

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.A. Nos.362 of 2015 and M.P. No.1 of 2015
W.A. No.454 of 2013 and M.P. No.1 of 2013

1 S. Unnamalai
2 S. Ishwarya Appellants in both the W.As.

Vs

1 Alwarpet Benefit Fund Limited
represented by its Commissioner
Justice A. Raman
(Retd. Judge, High Court, Madras)
No.75, C.P. Ramasamy Road
Alwarpet, Chennai 600 018

2 R. Subramaniam

3 The Reserve Bank of India
constituted under the RBI Act, 1934
having its Regional Office at
Rajaji Salai, Chennai - 1

4 The Secretary
Ministry of Law and Company Affairs
Government of India
Shastri Bhavan, New Delhi

5 The Regional Director
Southern Region
Department of Company Affairs
Ministry of Finance
Government of India
Shastri Bhavan
Block No.1
V Floor, 26 Haddows Road
Chennai 600 006

6 The Secretary
Ministry of Finance
North Block, New Delhi

- 7 Alwarpet Benefit Fund Ltd.
Represented by its Chairman and Managing Director
K.SP. B. Shanmugam
36, C.P. Ramasamy Road
Alwarpet, Chennai 600 018
- 8 K.SP. V. Shanmugam, Director
- 9 Harshavardan, Director
- 10 N. Mahesh, Director
- 11 N. Namasivayam
Advice Managing Agent
- 12 C. Muthusamy
- 13 The Company Law Board
Shastri Bhavan
South Regional Branch
Shastri Bhavan
Chennai
represented by its Regional Manager
- 14 S. Vishnuvaradhan
- 15 Nachiammal
- 16 Saroja
- 17 Sreenidhi Foundation
14, IV Cross Street
R.K. Nagar
Chennai 28
- 18 K. Arunachalam
- 19 Ramaniam Real Estates Ltd.
Represented by its Managing Director
V. Jagannathan
Sruthill
II Main Road
Gandhi Nagar, Chennai 20
- 20 Standard Chartered Grindlays Bank
Haddows Road
Chennai 600 006

- 21 B.B. Mastan Rao
(impleaded as per order dated 27.09.2007
in W.P.M.P. No.1287 of 2007)
- 22 Moolchand Finance Ltd.
No.31/32, Commander-in-Chief Road
Egmore, Chennai 600 008
- 23 Moolchand Properties Ltd.
100/2A, Suvarna Darshan II Main Road
Gandhi Nagar, Adyar, Chennai 20
- 24 KDH Properties Ltd.
Represented by the Director
P. Thangarajan
100/2A, Suvarna Darshan II Main Road
Gandhi Nagar, Adyar, Chennai 20
impleaded as per order dt.3/7/2008 in WMP.No.469/08)
- 25 The Senior Manager
Central Bank of India
Kalapatti Branch
No.7.25, Avinashi Road, Coimbatore
(impleaded as per order
dated 03.07.2008 in M.P. No.9 of 2008)
- 26 The Branch Manager
Corporation Bank
Madikeri Branch
Karnataka State
(impleaded as per order dated 09.03.2010
in WPMP No.203/2010)
- 27 The Recovery Officer - II
Debt Recovery Tribunal
Krishi Bhavan
Hudson Circle
Nrupthanga Road
Bangalore - 1
- 28 Vasudeva Rao
- 29 J.P. Builders
represented by its Proprietor
Sri. J. Paramanandam
J.R. Towers
7/2 Nungambakkam High Road
Chennai 600 034

- 30 K. Ramesh
- 31 K. Mahesh
- 32 The Chief Manager & Authorised Officer
Allahabad Bank
Adyar Branch
19, I Street, Padmanaba Nagar
Adyar, Chennai 600 020
(RR 27-31 impleaded as per
order dated 13.09.2011 in
W.P.M.P. No.537 of 2011)
- 33 Ponni Plantations, KOPPA
represented by its Partners
Mrs.K. Premalatha Hegde and
Mrs. Ramitha
both at Alankar Ajjarkad, Udupi - 576 101
- 34 Rajasri Developers Pvt. Ltd
represented by its Managing Director
Anjaneyulu Prathipati
a company registered under the
Companies Act, 1956
having its Registered Office at
New BHEL Road
Bangalore 560 058 Respondents in both the W.As.
- (R34 impleaded vide order dated 25.03.2015
in M.P. No.1 of 2015)

Prayer in W.A. No.454 of 2013:

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 08.02.2013 passed in M.P. No.12 of 2013 in W.P. No.14577 of 1999. Petition praying to modify the order dated 02.11.2012 made in WPMP.No.107 of 2012 in WP.No.14577 of 1999 by incorporating the nominee Caluse, extending the time for making the balance payment and thereby directing the recovery officer DRT, Bangalore the 28th respondent herein to issue sale certificate pending WP.No.14577 of 1999.

