

(2011) 12 MAD CK 0295

In the Madras High Court

Case No : Criminal O.P. No. 27211 of 2011

Lex Property Development (P) Ltd.

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Law (Amendment) Act, 1932 — Section 5(2), 5(3)
Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2011) 12 MAD CK 0295

Hon'ble Judges : A. Arumughaswamy, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; C. Emalias, Government Advocate (Crl. Side) for Respondent No. 1 and Mr. Shanmugasundaram, S.C. for Mr. M. Dhandapani, for the Respondent

Judgement

Honourable Mr. Justice A. Arumughaswamy

Duo non possuni in solido unam rem possidere -

Two persons cannot possess one thing in entirety

1. The petitioner has come forward with this petition seeking to protect the rights of the petitioner by directing the Chief Court of Small Causes, Chennai, to proceed adjudicate the claim petition in Crl.M.P.No.4136 of 1999 and Crl.M.P.No.4138 of 2000 and to pass such further or other orders.

2. The first respondent filed applications in Crl.O.P.No.1 of 1997 and Crl.O.P.No.11 of 1997 before the Court of Chief Judge, Small Causes, Chennai for attachment of the properties belonging to the petitioner company on unreasonable and erroneous assumptions that they form part of the properties covered in the Criminal Case registered in Crime No.13/AC/96/HQ by the Directorate of Vigilance and Anti Corruption against Selvi J. Jayalalitha, the

present Chief Minister of Tamil Nadu and three other suspected as her benamies for alleged offences u/s 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988 and in that petition, an order of attachment was made through the Court of Small Causes, Madras on 5.2.1997. On coming to know of the order of attachment of its properties, the petitioner company filed a claim petition in Crl.O.P.Nos.4136 of 2000 and 4138 of 2000 before the Court of Chief Judge, Small Causes, Chennai, to raise the orders of attachment.

3. From the perusal of the records it is seen that the second respondent herein has filed a transfer petition in Petition No.77 and 78 of 2003 before the Hon''ble Supreme Court of India praying to transfer C.C.No..7 of 1997 and C.C.No.2 of 2001 pending on the file of the XIth Additional Sessions Judge (Special Court No.1), Chennai in the State of Tamil Nadu to a Court equal and competent jurisdiction in any other State for free and fair trial. Ultimately, the Hon''ble Supreme Court has passed an order dated 18.11.2003 in Transfer Petition No.77 and 78 of 2003 as per the decision reported in K. Anbazhagan Vs. The Superintendent of Police and Others Etc.,). The relevant portion of the order of the Hon''ble Supreme Court is extracted hereunder:-

34. In the result, we deem it expedient for the ends of justice to allow these petitions. The only point that remains to be considered now is to which State the cases should be transferred. We are of the view that for the convenience of the parties the State of Karnataka would be most convenient due to its nearness to Tamil Nadu. Accordingly, the petitions are allowed. C.C.No.7 of 1997 and C.C.No.2 of 2001 pending on the file of the XIth Additional Sessions Judge (Special Court No.1), Chennai in the State of Tamil Nadu shall stand transferred with the following directions:

(a) The State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka shall constitute a Special Court under the Prevention of Corruption Act, 1988 to whom C.C.No.7 of 1997 and C.C.No.2 of 2001 pending on the file of the XIth Additional Sessions Judge (Special Court No.1), Chennai in the State of Tamil Nadu shall stand transferred. The Special Court to have its sitting in Bangalore.

4. Thereafter, the second respondent has filed a Criminal Original Petition 8772 of 2006 before this Court with a prayer to stay all further proceedings in Crl. O.P. Nos. 1 and 11 of 1997 on the file of the learned Chief Judge, Small Causes Court, Chennai pending disposal of C.C.No.7 of 1997 originally on the file of the learned XI Additional Judge-cum-Special Judge, Chennai now pending on transfer, on the file of the Special Court, Bangalore, in C.C.No.208 of 2004. In that petition, this Court has passed an order dated 26.4.2006. The relevant portion of the order passed by this Court runs as follows:

32. Of course, this Court cannot stall the claimants from filing their objections to raise the order of attachment till the disposal of the wealth case pending before the Special Court at Bangalore. This is not the scheme of the Criminal Law

(Amendment) Ordinance, 1944. The claimants are entitled to approach in the above facts and circumstances only the Special Court at Bangalore which deals with Special C.C.No.208 of 2004 for seeking the relief of raising the order of attachment.

