

THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI

W.P.No.24654 of 2022

ORDER

This writ petition is filed questioning the G.O.Rt.No.1342, issued by the Home (Passports) Department, Government of Telangana, dated 09-11-2020 and its consequential orders passed in CrI.M.P.No.410 of 2021 dated 07-06-2021 and CrI.M.P.No.3066 of 2021 dated 03-03-2022 in Crime No.171 of 2020 of P.S.Alwal (EOW), Cyberabad, by the learned Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District, at L.B.Nagar, in so far it relates to attaching of the properties of the petitioners i.e. open plots bearing Nos.19 and 18 part in Sy.Nos.21/AA, 22/AA and 38/AA, admeasuring 250.00 square yards or 209.03 square meters, situated at Maa Santhoshi Housing Colony, Turkapally Village, under Greater Hyderabad Municipal Corporation, Alwal Circle, Malkajgiri Mandal, Ranga Reddy District, purchased the same through registered sale deed document No.594 of 2009 dated 13-03-2009, and the open plot bearing No.17 and 18 in Sy.Nos.21/A, 21/AA, 22/AA and 38/AA, admeasuring 250.00 sq. yards or 209.03 sq. mtrs, situated at Maa Santoshi Housing Colony, Turkapally Village, under Greater Hyderabad Municipal Corporation, Alwal Circle, Malkajgiri Mandal, Ranga Reddy District, purchased the same through registered sale deed document No.,2190 of 1998 dated 18-08-1998 of petitioner No.1 and semi furnished flat bearing No.G8, ground floor in Block A admeasuring 1062 sq. feet built up area

and 288 sq. feet of common area and a reserved double car parking slot No.C1 A16, 17, admeasuring 240 sq. feet approximately together with proportionate undivided share of land to an extent of Ac.49.00 sq. yards out of total land Ac.10.20 gts in the building named Emerald Heights situated at Sy.No.1106(P), Ghanapur H/o.Edulabad Village, Ghanapur Gram Panchayat, Ghatkesar Mandal, Medchal Malkajgiri District, purchased the same through registered sale deed document No.417 of 2017 dated 07-04-2017 also motorcycle Honda Activa bearing registration No.AP 10 BE 5808, Chasis No.ME4JF591HDT009483 and Engine No.UKEFSO29788 (Black Colour) and the motor car Volkswagen Polo bearing registration No.AP 10 DG 6096 Chasis No.WVWA1460XETO45789 and Engine No.CJL076093, replex colour of petitioner No.2, is nothing but arbitrary and illegal and consequently direct to release the said properties in favour of the petitioners. .

2. Learned counsel for the petitioners Mr. K. Venumadhav, submits that the Government has issued G.O.Rt.No.1342 dated 09.11.2020 for attachment of the movable and immovable properties of M/s.Maa Santhoshi Chits and Finance Company represented by its Managing Partner. He submits that in the said G.O., the properties belonging to the petitioners were also included and those properties were purchased by petitioner No.1 after obtaining the Bank loans and he has also repaid the loan amounts to the Bank. He submits that except petitioner No.1, no other person has any right or title to the properties

and even petitioner No.2 also has purchased the property in the year 2017 and also he is the owner of a motorcycle and a car, which were purchased by him on his own earnings and he is a Software Engineer in multi level private company. He submits that basing on a complaint lodged by one Jwala Prasad, a case in Crime No.171 of 2020 on the file of Alwal Police Station, was registered for the offences under Sections 406 and 420 I.P.C. and under Section 5 of Telangana State Protection of Depositors of Financial Establishments Act, 1999 (for short 'the Act'), wherein the allegation is made that the Chit Fund Company has collected an amount of Rs.11.5 crores towards monthly subscriptions and defaulted in paying the same. He further submits that thereafter, the competent authority under the Act has placed a report and a letter dated 28.08.2020 basing on the report of the investigating officer and through the said report, the said competent authority has requested the Government to attach the movable and immovable properties alleged to be of the said Company including the properties of the petitioners and basing on the said request, the Government has issued G.O.Rt.No.1342 dated 09.11.2020 for attachment of movable and immovable properties. Learned counsel further submits that after the said G.O. was issued, the competent authority has filed Crl.M.P.No.410 of 2021 under Section 4(3) read with 4(4) of the Act for making attachment of the properties described in Annexures I and 2 attached to the G.O.Rt.No.1342 dated 09.11.2020 as absolute in Crime No.171 of 2020 of Alwal Police Station (EOW),

