IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.1034/2019

PETITIONER : Shri Sant Gajanan Maharaj Urban Credit Co-operative Society Limited, Nagpur, having it's registered office at Sapna Towers, Reshimbagh Chowk, Tulshibagh Road, Nagpur, Through it's President.

...VERSUS...

RESPONDENTS : 1. Deputy Commissioner of Police, Crime Branch, Nagpur City, Civil Lines, Nagpur.

2. The Assistant Police Inspector, Economic Offences Wing, Nagpur City, Civil Lines, Nagpur.

Mr. Firdos Mirza, Advocate for petitioner
Mr. S.M. Ghodeswar, Additional Public Prosecutor for respondents

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CORAM : SUNIL B. SHUKRE AND AVINASH G. GHAROTE, JJ.

Judgment reserved on : 11/01/2021
Judgment pronounced on : 14/01/2021

J U D G M E N T (PER : AVINASH G. GHAROTE, J.)

1. Heard. Rule. Rule made returnable forthwith.

2. By the present petition, challenge is raised to the communication-cum-order dated 9/10/2019, passed by the

respondent no.2, whereby the immovable property bearing Block No.1 on the first floor of Corporation House No.613/49/0+9, constructed on plot No.49, Ward No.20, Azamshah Layout, Ganesh Nagar, purchased by the petitioner-Society from Jay Shriram Urban Credit Co-operative Society Limited, is stated to be attached under Section 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, 'the MPID Act hereinafter) and the petitioner-Society has been directed not to alienate or create third party interest in respect of the same, without the prior permission of the Special Court (MPID, Nagpur).

3. Mr. Mirza, learned Counsel for the petitioner submits that the said property was purchased by the petitioner – Society by a sale-deed dated 25/2/2019 (registered on 25/3/2019), which is registered with the Sub-Registrar, Nagpur -4, at serial No.1916/2019 of the same date. He further submits that the valuation of the said property, on the date of the sale-deed as per the ready reckoner was Rs.77,51,000/- as against which a consideration of Rs.1.5 crore has been paid by the petitioner-Society. The mode of consideration, is stated in para 2 of the sale-deed. The sale is in pursuance to a Resolution No.10, dated 31/12/2018, by the Managing Committee

of Jay Shriram Urban Credit Co-operative Society Limited, Nagpur whereby it was resolved that as the financial position of the society was in doldrums and it was in need of funds to refund money to its customers, the said property was resolved to be sold and the sale proceeds thereof to be utilized for making payment to the customers. A copy of the resolution forms a part and parcel of the sale-deed dated 25/2/2019 (registered on 25/3/2019).

4. The impugned communication/order is issued under Section 102 of Cr.P.C., by the respondent no.2, attacking which, Mr. Mirza, the learned Counsel for the petitioner submits, that the same is illegal, on account of the provisions of Section 102 of Cr.P.C., not being applicable to immovable property. He places reliance upon the Full Bench judgment of this Court in the case of ***Sudhir Vasant Karnataki Vs. State of Maharashtra and ors., 2011 ALL MR (Cri) 96***. He further contends that any attachment, under the MPID Act, has to be necessarily preceded by a notification under Section 4 of the MPID Act, which is a *sine qua non*. He further submits that any such order under Section 4 of the MPID Act, has to be by the Government, and none else, for reasons to be recorded in writing, and any such order passed, has to be by publication in the official

gazette. He submits that it is only upon compliance of the requirement of Section 4 of the MPID Act that any attachment can be effected. He submits that no such order under Section 4 of the MPID Act has been passed by the Government as of date and therefore, the communication-cum-order impugned, passed by the respondent no.2 is also not sustainable in law. For this proposition, he places reliance upon ***Motilal Hastimal Bothara Vs. State of Maharashtra, 2003 ALL MR (Cri) 1011*** and ***Satpal Singh Bachan Singh Nagul and another Vs. State of Maharashtra and another, 2019 ALL MR (Cri) 4237***. He therefore submits that the impugned order cannot be sustained in law and the same is required to be quashed and set aside.

