

IN THE HIGH COURT OF ANDHRA PRADESH

W.P.No.41339 jof 2022

BETWEEN:

- # 1. Radha Ramana, S/o. Late B. Subbaiah, R/o. No.97, 3rd Cross Dollars Colony, BTM Layout, 1st Stage, Benagluru -560088.
2. B. Ravishankar, S/o. Sri B. Radha Ramana, R/o. No.97, 3rd Cross Dollars Colony, BTM Layout, 1st Stage, Benagluru -560088.
3. Smt. B. Radha, W/o. Radha Ramana, R/o. No.97, 3rd Cross Dollars Colony, BTM Layout, 1st Stage, Benagluru -560088.
4. M/s. Pooja Crafted Homes Pvt. Ltd., A company Incorporated under the Companies Act, 1956, Registered office at House No.8-2-293/82/A Plot No.388/A, Road No.22 Jubilee Hills, Hyderabad – 500 033. Repl by its Director Sri Showri Reddy Duggimpudi.

.... Petitioners

AND

- \$ 1. State of Andhra Pradesh rep. by Principal Secretary, Home Department, 2nd Block, Ground Floor, Room No.185, A.P. Secretariat Buildings, Velagapudi, Amaravati.
2. The Additional Director of General of Police, Crime Investigation Department (C.I.D) cum Competent Authority, Mangalagiri, Andhra Pradesh.
3. M/s. Agrigold Projects Limited, Public Limited Company, having its Corporate office at 6-3-680/A/B, Thakur Mansion Lane Near Somajiguda Circle, Punjagutta, Hyderabad – 500 082.

... Respondents

Date of Judgment pronounced on : 28.02.2023

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

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| 1. Whether Reporters of Local newspapers
May be allowed to see the judgments? | : Yes/No |
| 2. Whether the copies of judgment may be marked
to Law Reporters/Journals: | : Yes/No |
| 3. Whether The Lordship wishes to see the fair copy
Of the Judgment? | : Yes/No |

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****+W.P.No.41339 of 2022****% Dated:28.02.2023****BETWEEN:**

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... Respondents

! Counsel for Petitioners : Sri B. Adinarayana Rao, Sr. Counsel
 On behalf of Sri Javvaji Sarath Chandra

^Counsel for Respondent No.1&2 : Smt. Y. L. Siva Kalpana Reddy Spl. P.P.
 for CID

^Counsel for Respondent No.3 : Akula Vansi Krishna

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>HEAD NOTE:

? Cases referred:

(2007) 1 SCC 732

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**W.P.No.41339 of 2022****ORDER:**

The petitioners 1 to 3 herein, are the owners of Ac.56.24 guntas of land in various survey numbers in Dharapura and Mayaganahalli Villages of Ramanagara Taluk, Karnataka. The 4th petitioner is a developer who is seeking to enter into a fresh development agreement with the petitioners 1 to 3. The above lands were acquired under various registered deeds of sale in the years 2005 and 2006. The petitioners had entered into a joint development agreement with one M/s. Agrigold Projects Limited (arrayed as the 3rd respondent herein) on 20.10.2012 for the purpose of development of Ac.18.34 guntas out of Ac.56.24 guntas of land. The land was to be developed into a residential layout within a period of 24 months. The 2nd petitioner would be entitled to 60% of the developed sites and the 3rd respondent would be entitled to 40% of the developed sites under the joint development agreement. The 3rd respondent had paid the 2nd petitioner an interest free security deposit of Rs.16 crores. These deposits, which were interest free, were to be returned to the 3rd respondent upon successful completion of the project.

2. It appears that the 3rd respondent did not undertake the development of the land and various disputes had arisen between the petitioners and the 3rd respondent resulting in litigation being initiated in

the Courts in Karnataka. While the matter stood thus, respondents 1 and 2 had initiated proceedings against the 3rd respondent under the provisions of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short 'the Act'). Respondents 1 and 2, under these proceedings, had attached various assets of the 3rd respondent, situated in the States of Telangana, Andhra Pradesh and Karnataka. One of the properties attached by the 2nd respondent was Ac.18.34 guntas of land given for development by the petitioners herein to the 3rd respondent.

