

(2007) 11 AHC CK 0100
In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 8212 (MB) of 2007

Chhotey Lal Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 14(1), 15, 16, 18

Citation : (2007) 11 AHC CK 0100

Hon'ble Judges : Abdul Mateen, J and S.C.Nigam, J

Final Decision : Dismissed

Judgement

A. Mateen, J.—Heard Sri Daya Shanker Misra, learned Counsel appearing for the petitioners and learned Additional Government Advocate.

2. The present Writ Petition has been preferred by the petitioners feeling aggrieved by order dated 29th September, 2007 (contained in Annexure 15 to the petition) passed by District Magistrate, Lucknow under section 14 (1) of the U.P. Gangsters and AntiSocial Activities (Prevention) Act, 1986 (hereinafter referred to as the Act, 1986) thereby attaching the property owned by the petitioners. The District Magistrate, Lucknow, in the impugned order has mentioned that the property in question has been acquired as a result of commission of offences triable under Act, 1986.

3. From the impugned order, it is explicit that certain landed property of the petitioners has been attached, which property, as per subjective satisfaction of the District Magistrate, has been acquired as a result of commission of offences triable under Act, 1986.

4. Sri Daya Shanker Misra, learned Counsel for the petitioners emphatically submitted that the impugned order has been passed by the District Magistrate, Lucknow with total nonapplication of mind and without considering the manner and sources from which the property in question has been acquired by the

petitioners. He submitted that the District Magistrate has ignored the sale deeds relating to said properties and has also ignored the fact that the said properties were in fact acquired by the petitioner from her own source of income. The petitioners have annexed various interim orders passed by this Court in Writ Petitions and have claimed that relief in similar terms be granted in the present case.

5. In reply. Additional Government Advocate" has submitted that the petitioners have got equally efficacious alternative remedy under Sections 15 and 16 of Act, 1986. It has been submitted by learned Additional Government Advocate that the alternative remedy by way of appeal provided under the Act is a statutory remedy and the present petition under Article 226 of the Constitution of India in view of availability of said statutory remedy, is not maintainable. To augment his submission, learned Additional Government Advocate has cited the case of Krishna Murari @ Deepak v. District Magistrate, Jhansi and others(1. 2001 (42) ACC 107 (HC)).

6. Sri Misra laid much emphasis upon section 18 of Act, 1986. Section 18 of said Act provides for "appeal" against any judgment or order of a Court passed under the provisions of Act, 1986. However, the submission of learned Additional Government Advocate with respect to alternative remedy available to the petitioners could not be rebutted by him. Sri Misra also relied upon a judgment annexed along with the writ petition in the case of Smt. Kahkashan Parveen and another v. State of U.P. Writ Petition Nos. 3983 and 3669 of 1999 decided on 10th August, 1999. In said case, admittedly the Division Bench of this Court has not dealt with the question of availability of alternative remedy under Sections 15 and 16 of Act, 1986.

For better appreciation of the questions of law involved in this writ petition, we may consider the provisions of sections 15 and 16 of the Act.

7. Section 15 of the Act provides for moving representation before the District Magistrate concerned under section 15 of Act, 1986 showing the circumstances in and the sources by which property sought to be attached under section 14 of the Act, has been acquired by claimant. It is further provided in subsection (2) of section 15 of the Act that if the District Magistrate is satisfied about the genuineness of the claim made under subsection (1), he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant.

8. Section 16 makes it explicit that where no representation is made within the period specified in subsection (1) of section 15 of the Act and District Magistrate does not release the property under subsection (1) of section 15, he shall refer the matter with his report to the Court having jurisdiction to try an offence under the Act. Upon receipt of such a reference from the District Magistrate under subsection (1) or an application under subsection (2) of section 16, the Court having jurisdiction to try an offence under the Act shall make an inquiry as to whether

or not the property in question was acquired by the claimant as a result of commission of offences punishable under the Act. The Act also provides procedure for making such an inquiry by the Court having jurisdiction to try an offence under the Act, 1986.

9. In the case in hand, admittedly, the petitioners have not made any representation to the District Magistrate, Lucknow against the order of attachment as has been provided under section 15 of the Act, 1986. The question involved; whether the property attached has been acquired by a person as a result of the commission of an offence triable under Act, 1986 is a pure question of fact. The assertion of the petitioners that the property has not been acquired by unlawful means and in breach of the provisions of the Act, 1986 or that the property being ancestral property was inherited by them, can only be established by appraisal of evidence before the concerned Court of Special Judge (Gangsters Act) to whom the matter may be referred to by the District Magistrate, where it will be open for the petitioners to lead evidence, oral or documentary, in support of their claim. Such an appraisal of evidence is neither permissible nor it will be made by this Court in exercise of discretionary and extra ordinary jurisdiction under Article 226 of the Constitution of India, as such, this Court is of the view that no interference in the proceedings pending before the District Magistrate concerned is called for.

10. The provisions of the Act, 1986, referred to above, make it amply clear that a fullfledged inquiry is to be made and the Act provides for a complete and effective procedure for inquiry under Sections 15 & 16 of the Act, 1986 and against the decision of the Court, remedy by way of filing appeal is also provided under section 18 of Act, 1986.

11. The Apex Court in the case of Hindustan Steel Works Construction Ltd and another v. Hindustan Works Construction Ltd. Employees Union (2005 (106) FLR 998 (SC) = (2005) 6 SCC 725), I has observed:

"In U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S. Karantchari Sangh it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere except when a very strong case is made out for making a departure."

(Emphasis supplied)

12. Similar views have been expressed by their Lordships of Hon''ble Apex Court in U.P. State Spinning Co. Ltd v. R.S. Pandey and another (2005 (107) FLR 729 (SC) = (2005) 8 SCC 264) and Nirma Ltd. v. Lurgi Lentjes Energietechnik Gmbh and another ((2002) 5 SCC 520).

13. We may now take up the next argument of learned Counsel for the petitioners. Placing reliance on the Apex Court decision of Bir Bajrang Kumar v. State of Bihar (AIR 1987 SC 1345), it was submitted by learned Counsel for the

petitioners that writ petitions involving similar and identical points have been admitted and interim orders have been passed by Benches sitting at Allahabad, as such, the present writ petition also deserves to be admitted and interim orders be passed. With great respect to the observations made by the Hon"ble Apex Court in the case of Bir Bajrang Kumar (supra), we may observe that the issues raised in the present writ petition are quite different and distinguishable with the issues raised in those writ petitions, inasmuch, in the case in hand, admittedly the petitioners have not availed the alternative statutory remedy available to them under the Act, 1986 by making representation before the appropriate authority, i.e. District Magistrate under sections 15 & 16 of Act, 1986. In the case of Vishnu Traders v. State of Haryana and others (1995 Supp(1) SCC 461), it has been held by their Lordships of the Apex Court that although principle of binding precedent does not apply, but similar matters should receive similar treatment except where factual differences require a different treatment. In Vishnu Traders" case (supra) it has been observed:

In the matters of interlocutory orders principle of binding precedent cannot be said to apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach."

(Emphasis supplied)

14. Before parting with, we feel it apposite to mention it here that we have not entered into the merits of the orders passed by the District Magistrate, Lucknow least it may prejudice the case of the parties either way.

15. In view of our foregoing observations, the writ petition deserves to be dismissed on the ground of availability of alternative remedy and is accordingly dismissed in limine.