

2015 (0) AIJEL-HC 232240

GUJARAT HIGH COURT

Hon'ble Judges:Paresh Upadhyay, J.

N.K.Proteins Limited Versus Senior Inspector Of Police Economic Offences Wing, Crime
Branch, Mumbai Police

with

Ashita Nilesh Patel Versus Senior Inspector Of Police Economic Offences Wing, Crime
Branch, Mumbai Police

with

Priyam Nilesh Patel Versus Senior Inspector Of Police Economic Offences Wing, Crime
Branch, Mumbai Police

with

N.K.Industries Limited Versus Senior Inspector Of Police Economic Offences Wing, Crime
Branch, Mumbai Police

SPECIAL CIVIL APPLICATION No. 4689 of 2014 ;
SPECIAL CIVIL APPLICATION No. 5400 of 2014 ;
SPECIAL CIVIL APPLICATION No. 5724 of 2014 ;
SPECIAL CIVIL APPLICATION No. 6012 of 2014 ;
Special Civil Application No. 4689 of 2014 ;
Special Civil Application No. 5400 of 2014 ;
Special Civil Application No. 5724 of 2014 ;
Special Civil Application No. 6012 of 2014 ; *J.Date :- FEBRUARY 24, 2015

- MAHARASHTRA PROTECTION OF INTEREST OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 1999
- [CONSTITUTION OF INDIA](#) Article - [226](#)

MAHARASHTRA PROTECTION OF INTEREST OF DEPOSITORS (IN FINANCIAL ESTABLISHMENTS) ACT, 1999 - CONSTITUTION OF INDIA - ART.226 - POWER OF HIGH COURTS TO ISSUE CERTAIN WRITS.

Cases Referred To :

1. Babu Verghese And Ors. V/s. Bar Council Of Kerala And Others, 1999 3 SCC 422
2. Bishambar Dayal Chandra Mohan And Ors V/s. State Of Up And Others, 1982 1 SCC 39
3. Kharak Singh V/s. State Of Up And Others, AIR 1963 SC 1295
4. M:s.Kusum Ingots & Alloys Ltd. V/s. Union Of India And Anr., 2004 6 SCC 254

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5. M:s.Sterling Agro Industries Ltd. Vs. Union Of India & Ors., AIR 2011 Del 174
6. Metkore Alloys Industries Limited And Another V/s. The Union Of India, Writ Petition No. 37056 Of 2013, decided on 24.01.2014
7. Navinchandra N. Majithia V/s. State Of Maharastra And Others, 2000 7 SCC 640
8. Nawal Kishore Sharma V/s. Union Of India And Ors., 2014 9 SCC 329
9. [Oil And Natural Gas Commission V/s. Utpal Kumar Basu, 1994 4 SCC 711 : 1994 \(2\) GLH 379 : 1994 \(3\) Scale 90 : JT 1994 \(5\) 1 : 1994 \(Supp1\) SCR 252](#)
10. R.S.D.V. Finance Co.Pvt. Ltd. V/s. Shree Vallabh Glass Works Ltd., 1993 2 SCC 130
11. State Of Madhya Pradesh V/s. Thakur Bharat Singh, AIR 1967 SC 1170
12. [Union Of India And Others V/s. Adani Exports Ltd., And Another, 2002 1 SCC 567 : 2002 \(1\) GLH 520 : 2002 \(4\) GLR 2830 : 2002 \(2\) GCD 1292 : 2001 \(7\) Scale 575](#)

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JUDGMENT :-

1 The petitioners have approached this Court, invoking Article 226 of the Constitution of India, challenging the notice/ order dated 09.11.2013 issued by the Senior Inspector of Police, Unit-V, Economic Offences Wing, Crime Branch, C.I.D. Mumbai - the respondent No.1, addressed to the Collector of District of Ahmedabad (Gujarat). By the impugned identical notices/ orders, the District Collector, Ahmedabad is inter-alia informed by respondent No.1 that, the properties of the petitioners, the details of which are mentioned therein, which are stated to be in the territorial jurisdiction of the Collector Ahmedabad, are secured in the interest of investors, for the reasons and the circumstances mentioned therein, with the further stipulation that no third party interest in the said properties be created without the permission of the Special Sessions Court designated under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2 Heard learned advocates for the respective parties.

3 At the outset it is noted that, learned advocates for the petitioners have addressed this Court at length on merits of the matter, and learned advocates for the respondents have also addressed this Court on merits, to the extent necessary, however those contentions, for the time being are not recorded here, because during the course of hearing, the question of maintainability of these petitions is also raised on behalf of the respondents. Therefore, firstly that issue needs to be addressed as to whether this Court can, and if yes, whether in the facts of this case, this Court should entertain these petitions on merits. If ultimately these petitions are accepted to be considered on merits, only then those contentions shall be recorded and dealt with.

