(2007) 12 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 537 of 2007

Smt. T. Savitri Devi	APPELLANT
Vs	
State Bank of Bikaner-Jaipur and Others	RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Central Vigilance Commission Act, 2003 — Section 8
Right to Information Act, 2005 — Section 8(1)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4)

Citation : (2007) 12 AP CK 0057

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.V. Durga Prasad, for the Appellant; Narender Reddy, for R. 1 and R. 2, P.S. Sastry, for R. 3 and T. Niranjan Reddy, for R. 6, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This Court issued rule nisi on 12-7-2007.

2. Counter affidavits are filed by R.1, R.2 and also R.3.

3. Heard Sri M.V. Durga Prasad, the learned Counsel representing writ petitioner and Sri Narender Reddy, the learned Counsel representing R.1 and R.2, Sri P.S. Sastry, the learned Counsel representing R.3 and Sri T. Niranjan Reddy, the learned Counsel representing R.6.

4. The Writ Petition is filed for a Writ of Mandamus or Prohibition declaring that the impugned proceedings, including the notice published by the respondent No. 2 dated 21-11-2006 in Eenadu and Hindu, as being without any jurisdiction, arbitrary, malafide and violative of Article 14 and 300-A of the Constitution of India, and further prohibit the respondent No. 1 and 2 from proceeding with the impugned proceedings and further direct the respondents No. 4 to 6 to conduct investigation and to take necessary action and submit the action taken report to

this Court and pass such other suitable orders.

5. It is averred in para 2 of the affidavit filed in support of the Writ Petition that the petitioner is the absolute owner and possessor of the plot No. 9 admeasuring 374 Sq.Yds., in Sy.No. 116/1 situated at Journalists Colony, Banjara Hills, (hereinafter referred to as ''the petitioner''s property''), which was allotted to her by the Journalists Cooperative Housing Society Limited, being its member and that the petitioner constructed a single storied building in the said plot and has been living there since about 1970 and subsequently, the Journalists Cooperative Housing Society Limited has executed a sale deed in her favour on 29-12-1994 registered as document No. 5605/1994. It is also stated that the brother of third respondent Sri C.Raghu Ram was known to the petitioner and he introduced the third respondent and that he used to give some advice to the petitioner, while she was making construction of first floor in the petitioner''s property. Thus, the third respondent gained the confidence of the petitioner and later obtained her property for development on the condition that he should obtain all the necessary permissions and construct the building at his cost within 12 months and deliver 50% of the constructed area to the petitioner. Further it is stated that the third respondent failed to complete the construction within 12 months and abandoned the project in 2004 itself and after continuous pressure, he resumed the work for some time and again abandoned the work finally in 2005. The petitioner has always been in exclusive possession of the above said property and has never parted with the same. It is also stated that the petitioner has been engaging her own security hired from M/s.Sai Security Services. The third respondent was never in possession of the above said property at any point of time and he was only allowed to make constructions conditionally as above and by virtue of the license/permission required for executing the development work, on account of the breach on his part, the licence got extinguished. Further it is stated that as the matter stood thus, on 3-5-2006, the petitioner has seen a public notice in Eenadu issued by the 2nd respondent, alleging that the third respondent''s company by name M/s.Chakilam Estates Private Limited, availed credit facilities from them, by executing loan documents including the Memorandum of Mortgage/Deed of Hypothecation. The residential flats in the petitioner''s property were shown as item No. 3 in the schedule in the public notice. It is also stated that the petitioner was shocked and immediately got issued a legal notice to the second respondent Bank on 4-5-2006 denying the allegations and requesting the information and documents pertaining to the alleged loan and that as the second respondent Bank failed to send any reply and furnish information and documents, the petitioner sent another letter dated 19-5-2006 to the Chief Information Officer of the 1st respondent, under the provisions of the Right to Information Act and also E- Mails. The Advocate of the second respondent sent a reply notice dated 27-5- 2006 offering to permit inspection of the documents, but when the petitioner''s daughter, duly authorized by her, went for inspection, the second respondent has refused to issue photocopies of the documents or give full information of the alleged loan, except

