

Neutral Citation No. - 2024:AHC:139586-DB

A.F.R.

Reserved On : 06.08.2024

Delivered On : 30.08.2024

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 11443 of 2024

Petitioner :- Canfin Homes Ltd And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Amrendra Singh

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Arun Kumar Singh Deshwal,J.

(Delivered by Hon'ble Arun Kumar Singh Deshwal, J.)

1. Heard Sri Amrendra Singh, learned counsel for the petitioners and Sri Ratan Singh, learned AGA for the State.

2. Present petition has been filed for the following relief:

"I. Issue a writ, order or direction in the nature of certiorari, for quashing the order of attachment dated 04.05.2023 passed by Police Commissioner, Ghaziabad in the case no. 09/23, u/s 14(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 in State Vs. Rakesh Sharma as much as it relates to the borrower/mortgagor's said property i.e. House no.78 Sector Delta-3, Greater Noida, Gautam Budh Nagar, Uttar Pradesh;

II. Direct the respondent no.3 to handover the physical possession of the said property to the petitioner. "

3. Contention of learned counsel for the petitioners is that petitioner no.1 is a housing finance company sponsored by Canara bank. The petitioner-finance company has granted a loan to one Rakesh Sharma to purchase house no.78 Sector Delta-3, Greater Noida, Gautam Budh Nagar, Uttar Pradesh and that the property was also mortgaged to the petitioners in lieu of the above loan facility extended to Rakesh Sharma. It is

further submitted that against Rakesh Sharma, the Gangster Act was invoked, and a FIR was registered against him in case crime no.466 of 2022 and during that proceeding, the above property was attached by the Police Commissioner, Ghaziabad vide order dated 04.05.2023 u/s 14(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 (hereinafter referred to as the 'Gangster Act').

4. As the above property was already mortgaged to the bank, which is a secured creditor, the petitioners preferred Criminal Misc. Writ Petition No.3720 of 2024, immediately after the knowledge of the attachment order dated 04.05.2023. That writ petition was disposed of with a direction to Commissioner of Police, Ghaziabad, to consider the representation dated 08.09.2023 of petitioners against the attachment order dated 04.05.2023 and decide the same within 15 days from the date of production of the certified copy of this order.

5. It is further submitted that despite receiving a copy of the order dated 13.03.2024 passed by this Hon'ble Court in Criminal Misc. Writ Petition No.3720 of 2024, the respondent no.3 has not considered the representation of petitioner no.2, and he was simply informed by respondent no.3 vide letter dated 08.05.2024 that the final order regarding the property of Rakesh Sharma has been passed on 04.08.2023, u/s 15 of the Gangster Act and the matter has been referred to the Special Court (Gangster Act). Therefore, representation of petitioner no.2 cannot be considered at this stage. Learned counsel for the petitioners further submitted that the property in question was mortgaged to the bank, and the bank had already issued proceedings to recover its dues against the property in question (attached by respondent no.3), under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act,

2002') and petitioners being secured creditors will have first right over the property in question as the Act, 2002 is Central Act and same will prevail over the law made by the Legislature of the State in view of the Article 254 of the Constitution of India.

6. *Per contra*, learned AGA has submitted that at the time of deciding the Criminal Misc. Writ Petition No.3720 of 2024, petitioners had not informed the court about the order dated 04.08.2023 passed u/s 16 of the Gangster Act by which representation of the accused Rakesh Sharma was rejected and matter was referred to Special Court (Gangster Act) and at this stage, the Commissioner of Police has no authority to pass any order to release the property in question and petitioners have remedy to pursue their case before the Special Court (Gangster Act).

7. After hearing the submission of learned counsel for the parties and on perusal of the record, it appears that the impugned attachment order dated 04.05.2023 was passed by the Commissioner of Police, Ghaziabad, u/s 14(1) of the Gangster Act. Thereafter, after considering the representation of the accused, Rakesh Sharma, the final order was passed u/s 16 of the Gangster Act on 04.08.2023 and the matter was referred to the Special Court (Gangster Act). On the date of filing the Criminal Misc. Writ Petition No.3720 of 2024 by the petitioners, the matter had already been referred to the Special Court (Gangster Act) u/s 16 of the Gangster Act. As the matter was already referred to Special Court (Gangster Act), prior to passing the order dated 13.03.2024 in Criminal Misc. Writ Petition No.3720 of 2024, therefore, the Commissioner of Police has no authority to consider the representation of the petitioners regarding the release of the property in question. The petitioners were already informed by the Commissioner of Police vide order dated 08.05.2024 about the order dated 04.08.2023.

