

**Triveni Infrastructure Development Co. Ltd. Vs. State**

**Triveni Infrastructure Development Co. Ltd. Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/848812](http://sooperkanoon.com/848812)

**Court :** Delhi

**Decided On :** May-25-2010

**Judge :** P.K. Bhasin, J.

**Appeal No. :** Crl. M.A. 2794/2010 and Crl. M.A. 6126/2010 in WP (Crl.) No. 390/2010

**Appellant :** Triveni Infrastructure Development Co. Ltd.

**Respondent :** State

**Advocate for Def. :** Akshai Bipin, A.S.C.,; ACP T.R. Mongia and; Insp. Vinod

**Advocate for Pet/Ap. :** Abhishek Manu Singhvi,; Harish Malhotra and; Arun Bhardwaj

**Judgement :**

ORDER

**P.K. Bhasin, J.**

1. The petitioner Company is into the business of development of real estate. It claims that during the years 2006-07 it had invited bookings for allotment of flats and plots in their projects in different cities after having obtained necessary licences and other clearances from the concerned Government departments. Thousands of persons invested money with the petitioner Company in the hope of

getting flats/plots. The petitioner Company claims that due to global economic recession speculative investors suddenly started cancelling their bookings and refund was being claimed from the petitioner Company as they did not expect profit any more from the bookings and in order to pressurize the Company to pay them the money some of the investors converted the dispute of refund of money, which was purely a civil dispute, into a criminal case of cheating by lodging a complaint with the Economic Offences Wing(EOW) of the Delhi Police on 24th December, 2008 and on the basis of that complaint FIR 234/08 was registered.

2. During the investigation, the police vide order dated 20th November, 2009 attached immovable properties of the petitioner Company as well as of its Group Companies. That order was passed during the pendency of anticipatory bail application of three Directors of the petitioner Company in which this Court had stayed their arrest.(That application is also being disposed of today by a separate order). It is being claimed by the petitioner that it never had any intentions to cheat any of its valuable investors and, in fact, some speculative investors had started asking for refund of their money because of global recession due to which they did not expect profit any more from the bookings done by them with the petitioner Company for the allotment of flats/plots. Since the attachment order dated 20th November, 2009 had the impact of bringing the entire business activities of the petitioner Company to a halt the present writ petition was filed for quashing of that order of passed by the Assistant Commissioner of Police(EOW).

3. During the pendency of the anticipatory bail application of the three Directors of the petitioner Company they had offered to deposit in this Court a sum of rupees thirty five lacs every month in order to show their bona fides and they had agreed that that amount could be disbursed to the investors who were not interested in getting flats/plots and only wanted their money back and thereafter the Directors made payments of Rs. 35 lacs per month and thereafter the monthly deposit by them came to be increased to rupees one crore and that amount also they have been depositing in this Court. A sum of over two and a half crores of rupees already stands deposited in this Court by the Directors of the petitioner Company.

4. The petitioner is for the time being claiming partial lifting of the embargo on the sale of two pieces of land only as well defreezing of its bank accounts, which have also been frozen by the police during the pendency of this petition, to enable it to carry on its construction activities and to honour its commitments with thousands of investors who are still willing to have flats/plots from the petitioner Company despite the registration of case of cheating against it at the instance of only a handful of the investors.

5. As per the case of the respondent-State, upto 31st March, 2010, 380 investors had approached the police asking for refund of their money. During the course of hearing of the present matter the petitioner has been claiming that out of those 380 persons they had already settled with 233 investors and out of those 233 persons 85 persons been had been paid full amount as per the settlements. That amount was claimed to be Rs. 4,62,14,182. To the remaining 148 investors total amount of Rs. 9,66,10,071/- was stated to be payable by petitioner Company and out of that amount also it claims to have already disbursed a sum Rs. 3,26,70,656/- and the balance amount of Rs. 6,39,39,415/- and it is being claimed that as per the settlements the investors had agreed to take the unpaid money in instalments and the petitioner would stick to the terms of settlement. The amount payable to the remaining 147 investors, according to the petitioners' was stated to be Rs. 8,41 ,41 ,006/- calculated after deducting 20% of the base price of flats/plots from the actual amounts paid to the Company. That was according to the petitioner as per the term of the buyer's agreements executed by the investors.

6. It was contended by the learned senior counsel appearing in the matter on behalf of the petitioner Company that in order to make the payments to the investors presently claiming back their money as well as to those who might come forward in future also to have refund of their money and also to enable the petitioner Company to go ahead with its regular construction activities which had come to a complete halt because of the impugned attachment order dated 20th November, 2009 it may be permitted, as an interim relief only, to sell two pieces of land, one of which was in Dharuhera and the other one in Ghaziabad, both of which are totally unencumbered and the petitioner Company has clear title thereto. It was submitted that petitioner Company has found two buyers who are willing to