showing a copy of the alleged development agreement in respect of the petitioner''s property and a sale deed pertaining to the petitioner''s property allegedly deposited with them. It is also stated that the Chief Information Officer of the first respondent Bank in his letter dated 5-6- 2006 stated that her request for information is not accompanied by fees and therefore, the information could not be given, in contrast to their own reply notice. Therefore, the petitioner sent another detailed letter dated 12-6-2006 along with requisite fees and also costs for the photocopies of the documents required by her. The Bank sent a letter dated 7-7-2006 informing the petitioner to collect the concerned documents as per para 1 of her request letter, but claimed privilege with regard to the documents and information required in para 2 and 3 of her request letter, in terms of Section 8(1) of Right to Information Act. Further it is stated that the petitioner personally went to the Bank and paid Rs. 56/- in cash as required by the second respondent, upon which he has given only certified photocopies of few documents, including the alleged development agreement dated 2-10-2003 signed by the 3rd respondent and the alleged Memorandum of Deposit of Title Deeds attested by his employee by name, Sri Uma Maheswar Rao. The said documents are clearly forged and they bear the thumb impression, which does of the belong to the petitioner, under which it is written "LTI of Savitri Devi", which writing appears to be that of the said Uma Maheswar Rao. The alleged development agreement dated 2-10-2003 bears the seal and signature of the third respondent and the alleged Memorandum of Deposit of Title Deeds bears the signature of said N. Uma Maheshwara Rao, who is an employee of the third respondent. It is also stated that the petitioner is snot a thumb impressionist and the alleged documents in respect of the petitioner''s property are obviously fabricated and forged by the third respondent in collusion with the second respondent Bank and its Officers. It is also stated that the petitioner never entered the first respondent Bank or its branches, including the one at Shivajinagar, before she went there, for the first time, to collect the documents as above and that she never signed any papers for obtaining any loan from any bank, including the second respondent Bank at Shivaji Nagar, Secunderabad and that above all, the original title deeds pertaining to the petitioner''s property have always been and still are in the custody of the petitioner, which she has never parted with. The documents alleged deposited with the second respondent Bank are clearly forged and fabricated. Most significantly, in the sale deed obtained in favour of one Venu S.K. by the third respondent, it is recited that the development agreement is oral. The petitioner has issued a notice dated 24-7-2006 to the third respondent by registered post acknowledgement due. The petitioner filed appeal under the Right to Information Act and ultimately, the second respondent Bank sent a letter dated 24-10-2006 enclosing certified copies of some more documents required by the petitioner under the said Act. Further it is stated that the first respondent deputed its Deputy Manager (Vigilance) to investigate into the complaint of the petitioner and he gave a letter dated 31-8-2006 requesting for copies of evidence and documents and he also promised that the enquiry will be completed soon and action will be taken against the third respondent and others involved in the fraud and the crime and that the petitioner cooperated with the investigation and gave copies of her documents to him and he recorded a statement, on which he obtained the signatures of the petitioner and that he also obtained several specimens of the petitioner''s thumb impression of both right and left hands, but, till date, the first and second respondents have not sent any information to the petitioner regarding the action taken in this regard. Further it is stated that the petitioner got serious doubts about every transaction made by the third respondent and started enquiries and took certified copy of the document obtained by the third respondent and on finding its contents as false, got issue a legal notice dated 6-6-2006 to the purchaser under the said document, who is in his reply dated 10-6-2006 admitted the falsity of the recitals, but curiously avoided the receipt of the rejoinder sent by the petitioner. Further it is stated that the third respondent received the notice dated 24-7-2006 sent to him by the petitioner by registered post acknowledgement due, but did not send any reply till date. It is also averred that the third respondent filed O.S.No. 4200/2006 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad, which was later transferred to the Court of the VII Junior Civil Judge, City Civil Court, Hyderabad, with false allegations and obtained an ex parte ad-interim injunction on 21-7-2006 which was not extended with effect from 28-7-2006 and that the petitioner filed a detailed counter and to pressurize the petitioner, the third respondent started several strong arm tactics, including issuing a legal notice in the name of third parties, who after exchange of notices, filed I.A.No. 916/2006, which was renumbered as I.A.No. 680/2006, in the said suit, which is still pending. Further it is stated that after unsuccessful attempt to obtain interim ordersfrom the Civil Court, the third respondent prevailed over the second respondent to issue the impugned notice dated 21-11-2006 purporting to be acting u/s 13(4) of the SARFAESI Act, 2002, read with Rule 8(1) made thereunder, contrary to its earlier promises. The petitioner also further stated that she filed complaint with the Station House Officer, Panjagutta Police Station, on 7-11-2006, which was registered as Crime No. 981/2006. Several grounds had been narrated in the affidavit filed in support of the Writ Petition.

