

(2005) 12 AHC CK 0158

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 12636 of 2005

Saira Begum

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Income Tax Act, 1961 — Section 14, 15, 16, 18

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

Citation : (2005) 12 AHC CK 0158

Hon'ble Judges : Shiv Shanker, J; Amitava Lala, J

Bench : Division Bench

Advocate : Nisar Uddin, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala and Shiv Shanker, JJ.—Petitioner has contended before this Court that she has purchased the property and she has no association with the alleged gangsters, her brothers. She or her husband is separate assessee under the Income Tax Act. Therefore, the property cannot be attached. Learned Government Advocate appeared and contended before this Court that the property can be attached u/s 14 of the U.P. Gangster Act and Anti Social Activities (Prevention) Act, 1986, provided the same has been acquired by the gangsters. According to us, acquiring of the property does not substantially mean the purchase alone. Therefore, it is a question of investigation of facts by an appropriate authority. Learned Government Advocate has further said that the property can be released on the appropriate application and or Section 15 of the Act. Even if the petitioner is aggrieved, she can prefer an appeal. Learned counsel appearing for the petitioner contended that although notice has been served on 19th October, 2004 to others but till this date that no notice has been served upon the petitioner to attach the property u/s 14 of the Act. Therefore, she cannot represent her case before the appropriate authority u/s 15 of the Act. We do not find any factum in the order dated 19th October, 2004 till this date no

notice is served upon her. But since the petitioner has contended before this Court that notice has been served to others but not to the petitioner taking the plea regarding merit in the Court, we feel such submission is good enough to treat a service of notice. Hence this date will be construed as date of issuance of the notice for the sake of substantial justice. The purpose of issuance of notice, as made in the law, is to fulfill the purpose of audi alteram partem. According to us this has been fulfilled today. The date for making an application will be counted from this date. The petitioner may apply to release the property u/s 15 of the Act within the time from today itself, if necessary, by annexing the order passed by this Court. For the purpose of consideration of this matter the case of the petitioner will be given fullest opportunity of hearing and pass reasoned order thereon. For the purpose of effective adjudication, copy of the writ petition along with its annexures can also be treated as part and parcel of the representation. In case, the petitioner is aggrieved, she will have a right appear before the appropriate court for enquiry u/s 16 of the Act. Even thereafter the petitioner has a right of appeal u/s 18 of the Act.

2. The writ jurisdiction is not the forum for adjudication of such dispute.

3. With the above observation, the writ petition is dismissed on the ground of alternative remedy. We make it clear that we have gone through the merit of the case which is open for the petitioner to raise before the appropriate forum. This order will not prejudice the interest of the petitioner in getting hearing on merit.

4. No order is passed as to costs.