(2016) 01 MAD CK 0141

In the Madras High Court

Case No : Criminal Original Petition No. 29409 of 2006

S. Indira APPELLANT

Vs

The Superintendent (Anti-Corruption Wing) Central Bureau of Investigation (CBI) and Others RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 32
Criminal Procedure Code, 1973 (CrPC) — Section 482
Judges (Protection) Act, 1985 — Section 3
Penal Code, 1860 (IPC) — Section 77
Recovery of Debts Due to Banks and F

Citation : (2016) 01 MAD CK 0141

Hon'ble Judges : A. Selvam, J.

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; K. Srinivasan, Spl. P.P., for the Respondent

Final Decision : Allowed

Judgement

A. Selvam, J.—1. This criminal original petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 praying to direct the first respondent herein to register the complaint, dated 06-09-2006.

2. In the instant case, the petitioner who has no connection whatsoever with the judicial proceeding, lost her dwelling house due to miskenning judicial approach and irresponsible conduct of the persons concerned.

3. The material averments stated in the petition can be summarised as follows:

"The petitioner is the absolute owner of the property bearing New No. 1, Old No. 7, Seven Hills, 5th Main Road, Kasturibai Nagar, Adyar, Chennai - 600 020. She purchased the same by virtue of a sale deed dated 17-12-1974 and since then she has become absolute owner. Some 30 years'' ago, the same has been let out to one V.S. Krishnan and for the past four years, he has not paid rent. The petitioner has locked the house mentioned in the petition and a portion of the same has been let out to Subham Trading Company. To the shock and surprise of the petitioner, a notice has been affixed on the outer door of the house mentioned in the petition in the name of Mr. Sathia Prakash, Recovery Officer, Debts Recovery Tribunal, New Delhi. The petitioner has come to know that a judicial proceeding is pending in between Indian Renewable Energy Development Agency Ltd., New Delhi (IREDA) and one M/s. Maha Krishna Financial Services Ltd., Chennai. In the notice affixed it is stated that the property mentioned in the petition has been brought for public sale. The notice in question has been affixed by active conspiracy of IREDA Officials without verifying the ownership of the property. The petitioner has issued a legal notice dated 16-05-2006 to the Recovery Officer. Even after receipt of the same, the Recovery Officer has conducted sale and subsequently, confirmed the sale. Since the entire proceedings have been made with the conspiracy of the persons concerned, a complaint dated 06-09-2006 has been given to the first respondent and so far no action has been taken. Under the said circumstances, the present petition has been filed for getting the relief sought therein."

4. In the counter filed by the first respondent it is averred that the letter dated 06-09-2006 given by the petitioner has been enquired into and since it is nothing but a civil matter, the same has been closed and therefore, the present petition deserves to be dismissed.

5. In the counter filed on the side of the second respondent it is stated that the third respondent has initiated the proceeding in R.C. No. 210 of 2002. The second respondent on the basis of Recovery Certificate has passed further orders. The second respondent has issued a sale notice and subsequently, sale has been conducted in accordance with law. The second respondent is entitled to get protection as per Section 3 of The Judges (Protection) Act, 1985 (59 of 1985). The second respondent has not done any infraction. The criminal proceeding against the second respondent is clearly barred under Section 33 of the Recovery of debts due to Banks and Financial Institutions Act, 1993. Even as per Section 77, IPC, such protection is available. Further, from the date of attachment (31-10-2005) upto confirmation of sale (02-06-2006), no person has come forward with any petition nor raised any objection and there is no merit in the petition and the same deserves to be dismissed.

6. In the counter filed on the side of the third respondent, it is averred that the third respondent is a public financial institution under Section 4 A of the Companies Act. No complaint can be registered without the consent of Central Government or State Government. The third respondent has had money dealings with M/s. Maha Krishna Financial Services Limited, Chennai. Since the said M/s. Maha Krishna Financial Services Limited, Chennai has not discharged its liability, O.A. No. 665 of 2000 has been instituted before Debt Recovery Tribunal wherein a final order has been passed on 09-05-2002 and in pursuance of the same, some properties of the said M/s. Maha Krishna Financial Services Limited,

Chennai have been brought for sale and since the sale proceed is not sufficient to discharge the entire liability of M/s. Maha Krishna Financial Services Limited, Chennai, the third respondent has sought assistance of a detective agency viz., M/s. Eagle Hunter Solutions Limited, Delhi to trace out assets of the said Company and accordingly, the said private detective agency has given a report dated 05-09-2005 wherein it is stated that the property mentioned in the petition belongs to V.S. Krishnan, Director/guarantor and subsequently, on 26-10-2005, recovery order has been passed by the Recovery Officer, Debt Recovery Tribunal - I and in pursuance of the same, the property mentioned in the petition has been attached and subsequently, sold in public auction. Since the third respondent has taken all the proceedings in accordance with law, no criminal proceeding can be initiated against it and therefore, the present petition is liable to be dismissed.

