

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 21783 OF 2019

ORDER :

This writ petition is filed challenging the action of the 4th respondent in issuing warrant of attachment of immovable property of the petitioner in proceedings No.52Q/36228-0403, dated 28-08-2019, prohibiting and restraining the petitioner from transferring or changing the specification of property mentioned therein, without any notice and without affording opportunity to the petitioner.

The case of the petitioner is that the Andhra Pradesh Industrial Infrastructure Corporation Limited, a Government Company has developed industrial park at Madikonda Village, Hanamkonda Mandal, Warangal District to encourage and allot the land to the unemployed youth and the women entrepreneurs; that the petitioner was allotted plot No.188, admeasuring 2631.20 Sq.Yards at Industrial Park, Madikonda and the said Corporation represented by its Zonal Manager, Warangal has executed the Deed of Sale, dt.18.03.2011 vide Document No.1834 of 2011. It is further stated that the Andhra Pradesh State Financial Corporation has also sanctioned a term loan of Rs.60 lakhs for setting up a granite cutting and polishing unit in the said land by a letter dt.19.02.2011 and that after taking all necessary registration certificates in respect of the said unit, petitioner established the same and it was a small unit with less than ten employees/workers. While so, due to the non-availability of raw material and efficient/skilled staff, the petitioner could not run the said unit and the said unit became sick unit within a short period, and as such,

the petitioner sold out the said firm to M/s.Shree Ganesh Granite (firm Reg.No.438/2017) of Elkathurthi Village, Warangal Urban District rep. by its partners Sri Mahaveer Kukna and two others under registered sale deed dt.21.01.2019 vide Document No.1653 of 2019 and that since the date of purchase the said M/s.Shree Ganesh Granite has been in possession of the said property and commenced its business recently. While so, the 4th respondent has issued the Warrant of Attachment of Immovable Property of the petitioner in proceedings No.52Q/36228-0403, dt.28.08.2019, prohibiting and restraining the petitioner from transferring or changing the specification property mentioned therein, without any notice and without affording an opportunity to the petitioner stating that the petitioner failed to pay a sum of Rs.9,44,166/- towards contribution, interest, damages and further interest up to 27.08.2019 on the contribution payable by the petitioner in respect of Certificate No.TS/INS-II/52000362280000403, dt.22.05.2017, along with the panchanama dt.28.08.2019. Aggrieved by the aforesaid proceedings dt.28.08.2019, present writ petition is filed.

Heard learned counsel for the petitioner who submits that without any prior notice and without affording any opportunity of hearing, the impugned order of attachment dt.28.08.2019 is issued which is in violation of principles of natural justice. He also submits that the petitioner has sold away the sick unit to the third parties on 21.01.2019.

Sri Pasam Srinivas, learned Standing Counsel for the Employees State Insurance Corporation submits that before issuing the impugned

order 28.08.2019, the 3rd respondent issued order dt.07.03.2017 under Section 45 A of the Employees State Insurance Act, 1948 (*for short 'ESI Act'*); and that without challenging the said order petitioner challenged the consequential order for attachment. He also submits that the petitioner has alternate remedy against the said order.

When he was asked to produce the acknowledgment regarding issuance of notice before passing the order under Section 45 A of the ESI Act, 1948, he could not produce the acknowledgment which goes to show that the order under Section 45 A of the ESI Act is without notice and the same is in violation of principles of natural justice, as such, the same is liable to be set aside and the impugned attachment order which is consequential to order under Section 45 A of the Act is also liable to be set aside.

Accordingly, the both the orders dt.07.03.2017 passed by the 3rd respondent under Section 45-A of the ESI Act and the impugned warrant of attachment dt.28.08.2019 issued by the 4th respondent are set aside. However, this order will not preclude the competent authority from taking action after issuing notice to the petitioner.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

18.10.2019
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