(2014) 07 MP CK 0162

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9883/2014

Sai Prasad Foods Limited APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam, 2000 — Section 4

Citation : (2014) 4 MPHT 89 : (2014) 4 MPLJ 91

Hon'ble Judges : A.M. Khanwilkar, C.J;K.K. Trivedi, J

Bench : Division Bench

Advocate : Shobha Menon, Sr. Advocate and Rahul Choubey, Advocate for the Appellant; Kumaresh Pathak, Dy. Advocate General, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.M. Khanwilkar, C.J.—This writ petition under Article 226 of the Constitution of India takes exception to the notice dated 28th May, 2014 (Annexure P-5), issued under the signature of Principal Secretary (Finance), Government of Madhya Pradesh and order dated 24-6-2014 (Annexure P-7), issued under the signature of Collector, Gwalior. For the nature of order, we propose to pass, it may not be necessary to advert to the entire factual matrix, which has resulted in filing of the present petition, except to observe that the petitioner-Company had filed writ petitions in this Court being Writ Petition Nos. 6371/2011 and 6451/2011 as also Writ Appeal Nos. 592/2011 and 596/2011, which came to be disposed of by common judgment dated 12-5-2014. The Division Bench of this Court adverted to the background in which action was taken by the authority. It is noted that in Writ Petition No. 3332/2010 (PIL), the Division Bench of this Court issued directions to the Competent Authority. Keeping those observations in mind, the writ petitions and appeals filed by the petitioner herein came to be disposed of with direction to the Collector to proceed in the matter in accordance with law and take appropriate decision and action to its logical end expeditiously. In that context, the Principal Secretary (Finance) issued communication, dated 28th

May, 2014 (Annexure P-5). Acting on the said communication, the Collector issued order, dated 24-6-2014 (Annexure P-7) ordering seizure of the immovable property belonging to the petitioner-Company. The Collector has noted that the petitioner-Company was doing business of banking without any formal permission granted by the Regulatory Authority in that behalf. That finding was recorded in the inquiry conducted against the petitioner-Company in the year 2011. On that basis, the Collector proceeded to pass the impugned seizure order.

2. The first grievance of the petitioner is that this order is passed without giving any opportunity to the petitioner. Secondly, the said order nowhere records satisfaction of the Competent Authority that it was necessary to seize the immovable property of the petitioner-Company so that the same is not transferred or otherwise dealt with, which may inevitably result in defeating the purpose of the Act. Reliance is placed on Section 4 of the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 (in short "the Act of 2000") and also Rule 9 of the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Niyam, 2003 (for brevity "the Rules of 2003").

3. Section 4 of the Act reads, thus:--

4. Attachment of properties on default of return of deposits.--

Notwithstanding anything contained in any other law for the time being in force:--

(i) where, upon complaints received from depositors or otherwise, the Competent Authority is satisfied that any financial establishment defaults the return of deposits in cash or kind, as promised, after maturity; or

(ii) where the Competent Authority has reason to believe that any financial establishment is acting in a calculated manner with an intention to defraud the depositors,

and, if the Competent Authority is satisfied that such financial establishment is not likely to return the deposits, the Competent Authority may, in order to protect the interests of the depositors of such financial establishment, pass an ad interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person or establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said financial establishment or the promoter, partner, director, manager or member of the said financial establishment, as the Competent Authority may think fit."

As reliance is also placed on Rule 9, the same is reproduced thus:--

?9. Power to freeze or seize property.--(1) Where the Competent Authority is satisfied or has reason to believe that any property, which is liable to be attached under the Act is likely to be concealed, transferred or dealt with in any manner, which will result in defeating the purpose of the Act, may make an order seizing such property or where it is not practicable to seize such property, make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the Special Court.

(2) The Competent Authority may take the assistance of any Subordinate Officer of the Government to take possessions of the property in respect of which an order of seizure or freezing has been made under Sub-rule (1).

(3) Any officer-in-charge of Police Station when required by the Competent Authority, shall take all steps, including inquiry, investigation or survey in respect of any person, place, property, documents, books of account etc. for the purpose of tracing and identifying the properties.?

4. From the bare reading of the communication-cum-order, dated 24-6-2014 issued under the signature of Collector, Gwalior (Annexure P-7), we are of the opinion that the same is purportedly an order of seizure of immovable property belonging to the petitioner-Company. Indeed, the entire order makes no reference to any express provision contained in the Act of 2000 or the Rules of 2003 on the basis of which the said power has been exercised by the Collector. However, considering the fact that the order refers to the decision of Gwalior Bench of this Court passed in Public Interest Litigation and the decision of the Division Bench of the Principal Seat at Jabalpur in the writ petitions and appeals filed by the petitioner-Company, we would assume that the Collector, Gwalior purportedly acted in furtherance of power under the Act of 2000 and/or the Rules of 2003, as the case maybe.

5. As aforesaid, our understanding of the order passed by the Collector is that it is a seizure order and not an attachment order as such. If it is a case of seizure order, naturally the question of giving prior opportunity to the petitioner-Company may not arise as that action is required to be taken so as to ensure that the movable and immovable property of the petitioner-Company in question is not transferred or dealt with in any manner, resulting in defeating the purpose of the Act. That is essentially a preventive action and prelude to the passing of attachment order, if the situation so warrants. Nevertheless, the power under Rule 9 can be exercised by the Competent Authority only after recording satisfaction or his reason to believe that any property, which is later on liable to be attached under the Act of 2000 is likely to be concealed, transferred or dealt with in any manner, which will result in defeating the purpose of the Act and simultaneously make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the Special Court.

6. In the order, which is impugned in the present petition, the Collector has not recorded that satisfaction at all. On this count alone, the impugned communication-cum-order will have to be set aside. Since the action taken by the Collector is a drastic action of seizure, the Collector is obliged to comply with the mandatory requirements specified under Rule 9, which in our opinion, are imperative. Without recording such satisfaction, the Collector cannot assume

jurisdiction to invoke the power under Rule 9 of the Rules of 2003.

7. As a result, we set aside the impugned decision. But, at the same time, we direct the petitioner-Company not to transfer or otherwise deal with the immovable property, which has been seized in terms of order dated 24-6-2014 (Annexure P-7), except with the prior permission of this Court. This prohibition will operate against the petitioner-Company for a period of two weeks from today within which time, the Collector may proceed in the matter in accordance with law and pass fresh seizure/attachment order, as the case may be, if the situation so warrants.

8. We may invite attention of the Collector to the factors delineated in Section 4 of the Act of 2000. In other words, the power to be exercised u/s 4 of the Act of 2000 or Rule 9 of the Rules of 2003, is circumscribed by the concerned provision and the Collector while passing the order in exercise of the said provision, must advert to those matters.

9. While parting, we may place on record that during the pendency of this petition, the immovable property of the petitioner-Company at District Indore, District Umaria and District Mandsaur have also been seized by the concerned Collectors. The petitioner is free to assail that action, which challenge can be considered on its own merits in accordance with law. In view of the above, the writ petition as well as pending application (LA. No. 8698/2014) is disposed of on the above terms.