6. In the counter affidavit filed by R.1 and R.2, it is averred that the company M/s. Chekkilam Estates Limited, represented by its Managing Director - the 3rd respondent herein had availed the working capital loan facilities of Rs. 250 lakhs from the 2nd respondent Bank, after executing the security documents on 7-8-2004. It is further averred that it is noticed from the records that the said loan facility was personally guaranteed by the Directors of the said company viz., the 3rd respondent herein, Smt. C. Uma and Smt. Y. Satyavathi and also Smt. Nalini Bai and further stated that it is also noticed from the records that the said loan facility was further secured by the following immovable properties by way of equitable mortgages by deposit of title deeds:

a) H.No. B/2/120/112/A on plot No. 18 admeasuring 316.15 sq.yards at Road No. 9, Jubilee Hills (under Sheikpet village), Hyderabad. (EM created by Sri C.

Raghuram by deposit of sale deed dated 19-5-2000 (Document No. 1912/2000).

b) Plot No. 9 admeasuring 376 Sq.Yds., at Road No. 5, Journalists Colony, Banjara Hills, Hyderabad. (EM created by Smt. Savithri Devi by deposit of sale deed dated 29-12-1994 (Document No. 5605/1994).

c) House No. 8-2-268/4 located at Sy.No. 129 (92 old), 403/25 new, as per the village survey No. 151/1 in Ward o.89 situated at Banjara Hills (Sheikpet), Hyderabad. (EM created by Smt. Y. Satyavathi by deposit of sale deed dated 18-02-1975 (Document No. 399/1975).

d) All that portion of land bearing Sy.No. 318 admeasuring 2016 Sq.Yds., situated at Malakpet Colony, Masulipatnam, Saroornagar Road, Gaddiannaram, Hyderabad. (EM created by Smt.Nalini Bai by deposit of sale deed dated 09-03-1962 (Document No. 413/1962).

e) Plot bearing No. 298 and 299 admeasuring 800 Sq.Yds., in Sy.No. 870, 871, 872 situated at Malkajgiri Railway Station, Gautham Nagar, Ranga Reddy District. (EM created by Sri Dharampas, Sri Vijaypi, Sri Vedpal, the legal representatives of late Sri Jhabbu Ram by deposit of sale deed dated 10-12-1965 (Document No. 1800/1965).

After furnishing the above said securities, the said company M/s.Chekkilam Estates Limited represented by third respondent had availed the loan facilities from the 2nd respondent Bank through the loan account Nos. 51016183758 and 51016133769. Further it is stated that the said company committed default in repaying the loan amount, the 2nd respondent Bank initiated proceedings against the said company and its guarantors/mortgagors by issuing proceedings under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is also stated that the 2nd respondent Bank to save the limitation filed application O.A.No. 93/2007 before the Debts Recovery Tribunal at Hyderabad for recovery of debt of Rs. 2,49,14,438- 76 together with future interest and costs and the said application is pending disposal. It is also further averred that after receiving the objections/ claims from the petitioner and others, the 2nd respondent Bank got re-examined the matter through the Advocate with regard to the genuineness of the title deeds deposited with the Bank as security for the loan and that the Advocate through the report dated 17-9-2007 has stated that out of 5 title deeds deposited with the Bank, 4 of the following documents are not genuine and are fabricated:

a) EM created by Sri C.Raghuram by deposit of sale deed dated 19-5-2000 (Document No. 1912/2000

b) EM created by Smt. Savithri Devi by deposit of sale deed dated 29-12-1994 (Document No. 5605/1994

c) EM created by Smt. Y. Satyavathi by deposit of sale deed dated 18-02-1975 (Document No. 399/1975

d) EM created by Smt. Nalini Bai by deposit of sale deed dated 09-03-1962 (Document No. 413/1962.