8. At present, the matter is pending before the Special Court (Gangster Act). Now, as per the Section 16(3) of the Gangster Act, Special Court will conduct an inquiry u/s 17 of the Gangster Act regarding the character of acquisition of property. Sections-16 & 17 of the Gangster Act are being quoted as under:

"16. Enquiry into the character of acquisition of property by court-

(1) Where no representation is made within the period specified in sub-section (1) of Section 15 or the District Magistrate does not release the property under sub-section (2) of Section 15 he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.

(2) Where the District Magistrate has refused to attach any property under sub-section (1) of Section 14 or has ordered for release of any property under sub-section (2) of Section 15, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such Court may, if it considers necessary or expedient in the interest of justice so to do, order attachment of such property.

(3)(a) On receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation under Section 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.

(b) On the date so fixed or any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order under Section 17 as may be just and necessary in the circumstances of the case.

(4) For the purpose of inquiry under sub-section (3) the Court, shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely :-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

(e) issuing commission for examination of witness or documents;

(f) dismissing a reference for default or deciding it ex parte

(g) setting aside an order of dismissal for default or ex parte decision.

(5) In any proceedings under this section, the burden of proving that the property in question or any part thereof 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, anything to the contrary contained in the Indian Evidence Act, 1872 (Act No.1 of 1872), notwithstanding.

“17. Order after inquiry-If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make 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.”

9. From perusal of Section-16 of the Gangster Act, it is clear that when no representation is made or despite receiving representation u/s 16(1) of the Gangster Act, District Magistrate does not release the property u/s 15(2) of the Gangster Act then any aggrieved person by such refusal may make an application to special court u/s 16(2) of the Gangster Act to release such property after conducting inquiry.

10. Therefore, it is also clear from Section 16(3)(a) of the Gangster Act that when the matter is referred by the District Magistrate to Special Court u/s 16(1) of the Gangster Act then any person whose interest appears to be involved in the case may also be heard by Special Court while conducting inquiry u/s 17 of the Gangster Act. From perusal of Section 16(3)(a) of the Gangster Act, it is amply clear that any person who is interested in the property has the right to appear before the court to establish his claim over the property and the Special Court u/s 16(3)(b) of the Gangster Act will hear the parties and after considering the evidence produced by the parties would decide whether property was acquired by the Gangster, as a result of Commission of offence or not. After the inquiry u/s 17 of the Gangster Act, if the Special Court does not release the property in favour of the Gangster, then the court can also deliver the same to a person who is entitled to possession.

11. The co-ordinate Bench of this court in the case of **Prithvi Singh Vs. State of U.P. And Others** reported in **2022 (8) ADJ 29 (DB)** considered the law relating interpretation of statute. Paragraph nos.10 to 18 of **Prithvi Singh's case (supra)** is being quoted as under:

“10. Before proceeding further it would be appropriate to take note of the principles of statutory interpretation as the decision of the question involved in the present case is directly dependant on the interpretation of the statutory provisions. For this purpose we have taken help of the book 'Principles of Statutory Interpretation' '13th Edition, 2012' written by Justice G. P. Singh (Former Justice of M. P. High Court).

11. One of the main basic principles of interpretation is that if meaning of words of statute are plain, effect must be given to it irrespective of consequences.

12. In Nelson Motis v. Union of India, AIR 1992 SC 1981, it has been observed that when the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.

13. In Kanailal Sur v. Paramnidhi Sadhu Khan, AIR 1957 SC 907, it was observed that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

14. In State of Uttar Pradesh v. Vijay Anand Maharaj, AIR 1963 SC 946, it was held that when a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself.

15. It is also a guiding rule of interpretation that language of the statute should be read as it is.

16. In Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd v. Custodian of Vested Forests, AIR 1990 SC 1747, it was observed that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said.

17. In Raghunath Rai Bareja v. Punjab National Bank, (2007) 2 SCC 230, Supreme Court held that departure from the literal rule should be done only in very rare cases and ordinarily there should be judicial restraint in this connection.

18. Insofar as rule of 'regard to consequences' is concerned, the aforesaid book clearly provides that this rule has no application when the words are acceptable to only one meaning and no alternate construction is reasonably open. A reference may be made in this regard with citations noted above which provides that if meaning is plain, effect must be given to it irrespective of consequences.”