33. In the result, the learned Chief Judge, Small Causes Court, Chennai is directed, in the interest of justice, not to deal with the Crl. O.P. Nos. 1 and 11 of 1997 pending on his file and the parties are given liberty to approach the Special Court, Bangalore dealing with Special C.C.No.208 of 2004 seeking the relief of raising the order of attachment and the first respondent shall contest those claims only through the Special Public Prosecutor appointed to conduct the case in Special C.C.No.208 of 2004.

34. The Criminal Original Petition is ordered accordingly. Consequently, connected criminal miscellaneous petition is closed.

5. Thereafter, the present petitioner filed an application in Crl.Misc.5651 of 2010 before the Special Judge at Bangalore to call for the records in Crl.O.P.No.1 and 11 of 1997 on the file of the Chief Judge, Small Causes Court, Chennai and for disposal in accordance with law and for other reliefs. The first respondent filed its objection through the Special Public Prosecutor seeking for the dismissal of the application on the ground it is not maintainable as the proceedings before the Court of Small Causes, Madras is not the subject matter to be heard or tried by the Special Court at Bangalore. The counter filed by the first respondent before the Special Court at Bangalore runs as follows:

3. It is submitted that the applicant claims to have filed the application for raising of the attachment before the Small Causes court at Chennai which has lost jurisdiction in the matter as held by the Madras High Court in its order dated 26.4.2006 passed in Crl.O.P.No.8772 of 2006.

From this it is clear that the second respondent has admitted the jurisdiction of the Special Court at Bangalore in this matter. The operative portion of the order passed by the Special Judge at Bangalore in Crl.Misc.5651 of 2010 runs hereunder:

17. Under the circumstances, in the absence of specific direction, we cannot interpret the word "all documents includes the documents connected to the petitions filed by the petitioners before the learned Chief Judge, Small Causes Court, Chennai. Moreover, the petitioners are not the parties to main criminal case i.e., Spl.C.C.No.208 of 2004.

18. ...

19. Under the circumstances, if really the petitioners approached the court by invoking the provisions under Sec. 5(2) and (3) of the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No.38 of 1944), they have to come up with a petition as per the procedure provided in the Code of Civil Procedure. But, here, in the instant case, if we perused the petition filed by the petitioners,

it goes to show that, it is not in accordance with the said procedure. Because, on perusal of the petition, it shows that, at the Cause-Title, with regard to the petitioner/claimant, it simply mentioned that Lex Property Development Pvt., Ltd., represented by its Director P. Chitra. The full address of the petitioner is not stated. Further, there is no verification at the end of the petition and only the signature, is found as counsel for the petitioner/claimant. Even the full name and address of the learned counsel for the petitioner is not stated in the petition. The description of the property to be claimed is also not mentioned. Therefore, the above said petition is bald and vague. In view of the above discussion, I am of the opinion that the petition is liable to be rejected, as not maintainable. Accordingly, I answer point No.1 in the negative.

By observing this the Crl. Misc. petition was rejected by the Special Court at Bangalore. Under this back drop the present petitioner filed a petition seeking direction from the Court to adjudicate his application by the Chief Judge of Small Causes Court at Chennai.

6. Heard the learned counsel appearing for the petitioner, the learned Government Advocate (Crl. Side) appearing for the first respondent and the learned senior counsel appearing for the second respondent and also perused the materials available on record.

7. The learned counsel appearing for the petitioner contended that the second respondent has filed Crl.O.P.No.8772 of 2006 before this Court and obtained an order of stay of all further proceedings in Crl.O.P.No.1 of 1997 on the file of the Chief Judge, Court of Small Causes, Chennai, pending disposal of C.C.No.7 of 1997 on the file of XI Additional Sessions Judge, Chennai, now transferred to the Special Court, Bangalore in Spl.C.C.No.208 of 2004 which is erroneous in law and the order passed by this Court is non-exist. Hence, he prayed that this petition has to be allowed.

