
(2010) 02 AHC CK 0045
In the Allahabad High Court
Case No : Govt. Appeal No. 7545 of 2008

State of U.P.

APPELLANT

Vs

Manoj Kumar Pandey and Others

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Citation : (2010) 2 ACR 1982

Hon'ble Judges : S.N.H. Zaidi, J

Bench : Single Bench

Advocate : A.G.A, for the Appellant; Gopal Chaturvedi and Lokesh Kumar Dwivedi, for the Respondent

Judgement

S.N.H. Zaidi, J.—This appeal, u/s 18 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, hereinafter referred to as the Act. has been filed against the judgment and order dated 15.10.2008 of Additional Sessions Judge/Special Judge (Gangster Act), Court No. 5, Allahabad, passed in Criminal Miscellaneous Application No. 8 of 2008, whereby the application of the Respondents has been allowed and order dated 21.8.2008 of District Magistrate, Allahabad passed in Case No. 15 of 2008 refusing to release plot No. 289 of village Lawayan Kalan and the house built thereon has been set aside and the said properties have been released from attachment and ordered to be made over to the applicants-Respondents.

2. Briefly stated, the relevant facts are that the District Magistrate, Allahabad, by order dated 24.7.2008, passed u/s 14(1) of the Act, attached certain movable and immovable properties of one Dilip Kumar Misra of village Lawayan Kalan, Police Station Audyogik Kshetra, district Allahabad, who was an accused of Case Crime No. 219 of 2007 registered u/s 2/3(1) of the Act. Against that order, said Dilip Misra made a representation (Case No. 15 of 2008) u/s 15(1) of the Act to the District Magistrate (D.M.). who by a detailed order dated 21.8.2008, refusing to release the properties from attachment, dismissed the representation and referred the matter with his report to the Special Judge (Gangster Act)

Allahabad, u/s 16(1) of the Act. The Respondents, namely, Manoj Kumar Pandey, Jitendra Kumar Pandey and Dharmendra Kumar Pandey, who are the brothers-in-law of Dilip Misra made an application on 2.9.2008 to the Special Judge for releasing plot No. 289 of village Lawayan Kalan and the house built thereon from attachment on the ground that they are the recorded owners of the plot in the revenue record and have constructed the house on it with their own funds and Dilip Misra has no concern with it. The Special Judge in the inquiry made u/s 16 of the Act examined area Lekhpals, Pradhan and Gram Panchayat Adhikari of the concerned village and the Station Officer of the concerned police station as Court witnesses and allowed the application of the Respondents after holding that the said plot and house were not acquired by Dilip Misra and the applicants are its actual owners and ordered for its release in their favour by the impugned judgment. The State Government has challenged the same in this appeal.

3. I have heard Shri. D.R. Chaudhary learned Government advocate for the Appellant and Shri. Gopal Chaturvedi learned senior advocate assisted by Shri L.K. Dwivedi appearing for the Respondents and perused the impugned judgment as well as the record of the lower court.

4. Learned Government Advocate (G.A.) has contended that for the last several years Dilip Misra had formed a gang with several persons and committed offences triable under the Act and as a result of those offences acquired several movable and immovable properties worth crores of rupees in his name as well as, by way of benami transactions in the names of his wife and other relatives, including his brothers-in-law (the Respondents) and when his properties were attached he alone made the representation. It is also contended that if the Respondents were having any claim over any of the attached properties then they should have also made the representation to the D.M., as envisaged in Section 15(1) of the Act, but instead of making any representation they directly approached the Court of Special Judge by making an application before it and the learned Special Judge ignoring the contentions of the State that the Respondents could not make any application to the Court directly without following the provisions of Section 15 of the Act and without looking into the locus standi of the Respondents proceeded with the matter and committed serious error in allowing that application.

5. It has also been argued that the learned Special Judge, without calling for or taking any evidence from the Respondents in support of their claim and without looking for their source of income for the acquisition of the properties in question by them, decided the matter by summoning several persons as Court's witnesses and misreading their testimonies released the properties in question from attachment and the State was not given any opportunity to produce any evidence.

6. It has further been submitted by him that by virtue of Section 16(5) of the Act the burden of proving that the properties in question were not acquired by Dilip Misra, a gangster, by committing any offence triable under the Act, was upon the

Respondents who were claiming those properties, but as they did not produce any evidence, oral or documentary, therefore, they have miserably failed to discharge that burden and they could also not prove their sources of income for the acquisition of the plot or for the construction of the house but the learned Special Judge did not consider that aspect and allowed their application.