Prayer in W.A. No.362 of 2015:

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 02.11.2012 passed in W.P.M.P. No.107 of 2012 in W.P. No.14577 of 1999 Petition praying to permit the Commissioner of M/s. Alwarpet Benefit fund limited to sell the property being Coffee Estate Comprising of 151.55 acres of land

situate at Ibbnivalavadi Village, Boikeri Post, Madikeri TK., Kodagu District, Karanataka the details of which are morefully set out in the schedule to the petition by invisting offers from the public after making due publication of English Daily and Kanada Dail pending W.P.No.14577/1999.

For appellants in Mr. AR. L. Sundaresan, Sr. Counsel
both the appeals for M/s. AL. Gandhimathi

For R1 in Mr. R. Krishnamurthy, Sr. Counsel
both the W.As. For Mr. R. Bharath Kumar

For R 26 Mr. S. Sethuraman

For R34 Mr. G. Masilamani, Sr. Counsel
for M/s. Nithyanandam and Prataba

COMMON JUDGMENT

(Order of the Court was made by SATISH K.AGNIHOTRI, J.)

While W.A. No.454 of 2013 arises from the order dated 08.02.2013 passed in W.P.M.P. No.12 of 2013 in W.P. No.14577 of 1999, the other writ appeal being W.A. No.362 of 2015 is directed against the order dated 02.11.2012 passed in W.P.M.P. No.107 of 2012 in W.P. No.14577 of 1999.

2 Both the appeals have a common lineage and as such, they are being considered and decided by this common judgment. For the sake of brevity, clarity and convenience, the parties are referred to as per their rank in the instant appeals.

3 The facts, in brief, necessary for the disposal of the instant appeals are as under:

3.1 The first respondent is a Nidhi Company registered under the Companies Act, 1956. While the sixth respondent in the instant writ petition (8th respondent herein) was the Managing Director of the first respondent, respondents 7 and 8 (9th and 10th respondents herein) were its Directors. Pursuant to the offer made by the first respondent, the public invested in fixed deposits with the first respondent. However, the first respondent defrauded them and also vanished by siphoning off their funds to the tune of Rs.100 crores. Consequently, many an investor lodged complaints before the Economic Offences Wing.

3.2 One such depositor, viz. R.Subramanian, filed the instant writ petition being W.P. No.14577 of 1999 for appointment of a Fit Person as Custodian for taking immediate control and possession of

the assets of the first respondent and clear the dues which the first respondent owes to its investors. Like the said Subramanian, several others too filed writ petitions seeking similar relief. Pursuant thereto, on 13.10.1999, this Court appointed one retired Judge of this Court as the Commissioner and Mr. T. Venkatachalam, retired General Manager of TNSC Bank as the Joint Commissioner of the first respondent to manage its affairs, holding that "The Commissioner is at liberty to mobilise the funds so as to enable him to meet the liabilities of the 5th respondent Benefit Fund Ltd., towards the petitioners / depositors even by selling the immovable properties of the 5th respondent Benefit Fund Ltd., in consultation with its directors."

3.3 On 10.02.2001, the learned Commissioner filed a memo seeking attachment of certain immovable properties as per Annexure "A" of the erstwhile Directors of the first respondent and also, sought a direction against those persons, restraining them from alienating the said immovable properties, without the permission of this Court. Acceding to the prayer made by the learned Commissioner, this Court, on 29.03.2001, allowed the Memo and further, passed an order of attachment, as sought by the learned Commissioner. Thereafter, on 17.02.2006, at the learned Commissioner's instance, 5 items of properties were sold in public auction with a view to settle the dues payable to the investors of the first respondent. Seemingly, a writ appeal being W.A. No.633 of 2006 was preferred by the appellants along with the eight respondent, who was the erstwhile Managing Director of the first respondent, challenging the order dated 17.02.2006 passed in W.P.M.P. No.2722 of 2005 for the sale of 5 items of properties in public auction, which ended in dismissal.