12. In the present case, the petitioners have also made a representation u/s 15(1) of the Gangster Act before the respondent no.3 but same was submitted after passing of the order u/s 16 of the Gangster Act, even then their right to appear before the special court to claim their property on the ground that being finance company, they have preferential rights over the attached property which was hypothecated to the bank and the proceeding against

the same was also issued under the Act, 2002 to recover the loan extended by the petitioners to the accused, Rakesh Sharma to purchase that property. Thus, the bank falls in the category of “any person aggrieved” as provided u/s 16(2) of the Gangster Act and in the category of “any other person whose interest appears to be involved in the case” as mentioned in Section-16(3)(a) of the Gangster Act.

13. From the above analysis, this court holds that if a person interested in a property could not file a representation before the District Magistrate/Commissioner of Police u/s 15(1) of the Gangster Act for want of knowledge then he can file his objection before the Special Court even after reference of attachment order to Special Court u/s 16(1) of the Gangster Act and, in appropriate cases the Special Court after completion of the inquiry u/s 17 of the Gangster Act may also deliver the attached property to the interested person if he is found entitled to possession thereof.

14. So far as the contention of learned counsel for the petitioner that the Act, 2002 being a Central Act will have overriding effect over the Gangster Act in view of Article 254 of the Constitution of India is concerned, to decide this issue, Articles 246 and 254 of the Constitution of India are being quoted as under:

“246. Subject-matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

15. From the perusal of Article 246 of the Constitution of India, it appears that it confers exclusive powers to Parliament to make laws with respect to any of the matter enumerated in Union List (List I) of the Seventh Schedule, and it also confers exclusive power to the State Legislatures with respect to the matters enumerated in the State List (List II), which is subject to the exclusive legislative power of Parliament. Issue of interpretation of Article 254 of the Constitution of India came into consideration before the Supreme Court in the case of **Mineral Area Development Authority & Another Vs. Steel Authority of India & Another** reported in **2024 SCC OnLine SC 1796**. While interpreting Article 254 of the Constitution of India, the nine Judges Bench in **Mineral Area Development Authority (supra)** observed that **issue of repugnancy arises only when both the legislatures are competent to legislate on the subject with respect of List-III and in case of conflict in other cases, answer lies in Article 246 of the Constitution of India, itself.** Paragraph

nos.33, 34 and 35 of **Mineral Area Development Authority (supra)** are being quoted as under:

“33. Article 254 clarifies that if the law made by a State legislature is repugnant to any provisions of a law made by Parliament with respect to any of the matters enumerated in List III, the law made by Parliament would prevail and the law made by the State legislature would be void to the extent of the repugnancy. The issue of repugnancy arises only when both the legislatures are competent to legislate on the subject with respect to List III. The issue of repugnancy does not arise if the legislations enacted by Parliament and the State legislatures deal with separate and distinct legislative subject matters. By virtue of Article 248, Parliament has exclusive legislative powers to make laws with respect to any of the matters not enumerated in List II or List III. However, how should courts deal with a situation where two legislations, enacted by Parliament and State legislature in pursuance of their respective legislative powers, appear to conflict with each other? The answer lies in Article 246 itself.

*34. Article 246 incorporates the principle of federal supremacy. In **Hoechst Pharmaceuticals (supra)**, this Court held that the words “notwithstanding anything contained in clauses (2) and (3)” in Article 246(1) and the words “subject to clauses (1) and (2)” in Article 246(3) embody that principle. The principle postulates that in case of an inevitable conflict between Union and State powers, the Union's power of legislation over a subject enumerated in List I shall prevail over the State powers of legislation over a subject enumerated in List II and III. However, it is also settled that this principle cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and State Lists. Such a conflict must be an actual one and not a mere seeming conflict between the two entries in two lists.*

*35. **Hoechst Pharmaceuticals (supra)** laid down the following principles to resolve any direct conflict between the entries in List I and List II : (i) in case of seeming conflict, the two entries should be read together without giving a narrow and restricted reading to either of them; (ii) an attempt should be made to see whether the two entries can be reconciled so as to avoid a conflict of jurisdiction; and (iii) no question of conflict arises between two Lists if the impugned legislation in pith and substance appears to fall exclusively under one list and the encroachment upon the other list is incidental.”*

