



W.P.No.8895 of 2023
and
W.M.P.Nos.9040 & 9042 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.10.2023

Pronounced on :30.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.8895 of 2023
and
W.M.P.Nos.9040 & 9042 of 2023

V.Mahendran

.. Petitioner

/versus/

1.The Principal Secretary to Government (Home Dept),
Secretariat, Chennai 600 009.

2.The Additional Director General Police,
Director General of Police Office,
Chennai 600 004.

3.Inspector General of Police,
Chennai.

4.The District Registrar,
North Madras, Chennai 600 001.

5.The Sub Registrar,
Madhavaram, Chennai 600 060.

.. Respondents



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Writ Petition has been filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records in respect of the G.O.Ms.No.410 dated 22.07.2011 issued by 1st respondent in respect of the item No.12 bearing D.No.1A, 21st Street, Union Carbide Colony, Kodungaiyur, Chennai 600 118 and quash the same and consequently, direct the 4th and 5th respondents to carry out the amendment in the record of Registration Department.

For Petitioner :Mr.D.Rajagopal

For Respondents :Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

ORDER

The case of the writ petitioner is that he purchased the property bearing Door No:1A, 21st Street, Union Carbide Colony, Kodungaiyur, Chennai, from one Ramanathan, S/o Subramaniam for a sale consideration of Rs.22,00,000/- and got it registered in his name on 30/04/2008. Since then for the past 15 years he is in possession of the property. In the year 2015, when he verified the Encumbrance Certificate, he found that the property is transferred to the Government of Tamilnadu. On verification, he came to know that, his vendor



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Mr.Ramanathan and few others were accused of offence under Sections 406 and 420 IPC. They have cheated several crores of rupees from gullible public promising to give free house. Hence, the CBCID Police had registered case against them in Crime No.716 of 2006. Pursuant to the investigation, suspecting that the property sold by Ramanathan in the year 2008 to the petitioner was purchased by Ramanathan in the year 2006, from the proceeds of crime, the investigating agency had sought for permission from the Government to make application before the Small causes Court for the attachment of the property of Ramanathan and other accused under Section 3 of the Criminal Law Amendment Ordinance, 1944.

2. Considering the request and the facts of the case, the Government authorised the Investigating Officer, CBCID, Chennai in G.O.No:410, Home (Police–VII) Department, dated:22/07/2011 to make application before the Chief Judge, Small Causes Court, Chennai in respect of about 12 items of property, in which the property purchased by the petitioner from Ramanathan also finds place.



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3. According to the writ petitioner, he is a bonafide purchaser few years before attachment. He purchased the property availing loan from Reliance Capital and he is in possession of the property for the past 15 years. On the date of his purchase, the property was without any Encumbrance. There is no reason to suspect this sale as sham and nominal to defeat the victims of the crime. Without verifying the ownership of the property, his property is included in the impugned G.O. Hence, there is grave violation of natural justice principal. The procedure laid for attachment under Section 3 of CLA Ordinance 1944 is not followed in this case. Till date, there is no progress in the case though more than 15 years have lapsed after registration of the complaint. Soon after the knowledge of the attachment, he gave a representation on 17/06/2015 requesting the respondents to release his property from erroneous attachment. The respondents did not consider his request. Hence, he filed a writ petition for Mandamus to direct the respondent to release the property from attachment. His W.P.No:22115/2015 was disposed by the High Court on 23/11/2022 giving liberty to challenge the G.O.Ms.No.410, Home (Police VII) Department, dated 22/07/2011. Hence, the present writ petition has been filed to issue



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Certiorarified Mandamus and quash the impugned GO.

4. The Investigating Officer of the case in CCB 'X' Crime No:712/2006 under Sections 406, 420 and 120B IPC in her counter, had submitted that, a criminal case against Ramanathan, who is the vendor of the petitioner came to be registered in the year 2006. The investigation has culminated in filing final report which is taken cognizance by CBCID, CCB, Special Court, Allikulam, Chennai in C.C.No:1706/2017. Out of 504 listed witnesses, so far 84 witnesses examined. The property stood in the name of Ramanathan (A-2) was attached in the year 2011 as per the order of the Chief Judge, Small Causes Court Chennai, after obtaining necessary permission from the Government in G.O.Ms.No.410 which is under challenge in this writ petition. Two years after registration of the case, A-2 had created this sale deed to defeat the interest of the victim. Since after two years from the date of registration of the criminal case, document of the sale transaction between the writ petitioner and the second accused is created, there is every reason to believe that the said sale deed was created by Ramanathan by utilizing the help of the writ petitioner. Instead of proceeding against Ramanathan for recovery of



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money or giving complaint against him for cheating, the petitioner has wrongly approached the High Court seeking quash of the G.O.410, which granted permission to the Investigating Officer to file petition before the Chief Judge, Small Causes Court Chennai for attachment. The prayer in the writ petition is misconceived and not maintainable. Hence, this writ petition is to be dismissed.

