* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 03rd NOVEMBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 12655/2022**

SMT SAPNA ..... Petitioner

Through: Mr. Avnish Kumar Tyagi and Mr. V.P Singh, Advocates.

versus

SUB REGISTRAR-IIA & ORS. ..... Respondent

Through: Mr. Harshit Anand, Advocate for Mr. Shadan Farasat, Advocate.
Mr. Nikhil Goel, SPP with Mr. Kartik Kaushal and Ms. Siddhi Gupta, Advocates for CBI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court under Article 226 of the Constitution of India for direction to the Respondent No.1/Sub-Registrar II-A, Punjabi Bagh to register a Sale Deed pertaining to a flat bearing LIG Flat No. GH 8/484, Paschim Vihar, New Delhi-110087 (*hereinafter referred to as the 'flat in question'*) submitted to the authority *vide* Computer No.6198 dated 20.05.2022 and thereafter to further direct the authority to return the Sale Deed and other documents of the flat in question to the Respondent No.3 who is the purchaser of the flat.

2. Material on record discloses that the Petitioner herein is the owner of the flat in question and a registered Sale Deed was entered into between the Petitioner and the Respondent No.3.

3. It is stated that the Petitioner received a letter dated 14.07.2022 from the Respondent No.1/Sub-Registrar II-A, Punjabi Bagh refusing to register the documents submitted to the authority *vide* Computer No.6198 dated 20.05.2022 because of a letter bearing No.857/3/1 & 2(a)/1995/ACU-IX dated 28.02.2018 written by Sri R. Gopala Krishna Rao, IPS, Superintendent of Police, CBI/AC-III/New Delhi intimating the Registrar of documents not to permit any creation of third party rights in respect of the flat in question.

4. The Petitioner has filed the List of Dates (LOD) showing the chain of ownership of the flat in question. The said List of Dates (LOD) read as under:

> ***"CHAIN OF THE PROPERTY BEARING LIG FLAT NO. GH 8/484, PASCHIM VIHAR, DELHI-ll0087***
>
> *27.01.1989- The LIG Flat No. GH 8/484, Paschim Vihar, Delhi- 110087 allotted to Mr. Ram Avtar Singh By DDA.*
>
> *23.03.1994- Mr. Ram Avtar Singh sold the said Flat i.e. LIG Flat No. GH 8/484, Paschim Vihar Delhi-110087 was sold to Mrs. Mohini Sawhney.*
>
> *27.06.1994- Mrs. Mohini Sawhney sold the said Flat to Ms. Prema Gairola W/O Tulsi Gairola.*
>
> *06.05.2005- Mrs. Prema gairola Sold the said flat to Mr. Nirmal Kumar Jain.*
>
> *27.08.2013- as per record of DDA the said Flat got Freehold in the Name Of Mr. Nirmal Kumar Jain.*
>
> *11.09.2013- Conveyance Deed Registered Under Registration No. 23134, in Book No. 1 Volume No. 4972 on Pages 136 to 138.*

> *21.04.2015- Mr. Nirmal Kumar Jain Sold The said flat to Mrs. Anju Arora w/ o Mr. Sunil Arora and Manjeet Kaur W/o Mr. Manmohan Singh.*
>
> *20.11.2017- Mrs. Anju Arora w/o Mr. Sunil Arora and Manjeet Kaur W/o Mr. Manmohan Singh sold the Property to Petitioner.*
>
> *The petitioner was in peaceful vacant physical possession of the property since inception of ownership."*

5. It is the contention of the learned Counsel for the Petitioner that the Petitioner is the absolute owner of the flat in question who could deal with the flat the way she wanted to. It is stated that the Petitioner decided to sell the flat in question to Respondent No.3 herein for which the purpose stamp papers were purchased and a Sale Deed was executed on the said stamp papers and was presented before the Sub-Registrar on 20.05.2022 which was rejected by the Sub-Registrar *vide* a letter dated 14.07.2022.

6. It is stated that on inquiry, it transpires that Mr. Ram Singh, who is the elder brother of the original owner - Mr. Ram Avtar Singh, was an accused in cases bearing RC No.26(A)/92/CBI/ACB/DELHI/ACU-IX and RC No.44(A)/92/CBI/ACB/DELHI/ACU-IX instituted by CBI for an offence under Sections 120-B, 193, 467, 471 of IPC and Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. It is stated that the flat in question was attached under Criminal Law Amendment Ordinance, 1944 (*hereinafter referred to as 'the 1944 Ordinance'*) *vide* Interim Attachment Order dated 21.01.2000 and the said attachment of the flat in question was continued.

7. The Petitioner has approached this Court by filing the instant writ petition stating that the Petitioner is a bona fide purchaser of the flat in question and she is completely unaware of any attachment proceedings instituted under the 1944 Ordinance.