3. The 1st respondent, by G.O.Ms.No.136 dated 12.09.2022, had issued an ad interim order of attachment under Section 3 of the Act attaching an extent of Ac.250.00 of land in Dharapura and Mayaganahalli villages. Petitioners 1 and 2 were shown to be the owners of the said land as benamidars of the 3rd respondent.

4. The petitioners, being aggrieved by the said ad interim attachment by way of G.O.Ms.No.136 dated 12.09.2022, have approached this Court by way of the present writ petition for a declaration that the said G.O.Ms.No.136 is illegal, arbitrary and bad in law besides being violative of Articles 19 and 21 of the Constitution of India and consequently to set aside the same and direct respondents 1 and 2 to release and handover all the original title documents pertaining to the petitioners' lands and pass such other order or orders as this Hon'ble Court deem fit and proper in the interest of justice.

5. The case of the petitioners is that they are the owners of various extents of land in Dharapura and Mayaganahalli villages out of which Ac.18.34 guntas of land was given on development to the 3rd respondent under development agreement dated 20.10.2012. The petitioners contend that, apart from this transaction, there are no other transactions between the petitioners and the 3rd respondent. They also contend that the subject lands were purchased by them, for themselves and not as any benami holders of the 3rd respondent or its sister concerns.

6. The petitioners contend that the provisions of the Act would only permit respondents 1 and 2 to attach the money which has been given for acquiring any rights and the same would be restricted to the interest free security deposit of Rs.16 crores given by the 3rd respondent. They would further submit that Section 3 of the Act empowers respondents 1 and 2 to attach the assets acquired by a financial institution from the funds collected from the public. This would, at best mean, a right, if any, under the development agreement and the same would not extend to the land belonging to the petitioners as the said land had never been acquired by the 3rd respondent.

7. Heard Sri B. Adinarayana Rao, learned Senior Counsel appearing for Sri Javvaji Sarath Chandra, learned counsel for the petitioner, Sri C. Sumon, learned Special Government Pleader in the office

of the Advocate General appearing for respondents 1 and 2 and Sri Akula Vamsi Krishna, learned counsel appearing for respondent No.3.

8. Sri B. Adinarayana Rao, learned Senior Counsel appearing for Sri Javvaji Sarath Chandra, learned counsel for the petitioner would submit that the attachment of the entire Ac.18.34 guntas of land is wholly without jurisdiction and as such a writ petition would be maintainable before this Court. He would rely upon the judgment of the Hon'ble Supreme Court in the case of **Arun Kumar and ors., vs. Union of India and Ors.**,¹ (paras 74 and 75) to contend that this Court would be entitled to consider the jurisdictional fact of whether the attachment of the land belonging to the petitioners was within the jurisdiction of respondents 1 and 2 or not. He would contend that upon such finding given in this regard, it would be open for this Court to entertain the writ petition. He makes this statement in the light of the availability of the alternative remedy of approaching the competent Special Court for raising the attachment.

9. Respondents 1 and 2 have filed their counter affidavit. Respondent No.3 has filed a separate counter affidavit. In this counter affidavit, it is stated that the 3rd respondent has collected deposits of over 6380 crore rupees, from 32 lakhs customers, in eight states and had not repaid the same. The respondents contend that on account of this

¹ (2007) 1 SCC 732

widespread economic offence, the respondents had to intervene under the provisions of the Act. The counter affidavit sets out various Government Orders, issued provisionally, attaching various properties of the Agrigold Group under the provisions of the Act.

10. Respondents 1 and 2 would submit that in view of the effective alternative remedy under Section 7 of the Act, empowering the Special Court to raise attachments where the same are not in accordance with the Act, is sufficient for the petitioners and the petitioners without availing of the said remedy cannot approach this Court by way of the present writ petition. In this regard, respondents 1 and 2 would also submit that a similar writ petition had been filed before the Hon'ble High Court of Karnataka by the petitioners wherein the Hon'ble High Court of Karnataka had held that the writ petition was not maintainable and the petitioners ought to avail of the alternative remedy of approaching the Special Court.

11. Respondents 1 and 2, on the merits of the case, would submit that the 3rd respondent had obtained a valid and valuable right over the lands in question, by way of the development agreement dated 20.10.2012. These rights would include a possessory right over the entire extent of Ac.18.34 guntas and raising of the attachment would effectively take away these rights of the 3rd respondent also. It is further contended that in any event, the 3rd respondent is entitled to 40% of the developed

area and consequently has an interest in the land and that the attachment of the land is wholly justified.