5. The G.O.Ms.No 410, Home (Police VII) Department, dated 22/07/2011 which is impugned in this writ petition reads as under:-

“ORDER:

WHEREAS, the Inspector General of Police, Crime, Chennai has stated that on the complaint of one Thiru.Francis, S/o Kashmir, Thirukookarnam, Pudukottai District, the Central Crime Branch, Chennai registered a case in "X" Crime No.712/2006 under sections 406 and 420 IPC on 29.08.2006. Similarly, on the complaints of Mr. Udayakumar, S/o.Gopi and Thiru.K. Ramalingam of Ashok Nagar, cases in CCB "X" Crime No.716/2006 and CCB "X" Crime No.717/2006 under sections 406 and 420 IPC were registered against Saravanan @ J.Job Saravanan. On 09.04.2007, the complainant Rev.S.P.Raja, S/o. Stennislas, Consolation Prayer Tower, Viricode, Marthandam, Kanyakumari District, approached the Hon'ble High Court seeking registration of criminal case for action against in Job Saravanan and Ramanathan on the petition dated 11.01.2007. Upon hearing the petition, the Hon'ble High Court has ordered Crl. O. P. No.8214/2007 to register a case and investigate. By the above orders, a case in CB CID, Metro Crime No 4/2007, under sections 406 and 420 IPC was registered on 25.05.2007. On the complaint preferred by Thiru K. Kandasamy, S/o Kaliyannan, Kunnikadu, No. 149, Senkundapuram, Chithodu, Erode District-638 102, the case in CB CID, Metro Crime No.5/2007 under sections 341, 323,



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307, 406, 420 and 506(ii) IPC has been registered on 28.05.2007 for cheating them by collecting crores of rupees from them and misappropriating the same under the pretext of providing free houses. In order to protect the interest of the complainants, he has requested the Government to issue an authorization under section 3 of the Criminal Law Amendment Ordinance, 1944 to attach the movable and immovable properties belonging to Saravanan @ J.Job Saravanan, Tmt.L.Jessie Fathima, W/o.S.Ramanathan @Lazar @ Lazarus, Tmt. R. Dhanalakshmi, Thiru.M.M. Manthirakumar, Thiru.S. Ramanathan and International Culvary Mission Trust, Vellore and Chennai. Hence, he has requested the orders of the Government authorizing the IO to file an application before the Chief Judge, City Small Causes Court, Chennai for obtaining attachment of the properties of the abovesaid accused. He has also reported that the amount realized on the sale of property would be utilized to settle the persons cheated by J.Job Saravanan and others after observing all legal formalities;

AND WHEREAS, the offences under sections 406 and 420 of the Indian Penal Code, 1860 (Central Act XLV of 1860) are scheduled offences under the Criminal Law Amendment Ordinance, 1944 (Central Ordinance XXXVIII of 1944);

AND WHEREAS, it is reported that the properties specified in the Annexure to this order stand in the names of Saravanan @ Job Saravanan and others;

NOW, THEREFORE, in exercise of the powers conferred by sub- section (1) of section 3 of the Criminal Law Amendment Ordinance, 1944 (Central Ordinance XXXVIII of 1944), the Governor of Tamil Nadu, after careful consideration of the materials placed, hereby authorises the making of an application by the IO, Crime Branch CID, Chennai to the Chief Judge, Court of Small Causes, Chennai, for the attachment of the properties detailed in items 1 to 7 and 11 to 12 of the Annexure and also authorises the said IO, Crime Branch CID, Chennai to sign and verify the said application. The IO, Crime Branch CID, Chennai is also directed to file an affidavit under section 6 of the said Ordinance before the Chief Judge, Court of Small Causes, Chennai for attaching the properties detailed in items 8, 9 and 10 of the Annexure.

2. The City Government Pleader, Court of Small Causes, High Court Buildings, Chennai-600 104 is requested to conduct the above case for attachment of the properties



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mentioned in the Annexure to this order.

6. In the Annexure to the G.O, the list of immovable properties sought to be attached is enclosed. In the list, the property bearing S.Nos.56,57,63,68 and 70 purchased by Ramanathan on 27/07/2006 as per document No:8287/2006 bearing Shop No.1, 21st Street, Union Corbide Employees Colony, Kodungaiyur village is found in Serial Number 12.

7. The case of the petitioner is that, he purchased the said property from Ramanathan on 30/04/2008 and got it registered at Chembiam SRO office as document No:3276/2008. The EB service, House tax and water tax for the property still stands in the name of the petitioner. The EC issued by the present SRO, Madavaram, the name is transferred from Ramanathan. S., to Government of Tamilnadu vide 22/07/2011 conveyance and 07/11/2011 Metro/UA. The note in the EC indicates that the name transfer effected pursuant to the G.O. Ms.No. 410 dated 22/07/2011.

8. The Investigating Officer in the counter contended that the sale



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9. From the material placed and the entry in the EC issued by the Madavaram SRO, it is seen that the name of the Government of Tamilnadu is entered in the EC based on the G.O.dated 22/07/2011. What the other entry mentioning Metro/UA dated 07/11/2011 means not clarified by either side.