8. Learned Counsel for the Petitioner contends that the Petitioner purchased the flat in question from Mrs. Anju Arora and Mrs. Manjeet Kaur. It is stated by the learned Counsel for the Petitioner that no information was given to the Petitioner by the Registrar of documents that the flat in question was under attachment. He states that the Petitioner was shown a Conveyance Deed executed by the DDA in favour of Mr. Nirmal Kumar Jain, from whom Mrs. Anju Arora and Mrs. Manjeet Kaur bought the flat before selling it to the Petitioner herein. He, therefore, states that the CBI cannot be permitted to raise the question that the flat in question is a benami property. He states that once the flat in question stands converted from leasehold to freehold and has changed hands several times, there cannot be any defect in the titled deeds of the flat in question and, therefore, there cannot be any impediment on the Petitioner to transfer the same to Respondent No.3.

9. Per contra, learned Counsel for CBI contends that once a property has been attached under the 1944 Ordinance the property cannot be dealt with unless it is released from attachment by the competent Court and, therefore, this Court cannot entertain the present Writ Petition under Article 226 of the Constitution of India.

10. Heard the Counsels and perused the material on record.

11. Section 3 of the 1944 Ordinance provides that if the State Government or the Central Government has reason to believe that any person has committed any scheduled offence, the State Government or the

Central Government, as the case may be, 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 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. Section 4 of the 1944 Ordinance provides for an order of interim attachment. It also provides that on termination of the 1944 Ordinance proceedings, the property which has been attached under Section 13 of the 1944 Ordinances and the attachment continues till disposal of those criminal proceedings. Section 11 of the 1944 Ordinance provides for an appeal against the Order of interim attachment.

13. Sections 3, 4, 10, 11 of the 1944 Ordinance 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.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.

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

4. Ad interim attachment*. - (1) Upon receipt of an application under section 3, the District Judge shall, unless for reasons to be recorded in writing he is of the opinion that there exist no prima facie grounds for believe that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit:*

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is being attached, a notice, accompanied by copies of the order, the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.
(3) The District Judge shall also issue, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.
(4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 5.

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***10. Duration of attachment**. - An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force*
(a) where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, [one year] from the date of the order under sub-section (1) of section 4 or sub-section (2) of section 6, as the case may be, unless cognizance of such offence is in the meantime so taken, or unless, the District Judge on application by the agent of the [State Government or, as the case may be, the Central Government] thinks it proper and just that the period should be extended and passes an order accordingly; or

(b) where a Court has taken cognizance of the alleged scheduled offence whether before or after the time when the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings.

11. Appeals. *- (1) The [State Government or, as the case may be, the Central Government] or any person who has shown cause under section 4 or section 6 or has made an objection under section 4 or has made an application under section 8 or section 9, if aggrieved by any order of the District Judge under any of the foregoing provisions of this Ordinance, may appeal to the High Court within thirty days from the date on which the order complained against was passed.*
(2) Upon an appeal under this section the High Court may, after giving such parties as it thinks proper an opportunity of being heard, pass such orders as it thinks fit.
(3) Until an appeal under this section is finally disposed of by the High Court, no Court shall, otherwise than in accordance with the provisions of section 8 or section 13, order the withdrawal or suspension of any order of attachment to which the appeal relates."

14. Admittedly, the Prevention of Corruption Act, 1988 is enumerated at S.No.4(a) of the Schedule annexed to the 1944 Ordinance.

15. The short question which arises for consideration in the present case is as to whether this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, can pass a writ of Mandamus directing the Sub-Registrar to register the sale deed pertaining to the property in question when the same stands attached under the 1944 Ordinance. Once the property stands attached under the 1944 Ordinance, it cannot be sold unless it is released in a manner provided for under the 1944 Ordinance which could be either in a manner stated in Section 10(b) of the Ordinance or when the

order of attachment is set aside by the High Court under Section 11 of the Ordinance or on termination of the criminal proceedings acquitting the accused. None of the abovementioned three eventualities have occurred in the instant case. The Petitioner, therefore, has no right in law even though he is a *bona fide* purchaser. Unlike proceedings under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 which protects the bona fide purchasers, there is no provision under the 1944 Ordinance protecting the bona fide purchasers and, therefore, this Court cannot enforce its jurisdiction under Article 226 of the Constitution of India.

16. A writ Court under Article 226 of the Constitution of India cannot nullify the proceedings under the 1944 Ordinance especially when the mode of releasing the attachment is specifically mentioned in the Ordinance.

17. Accordingly, the present Writ Petition is dismissed. Pending applications, if any, also stand dismissed.

18. It is always open for the Petitioner to take recourse to the modes mentioned in the 1944 Ordinance to get the property in question released from attachment. It is needless to states that as and when an application is filed by the Petitioner, the competent Court is requested to consider the fact that the Petitioner is a *bona fide* purchaser who was not aware of the fact that property stands attached.

SUBRAMONIUM PRASAD, J

NOVEMBER 03, 2023
S. Zakir

Signature Not Verified
Digitally Signed
By:RAHUL SINGH
Signing Date:03.11.2023
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