Cyberabad, including the properties of the petitioners. He submits that before issuance of the said G.O., the Government shall record its satisfaction and the petitioners are no way concerned and responsible for any of the activities of the said Chit Fund Finance Company. He submits that the Government, before issuing G.O.Rt.No.1342 dated 09.11.2020, neither looked into nor recorded any satisfaction that who is the owner of the above said properties and without looking into the fact that the above said properties do not belongs to M/s.Maa Santhoshi Chits and Finance, has made the attachment absolute. He submits that the learned Metropolitan Sessions Judge has committed gross illegality and irregularity in passing the impugned order without issuing any notice to the petitioners. He submits that the said act of the learned Metropolitan Sessions Judge is arbitrary, illegal, null and void and violative of principle of natural justice and also violative of Articles 14, 19, 21 and 300-A of the Constitution of India. He submits that pursuant to the order passed by the learned Metropolitan Sessions Judge, where the attachment was made absolute, the respondent authorities are taking steps and conducting the auction and hence, the petitioners have no other alternative remedy except to approach this Court. Learned counsel has relied on the orders passed by this Court in W.P.Nos.24514, 24558, 21042, 26069, 26074, 26077, 26094 and 26102 of 2021, wherein this Court, by order dated 01-02-2022, has observed that the Government has only considered the opinion of the Commissioner of Police, Hyderabad, which is also the competent

authority and the Government has failed to consider the matter independently and satisfied itself under Section 3 of the Act and hence, set aside the G.O. challenged therein. He submits that this Court has also observed that the petitioner therein was not a party to the proceedings and no notice was issued in terms of Section 1 of the Act and the Court has set aside G.O.Rt.No.484 dated 07.06.2019 as the procedure under Section 7 of the Act was not followed and no reasons were stated by the Special Court to make the attachment absolute. Learned counsel has relied on the judgment of the Honourable High Court of Andhra Pradesh in **Madanapalle Hospitals Private Limited v. Government of Andhra Pradesh, Home Department**¹.

3. Learned Government Pleader for Home Sri T. Srikanth Reddy appearing on behalf of the respondents submits that the Government has issued G.O.Rt.No.1342 dated 09.11.2020 after following the procedure contemplated under the provisions of the Act and the Special Court issued orders vide Crl.M.P.No.3066 dated 03-03-2022 by appointing a retired Senior Civil Judge as Commissioner to conduct the auction and sale of the attached properties as furnished in the Annexures and also the Court has directed to take assistance of revenue officials in the cadre of the Tahsildar for the said purpose and also the entire exercise shall be completed within a period of three months from the date of receipt of copy of the said order. Learned Government Pleader submits that petitioner No.1 is wife and petitioner

¹ 2009 AIR(AP) 153

No.2 is son of A-2 and A-2 had purchased the property on their names by gaining the money, which was collected from the depositors of M/s.Maa Santhoshi Chits and Finance Company. He submits that it is clearly established that the claims of petitioner Nos.1 and 2 are false. He submits that there is no *mala fide* intention to the law enforcing agencies in seizing the properties held in the names of the accused and his family members and the individual accused persons for conducting auction and to disbursement of proceeds to the victim depositors as per the provisions of the law. He submits that at this stage, if the Court gives any direction it will directly effect the interests of the innocent victim depositors and the petitioners will take advantage of the legal process. Learned Government Pleader further submits that the writ petition is not maintainable and as per Section 11 of the Act, an appeal lies to the High Court within 30 days from the date of passing of such order. He submits that the petitioners have approached this Court after a lapse of 12 months as the order was passed on 07.06.2021 and they have approached this Court on 07.06.2022. Learned Government Pleader also relied upon the order passed by the High Court of Andhra Pradesh in W.P.No.11176 of 2019 dated 28.04.2020 and submits that the Court has observed that whether the purchaser is *bona fide* purchaser for a value or not, whether the properties can be attached or not are all matters, which in the opinion of the Court are within the exclusive jurisdiction of the Special Court that has been established to hear and decide such cases. Even in the