10. As far the impugned G.O No: 410, it is in respect of permission granted to IO to proceed before the Chief Judge, Small Causes Court, Chennai for attachment of the listed property. This order is issued by the Home Secretary to the Government in the name of the Governor in exercise of power conferred on him under Section 3(1) of the CLA Ordinance, 1944.



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11. The relevant provision reads as under:-

“3. Application for attachment of property. - (1) Where the [State Government or, as the case may be, the Central Government], has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the [State Government or, as the case may be, the Central Government] may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the [State Government or, as the case may be, the Central Government] believes the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached, or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.”

12. The offence for which the vendor of the petitioner tried is a schedule offence. From the impugned GO, it appears that the Government believes that the property which stands in the name of the writ petitioner was procured by the accused by means of the offence of cheating and breach of trust. Before seeking permission of the Government to file petition for attachment, the Investigating Officer ought to have collected information about



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the transfer of the property in favour of the writ petitioner and should have caused notice to him. Only on collecting his response, the Investigating Officer should have placed it before the Government for taking appropriate decision. There is no valid reason or material available to know how and why the IO suspects the sale deed of the writ petitioner dated 30/04/2008 is a sham and nominal sale. If really, the writ petitioner had assisted to screen the ill-gotten money of A-2, then the Investigating Officer should have collected necessary evidence to substantiate the charge and taken appropriate action as per law. Nothing been done in this case except recording attachment and transfer of the property in the name of the Government.

13. Further sub sections (3) of Section 3 of CLA ordinance mandates, the Investigating Officer to file affidavit along with the application stating the reasons why he believe the property is procured from the proceeds of the crime. Also to inform the court about any third party claim in the property sought to be attached. It is not clear whether such affidavit is filed along with the application for attachment

Section 3 (3): *An application under sub-section (1) shall be accompanied by one or more affidavit, stating the*



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grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnish

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(b) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

14. It is also to be noted that notwithstanding no notice has been served upon him the CLA ordinance, 1944 provides remedy for person who claim any interest in the attached property. He can make objection before passing order of attachment under section 3 or before passing of interim attachment order under section 4. Under Section 5(3), the Court has power to release the attached property, after investigation of objections to attachment,

15. If really, the Investigating Officer had information that the writ petitioner is not a bonafide purchaser for value and the sale deed dated 30/04/2008 is sham and nominal deed created to defeat the interest of the



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victims, she should not have suppressed the fact of said sale transaction neither to the Government while seeking permission to file petition before the Court for attachment nor to the Court while seeking attachment. Instead she should have disclosed, the sale by the accused and should have resorted to Section 6 of the CLA which reads as below:-

6. Attachment of property of mala fide transferees. -

(1) Where the asset available for attachment of a person believed to have committed scheduled offence are found to be less than the amount or value which he is believed to have procured by means of such offence, and where the District Judge is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed, transferred (whether after the commencement of this Ordinance or not) any of his property otherwise than in good faith and for consideration, the District Judge may by notice, require any transferee of such property (whether or not he received the property directly from the said person) to appear on a date to be specified in the notice and show cause why so much of the transferees property as is equivalent to the proper value of property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in



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the manner provided in sub-section (2) of section 6, the District Judge is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the District Judge shall order the attachment of so much of the said transferees property as is, in the opinion of the District Judge, equivalent to the proper value of the property transferred.”

16. The impugned GO dated 22/07/2011 granting permission to the IO for filing petition for attachment is in respect of a property transferred three years prior to the GO. The said transfer not placed on record by the IO before or after obtaining the permission for attachment. Neither the petitioner, who claims right in the property as bonafide purchaser had approached the Chief Judge, Small Causes Court, Chennai for release of the property from attachment. In the said circumstances, this Court finds that the attachment order passed pursuant to the permission granted under G.O.Ms.No:410 dated 22/07/2011 suffers factual infirmity. Therefore, to protect the interest of the writ petitioner as well the victims, the writ petitioner is directed to file a petition before the Chief Judge, Small Causes Court, Chennai, for release of the attachment of his property, stating reasons. The Chief Judge shall follow the procedure for considering objection regarding attachment and pass appropriate



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order within two months from the date of filing of the application. The IO is given liberty to participate in the petition enquiry and file documents, if any to substantiate the request for the continuation of the attachment.

17. With the above direction, the Writ Petition is disposed of. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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Index:yes/no
Speaking order/non speaking order
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To:

1.The Principal Secretary to Government (Home Dept),
Secretariat, Chennai 600 009.

2.The AdditIOnal Director General Police,
Director General of Police Office,
Chennai 600 004.

3.Inspector General of Police,
Chennai.

4.The District Registrar,
North Madras, Chennai 600 001.



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5.The Sub Registrar,
Madhavaram, Chennai 600 060.

6.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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delivery Order made in
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