5. Mr. Ghodeswar, learned Additional Public Prosecutor for the respondents fairly concedes that as of date there is no order passed by the Government under Section 4 of the MPID Act in respect of the immovable property, which is the subject matter of the present petition. He however contends that offences under Sections 409, 420 r/w 34 of IPC read with Section 3 of the MPID Act have been registered against Jay Shriram Urban Credit Co-operative Society Limited, by virtue of FIR No.217 of 2019. He further

contends that the Resolution at serial No.10, on the basis of which it was resolved to sell the property, was doubtful and the Society was expected to deal with the property owned by it in a transparent manner and any sale ought to be on a genuine valuation by a paper publication and auction so that maximum value could be received, all of which factors are absent in the present matter. He further contends that the mode of consideration in the sale-deed in favour of the petitioner, as appearing in para 2 thereof also casts a doubt, as the fixed deposits of the petitioner-Society with Jay Shriram Urban Credit Co-operative Society Limited were shown to have been adjusted. He therefore submits that the sale in favour of the petitioner-Society were neither genuine nor bona fide and therefore the impugned order was rightly passed.

6. Section 102 of the Code of Criminal Procedure grants power to a Police Officer to seize certain property. The question whether an immovable property could be seized under Section 102 of Cr.P.C., came to be referred to a Full Bench of this Court in ***Sudhir Vasant Karnataki*** (supra), wherein upon consideration of the language of Section 102 of Cr.P.C., it came to be held as under :-

"63. Though on a plain reading of Section 102 of the Code it may appear that since the word "property" is qualified by adjective "any", it would include even immovable property, if considered in the context of use of the words "property", "immovable property" and "movable property" in the other sections of the Code, it would be clear that "any property" referred to is only movable property. Section 83 of the Code refers to attachment of property, movable or immovable. It provides for attachment of movable property by seizure and attachment of immovable property by taking possession, appointment of receiver, prohibitory order, etc.. It is significant that while the section provides for seizure of movable property, it does not use the word "seizure" in relation to immovable property. Attachment of property in Section 146 of the Code is also relevant. As already pointed out, Sections 145 and 146 are contained in Part-D of Chapter X of the Code which is titled as `Disputes as to immovable property'. Therefore, it cannot be said that the contention that term "seizure" is used in relation to movables and "attachment" in relation to immovables is without any merit. Section 456 of the Code refers to the power of the Courts to restore possession of immovable property. Therefore, if the provisions of Section 102 are examined in the above context, it would be difficult to conclude that any property would include immovable property since it would not be capable of being physically seized. Whenever the Legislature wanted to deal with immovable property it has specifically used that expression. Therefore by implication when this adjective is

not used, the word "property" may refer to only movable property.

64. The words "any property" cannot be interpreted in isolation. They have to be read in the context of all expressions used in the section. Therefore, such property has to be one which is alleged or suspected to have been stolen or "found" under circumstances which create suspicion of commission of any offence. Now, by definition of "theft", immovable property cannot be stolen. As to "finding" it under circumstances which create suspicion of commission of any offence, it is difficult to conceive as to how immovable property itself could give rise to suspicion of commission of an offence. An offence may be committed on immovable property - like say, a murder in a house. An offence could be committed in respect of immovable property -like trespass, or construction, or development in violation of building bye-laws. Construction or development of property in violation of law may come nearest to the property itself creating suspicion of commission of an offence. But even here, a closer look would show that rarely would the property itself create a suspicion of commission of offence - but, activities thereon, which could be objectively observed, may create such suspicion and could be proved by objective observations at the trial. The purpose which Section 102 which is supposed to serve is to enable police officer to collect evidence. The provision is procedural in nature and not penal even in the widest sense of putting any temporary restraint on a suspect, as a part of investigation, or for ensuing a fair trial.

65. If it is taken for a while that Section 102 of the Code provided for seizure of immovable property for the purpose of ensuring that offenders do not derive benefits from the property which they got as a result of crime as well, then it would have been unnecessary for the Legislature to provide for attachment and, eventually, forfeiture of such property under the Criminal Law (Amendment) Ordinance, as also the provisions of Section 105-A to 105-L of the Code and Sections 68-C to F of the Narcotic Drugs and Psychotropic Substances Act. It became necessary for the Legislature to provide for attachment and forfeiture of such property which the offenders had got as a result of crime, because Section 102 did not and could not have provided for attachment of such property."

and the questions relevant for our purpose were answered as under :-

"84. To sum up, we answer the reference thus:

Q. (a) Whether the words "any property" used in Sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would mean to include "immovable property"?

<u>Ans. We, therefore, hold that the expression "any property" used in Sub-section (1) of Section 102 of the Code does not include immovable property. Question (a) is, therefore, answered in the negative</u>.

Q. (b) Whether a police officer can take control of any Immovable property which may be found under circumstances which create suspicion of the commission *of any offence?*

Ans. No.”