7. The learned counsel appearing for the petitioner has repeatedly and also elaborately contended to the effect that the property mentioned in the petition is the absolute property of the petitioner and she purchased the same by virtue of the sale deed dated 17-12-1974 and since then she has become absolute owner of the same and prior to 30 years, the same has been let out to one V.S. Krishnan and for the past four years, he has not paid rent and therefore, the petitioner has closed the petition mentioned property and a portion of the same is let out to one Subham Trading Co., and all of a sudden, the petitioner has come to know that an auction notice has been affixed on the outer door of the house and the petitioner has made thorough enquiry and ultimately found that a judicial proceeding is pending between the third respondent and one M/s. Maha Krishna Financial Services Limited, Chennai, and thereafter, the petitioner has issued a legal notice on 16-05-2006 to the second respondent wherein it has been clearly stated about the ownership of the petitioner in respect of the property brought for sale and in spite of legal notice, the respondent Nos. 2 and 3 and others with their active connivance, sold the property mentioned in the petition in public auction and subsequently, demolished the same. Under the said circumstances, the complaint in question has been given to the first respondent. But the first respondent has not done any investigation and therefore, the present petition has been filed for getting the relief sought therein.

8. The learned Special Public Prosecutor appearing for the first respondent has putforth his contention on the basis of the averments made in Paragraph No. 3 of the counter, filed by the first respondent.

9. The learned Additional Solicitor General appearing for the second respondent has mainly contended that the second respondent has acted in accordance with law and he has not done any irregularity nor infraction in attaching, selling the property in question in public auction and since no deviation has taken place on the part of the second respondent, the present proceeding is totally unwarranted. Further, the second respondent is entitled to get protection of the Acts mentioned in the counter and therefore, the present petition deserves to be dismissed.

10. The learned Senior Counsel appearing for the third respondent has also elaborately contended to the effect that the third respondent has had money dealings with M/s. Maha Krishna Financial Services Limited, Chennai and in order to recover the dues, O.A. No. 665 of 2000 has been filed wherein necessary order has been obtained on 09-05-2002 and subsequently, some properties of the said M/s. Maha Krishna Financial Services Limited, Chennai have been brought for sale and since sale proceeds is not at all sufficient to meet out the entire liability of the said M/s. Maha Krishna Financial Services Limited, Chennai, the third respondent has sought assistance of M/s. Eagle Hunter Solutions Limited to find out the property owned by the said Financial Services Limited and accordingly, that private detective agency has submitted a report on 05-09-2005 wherein it has been clearly stated that the property mentioned in the petition is the absolute property of V.S. Krishnan, Director/Guarantor and subsequently, attachment has been made. After attachment, proper sale notice has been affixed and also published in Newspapers and after observing all legal formalities, the second respondent has conducted public sale wherein a third party has purchased the same and subsequently, a vacant possession has been given to the auction purchaser and since the third respondent has had acted well within its limit and since the third respondent has not done any delict, no criminal action can be taken against it and therefore, the present petition is liable to dismissed.

11. On the basis of divergent submissions made on either side, it is made clear that the property mentioned in the petition is the absolute property of the petitioner and the same is nothing but a dwelling house; neither the said M/s. Maha Krishna Financial Services Limited, Chennai nor the said V.S. Krishnan has had proprietary interest over the same. Only on the basis of a report dated 05-09-2005 given by M/s. Eagle Hunter Solutions Limited, the property in question has been brought for sale in public auction and a third party has purchased the same and subsequently, a vacant possession has been given to auction purchaser by way of demolishing the existing building.

12. From the foregoing narration of factual aspects, the Court has deduced the following flagrant/gargantuan mistakes:

"(1) M/s. Eagle Hunter Solutions Limited has not procured nor seen any document of title so as to ascertain that the property in question belongs to M/s. Maha Krishna Financial Services Limited,

Chennai (Judgment Debtor);

(2) The third respondent (decree holder) has not produced any document before Recovery Officer (second respondent) for the purpose of showing that the judgment Debtor is the owner of the property in question.