8. The learned senior counsel appearing for the second respondent would contend that that already this Court has disposed of a similar petition by order dated 26.4.2006 in Crl. O.P. No. 8772 of 2006. This Court is competent to pass an order in Criminal Original Petition even though the matter pertains to the attachment. If at all the petitioner wants any relief, he has to approach only before the Special Court at Bangalore and not the Chief Judge of Small Causes Court at Chennai. Therefore, the present petition is not maintainable and it has to be dismissed.

9. The learned Government Advocate (Crl. Side) appearing for the first respondent/State would contend that the earlier order passed by this Court is only in the criminal side whereas the petition filed by the petitioner for raising the attachment is civil in nature. Therefore, he prays that suitable and workable order can be passed by this Court.

10. On a perusal of the records it is seen that no doubt this Court by the order dated 26.4.2006 made in Crl.O.P.No.8772 of 2006, has directed the Chief Judge,

Small Causes Court, Chennai not to deal with CrI. O.P. Nos. 1 and 11 of 1997 pending on his file and the parties are given liberty to approach the Special Court, Bangalore, dealing with Special C.C.No.208 of 2004 seeking the relief of raising the order of attachment. Even though the second respondent has filed a petition before this Court seeking for stay of all further proceedings in CrI. O.P. Nos. 1 and 11 of 1997 pending on the file of the Chief Judge, Small Causes Court at Chennai, this Court has passed an order after hearing the counsel appearing on both sides and at that time this type of argument was not advanced, hence, I am of the view that this question of law can be raised at any point of time. Of course, no doubt the first respondent filed applications for attachment of properties belonging to the petitioner under the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No.38 of 1944), the relief sought for is civil in nature and the application for raising of attachment is also civil in nature. Even under the Criminal Law (Amendment) Ordinance it has been specifically mentioned that CPC alone will be applicable in respect of these nature.

11. It is also admitted by the second respondent that before filing the Criminal Original Petition before this Court, he has not chosen to file any petition before the Chief Judge of Small Causes Court at Chennai praying for this relief. If he has filed such a petition, then only the question of filing Miscellaneous Appeal arising out of the order passed against the Chief Judge of Small Causes Court at Chennai will arise. Since the second respondent has not invoked that provision by filing petition and he has directly filed Criminal Original Petition before this Court by invoking its inherent power u/s 482 of Cr.P.C. Any how, since already orders have been passed by this Court in Criminal Original Petition which is having inherent power of High Court, I am of the view that I cannot sit over the order passed by this Court in favour of the second respondent. At present the petitioner also filed the petition under the same provisions of law. In such a way, conclude this point accordingly.

12. Now, the next contention of the learned counsel for the petitioner is that since as per the earlier order he has filed application before the Special Court, Bangalore and that the Special Court Bangalore, has rejected the application. Under such circumstances, the petitioner seeks for a direction to the Chief Judge, Small Causes Court, Chennai to consider his application for raising the attachment and dispose of the same in accordance with law. The learned counsel for the petitioner would further contend that since the order passed by this Court in CrI.O.P.No.8772 of 2006 is not enforceable in law that order has to be ignored. The learned counsel for the petitioner relied on a judgment in the case of A.R. Antulay Vs. R.S. Nayak and Another, Paragraph 46 of the said judgment runs as follows:-

46. The appellant should not suffer on account of the direction of this Court based upon an error leading to conferment of jurisdiction.

13. The learned counsel for the petitioner relying on the orders passed by the Special Judge at Bangalore would contend that this Court has no jurisdiction to

direct the Special Court at Bangalore to dispose of the petition for raising of attachment before the Special Court at Bangalore. Hence, he prays that the petition has to be allowed.

14. The learned senior counsel appearing for the second respondent would contend that since the matter pending before the Special Court, Bangalore the petitioner has to file application if any before the Special Court, Bangalore and not before this Court.