Admittedly, the property in question in the present petition is an immovable property, and in light of what has been held in ***Sudhir Vasant Karnataki*** (supra), the powers under Section 102 of Cr.P.C., cannot be exercised in respect of immovable property, which would make the impugned communication dated 9/10/2019 unsustainable in law.

7. That takes us to the contention by Mr. Ghodeswar, learned Additional Public Prosecutor that the attachment of the property, can be justified under the provisions of the MPID Act. It cannot be disputed that any attachment of any property, whether movable or immovable, under the provisions of the MPID Act can only be done in the mode and manner as prescribed in Section 4 of the MPID Act. Section 4 of the MPID Act specifically mandates that upon complaint being received by the depositors or otherwise, if the Government is satisfied that any financial establishment has failed to return the deposit after maturity or on demand by the depositor; or to pay interest or other assured benefit; or to provide the service promised against such deposit; or the financial establishment is

acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them, the Government after recording reasons in writing, is entitled to issue an order, by publishing it in the official gazette, attaching the money or other property believed to have been acquired by such financial establishment either in its own name or the name of any other person, from out of the deposits, collected by the financial establishment, and if such property is not available or is not sufficient for repayment of the deposits, to attach other property of the promoters, director, partner, manager or member of the financial establishment as the Government may think fit. This position is enunciated in ***Motilal Bothara*** (supra) in the following words :-

> *"6 .....Moreover, it is not in dispute that the suit premises have not been notified as the property which have been published in the official gazette for the purpose of attachment, as required under Section 4 of the Act. The Scheme of the Act, to my mind, is that, after recording reasons in writing, the Government shall issue an order by publishing it in the official Gazette, attaching the money or other property believed to have been acquired by such Financial Establishment either in its own name or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for*

attachment or not sufficient for repayment of the deposits. It is fairly conceded by the learned A.P.P. that the property in question is not enlisted as the property notified for the purpose of Section 4 of the Act. The Act further requires that amongst the properties notified, the Designate Court can proceed to physically attach the property in exercise of the powers under Section 7 of the Act. On plain language of Section 7, it is seen that, the Designated Court can issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon the said Establishment or the said person to show cause on a date to be specified in the notice, why the order of attachment should not be made absolute. In other words, by virtue of notification under Section 4, the property is symbolically attached and would stand vested in the Government; and it is that property which is physically attached, sealed and seized by the order of the court under Section 7 of the Act. As the present property has not been notified, the order as passed by the Designated Court cannot be ascribed to Section 7 of the Act."

Satpal Singh (supra) also relies upon and reiterates the above position. In a similar circumstance, a Division Bench of this Court in ***The Gandhibag Sahakari Bank Limited, Nagpur through its Special Recovery Officer Vs. M/s Gruhalaxmi Constructions and***

Land Developers and others (Criminal Writ Petition No.665 of 2016, decided on 28/6/2018) had held that seizure and sealing of the property at the instance of the police authorities in absence of a notification under the MPID Act could not be sustained, and we are in complete agreement with the above position. Thus, when a notification under Section 4 (1) of the MPID Act is absent, as is admitted by Mr. Ghodeswar, learned Additional Public Prosecutor, there cannot be any attachment of the property, or any vesting of the same in the competent authority appointed by the Government, as contemplated by Section 4 (2) of the MPID Act.

8. Admittedly, as per the sale-deed 25/2/2019 (registered on 25/03/2019), the market value of the property as per the ready reckoner on the date of the sale was Rs.77,51,000/- as against which the consideration paid by the petitioner-Society is shown as Rs.1.50 crore. Even if the three entries in the sale-deed showing the adjustment of fixed deposits of the petitioner-Society with the Jay Shriram Urban Credit Co-operative Society Limited, are not taken into consideration, the balance consideration, would be commensurate with the market value of the property as per the ready reckoner prevailing at that point of time. It is not the case of

the prosecution that the entries which were adjusted, were not otherwise permissible or that the money under those entries, was not with the Jay Shriram Urban Credit Co-operative Society Limited.

9. Thus, in view of the law, as applicable to the facts of the present case, the impugned order/communication dated 9/10/2019, as issued by the respondent no.2, is clearly not sustainable in law. The same is, therefore, quashed and set aside. The writ petition is allowed.

Rule is made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.) **(SUNIL B. SHUKRE, J.)**

Wadkar

Shailendra Wadkar

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