Consideration of the Court:

12. Before advertng to the merits of the case, it would be necessary to consider the preliminary objections of the availability of an effective alternative remedy. The scheme of the Act is that the Government, upon being satisfied that it is necessary to protect the interests of depositors of financial establishments, can pass an ad interim order of attachment wherein the money or other property alleged to have been procured by use of the money obtained by way of deposits in cash or kind from depositors. This attachment would be an ad interim attachment which can be raised by way of an application before the Special Court which has jurisdiction over the proceedings initiated under the Act. The Hon'ble High Court of Karnataka in its judgment dated 15.11.2022 in W.P.No.35914 of 2017 had considered the provisions of the Karnataka Protection of Interests of Depositors in Financial Establishments Act, 2004 (the provisions of the Karnataka Act are in pari materia with the provisions of the A.P. Act). After considering these provisions, the learned Single Judge had taken the view that the provisions of the Karnataka Act clearly provide for an effective alternative remedy of approaching the special court for lifting the attachment. The learned Judge also took the view that the issues raised before the Karnataka High Court were

complicated questions of fact which require further enquiry and the same would not be possible in the proceedings under Article 226 of the Constitution of India.

13. In the present case, the question before this Court is whether the attachment of Ac.18.34 guntas of land belonging to the petitioners would be within the jurisdiction of the 1st respondent. This question requires an analysis of the development agreement dated 20.10.2012, the impugned G.O., and the application of the provisions of Section 3 of the Act to the said analysis. In the circumstances, this Court, is of the opinion that the situation in the Karnataka case does not arise in the present case.

14. In any event, the Hon'ble Supreme Court in Arun Kumar and Ors., Vs. Union of India and Ors., had taken the view that it would be open to a Court to verify a jurisdictional fact and to act upon such a finding. It is settled law that while the Constitutional Courts do not interfere in cases where there is an effective alternative remedy, it would be the duty of the court to intervene where there is violation of fundamental rights, violation of principles of natural justice or administrative / quasi judicial action which is without jurisdiction.

15. In the present case, the question before this Court is whether the action of the 1st respondent was within its jurisdiction or not. The question of jurisdiction would have to be decided on the basis of the contents of G.O.Ms.No.136 dated 12.09.2022, which is the impugned

order, the pleadings of the respondents before this Court and the provisions of Section 3 of the Act.

16. G.O.Ms.No.136 dated 12.09.2022 states that 250 acres of land said to be held by the petitioners 1 to 3 was being attached as the petitioners were benamidars of the 3rd respondent and various companies of the Agrigold Group.

17. The pleadings of the 2nd respondent state that the Agrigold Group of Companies had raised about Rs. 6380 crores from out of 32 lakh customers in eight States. However, the period within which these deposits are said to have been raised has not been given in the counter affidavit. Neither G.O.Ms.No.136 dated 12.09.2022 nor the counter affidavit set out any details as to how the petitioners are said to be benamidars of the 3rd respondent or any of the companies of the Agrigold Group.

18. There is no dispute that the amount of Rs.16 crores, given as an interest free security deposit, had come out of the deposits raised by the 3rd respondent and its sister companies. However, there is no material before this Court, either in any of the proceedings of attachment or the pleadings of the official respondents or in the material papers filed before this court to hold that the petitioners are Benamidars of the Agrigold Group of Companies. In the absence of any material at all, this court would have to negative the statement recorded in the impugned

G.O. 136, that the petitioners 1 to 3 are the Benamidars of the Agrigold group of companies.

19. Section 3 of the Act reads as follows:

"3. Attachment of properties on default in respect of deposits
- Notwithstanding anything contained in any other law for the time being in force,-

(i) Where, upon complaints received from a depositor or depositors, that any financial establishment defaulted or is likely to default in the return of deposits in cash or kind after maturity, or in any manner agreed upon; or

(ii) Where the Government have reason to believe that any financial establishment is acting in a manner prejudicial to the interests of the depositors with an intention to defraud the depositors;

and if the Government are satisfied that such financial establishment is not likely to return the deposits in cash or kind after maturity, or in any manner agreed upon, the Government 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 from and out of the deposits collected by the financial 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, manager or member of the said financial establishment, as the Government may think fit, and transfer the control over the said money or property to the competent authority."

