

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.15019 of 2019

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the action of the respondents in attaching item Nos.4 to 14 and 16 of Annexure-I and item Nos.1 and 2 of Annexure-II of G.O.Rt.No.649 (Home) Passports) Department, dated 27.06.2019, so far it relates to land admeasuring 32,406 sq.yds in Sy.Nos.41, 174, 177, 178, 179, 180/1, 181, 182 and 211, situated at Toli Chowki, Shaikpet village and Mandal, Hyderabad and consequently to direct the 1st respondent to delete item Nos.4 to 14 and 16 of Annexure-I and item Nos.1 & 2 of Annexure-II of the GO.

I.A.No.2 of 2019 is filed for impleading the 3rd party as 8th respondent is allowed today.

Heard learned counsel for the petitioner, learned Government Pleader for Home appearing for respondents 1 to 5 and Sri Mir Masood Khan, learned counsel for the 8th respondent.

The petitioners claims to be the owners of the property i.e., land admeasuring Acs.17.30 guntas in Sy.Nos.41, 174, 177, 178, 179, 180/1, 181, 182 and 211, situated at Toli Chowki, Shaikpet village and Mandal, Hyderabad, by virtue of judgment and decree in OS No.896 of 2014, dated 19.11.2018 and also by order dated 15.03.2019 in EP No.333 of 2018 and that they were handed over

possession of the said land by the Court Bailiff under cover of panchanama dated 23.03.2019.

Learned counsel for the petitioners submits that the petitioners filed O.S.No.896 of 2015 on the file of III Additional Chief Judge, City Civil Court, Hyderabad for declaration of title and injunction against the vendors of the respondents 6 & 7 and obtained injunction order in the month of December, 2015 and thereafter the said suit was decreed on 19.11.2018 in respect of the suit schedule property i.e., Acs.25.05 in Sy.Nos.41, 174, 177, 178, 179, 180/1, 181, 182 and 211, situated at Tolichowki, Shaikpet village and Mandal, Hyderabad District, as such, they are absolute owners and possessors of the suit schedule land, which forms part of the land, sought to be attached by way impugned G.O.Rt.No.649, dated 27.06.2019. He also submits that pending suit, injunction was granted to the petitioners and same continued till disposal of the suit. He also submits that in violation of the injunction orders, the vendors of the respondents 6 & 7 have sold the property to the respondents 6 & 7, as such, the respondents 6 & 7 does not derive any title from out of the said land. He also submits that after the suit i.e., OS No.896 of 2015 is decreed, the Court Bailiff put the petitioners into possession on 15.03.2019, as such, they are in possession of the subject property, i.e. to an extent of Acs.17.30gts in Sy.Nos.41, 174, 177, 178, 179, 180/1, 181, 182 and 211, situated at Toli Chowki, Shaikpet village, Hyderabad. As such, the impugned order of attachment to the extent claimed by the petitioners is to

be set aside. He further submits that when the crime amount is Rs.1,17,00,000/-, the attachment of the properties more than the said amount is illegal. He also submits that the petitioners derive their title from CS Nos.12 and 13 of 1959, as such, the impugned proceedings to the extent of petitioners' land is illegal, arbitrary and without jurisdiction.

On the other hand, learned Government Pleader for Home appearing for respondents 1 to 5 submits that the decree and judgment obtained by the petitioners in OS No.896 of 2015 is only *exparte* decree and there is a collusion between the defendants and the plaintiffs in the said suit. He submits that at any rate, the petitioners have an effective alternate remedy under sub-section (3) of Section 7 of the Telangana State Protection of Depositors of Financial Establishments Act, 1999 (for short 'the Act'). He submits that all these disputed questions of facts can be gone into by the Special Court constituted for that purpose, as such, this Court cannot entertain the Writ Petition under writ jurisdiction. He further submits that there are several criminal cases registered against respondents 6 & 7.

Learned counsel for the 8th respondent-association of persons, who are said to be the association of persons, who are victims of respondents 6 and 7, submits that the petitioners played fraud along with respondents 6 & 7 in collusion with the plaintiffs as well as defendants in the suit, as such, if the attachment is lifted, they will not be able to get back their money, which they have invested with respondents 6 & 7.

In this case, it is to be seen that admittedly, petitioners have alternate remedy under sub-section (3) of Section 7 of the Act of 1999. Sub-section (3) of Section 7 reads as follows:

“7. Powers of Special Court regarding attachment:

(1) & (2).....

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this Section, make an objection as aforesaid to the Special Court at any time before an order is passed under sub-section (4) or sub-section (6).”

Now, the proceedings are pending before the Special Court for making attachment absolute under sub-section (1) of Section 7 of the Act of 1999 and the same is not disputed by the learned counsel for the petitioners. However, learned counsel for the petitioners submits that since the petitioners were declared as owners of the property and possession of the said property was delivered to them through the Court Bailiff, respondents cannot attach the property. Learned counsel for the petitioners submits that during pendency of the suit, there was an injunction and pending injunction orders, the vendors of the respondents 6 & 7 have sold the property. No doubt, the suit i.e., OS No.896 of 2015 is filed for recovery of possession and declaration of title and the concerned Court passed judgment and decree in favour of the petitioners, but it is also a fact that the respondents 6 & 7 have also purchased the subject property. The allegation of the learned Government Pleader for Home that the respondents 6 & 7 have purchased the properties by collecting amounts from the general public, pursuant to which, several criminal cases have been registered against them. All these aspects can be effectively

dealt with by a Special Court, if the petitioners files objections under sub-section (3) of Section 7 of the Act of 1999, before making the *ad interim* order of attachment absolute under sub-section (4) of Section 7.

In view of above facts and circumstances, this Writ Petition is disposed of granting liberty to the petitioners to avail alternate remedy under sub-section (3) of Section 7 of the Act of 1999 by way of filing objections to the order of attachment, by raising all the objections, raised herein and any other contentions in support of their claim, within a period of two (2) weeks from today and the Special Court is obligated to consider the same and pass appropriate orders, within a period of three months, from the date of filing objections.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stands closed.

A.RAJASHEKER REDDY,J

31-07-2019
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.15019 of 2019

Date: 31.07.2019



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