(3) The second respondent(Recovery Officer) without seeing even a scrap of paper with regard to ownership of the property in question has made attachment, issued proclamation of sale and conducted sale and also other

subsequent proceedings;

(4) The auction purchaser even without ascertaining title or interest of the alleged judgment debtor over the property in question has purchased the same."

13. The only point that has now winched to fore in the present petition is as to whether necessary direction can be given to the first respondent to register the complaint dated 06-09-2006?

14. In fact, this Court has perused the entire averments made in the petition wherein it has been clearly stated that only due to conspiracy between the persons concerned, the property mentioned in the petition has been brought for sale and subsequently sold to third party and thereafter, demolished.

15. In the prologue of this order this Court has clearly pointed out to the effect that the petitioner has had no connection whatsoever with the legal proceedings initiated in between the third respondent and M/s. Maha Krishna Financial Services Limited, Chennai. Further, it is observed that the property of the petitioner has been unnecessarily and also erroneously brought for sale and subsequently, sale has been conducted.

16. The learned Special Public Prosecutor appearing for the first respondent has contended that the letter dated 06-09-2006 given by the petitioner has been enquired into and ultimately found that the allegations mentioned therein are nothing but civil matters.

17. The learned Additional Solicitor General appearing for the second respondent has contended that the second respondent through out the proceedings has acted as per the provisions of law and no infraction has been done and further the second respondent is entitled to get protection of the Acts mentioned in the counter and therefore, no criminal proceedings can be initiated against him.

17(a) The learned counsel appearing for the third respondent has contended that only on the basis of the report submitted by M/s. Eagle Hunter Solutions Limited, the property mentioned in the petition has been brought for sale by way of thinking that the same is the absolute property of V.S. Krishnan, Director/ Guarantor. It has already been pointed out that M/s. Eagle Hunter Solutions Limited has not seen nor verified any document for the purpose of confirming that the property in question is the absolute property of Mr. V.S. Krishnan.

18. At this juncture, it would be apropos to look into the relevant portion of the report given by M/s. Eagle Hunter Solutions Limited wherein it is stated that,

"As per the sources there, it was revealed that the subject and his wife were operating a Transport company in the name of M/s. Maheshwari Transport at No. -1, 5th Main Road, Kasthuri Bei Nagar, Adyar, Chennai - 20, It was learnt by our investigators after reaching at the said address that the property was owned by Mr. V.S. Krishnan and there was no transport company functioning from the said address."

Even from a mere reading of the report given by the said M/s. Eagle Hunter Solutions Limited, it is made clear that the said private detective agency has not seen nor verified any document for the purpose of ascertaining/confirming ownership of the property mentioned in the petition. The said private detective agency has simply conducted oral enquiry from some persons who have had no connection whatsoever with the property in question or its documents of title. Therefore, it is needless to say that the report given by the said private detective agency is nothing but a slipshod report and the same cannot be a basis for proceeding further as if the property in question is the absolute property of the said V.S. Krishnan, Director/Guarantor.

19. The third respondent has taken umbrage only on the basis of the report given by M/s. Eagle Hunter Solutions Limited. It has already been pointed out that the said report is nothing but an inchoate document and the same cannot be believed in as an authenticated document for the purpose of ascertaining ownership of the property in question. Even though, the said report is not at all conclusive nor authenticated for ascertaining title, ownership of the property in question, the third respondent without conducting further investigation with regard to right, title and interest of the said V.S. Krishnan, Director/Guarantor, has proceeded further before the second respondent. The second respondent as taunted earlier even without seeing any document of title, encumbrance certificate has passed further orders in respect of attachment, sale notice, auction and ultimately sold the property in question.

20. It is seen from the records that after seeing notice on the outer door of the house mentioned in the petition, the petitioner through her counsel has issued a legal notice dated 16-05-2006 to the second respondent wherein it has been clearly narrated to the effect as to how the petitioner has become absolute owner of the property in question and also prayed to stop all further proceedings. In fact, in the notice dated 16-05-2006, it is stated that,

"if a search is carried out in the history of assurances and if an application is sought for the issue of an encumbrance certificate it would reveal that our client is the absolute owner of the property aforesaid since 13-12-1974 and the same is free from any encumbrances."

At this juncture, the learned Additional Solicitor General appearing for the second respondent has contended that without invoking proper provisions of law and without filing any petition before the second respondent, the second respondent need not care the notice dated 16-05-2006.