The 2nd respondent Bank sent the said report to the Assistant General Manager (Vigilance), State Bank of Bikanear & Jaipur, Head Office, Tilak Marg, Jaipur, for further action in the matter and that in the light of the objection raised by Smt. Savitri Devi about the deposit of the title deeds by putting her thumb impression on the confirmation letter, the 2nd respondent Bank sent the said confirmation letter containing the thumb impression for report of the F.P.Expert and inspector on the Examination and Comparison of Finger Impressions and it is stated that the thumb impression on the letter of confirmation of deposit of the title deeds is not of Smt. Savithri Devi and it is also stated that the matter is under investigation and enquiry by the Vigilance Department. Further it is averred that in view of the above said facts, the relevant information was furnished and the further action was not taken under the provisions of the Act aforesaid and that the application O.A.No. 93/2007 filed before the Debts Recovery Tribunal, Hyderabad, against the company M/s.Chekkilam Estates Ltd and its guarantors is pending disposal. Further it is also stated that the facts stated in para 6 of the affidavit, are not within the knowledge of this respondent and the petitioner shall be put to strict proof of the same. The allegation of the petitioner that the 3rd respondent prevailed over the 2nd respondent to issue the impugned notice dated 21-11-2006 purporting to be acting u/s 13(4) of the Act aforesaid is not correct and the said allegation is denied. It is also stated that in the light of the above said under the SARFAESI Act 2002 are not continued and are deferred pending investigation and enquiry by the Vigilance Department.

7. In the counter affidavit filed by R.3 it is averred that this respondent is a businessman doing business in the field of Real Estate, Construction and Development under the name and style "M/s.Chakilam Estates Private Limited" and had successfully completed various ventures in and around Hyderabad city and that during the course of his business, this respondent got acquaintance with the petitioner and after series of discussions, the petitioner agreed to give her property situated at Banjara Hills for development and that accordingly, a Development Agreement is executed between the petitioner and this respondent and that as per the same, this respondent agreed to demolish the existing structure and construct 6 flats in which, the petitioner and the respondent are entitled for 50:50 share. Further it is stated that during the construction the petitioner had taken some amounts from this respondent for which, she authorised this respondent to sell two flats out of her share and accordingly, this respondent had executed five agreements of sale to different people and that against the said Agreements, this respondent and the petitioner together executed registered sale deed in favour of Venu Sukumar Kuruganti with regard to the semi-finished flat in the ground floor vide document bearing No. 1626/2005 dt.20-4-2005 on the file of SRO, Banjara Hills, Hyderabad. Further this respondent also stated that this respondent availed certain loans towards working capital from State Bak of Bikaneer and Jaipur for which, he had given

certain properties as prime securities and that the petitioner, at the request of this, given her property as secondary security with the bank and that as per the norms of the Bank, the petitioner visited the Bank along with the office personnel of this respondent and signed the documents in the presence of the Bank officials. This respondent had already paid an amount of Rs. 80,00,000/- to the Bank and subsequently, this respondent sustained heavy losses in his business and as such became a defaulter in payment to the Bank. It is also further averred that this respondent executed five agreements of sale in which he received only advance amounts and whereas, this respondent completed 90% of construction and the proposed purchasers has to pay still some good amounts and that when this respondent requested them to pay the balance amount in order to clear the loan amount, the proposed purchasers said that they are willing to pay the amounts subject to the execution of sale deeds in their favour, but whereas, the petitioner is not cooperating in the execution of registered sale deeds and started demanding further amounts in view of the hike in the prices of the property. As such, this respondent became a handicap in execution of registered sale deeds in their favour and that the petitioner contacted the proposed buyers and informed them unless they pay additional amounts, the petitioner will not execute the sale deeds. However, the said proposed purchasers did not accept the demand of the petitioner for which she filed the Writ Petition by suppressing the material facts. Therefore, the Writ Petition is liable to be dismissed as the same is devoid of merits. This respondent also averred that recently he came to know that the petitioner had already executed two registered Gift Deeds in favour of her daughters with regard to Flat No. 202, Flat No. s 302 and 402 without the knowledge and consent of this respondent and that this respondent had invested huge amounts in construction of six flats by taking loans from various Banks, but the petitioner with malafide intentions and ulterior motives executed the Gift Deeds in favour of her daughters in order to cause wrongful loss to this respondent and also further averred that the petitioner is obstructing this respondent from further constructing the building. Further it is averred that, as stated above, the respondent had put all his monies and constructed the building and at this juncture, the petitioner is not willing to come forward to executing the sale deeds and that the petitioner signed the documents before the Bank and kept the property as secondary security and that the Bank had rightly issued the notice under the SARFAECI Act. This respondent also stated that the petitioner in order to knock of this respondent choose to file the present Writ Petition malafidely and to cause wrongful loss to this respondent and also further stated that this Writ Petition is lack of merits and is liable to be dismissed.