20. Where the depositors raise complaints against any financial establishment of default in return of deposits, the Government has to satisfy itself that the financial establishment is not likely to return the deposits in cash or kind after maturity. In such circumstances, the Government, in order to protect the interest of the depositors of such financial establishment, can pass an interim order of attachment of 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 from out of the deposits collected by the financial establishment. The power of the Government to attach is restricted to the money which can be identified as money raised from the depositors or property which has been procured or purchased from money raised from depositors. This property can be in the name of the financial institution or any other name holders. A further power given to the Government is the power to attach any other property of the financial institution if the Government is satisfied that the money/property available for attachment is not sufficient to clear all the dues of the depositors or if the Government is unable to trace all the money raised as deposits.

22. This would mean that the 1st respondent has to satisfy itself that – (a) the Agrigold Group of Companies are not in a position to return the deposits; (b) the money of the 3rd respondent / Agrigold Group of Companies is available for attachment or that the Government is able to identify and ascertain the properties or assets acquired by the 3rd

respondent / Agrigold Group of Companies out of the deposits raised from the depositors or (c) that the Agrigold group is the owner of property which can also be attached to repay the dues of the depositors, after arriving at a finding that the properties/money attached prior to this will not be sufficient to repay the depositors.

23. In the present case, there is no denial by the 3rd respondent that the interest free deposit of Rs. 16 crores has been given from the money raised as deposits. Consequently, the deposit can be attached. However, it has not been attached. The development agreement dated 20.10.2012, stipulates that the 3rd respondent would develop the land of the petitioners into a residential layout and share the developed sites in the ratio of 40: 60 with the petitioner no.2. The consideration being offered to the petitioners 1 to 3 is the promise of development of the land, by expending the money of the 3rd respondent and delivering 60% of the developed sites to the petitioner No.2. There is no consideration in terms of money which has flown from the 3rd respondent to the petitioners. These facts preclude the 1st respondent from attaching the land under the first two limbs of section 3. However, the 1st respondent can still attach the property if it can be shown that the 3rd respondent has ownership rights over the property. The agreement between the petitioners 1 to 3 and the 3rd respondent is a development agreement and not a sale transferring ownership of the land to the 3rd respondent. The agreement would at best give the 3rd respondent the right to claim ownership over

40% of the developed plots after developing the entire layout. Such a right cannot be claimed without undertaking the necessary development of the layout. In the absence of any evidence showing rights of ownership of the 3rd respondent, the 1st respondent cannot attach the land in question.

24. In such circumstances, the 1st respondent would be entitled and would have jurisdiction to attach the aforesaid Rs.16 crores interest free security deposit. Since the land of the petitioners was not acquired by the 3rd respondent out of the deposits raised by the 3rd respondent, or otherwise, it would not be within the jurisdiction of the 1st respondent, to attach such land belonging to the petitioners.

25. In the circumstances, this writ petition is allowed as follows:

1. G.O.Ms.No.136 dated 12.09.2022 is set aside to the extent of the attachment of the lands of the petitioners admeasuring Ac.18.34 guntas in various survey numbers of Dharapura and Mayaganahalli Villages of Ramanagara Taluk, Karnataka.
2. It would also be necessary to record that the learned counsel for the petitioners in the course of arguments and the petitioners by way of pleadings in paragraph No.39 of the writ petition have also submitted that they are ready and willing to deposit the interest free security deposit of Rs.16 crores with the Special Court at Eluru, which is seized of all the matters relating to the 3rd respondent / Agrigold Group of Companies.

3. It would be open to the 1st respondent to attach any such deposit made with the Special Court, Eluru. Time of eight (8) weeks is given to the petitioners to deposit the said sum of Rs.16 crores with the Special Court at Eluru.
4. The question of whether the development agreement, dated 20.10.2012, is alive and binding on either party, is outside the scope of this writ petition and it is left open for the parties to resolve the said issue.

There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

28th February, 2023
Js.

R. RAGHUNANDAN RAO, J.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.41339 of 2022

28th February, 2023

Js.