rejoinder filed, in reply to the pleas raised, the petitioner therein merely reiterated what has been stated earlier that he is a *bona fide* purchaser for a value etc., and nothing more. In that view of the matter, the Court therein opined that as there is an efficacious alternative remedy available in the form of Special Court and the said Special Court has also given power to take evidence and deal with the objections raised, the said writ petition is misconceived. Learned Government Pleader has also relied upon the judgment passed by this Court in W.P.No.32814 of 2010 dated 04.02.2013.

4. According to the petitioners there is non-compliance of Section 7(2) of the Act, which deals with the power of the Special Court regarding attachment. Section 7(2) of the Act reads thus;

“(2) The Special Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the financial establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice 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.

Section 7(3) of the Act reads thus;

“(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).

According to the learned counsel for the petitioners as G.O.Rt.No.1342 dated 09.11.2020 is issued without satisfaction of the Government and consequently the procedure under Section 7(2) of the Act has not been followed. When the petitioners have specifically relying on the provisions of the Act and submit that a particular provision in the said Act is not followed, the other provisions of the Act are also binding on the petitioners specifically Section 11 of the Act deals with Appeal. Section 11 of the Act, reads thus;

“Appeal:- Any person including the Competent Authority, if aggrieved by an order of the Special Court, may appeal to the High Court within thirty days from the date of such order.

As per Section 11 of the Act, any person including the competent authority, if aggrieved by an order of the Special Court, may appeal to the High Court within thirty days from the date of such order. The Telangana State Protection of Depositors of Financial Establishments Act, 1999, is a special enactment made to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits. This is a special enactment to protect the deposits made by the public in financial establishments and for matters connected therewith or incidental thereto. The Act itself is a complete code in business and by virtue of the special enactment the procedure is also prescribed.

5. It is the case of the petitioners that the petitioners have nothing to do with the Chit Fund Company and they have purchased the properties out of their own earnings and without looking into all these factors if the Special Court has passed any order, it is always open to the petitioners to approach this Court under Section 11 of the Act, which is an effective alternative remedy available to the petitioners. When there is an alternative remedy provided under the Act, this Court cannot entertain this writ petition.

6. The Court has recognized some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation." (emphasis supplied)

Commissioner of Income Tax v. Chhabil Dass Agarwal²

7. The writ remedy is no doubt an extraordinary remedy and in every case just because a case is made out on action / inaction of an authority vested with power, the Writ court will not entertain the writ petition and the affected party has to avail the remedy available under law. In *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*³, the Hon'ble Apex Court has observed that under Article 226 of the Constitution, the High Court having regard to the facts and circumstances has discretion to entertain or not to entertain a writ petition but the High Court has imposed certain restrictions one of which is that if an effective alternative remedy is available, the High court would not normally exercise the jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies; namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged.

8. In the light of the law laid down by this Court and the Apex Court referred to supra, when there is a statutorily-engrafted adequate and efficacious alternative remedy available to the person, who complains, to redress his grievance, the Court do not entertain the writ petition but

² (2014) 1 SCC 603

³ (1998) 8 SCC 1

relegate the party to avail such remedy before invoking extraordinary jurisdiction of this Court. Learned counsel for the petitioners also relied on the order passed by this Court in **Methuku Ventures Ltd., vs. The State of Telangana, rep. by its Principal Secretary (Home) Secretariat, Hyderabad** (W.P.No.24514 of 2021 and batch dated 01-02-2022). In the said writ petitions, the maintainability of a writ petition was not considered by the Court. This Court is of the considered opinion that this writ petition is not maintainable and the petitioners have to prefer an Appeal as envisaged under Section 11 of the Act.

9. Accordingly, this Writ Petition is disposed of giving liberty to the petitioners to avail the appropriate remedy by filing an appeal under Section 11 of the Act, 1999. No order as to costs.

10. Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

13th June, 2022.

sj

SMT LALITHA KANNEGANTI, J