4 Mr.Avinash B. Avhad, learned advocate for respondent No.1 has raised the preliminary objection that these petitions are not maintainable. It is submitted that this Court does not have territorial jurisdiction to entertain these petitions. In support of this contention, reliance is placed on the decision of the High Court Andhra Pradesh in the case of Metkore Alloys Industries Limited and another Vs. The Union of India (Writ Petition No. 37056 of 2013 decided on 24.01.2014). Reliance is also placed on the decision of Hon'ble the Supreme Court of India in the case of Oil and Natural Gas Commission Vs. Utpal Kumar Basu reported in 1994 (4) SCC 711. Without prejudice to this, it is further submitted that the petitioners have alternative remedy of approaching the Special Sessions Court designated

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under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, and for that reason also, these petitions are not maintainable. It is also submitted that there is suppression of material fact and on that count also these petitions be dismissed. For this purpose, attention of this Court is invited to the Writ Petition No. 3342 of 2014 filed in the Bombay High Court.

4.2 Learned advocate for the respondent No.1 has taken this Court through the paper book and has addressed the Court on merits, to the extent necessary, to contend, alternatively, that it would be in the interest of justice, if the petitioners are asked to move the Bombay High Court or any Court subordinate to it, so that ultimately no conflicting orders are passed on the subject matters, the root of which is the offence registered with the M.R.A. Marg Police Station (Mumbai) on 30.09.2013 vide C.R. No.216 of 2013, which subsequently came to be transferred to the Economic Offences Wing, Unit-V Crime Branch, C.I.D. Mumbai, whereat another C.R. is registered as C.R. No. 89 of 2013. Learned advocate has taken this Court through the contents of the offence registered and the impact thereof on the economy of the country and the suffering of the people at large. It is submitted that since the investigation is on, it would not be appropriate to divulge details in that regard, however in the preliminary investigation it is found that the group of persons directly connected with the petitioners have indulged in economic offence of about One Thousand Crores of rupees and any interference by this Court would ultimately be prejudicial to the public at large. It is submitted that similar notices were issued to various persons and except these petitioners, in all other cases, the proceedings have reached to its logical end. It is submitted that because of pendency of these petitions, and ad-interim injunction granted by this Court, further proceedings have not been taken against the petitioners. It is submitted by him that, these petitions be dismissed.

5 Mr.Soparkar, learned senior advocate for the National Spot Exchange Limited (respondent No.4) has submitted that, it is this respondent, on whose platform the alleged irregularities have taken place. It is submitted by him that though this Court may have territorial jurisdiction with regard to the subject matter of these petitions, in the facts of this case, discretion be not exercised and the petitioners be relegated to avail the remedies either before the Bombay High Court or the Courts subordinate to it. To substantiate this argument and for that limited purpose, facts of the case are also put to the notice of this Court and it is submitted that about One Thousand Crores of rupees is payable by the petitioners and their group, and any interference by this Court would ultimately be prejudicial to the public at large. It is submitted that similar notices were issued to various persons and except these petitioners, in all other cases, the proceedings have reached to its logical end. It is submitted that because of pendency of these petitions, and ad-interim injunction granted by this Court, further proceedings have not been taken against the petitioners. It is submitted that this Court may not interfere and petitions be dismissed.

6 Mr.Kamal Trivedi, learned senior advocate for the original complainant (respondent No.5) has submitted that in the matter of territorial jurisdiction, the parameters would be different in Civil Proceeding and the Criminal Proceeding. It is submitted that the root of the impugned proceeding is the offence registered by the Mumbai Police, the details of which are noted above. It is submitted that though the said FIR is not challenged in these petitions, the impugned notices are ultimately the part of investigation and other proceedings taken out by the appropriate Authority, pursuant to that very FIR and therefore, it is that Court, which can have jurisdiction to interfere in the said FIR, can be said to have territorial jurisdiction. It is

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submitted that therefore this Court does not have jurisdiction and these petitions be dismissed on that ground. Reliance is placed on the following decisions of Hon'ble the Supreme Court of India.

(1) Navinchandra N. Majithia VS. State of Maharashtra and others reported in (2000) 7 SCC 640.

(2) Union of India and others Vs. Adani Exports Ltd., and another reported in (2002) 1 SCC 567.

6.2 Alternatively it is submitted that, even if it is held that this Court does have territorial jurisdiction, in the facts of this case, it would be more appropriate if discretion is not exercised by this Court. For this purpose, learned senior advocate for the original complainant has also addressed this Court on merits of the matter, to the extent necessary. It is submitted that these petitions be dismissed.