purchase those properties and with whom separate MoUs have also been executed but the same cannot be converted into a final deal because of the impugned attachment order. It was submitted that whatever money the petitioner Company would be receiving from the two prospective buyers, towards the sale consideration which as per the tentative understanding with the buyers was payable in instalments and sale deeds were to be executed in phases depending upon the instalments paid by the buyers, shall be deposited with this Court only for being disbursed to the investors claiming back their money. Additionally, to secure the interests of the investors, the petitioner Company would furnish security of immovable properties of the value of about fifteen crores of rupees. It was also contended that there were many investors who are still willing to continue making payments to the petitioner Company towards the price of flats/ plots booked by them but the petitioner Company cannot accept money from them because of the order dated 12th April, 2010 by the respondent during the pendency of this Writ Petition whereby now operation of all the bank accounts of the petitioner Company has also been stopped and in that way those investors are also suffering and that circumstance also justifies giving of a direction by this Court defreezing the bank accounts also as an interim relief. My attention was also drawn to the two MoUs entered into between the petitioner Company and two intending buyers of its land in Dharuhera and Ghaziabai Details of which lands were given in those MoUs which have been placed on the file of the anticipatory bail application of the Directors of the Company and copies whereof had been furnished to the respondent's counsel also. Although in support of the submissions made in the impugned writ petition to the effect that the respondent could not legally attach the immovable properties and freeze bank accounts of the petitioner copies of many judgments of different High Courts were also placed on record but during the course of hearing of the applications for interim relief learned senior counsel Dr. Abhishek Manu Singhvi submitted that since the petitioner Company and its Directors having already decided to make refunds to the investors asking for their money back he was not making any submissions on the merits of the challenge to the impugned orders dated 30th November, 2009 and 12th April, 2010 for the present.

7. On behalf of the respondent-State it was contended by Shri Akshay Bipin, learned Additional Standing Counsel, that till such time the claims of all the investors who had approached the police for refund of their money from the petitioner Company are satisfied the prayer for even partial lifting of the embargo vide order dated 20th November , 2009 should not be accepted and in case some relief is to be granted that should be done keeping in view the interests of aggrieved investors so that their money is recovered and paid to them. Learned Counsel appearing for some of the investors and some investors who have been attending these proceedings without any advocate had also submitted that no interim relief should be granted to the petitioner till they get back their entire money paid by them to the petitioner Company. Although at the same time, it was also stated that the investors were not interested in sending the Directors of the Company to jail in case they get back their money and that this Court must ensure that while passing any order on the applications for interim reliefs.

8. There were some of the investors represented by their counsel who had submitted that because of the present situation created by a handful of investors they were suffering since they were not in a position to get flats for which they were still ready to make payments to the petitioner Company but the Company is not accepting the same as its bank accounts have also been frozen by the police. It was contended on their behalf that interests of the investors who were asking for refund of their money and those who were still interested in getting flats since they would not now get better offers in the real estate market, should be kept in mind and protected by this Court while passing any orders on the prayers of the petitioner Company for partial lifting of embargos which relief in fact, according to this category of investors, should be granted.

9. Considering all the facts and circumstances, this Court is of the view that the petitioner Company can be permitted to go ahead with finalization of sale deal in respect of its land in Dharuheda and Ghaziabad, details whereof have been furnished in the affidavit dated 29th April, 2010 of Shri Sumit Mittal, one of the Directors of the petitioner Company and along with which affidavit copies of the two MoUs with the prospective buyers of those two pieces of land had also been annexed, this interim relief is being granted to the petitioner Company keeping in

view of the fact that its Directors are depositing money in Court for being disbursed to the investors claiming refund of their money and now they are being asked to deposit in this Court a weekly payment of Rs. 3 1,25,000/- while disposing of their anticipatory bail application. The present interim relief shall, however, be subject to the following conditions:

(i) The petitioner Company shall go ahead with the finalization of the sale transactions with the two prospective buyers but shall not execute sale deeds in their favour without prior permission of this Court and in the event of the deals being finalized if sale deeds in respect of some part of the land in question are to be executed on receipt of part of the sale consideration as per the sale agreements to be finally executed, the petitioner Company would be at liberty to file an appropriate application informing the Court about the payments received by it from the buyers and its utilization which, of course, has to be utilized for disbursement of the money to the investors, as has been volunteered also by the petitioner Company. At that stage, the request of the petitioner Company for execution of the sale deed(s) shall be considered. It is, however, clarified that the petitioner is being permitted to go ahead with the sale deals only on its representation made to this Court that the lands in question are free from all encumbrances and the petitioner Company has a clear title in the same and further that this permission being given to the petitioner Company shall not be considered by the prospective buyers to be a declaration of this Court about the clear title of the petitioner Company in respect of those lands. It shall be the responsibility of the buyers to satisfy themselves in respect of the title of the lands which they propose to buy from the petitioner Company in Dharuheda and Ghaziabad.

(ii) As also volunteered by the petitioner Company, it shall furnish security of an immovable property to the extent of Rs. 15 crores to the satisfaction of the Registrar General of this Court within two weeks.

10. Since it was informed during the course of hearing of the present two applications by the learned Counsel for the State that in the bank accounts of the petitioner Company frozen by the police there was hardly any money lying

deposited and a submission was also made on behalf of some of the investors, who were still willing to make payments to the petitioner Company, that those payments cannot be made to the petitioner Company since all its accounts have been frozen and without those payments they would not be able to get the flats booked by them which they still wanted to get and were hopeful of getting the same despite the present criminal proceedings going on against the petitioner, the petitioner is also permitted to operate any of its two frozen bank accounts and it would inform the investigating officer of those two banks and upon receipt of that communication from the petitioner Company the respondent shall issue appropriate directions to the concerned banks withdrawing the freeze order within three days.

11. The petitioner Company as well as its Directors shall also honour all the assurances given from time to time in the present petition as well as in the anticipatory bail application No. 1641/09 in the affidavits as well as during the course of hearing of the matters and in case of any breach thereof, the reliefs being granted today shall be liable to be withdrawn.

Crl. M.A. 2794/2010 and Crl. M.A. 6126/2010 stand disposed of accordingly.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**