16. The issue of repugnancy between the Central Act and the State Act has been explained in a number of statutory interpretations by G.P. Singh. The relevant extract from the Fourteenth Edition of G.P. Singh's principles of statutory interpretation is being quoted as under:

“The question whether the legislature has kept itself within the jurisdiction assigned to it or encroached upon a forbidden field is determined by finding out the true nature and character or pith and substance of the legislation which may be different from its consequential effects. If the pith and substance of the legislation is covered by an entry within the permitted jurisdiction of the legislature any incidental encroachment in the rival field is to be disregarded. There is presumption of constitutionality of statute and hence, prior to determining whether there is any repugnancy between the Central Act and the State Act, it has to be determined whether both Acts laid to the same entry in

the List III and whether there is a 'direct' or that a 'irreconcilable' conflict between two, applying the doctrine of, pith and substance."

17. Similarly, from the perusal of the above quoted Article 254 of the Constitution of India, it is clear that the same is applicable where there is inconsistency between the law made by the Parliament and the State Legislature regarding any matter enumerated in Concurrent List (List III). Act 2002 is referable to Entry 45 and 95 of the Union List (List I) and deals with the recovery of debt due to bank and financial institutions, which is the subject of the Union List. Similar issue came for consideration before the Hon'ble Supreme Court in the case of **State Bank of India Vs. Santosh Gupta & Anothers** reported in **(2017) 2 SCC 538**, wherein the dispute arose regarding the Act, 2002 and the transfer of property Act. Paragraph no.37 of the **Santosh Gupta's case (supra)** is being quoted as under:

"37. Applying the doctrine of pith and substance to Sarfaesi, it is clear that in pith and substance the entire Act is referable to Entry 45 List I read with Entry 95 List I in that it deals with recovery of debts due to banks and financial institutions, inter alia through facilitating securitisation and reconstruction of financial assets of banks and financial institutions, and sets up a machinery in order to enforce the provisions of the Act. In pith and substance, Sarfaesi does not deal with "transfer of property". In fact, insofar as banks and financial institutions are concerned, it deals with recovery of debts owing to such banks and financial institutions and certain measures which can be taken outside of the court process to enforce such recovery. Under Section 13(4) of Sarfaesi, apart from recourse to taking possession of secured assets of the borrower and assigning or selling them in order to realise their debts, the banks can also take over the management of the business of the borrower, and/or appoint any person as manager to manage secured assets, the possession of which has been taken over by the secured creditor. Banks as secured creditors may also require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom money is due or payable to the borrower, to pay the secured creditor so much of the money as is sufficient to pay the secured debt. It is thus clear that the transfer of property, by way of sale or assignment, is only one of several measures of recovery of a secured debt owing to a bank and this being the case, it is clear that Sarfaesi, as a whole, cannot possibly be said to be in pith and substance, an Act relatable to the subject-matter "transfer of property".

18. The Constitution Bench of the Hon'ble Supreme Court in **M. Karunanidhi Vs. Union of India** reported in **(1979) 3 SCC 431** had considered the question of repugnancy and inconsistency between the Central Act and the State Act and held that, before

any repugnancy can arise, the conditions which must be satisfied are:

(i) that there is a clear and direct inconsistency between the Central Act and the State Act;

(ii) that such an inconsistency is absolutely irreconcilable;

(iii) that inconsistency between the provision of two Acts is of such a nature so as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

19. The relevant paragraph no.24 of **M. Karunanidhi's** case (**supra**) is being quoted as under:

“24. It is well settled that the presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.”

20. In the case of **R.S. Raghunath Vs. State of Karnataka & Another** reported in **(1992) 1 SCC 335**, Hon'ble Supreme Court observed that the Court must ascertain the intention of Legislature by directing its attention not merely to the clauses to be construed, but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. The relevant paragraph no.12 of **R.S. Raghunath's** case (**supra**) is being quoted as under:

“12. Further, the influence of a non-obstante clause has to be considered on the basis of the context also in which it is used. In State of W.B. v. Union of India [(1964) 1 SCR 371 : AIR 1963 SC 1241] it is observed as under: (SCR p. 435)

“The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs.”

It is also well settled that the Court should examine every word of a statute in its context and to use context in its widest sense. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424] it is observed that: “That interpretation is best which makes the textual interpretation match the contextual.” In this case, Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus: (SCC p. 450, para 33)

“Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

If we examine the scope of Rule 3(2) particularly along with other General Rules, the context in which Rule 3(2) is made is very clear. It is not enacted to supersede the Special Rules.”