7. It is also the submission of the learned G.A. that the order of attachment passed by the D.M. as well as his subsequent order of refusal to release the attached properties were based on cogent reasons and in his detailed order dated 21.8.2008 he had given reasons of his belief that the attached properties were acquired by Dilip Misra by committing offences under the Act and the learned Special Judge has erred in rejecting those reasons and upholding the claim of the Respondents over the properties in question.

8. Per contra, Shri Gopal Chaturvedi, supporting the impugned judgment, has contended that Dilip Misra has not been declared a gangster as yet as the trial relating to Case Crime No. 219 of 2007 u/s 2/3 of the Act is pending. It is also contended that concerned plot No. 289 is recorded in the names of the Respondents in the revenue records and the Respondents, being real brothers, alongwith their father had jointly constructed a house thereon from their independent incomes which they got from their respective businesses as Respondent Dharmendra Kumar is a licensee of a fire arms shop at Cotton Mill Crossing at Naini in Allahabad whereas the other Respondents have a good business of dairy and vegetable in Bombay and their father had received a considerable amount on his retirement from his service. It has also been contended that although Dilip Misra has a separate and independent house of his own in the vicinity of the house of the Respondents but he has no concern with the properties in question.

9. I have given my thoughtful consideration to the submissions of the learned Counsel of the parties.

10. An objection about the maintainability of the appeal was initially raised by the Respondents but it was subsequently given up and was not pressed. Neither party has, therefore, addressed the Court on this question. However, since Section 18 of the Act provides for the appeal against the judgment or order of the Court passed under the Act and the impugned judgment and order have been passed by the Court u/s 17 of the Act, therefore, the appeal is maintainable.

11. For better appreciation of the questions of law involved in this appeal, the relevant provisions of the Act may be summarized as under:

12. Sub-section (1) of Section 14 provides that if the District Magistrate has reason to believe that any movable or immovable property, which is in possession of any person, has been acquired by a gangster as a result of commission of an offence triable under this Act, he may order attachment of such property, notwithstanding the absence of cognizance of such offence by any Court.

13. Section 15(1) enables the claimant of the attached property to make a representation to the D.M. concerned showing the circumstances in and the sources by which he had acquired that property and Sub-section (2) thereof provides that if the D.M. is satisfied about the genuineness of the claim, he shall forthwith release the property from attachment and thereupon such property shall be made over to him.

14. Sub-section (1) of Section 16 makes it explicit that where no representation is made in accordance with Section 15 or the D.M., on representation, refuses to release the property, he shall refer the matter with his report to the Court having jurisdiction to try an offence under the Act. Sub-section (2) provides that if the D.M. has refused to attach property under Sub-section (1) of Section 14 or has released any property under Sub-section (2) of Section 15 then the State Government or any person aggrieved by such refusal or release may make an application to such Court for inquiry as to whether the property in question was acquired by or as a result of the commission of an offence triable under the Act. Sub-section (3) lays down that the Court, on receipt of the reference by the D.M. or an application under Sub-section (2), shall make the inquiry after fixing date and giving notices to the person making the application or to the person making the representation and to the State Government and also to any other person whose interest appears to be involved in the case and after hearing the parties and receiving evidence produced by them or taking such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of any offence under the Act. Sub-section (4) deals with the powers of the Court for the purposes of making the inquiry and Sub-section (5) lays down that in the proceedings under this section, the burden of proving that the property in question was not acquired by a gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872.

15. So far as the locus standi of the Respondents in making the application directly to the Court is concerned, the contention of the learned G.A. does not appear to be acceptable in view of the scheme of Section 16 of the Act, according to which, the Court, in making the inquiry, is required to issue notices not only to the person making the representation or the application and to the State Government but also to any other person whose interest appears involved in the case. Since in the representation of Dilip Misra there was an allegation of the attachment of the properties of his brothers-in-law, therefore, the Court was required, under Sub-section (3) of Section 16 of the Act, to issue notices to the Respondents, as their interest were apparently involved in the case. The Respondents were, therefore, well within their right in making the application for release of the properties in question to the Court as the D.M. has not accepted their title over it in his order dated 21.8.2008.

16. For the purposes of inquiry u/s 16 of the Act, the Court is empowered to take

any evidence and to summon any person as a witness as it considers necessary under Sub-sections (3) and (4) thereof. Therefore, examination of certain persons as Court witnesses by the court below is in accordance with law and the impugned judgment is not suffering with any legal defect on account thereof. Moreover, since C.W. 4 and C.W. 5 were summoned on the application of the Prosecution Officer, therefore, the contention of the Appellant that no opportunity was given to it to produce the evidence is not tenable.