7 Mr. K.S.Nanavati, and Mr. Mihir Joshi, learned senior advocates for petitioners have submitted that though the impugned communication dated 09.11.2013 are titled as notice for securing property for attachment, in substance it is an order, directly interfering with the right of the petitioners to the property, and thus it is not the notice as claimed by the respondent No.1 but is the order passed against the petitioners. It is submitted that the impugned direction is to the Collector Ahmedabad (Gujarat) and further that the properties in question are immovable properties situated in Ahmedabad (Gujarat) and therefore it is the Court in the State of Gujarat, and Gujarat alone, which can have territorial jurisdiction. It is further submitted that so far the impugned notice is concerned, the entire cause of action is in the State of Gujarat and therefore these petitions be considered on merits. Learned advocates for the petitioners have contended that though any order passed by the Competent Authority appointed/ designated under the said Act can be challenged before the designated Court at Mumbai, what is challenged in this petition is the action at the very threshold of exercise of power by an Authority, which is not Competent Authority and further that, it has done, what even the Competent Authority could not do, since none of the conditions precedent to exercise of such power is satisfied in this case and therefore these petitions be entertained. Arguments are also advanced at length to contend that from the Act itself two separate procedures can be culled out, one relating to the criminal proceeding and the second relating to the civil proceeding. It is submitted that the present one is purely civil in nature, and therefore the investigation into an offence referred to by the learned advocates for the respondents noted above, be not taken into consideration, as a factor against the petitioners. It is submitted that when it is complained to the Court of law that there is violation of fundamental right, it is not only the right but duty of the Court to consider the said grievance of the citizen. Reliance is placed on the following decisions, to contend that these petitions be entertained.

(1) State of Madhya Pradesh Vs. Thakur Bharat Singh reported in AIR 1967 SC 1170.

(2) Bishambar Dayal Chandra Mohan and Ors Vs. State of UP and Others reported in 1982 (1) SCC 39.

(3) Kharak Singh Vs. State of UP and Others reported in AIR 1963 SC 1295

(4) Nawal Kishore Sharma Vs. Union of India and Ors. reported in 2014 (9) SCC 329

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(5) Union of India and Ors. Vs. Adani Exports Ltd. and Anr. reported in 2002 (1) SCC 567.

(6) R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd. reported in 1993 (2) SCC 130.

(7) Babu Verghese and Ors. Vs. Bar Council of Kerala and Others reported in 1999 (3) SCC 422.

8 It is noted that learned advocates for the petitioners have also addressed this Court at length on merits of the matter and the contentions broadly are to the effect that, the impugned notice is issued by a person, who is not authorised under the law, it is also without complying with any of the conditions precedent to exercise such powers, even if the said Authority is accepted to be Competent Authority. For this purpose, learned advocates have taken this Court through the various provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. Submission is also made that none of the petitioners can be said to be a 'financial establishment' and none of the petitioners can be brought within the ambit of the said Act.

9 Having heard learned advocates for the respective parties on the preliminary objection that this Court does not have territorial jurisdiction, this Court finds as under.

9.1 From the impugned notice dated 09.11.2013 it transpires that the Revenue Authority of the Ahmedabad District (Gujarat) is directed to do something. Further, it is the immovable properties of the petitioners situated in the State of Gujarat, which are directed to be attached by the impugned notice. Thus, so far the impugned notice is concerned, not only the substantial part of cause of action arising therefrom, but the entire effect thereof is within the territorial jurisdiction of the Gujarat High Court. For this reason, the preliminary objection raised on behalf of respondents, more particularly respondent No.1 that this Court does not have territorial jurisdiction, needs to be rejected. The reliance on the decision of Andhra Pradesh High Court in Writ Petition No. 37056 of 2013 dated 24.01.2014 would not help the respondent No.1 in this regard, since the controversy therein was different, inasmuch as the challenge therein was, inter-alia to the FIR in question, which is not the case here.

9.2 So far the contention raised on behalf of original complainant that, in the matter of territorial jurisdiction the parameters would be different in Civil Proceeding and the Criminal Proceeding, is concerned, there can not be any dispute with regard to the proposition of law announced in the decisions of Hon'ble the Supreme Court of India relied by him, as noted above. The same principle is followed by the Andhra Pradesh High Court in the above referred decision, however as noted above, the very impugned notice directs the Revenue Authority of the Ahmedabad District (Gujarat) to do something with regard to the immovable properties of the petitioners situated in the State of Gujarat, and thus the entire effect thereof is within the territorial jurisdiction of the Gujarat High Court. For this reason, the objection raised on behalf of the original complainant about the lack of territorial jurisdiction of this Court, is also rejected.