21. For considering the contentions put forth on the side of the second respondent it would be condign to look into Order 21 Rule 58 of the Code of Civil Procedure, 1908 and the same reads as follows:

"Adjudication of claims to, or objections to attachment of, property: where any claim is preferred to, or any objection is made to the attachment of, any property in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained."

A mere reading of the said provision would clearly go to show that in execution of a decree if any property is attached, as per the said provision, a claim petition can be preferred or objection can be raised. If that be the case, the concerned Court has to adjudicate the matter in respect of claim or objection. It is true in the instant case, except legal notice dated 16-05-2006, the petitioner has not shown any interest in filing a separate petition before the second respondent. It has already been pointed out in many places that the said M/s. Eagle Hunter Solutions Limited has not annexed any document with regard to alleged ownership of the said V.S. Krishnan and therefore, the said report is nothing but a waste paper. Even though the said report is nothing but a waste paper, the third respondent has not endeavoured to find out as to who is the real owner of the property, in question. To put it in short, both the respondent Nos. 2 and 3 have acted on the basis of a waste paper submitted by M/s. Eagle Hunter Solutions Limited for the reasons best known to them.

22. It is an admitted fact that prior to sale, on 16-05-2006, the petitioner through her counsel has given an elaborate legal notice mentioned supra wherein it is clearly stated that the petitioner is the absolute owner of the property which has been attached. The second respondent without considering the said notice and even without insisting the third respondent to produce relevant documents for the purpose of showing/establishing alleged title of the said V.S. Krishnan over the property, brought it for sale. The second respondent after receipt of notice dated 16-05-2006 has conducted sale in public auction, passed confirmation of sale and subsequently, the Court auction purchaser has demolished the building. Therefore, it is quite clear that both the second and third respondents have clearly done infraction/delict, for the reasons best known to them.

23. The main contention expressed on the side of the petitioner is that with active conspiracy of the persons concerned, the property mentioned in the petition has been attached, sold in public auction and subsequently, demolished. Simply because the second respondent is having protection under the Acts mentioned in the counter, the Court cannot close its eyes in a case like this without directing investigating agency to conduct investigation. In fact, it is pathetic to note that the petitioner has lost her property (dwelling house) without any mistake of her. Under the said circumstances, for the purpose of investigating the allegations mentioned in the petition intervention of the first respondent has become shunless.

24. The learned Senior Counsel appearing for the third respondent has also contended that for registering a criminal case or conducting investigation against the third respondent, consent of the Central Government or the concerned State Government is very much essential and therefore, the present petition is not legally maintainable.

25. In support of the said contention, the following decisions are relied upon:

"(i) State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal and others(, 2010 (3) SCC 571), wherein the Honourable Constitution Bench of Supreme Court has dealt with the similar legal point raised by the learned Senior Counsel and ultimately found that both the Honourable Supreme Court as well as High Court are having extraordinary power either under Article 32 or under Article 226 of the Constitution of India respectively. But such extraordinary power should be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility to and instill confidence in investigations or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

(ii) In M. Balakrishna Reddy v. Director, CBI, New Delhi (, 2008 (4) SCC 409), the Honourable Supreme Court has dealt with similar legal point."

26. From a cumulative reading of the decisions rendered by the Honourable Supreme Court, it is easily discernible to the effect that the High Court by invoking Article 226 of the Constitution of India can direct the Central Bureau of Investigation(CBI) to investigate a particular matter, even though necessary sanction has not been obtained from the concerned State Government. Therefore, the last contention put forth on the side of the third respondent is sans merit.

27. It has already been animadverted to in many places that even without filing a scrap of paper, the third respondent has brought the property in question for sale. Likewise, the second respondent even without seeing proper documents for the purpose of ascertaining alleged ownership of the said V.S. Krishnan has erroneously sold the property in question in public auction and subsequently, given necessary permission to demolish the same. Under the said circumstances as mentioned supra, investigation by utilizing the service of the first respondent is very much essential. Further, the protection available to the second respondent under the Acts mentioned in the counter can also be considered by the prosecuting agency. On that basis, the fundamental rights of the petitioner cannot be deterred. Therefore, viewing from any angle the contentions put forth on the side of the respondents cannot be accepted and the first respondent can be directed to look, investigate the allegations mentioned in the complaint dated 06-09-2006.

In fine, this criminal original petition is allowed. The first respondent is directed to conduct preliminary investigation/enquiry in respect of the allegations made in the complaint dated 06-09-2006. If sufficient materials are available, the first respondent is directed to register the same and proceed further against the persons concerned.