17. Much stress has, however, been laid by the learned G.A. on the contention that as the Respondents have not produced any evidence, oral or documentary, in support of their claim of title or to show that the properties in question have not been acquired by any gangster as a result of the commission of any offence triable under the Act, therefore, they have failed to discharge the burden put upon them under Sub-section (5) of Section 16 of the Act. In my opinion, the burden under this Sub-section can be sufficiently discharged if the claimants succeed in establishing their claim over the attached properties by showing that it were not acquired by any gangster by committing any offence. Moreover, the burden is required to be discharged in respect of a property which has been attached u/s 14(1) of the Act but if any property is not included in that attachment order then the claimant is not required to prove anything in respect of such property.

18. The properties in question are plot No. 289 of village Lawayan Kalan and the house built thereon. Although the Respondents have admittedly not produced any evidence in support of their claim of ownership but it appears that the D.M. has admitted in his order dated 21.8.2008 that the plot in question is recorded in the names of the Respondents in the revenue records and there is no allegation in the attachment order that this plot was purchased by Dilip Kumar Misra in the names of the Respondents and the examined witnesses have also admitted that the Respondents are living with their family in the house built thereon.

19. A perusal of the attachment order dated 24.7.2008, however, shows that plot No. 289 of village Lawayan Kalan has been incidentally referred to while stating that Dilip Kumar Misra has constructed two separate houses in the names of himself and his brother Ajay Kumar Misra on plot Nos. 291, 292 and 292/2 of the said village, which have an ahata like boundary walls and the land of plot No. 289 has been illegally encroached upon and included in that ahata. He has neither stated about the presence of any house over plot No. 289 nor about its ownership. As stated above, there is no dispute that the Respondents are the recorded owners of plot No. 289 and this fact has not only been admitted by Ram Shiromani C.W. 1 and Dinesh Kumar C.W. 4, the present and past lekhpals respectively of the concerned village but also by the D.M. in his order dated 21.8.2008. C.W. 1 to C.W. 4 have also admitted that a pucca house is built by the Respondents on plot No. 289 who are living in it. The Respondents have also alleged their title and possession over the plot and house in their application. Since the claim of the Respondents that they are the recorded owners of plot in

question and the house constructed thereon is in their possession is sufficiently established from the record, therefore, non-production of any further evidence by them in support thereof does not make their claim false. In any case, evidence is needed to prove a fact which is not admitted or disputed but if the fact is not disputed or if sufficient evidence is already available on record in support thereof then production of any other evidence is not required. In view of above circumstances it cannot be said that the Respondents have failed in discharging their burden.

20. A careful perusal of the list of immovable properties of Dilip Kumar Misra attached by the D.M.'s order dated 24.7.2008 shows that it neither includes any house built on plot No. 289 of village Lawayan Kalan nor any house in possession of the Respondents. Thus, it is evident that the house in possession of the Respondents on plot No. 289 has wrongly been attached without any authority of law and, therefore, it is entitled to be released in favour of the Respondents on this ground alone.

21. The D.M. while deciding the representation of Dilip Kumar Misra has not considered that the house on plot No. 289 is not included in the properties attached by his order dated 24.7.2008. He has, however, after referring to a report dated 5.7.2008 of Revenue Inspector of Naini Area, Tahsil Karchhana, Allahabad, observed in his order dated 21.8.2008 that a pucca house and ahata are built on plot Nos. 291, 292 and 289 situate in village Lawayan Kalan and plot No. 298, which is matruk (abandoned), has been included in that ahata and the names of Ajay Kumra Misra, Dilip Kumar Misra sons of Ram Gopal and Manoj Kumar, Dharmendra Kumar and Jitendra Kumar sons of Shambhu Nath are recorded on the said plot Nos. 291, 292 and 289 in the Government records. This observation is contrary to his own observation made earlier in the attachment order dated 24.7.2008 that in plot Nos. 291, 292 and 292/2 of village Lawayan Kalan, the land of plot No. 289 has illegally been encroached upon and included in the ahata of the house built on those plots. Thus, the observation made in respect of plot No. 289 in the attachment order being self contradictory is unworthy of acceptance.

22. In view of what has been stated above, it appears that since the properties in question are not included in the list of properties of Dilip Kumar Misra attached vide order dated 24.7.2008, therefore, its attachment by the authorities effecting the attachment order is without any authority of law and void and the properties in question deserve to be released from the attachment in favour of the person from whose possession it were attached. Although the learned court below has not considered this aspect of the matter in the impugned judgment, yet it has rightly held that the Respondents are owners of the properties in question and that it were not acquired by Dilip Kumar Misra, an alleged gangster, by committing any offence triable under the Act. The impugned judgment and order, therefore, do not appear to be suffering with any illegality and no interference is warranted in it. This appeal has, therefore, no force and is liable to be dismissed.

23. Appeal is, accordingly, dismissed.