8. Section 8 of the Central Vigilance Commission Act, 2003 dealing with Functions and Powers of Central Vigilance Commission reads as hereunder:

(1) The functions and powers of the Commission shall be to-

(a) exercise superintendence over the functioning of the Delhi Special Police

Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988), or an offence with which a public servant specified in Sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under Sub-section (1) of Section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946) : Provided that while exercising the powers of superintendence under Clause (a) or giving directions under this clause, the Commission shall not exercise powers in such a manner so as to require the Delhi Special Police Establishment to investigate or dispose of any case in a particular manner;

(c) inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) or an offence with which a public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial;

(d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in Sub-section (2) of wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 (49 of 1988) and an offence with which a public servant specified in Sub-section (2) may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) or the public servant may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial;

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988 (49 of 1988);

(g) tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise;

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters;

(2) The person referred to in Clause (d) of Sub-section (1) are as follows:

(a) members of All India Services serving in connection with the affairs of the Union and Group ''A'' officers of the Central Government;

(b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in Clause (d) of Sub-section (1).

9. Reliance was placed on the decision State of Bihar and another Vs. Ranchi Zila Samta Party and another, wherein it was observed as hereunder:

The only question then is whether this is a fit case for our interference under Article 136 of the Constitution? The exercise of the power under Article 226 of the Constitution in a public interest litigation was not to give any advantage to political party or group of people, as apprehended by counsel for the appellants. It was also not to cast a slur on the State police. It was done to investigate corruption in public administration misconduct by the bureaucracy, fabrication of official records, and misappropriation of public funds by an independent agency that would command public confidence. We are therefore, of the opinion that the direction given by the High Court appears to be just and proper and calls for no real interference.

We are also of the opinion that, to alleviate the apprehensions of the State about the control of the investigation by the C. B. I it should be under the overall control and supervision of the Chief Justice of the Patna High Court. The C. B. I. officers entrusted with the investigation shall, apart from the concerned criminal Court, inform the Chief Justice of the Patna High Court from time to time of the progress made in the investigation and may , if they need any direction in the matter of conducting the investigation, obtain them from him. The learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. After the investigation is over and reports are finalised, as indicated by the Division Bench of the High Court in the impugned judgment, expeditious follow-up action shall be taken. The High Court and the State Government shall co-operate in assigning adequate number of special Judges to deal with the cases expeditiously so that no evidence may be lost.

The order of the Division Bench of the High Court in paragraph 54 to the effect that investigation by the State police in cases already instituted shall remain suspended, is modified. The entire investigation now stands entrusted to the C. B. I. as aforesaid. The C. B. I. is directed to take over the investigation already made by the State police, inclusive of the FIRs, arrests and attachments aforementioned, and deal appropriately therewith.

10. In the light of the specific stand taken in the counter affidavit filed by R.1 and R.2 and also in the light of the relief prayed for in the Writ Petition, this Court is of the considered opinion that the Writ Petition be disposed of with the following directions:

The Notice published by R.2 dated 21-11-2006 in Eanadu and the Hindu, at present, is without jurisdiction in the light of the specific stand taken in the counter affidavit of R.1 and R.2. Further, in the light of the specific stand taken in the counter affidavit of R.1 and R.2, let R.5 proceed with the further investigation in this regard.

11. Accordingly, the Writ Petition is allowed to the extent indicated above. However, it is made clear that this Court is not inclined to go into the other factual controversies between the petitioner and R.3. No order as to costs.