15. A careful perusal of the order of the Special Court, Bangalore it is seen that admittedly the petitioner has filed application before the Special Court at Bangalore for raising of attachment. Even though the case has been transferred to the Special Court, Bangalore as per the orders of the Hon"ble Supreme Court of India, the case records and documents have not been transferred by the Chief Judge, Court of Small Causes, Chennai. Even this Court on an earlier occasion directed the 6th respondent namely the present petitioner to file appropriate application before the Special Court, Bangalore, pursuant to the order of the Hon"ble Supreme Court of India. Admittedly, the documents are before the Court of Chief Judge, Small Causes, Chennai. Under these circumstances, either the Special Court, at Bangalore, or this Court cannot give any direction to the Chief Judge, Small Causes Court, Chennai to transfer the documents to the Special Court at Bangalore for which parties have to take steps before the Hon"ble Supreme Court of India for getting suitable orders in this regard.

16. At this juncture, I am of the view the earlier order passed by this Court is not clear and without any order for transfer of the documents, the mere directing the petitioner to file a petition for raising the attachment before the Special Court, Bangalore, is meaningless. Any how, at this stage, this Court also cannot pass any order by transferring the case which is pending on the file of the Chief Judge, Small Causes Court at Chennai to Special Court, at Bangalore since the earlier order has been passed in obedience to the order of the Hon"ble Supreme Court. Under this juncture, this Court can order the Chief Judge of Small Causes Court to transmit the papers in obedience to the order of the Hon"ble Supreme court of India to the Special Court at Bangalore to try the said case to avoid further delay of the proceedings.

17. Admittedly, the present petitioner is not a party in C.C.No.208 of 2004 which is pending on the file of the Special Court at Bangalore. She claims to be a Director of the Company. She has filed an application before the competent Court for the past few years for raising of attachment and similarly it has been rejected. Now she was forced to file another application before this Court for her appropriate relief. Therefore, I am of the view to meet the ends of justice the application for raising of attachment has to be disposed of at the first instance. *Fiat justitia, ruat coelum* -(Let right be done, though the heavens fall).

18. It is needless to mention that the petitioner is now nowhere that is neither before the Special Court at Bangalore or before the Chief Judge, Small Causes

Court, Chennai to redress her remedy. As I have already pointed out the proceedings the Chief Judge of Small Causes Court, Chennai stands stayed as per the order of this Court in CrI.O.P.No.8722 of 2006 dated 26.4.2006. Therefore, she cannot pursue her remedy before the Small Causes Court at Chennai. However, as per the liberty given by this Court, she can approach the Special Court at Bangalore for the relief. Previously, the Special Court at Bangalore also rejected her petition on flimsy grounds. Therefore, she could not get relief in that Court also. Thus, the petitioner could not pursue her remedy neither before the Chief Judge, Small Causes Court at Chennai nor before the Special Court at Bangalore.

19. Thus, the petitioner has been rendered in a way of remedy less. Such a situation denying the valuable right of the petitioner to have contest cannot be deprived of. Such a denial will denying the fundamental right guaranteed under Article 14 of the Constitution of India.

20. Therefore, here is the petitioner who is crying for justice needs to be given an opportunity to have effective contest. It is well said in Latin Maxim that: *Ibi semper debet fieri triatio, ubi juratores meliorem possuni habere notitiam* -(A trial should always be had where the jury can get the best information). In my considered opinion it will be possible only in the event of the petition pending before the Chief Judge, Small Causes Court, Chennai, is directed to be transmitted to the Special Court at Bangalore where the petitioner can pursue her claim at first instance. *Boni judicis est ampliare justitiam* -(A good judge will extend the limits of justice). The Special Court at Bangalore will be well within its competency to dispose of the said petition.

21. With the above observation, this Criminal Original Petition is disposed of directing the Chief Judge, Small Causes Court, Chennai to transmit all connected records which are pertaining to the CrI.O.P.No.1 and 11 of 1997 pending on the file of Chief Judge, Small Causes Court, Chennai to the Special Court at Bangalore. After receipt of the order the learned Chief Judge, Small Causes Court, Chennai shall comply with the directions regarding the handing over of all the documents pertaining to this case by deputing the Registrar or Sherishtadar to the Special Court at Bangalore.