21. Similarly, in the case of **Commissioner of Income Tax Vs. Hindustan Bulk Carriers** reported in **(2003) 3 SCC 57**, the Hon'ble Supreme Court again observed that the statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make it consistent enactment of the whole statute. The relevant paragraph no.18 of **Hindustan Bulk Carrier's** case (**supra**) is being quoted as under:

“18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.”

22. The Hon'ble Supreme Court again in the case of **Government of A.P. Vs. J.B. Educational Society** reported in **(2005) 3 SCC 212** observed that there is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the Court to interpret the Legislation made by Parliament and the State Legislature in such a manner so as to avoid any conflict. However, if the conflict is unavoidable and the two enactments are irreconcilable, then by the force of *non-obstante* clause in Clause-1 of Article 246 of the Constitution of India, the Parliamentary Legislation would prevail, notwithstanding the exclusive power of the State Legislature to make a law with respect to the matter enumerated in the State List. The relevant paragraph no.10 of **Educational Society's** case (*supra*) is being quoted as under:

“10. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.”

23. From the above legal position, it is clear that the concept of "inconsistency" is found in Article 254 of the Constitution of India. Article 254 of the Constitution of India has a marginal note which speaks about the inconsistencies between the laws made by the Parliament and the laws made by the Legislatures of the State. The Article aforesaid goes on to State that if the law made by the State is repugnant to the law made by the Parliament, then the law made by the Parliament to the extent of repugnancy would prevail. The said Article, being a constitutional provision, deals with the complex subject of the quasi and federal structure we have in India.

24. In the present case, the question is regarding the repugnancy of the Act, 2002 and the Gangster Act. The subject of making criminal law is in Entry-I and its procedure in Entry-II of the Concurrent List of the Constitution of India, wherein the Parliament and State Legislature are competent to legislate in view of Article 246 of the Constitution of India. The UP Gangster Act is criminal law and UP State Legislature is competent under Entry I and II of the Concurrent List to enact UP Gangster Act that provides penalties to gangster and also procedure to attach and confiscate the property of a gangster acquired through illegal means. However, Act 2002 is referable to Entry 45 and 95 of List I. For reference, Entry 45 and 95 of the Union List (List I) and Entry I and II of the Concurrent List (List III) are being quoted as under:

“Union List (List I)

Entry 45-Banking

Entry 95-Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list; admiralty jurisdiction.

Concurrent List (List III)

Entry I- Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

Entry II-Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.”

25. The object of the Act, 2002 is to ensure that dues of secured creditors including banks, financial institutions are recovered from the defaulting borrowers without any obstruction and without intervention of courts or Tribunals, while the object of the Gangster Act is to provide speedy and transparent procedure to punish the gangster, to establish an efficient recovery system with respect to the property of gangsters and incidental benefits acquired by them through crime. The conjoint reading of the Act, 2002 and Gangster Act shows that there is no overlapping between them.

26. This court is of the view that Article 254 of the Constitution of India will apply only in those cases where there is inconsistency between the law made by the Parliament and law made by the Legislature of State on the subject of List-III (Concurrent List) but there is no inconsistency between the Act, 2002 and the Gangster Act, as object of the Act, 2002 and Gangster Act are different and both the Acts operate in different fields, and both Acts were enacted in different lists. (List I and List III).

27. Now coming back to the controversy involved in present case, the inquiry, as per Section 16 of the Gangster Act, would be, whether the property purchased by the Gangster, as a result of commission of an offence under the Gangster Act and not the issue that who will have first right over that property. Therefore, the petitioners can file an application before the Special Court (Gangster Act) in case crime no.466 of 2022 to claim their right over the property by showing that property was not the result of commission of crime by the accused, Rakesh Sharma, but it was purchased through a bank loan, as the property in question was mortgaged to the bank, therefore, the bank is entitle to take its possession, as provided in Section 17 of the Gangster Act.

28. In view of the above, the petitioners argument has no force. Accordingly present petition is **dismissed**. However, liberty is granted to the petitioners to file their objection or claim before the Special Court (Gangster Act), Ghaziabad, regarding House No.78 Sector Delta-3, Greater Noida, Gautam Budh Nagar, Uttar Pradesh and the court below will consider the same, in accordance with law, on its own merits.

Order Date :- 30.8.2024
S.Chaurasia