attachment and it would be for the Court to consider and to pass appropriate orders if such an application is moved by the prosecuting agency. Therefore, I am not inclined to interdict the impugned G.O. at the instance of the petitioners. The petitioners are at liberty to make an appropriate application before the concerned Court, and such application shall be examined by the Court on its

own merits.

The Writ Petition is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. No order as to costs.

VILAS V.AFZULPURKAR,J

Date: 06.04.2015

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