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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4478 OF 2016

Naresh Daswani and anr	 Petitioners.
V/s.	
The State of Maharashtra and	
ors	 Respondents

Mr. Chaitanya Pendse a/w Mr. R.A. Mishra i/by
V. B. Dhingreja, for the petitioners.

Mrs. M. M. Deshmukh, APP for the Respondent .
Ms. Rebecca Gonsalves, Special Public
Prosecutor for the CBI.
Ms. Jayshree Rao, Deputy Superintendent of
Police, CBI, E.O.W. Present.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 14th FEBRUARY, 2017.

P.C. :

1. Heard Mr. Pendse, learned counsel appearing on behalf of petitioners and Mrs. Rebecca Gonsalves, learned Special PP appearing on behalf of CBI.
2. By this petition filed under Article 226 of the Constitution of India, the petitioner is challenging the communication dated 17th September, 2014, issued by Deputy Superintendent of Police, CBI,

EOW. By the said communication, the Secretary, Fortune Heritage, Sargam Co-operative Housing Society Ltd, Bandra (W), Mumbai, is directed not to permit sale or transfer of the flat No.1001, 10th floor.

3. Learned counsel for the petitioner contends that the petitioner had purchased the said flat from one Mr. Amit Shinde @ Sarkar, for valuable consideration. Ms. Rebecca Gonsalves, learned Special PP, contends that said Amit Shinde @ Sarkar is involved in two CBI cases and he purchased the flat in question out of crime proceeds.

4. The very same order was challenged by the petitioner, by filing Writ Petition No.1940 of 2015. At the time of hearing of said petition, learned Special PP for CBI, took stand that steps are being taken for attachment of the said flat and said exercise will be completed within a period of two weeks. On the basis of the said stand, petitioner sought permission to withdraw the petition. We accordingly granted 8 weeks period to complete the initiation of proceeding for attachment of the subject flat.

5. Ms.Gonsalves, now placed on record the communication dated 25/27.1.2017 by CBI to Enforcement Directorate. Relying on this communication, learned Special PP submitted that CBI does not want to initiate proceeding for attachment of the flat. She also stated that now they have requested Enforcement Directorate for attachment of the said

flat.

6. The fact remains that as of today there is no offence registered against Amit Shinde @ Sarkar. It is the case of CBI that the said Amit Shinde has purchased the said flat out of crime proceeds.

7. At this stage, Mr. Pendse, learned counsel for the petitioners, on instructions, makes a statement that the petitioners are ready and willing to give an undertaking that they will not transfer or create third party interest in the said flat without prior permission of this Court.

8. Learned counsel for petitioner submits that the subject flat is purchased by the petitioner for an amount of Rs.4,20,00,000/-. It is the case of petitioners that they have taken loan of Rs.3,31,00,000/- from HDFC Bank. This fact shows that the petitioners are the bonafide purchasers of the flat in question.

9. In our considered view, in view of above facts, no prejudice would be caused either to the CBI or to the Enforcement Directorate, if the communication is quashed and set aside on petitioners' filing an undertaking to the effect that they will not transfer or create third party interest in the said flat.

10. The petition is accordingly disposed off, by passing the following order.

Order .

I) The impugned order No.5504 dated 17.09.2014, passed by CBI is quashed and set aside subject to petitioner's filing undertaking within a period of two weeks from today to the effect that they will not transfer or create third party interest in the said flat namely Flat No.1001, 10th floor, Fortune Heritage, Sargam CHSL , Bandra, Bombay, without prior permission of this Court

II) It is expressly made clear that this order will not come in the way of either CBI or Enforcement Directorate, if they want to initiate proceeding for attachment of the said property.

[DR. SHALINI PHANSALKAR JOSHI, J.]

[RANJIT MORE,J.]