

(2009) 07 AHC CK 0283

Allahabad High Court

Case No: Criminal A. No. 3809 of 2008

Smt. Afzal Begum
alias Akhtari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: July 9, 2009

Citation: (2009) 3 ACR 3214

Hon'ble Judges: Shrikant Tripathi, J

Bench: Single Bench

Advocate: Daya Shanker Mishra and Chandra Kesh Mishra, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

Shrikant Tripathi, J.

Heard Sri D. S. Mishra, the learned Counsel for the Appellant and the learned A.G.A. and perused the record.

2. The Appellant Smt. Afzal Begum alias Akhtari has moved this application for modification of the stay order dated 25.11.2008 rendered by Hon'ble Shiv Charan, J., whereby the effect and operation of the impugned judgment and order dated 3.6.2008 were stayed till the disposal of the appeal.

3. It may be mentioned that the learned Special Judge, Varanasi appointed under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, has confiscated the Appellants properties in favour of the State of U.P. The Appellant's properties detailed in the impugned order were attached by the District Magistrate, who, after the attachment, referred the matter to the learned Special Judge for appropriate decision on the objection filed by the Appellant against the attachment. The learned Special Judge rejected the Appellant's objection and found the attachment just and valid and as such confiscated the attached property in favour of the State of U.P. The Appellant has preferred the instant appeal against the said

order of the Special Judge, whose operation and effect has been stayed, as aforesaid.

4. The learned Counsel for the Appellant submitted that the stay order granted by this Court needs to be modified so as to stay the operation of the attachment order also. In other words, the Appellant wants that the operation and effect of the attachment order passed by the District Magistrate be also stayed till the disposal of this appeal. The learned Counsel for the Appellant further submitted that the proceedings before the Special Judge was in continuation of the proceedings done by the District Magistrate and as such operation of the attachment order can be stayed in this appeal. It was further submitted that the plot No. 220/7 of Khata No. 44 was purchased on 7.10.1977 by the Appellant and her husband Rahmat Khan much prior to the coming into force of the aforesaid Act and as such the same could not be made the subject-matter of the attachment u/s 14 of the Act.

5. The learned Counsel for the Appellant placed reliance on Smt. Kahkashan Parveen and Anr. v. State of U.P. 1999 UP CR 810: 1999 (2) ACR 1762, in support of his submission. In that case a Division Bench of this Court held:

An analysis of the different words used in Section 14 suggests that it is within the authority of the District Magistrate upon his satisfaction that any property in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under the Act, to direct attachment of the property notwithstanding the question of absence of cognizance by any Court. The provision requires that there must be a reason to believe on the part of the District Magistrate that the conditions for an action u/s 14 of the Act did exist and the conditions are that certain property in possession of any person must have been acquired by a gangster and that too by commission of an offence under the Act. Thus, the satisfaction portion should not only indicate that the property sought to be attached was acquired by a gangster but it should also indicate that such acquisition has been made by commission of an offence under the Act. This satisfaction of the District Magistrate is not open to be challenged in any appeal. Only a representation is provided for before the District Magistrate himself u/s 15 and in case he refuses to release the property on such representation, he is to make a reference to the Court having jurisdiction to try an offence under the Act. Thus, so far as the District Magistrate is concerned, the satisfaction must not be arbitrary and must be based on the legal conditions indicated in Section 14 of the Act.

6. It is now well-settled that the property being made subject-matter of an attachment u/s 14 of the Act must have been acquired by a gangster and that too by commission of an offence under the Act. The District Magistrate has to record his satisfaction on this point. The satisfaction of the District Magistrate is not open to challenge in any appeal. Only a representation is provided for before the District Magistrate himself u/s 15 of the Act and in case he refuses to release the property on such representation, he is to make a reference to the Court having jurisdiction to

try an offence under the Act. The Court, while dealing with the reference made under Sub-section (2) of Section 15 of the Act has to see whether the property was acquired by a gangster as a result of commission of an offence triable under the Act and has to enter into the question and record his own finding on the basis of the inquiry held by him u/s 16 of the Act, If the Court comes to the conclusion that the property was not acquired by the gangster as a result of commission of an offence triable under the Act, the Court shall order for release of the property in favour of the person from whose possession it was attached. If the conclusion of the Court is otherwise, it may pass such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof or otherwise. In other words, the attachment made u/s 14 of the Act can be upset by the Court after an inquiry u/s 16 of the Act and in that situation the Court has power to release the attached property in favour of the person from whose possession the property was attached.

7. It is also well settled that interim reliefs by way of stay order or otherwise, amounting to grant of final relief claimed in the case, cannot be granted. In my opinion, if the stay order, as claimed by the Appellant, is granted it would amount to grant of the final relief of release of the attached property as the Appellant would get an opportunity to enter into the possession of the attached property on enforcement of the stay order, without its release in his favour. It is also significant to mention that the attachment order has already been implemented and as such stay of its operation would not be proper.

8. So far as the contention of the learned Counsel for the Appellant that plot No. 220/7 area 260 sq. ft. was acquired before coming into force of the Act is concerned, it has also no substance in view of the fact that it is mentioned in the impugned order that a single storied house also exists on the land purchased by the Appellant and her husband through the sale deed dated 7.10.1977. It is, however, not clear as to whether the Appellant and her husband purchased the house in the year 1977 or merely purchased an open land and constructed house thereon subsequently. It is also not clear as to whether the house was constructed before or after the commencement of the Act. In absence of relevant materials on this point, the Appellant cannot, prima facie, be permitted to take any advantage of the fact that plot No. 220/7 was acquired prior to the coming into force of the Act.

9. The learned Counsel for the Appellant relied on the order dated 24.9.2005 passed by Hon"ble R. C. Deepak, J., in Criminal Misc. Writ Petition No. 10016 of 2005, Sardar Daleep Singh and Anr. v. State of U.P. and others Criminal Misc. Writ Petition No. 10016 of 2005. In that case the attached property which was a house, was directed to be released in favour of the Petitioners of that case. The facts of that case were altogether different. The Petitioners of that case were not gangsters. They had purchased the property in good faith on payment of Rs. 16,75,000 and the sale consideration was paid after taking loan from a bank and not from the money

earned through criminal activities as provided in Section 14 of the Act. In view of factual aspects of that case, the learned single Judge of this Court directed release of the house in favour of the Petitioners of that case, The Appellant is not entitled to any benefit of the order passed in the aforesaid writ petition.

10. The Petitioner's application for modification of the stay order dated 3.6.2008 has no substance. It is accordingly rejected.