10 Having held that this Court does not lack territorial jurisdiction to consider the grievance of the petitioners, coming to the next preliminary objection raised on behalf of the respondent

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No.1 that these petitions are not maintainable, since the impugned notice can be challenged before the designated Court at Mumbai under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, it is recorded that, in a given case High Court may not exercise discretion is different than the petition not being maintainable. If the merits of the matter are gone into, and if it is found that the impugned action is taken by an authority not authorized under the law and/ or it is without satisfying any of the conditions precedent to exercise of such power, even on the face of alternative remedy, even statutory remedy, writ petition can be maintained and entertained on merits. This contention also therefore is rejected.

11 One of the contentions raised on behalf of the respondent No.1 is that, there is suppression of material fact by the petitioners. Reference in this regard is made to the Writ Petition No. 3342 of 2014 filed in the Bombay High Court. It is noted that, the present petitions are filed much prior to filing of the said petition in the Bombay High Court. This aspect can be said to be one of the defences available to the respondent No.1, however the petitioners can not be blamed for not disclosing something, which did not exist, at the time of filing of these petitions. This contention is therefore rejected.

12 Having held that this Court does not lack territorial jurisdiction and also that these petitions can not be termed to be not maintainable, this Court has still considered it prudent to first examine, as to whether in the facts of this case these petitions should be entertained by this Court. In this regard 'the concept of forum convenience' needs to be kept in view. The larger Bench of the Delhi High Court (the Bench of Five Hon'ble Judges) has, in the case of M/s.Sterling Agro Industries Ltd. Vs. Union of India & Ors. reported in AIR 2011 Delhi 174, after taking into consideration the decision of the Hon'ble Supreme Court of India in the case of M/s.Kusum Ingots & Alloys Ltd. V/s. Union of India and Anr. reported in (2004) 6 SCC 254, has explained this principle. The observations made by the Delhi High Court in the said decision (para:31 & 32), read as under.

" 31. The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of. Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court can not be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co.Ltd.(supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe the said view."

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12.2 Keeping above principle in view and having heard learned advocates for the respective parties, this Court finds that though the impugned notice can be seen in isolation for the purpose for which it is issued, any interference therein by this Court may have direct impact on the investigation and other proceedings pursuant to the offence registered by the Economic Offences Wing, Unit-V Crime Branch, C.I.D. Mumbai, as C.R. No. 89 of 2013. This Court has also taken into consideration (i) the order of the Bombay High Court in its Original Civil Jurisdiction, recorded on Notice of Motion No. 240 of 2014 in Suit No. 173 of 2014 with TPN 02 of 2014 to TPN 15 of 2014 dated 02.09.2014, and further proceedings stated to have arisen therefrom, (ii) the Writ Petition No. 3342 of 2014 filed by Nilesh Keshavlal Patel and Nimish Keshavlal Patel in the Bombay High Court, (iii) the material with regard to declaration of defaulters circulated by the National Spot Exchange, and the alleged defalcation by one of the petitioners before this Court, and the relationship of the petitioners inter-se, and the extent of said defalcation. Apart from other material which is on record, considering this material, this Court finds that it would be appropriate if no interference is made by this Court, without entering into the merits, reserving liberty to the petitioners to move the Bombay High Court or any Court subordinate thereto, as may be advised. The Courts of law have to function for furtherance of justice. Any order that may be passed by this Court, though may appear to be sustainable and even proper per-se, if ultimately it is likely to hamper the proceedings before other Court, it would be prudent for this Court to be slow to exercise jurisdiction and discretion, without leaving the petitioners remedy less. There is substantial force in the argument of learned advocates for the respondents that, the present one is such case. For this reason, these petitions are not entertained. It is recorded that, though the contentions of the petitioners are noted above in brief, no opinion is expressed on merits thereof, since it may hamper any of the parties, before any other forum.

13 For the reasons recorded above, these petitions are dismissed, without entering into the merits, reserving liberty to the petitioners to move the Bombay High Court or any Court subordinate thereto, as may be advised. It is clarified that the observations made in this order are only for the limited purpose to decide whether to entertain these petitions or not, and the same be not construed as this Court having expressed any opinion on any of the contentions on merits. With these observations, notice in each petition is discharged. Ad-interim relief granted by this Court earlier, is vacated.

14 After the pronouncement of this order, learned advocates for the petitioners have submitted that, the interim protection which was operating in favour of the petitioners be continued for some time to enable them to approach the higher forum, if so advised. This request is opposed by the learned advocates for the respondents.

14.2 Considering the totality, and further with a view to see that challenge if any to this order remains meaningful to the petitioners, it is ordered that, ad-interim relief granted by this Court earlier, which has operated upto now, shall remain in force for a further period of four weeks from today, on condition that the petitioners shall not deal with the properties referred to by the respondent No.1 in the impugned notices, in any manner, till then.

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