3.4 Meanwhile, on 09.11.2006, the Corporation Bank, the 26th respondent herein filed O.A.Nos.379 to 383 of 2002 against the erstwhile Directors of the first respondent, who were its borrowers and also, obtained a decree in respect of the mortgaged property, viz., coffee estate to an extent of 151.55 acres, situated at Coorg District. That apart, a Recovery Certificate also came to be drawn by the Debts Recovery Tribunal, Bangalore, (for short "the Tribunal"), pursuant to which, recovery proceedings were initiated against the mortgaged properties. Annexure "A" to the order dated 29.03.2001 includes the subject matter of property, viz., Veena Coffee Estate, Coorg Mercera, Karnataka, measuring an extent of 200 acres.

3.5 On 17.08.2007, the erstwhile Managing Director and the Directors, viz., respondents 8 to 10 preferred a Special Leave Petition before the Supreme Court, challenging the judgment rendered in W.A. No.633 of 2006, by which the sale of 5 items of properties in public auction, was confirmed. The said Special Leave Petition ended in dismissal and thus, the auction sale of five items of properties attained finality.

3.6 While so, the learned Commissioner filed W.P.M.P. No.203 of 2010, seeking impleadment of Corporation Bank as a party respondent to the instant writ petition. The learned Commissioner also filed W.P.M.P. No.206 of 2010 for an order of interim injunction restraining the Corporation Bank from selling the subject property in public auction.

3.7 This Court, accepting the stand of the learned Commissioner, allowed the petition for impleadment on 09.03.2010, besides granting an order of interim injunction against the Corporation Bank for sale of the subject property. Seeking to vacate the order of interim injunction, the Corporation Bank filed a Vacate Injunction Petition in W.P.M.P. No.69 of 2010. In the said Vacate Injunction Petition, this Court, on 28.10.2010, issued certain directions to be followed by the Tribunal, while making advertisement for sale of the subject property. However, it appears that the Recovery Officer of the Tribunal, on 20.03.2011, had caused an advertisement in The Hindu, in defiance of the order dated 28.10.2010 passed by this Court in the Vacate Injunction Petition.

3.8 Thereafter, in W.P.M.P. No.306 of 2011 filed by the learned Commissioner seeking stay of the proposed auction sale by the Tribunal, this Court, on 12.04.2011, granted an order of interim stay. Challenging the order of stay passed by the learned Single Judge, the Corporation Bank preferred W.A. No.705 of 2011, wherein, the Corporation Bank was denied interim order in its favour. Later, the learned Commissioner filed W.P.M.P. No.107 of 2012, seeking the Court's permission to sell the coffee estate through public auction. Accordingly, this Court, on 26.03.2012, passed an order directing the learned Commissioner to bring the subject matter of property for sale through paper publication, both in English and in vernacular language.

3.9 Pursuant thereto, on 02.11.2012, the learned Commissioner submitted the sealed offers submitted by the bidders before this Court. Upon being instructed by this Court to offer better rates, one Rajasri Developers offered the highest bid of Rs.7.50 crores. Eventually, in W.P.M.P. No.107 of 2012 filed by the learned Commissioner, by order dated 02.11.2012, Rajasri Developers was declared as the highest bidder and was directed to pay the balance sale consideration, after deducting the Earnest Money Deposit, within two months.

3.10 On 21.12.2012, Rajasri Developers, who is the auction purchaser, after making a payment of Rs.2.75 crores, sought 3 months time to pay the balance sale consideration of Rs.3.75 crores and also, sought a direction to the Recovery Officer of the Tribunal, to issue sale certificate in its favour and further, to hand over original title deeds of the property in question.

3.11 Thereafter, based on the request letter submitted by Rajasri Developers, the auction purchaser, seeking inclusion of "nominee clause" to the sale and also extension of time to make the balance sale consideration, the learned Commissioner filed W.P.M.P. No.12 of 2013, seeking modification of the order dated 02.11.2012. This Court, by impugned order dated 08.02.2013, rejected the prayer for inclusion of "nominee clause", as sought by Rajasri Developers. However, this Court granted the other relief of further time of two months for making payment of balance sale consideration and to this extent, the order dated 02.11.2012 passed by this Court was modified by order dated 08.02.2013.

3.12 Feeling aggrieved by the order dated 02.11.2012 passed in W.P.M.P.No.107 of 2012, which was filed by the learned Commissioner seeking permission to sell the subject property, the wife and daughter of the erstwhile Managing Director of the first respondent have come up with W.A. No.362 of 2015. The same persons have also preferred W.A. No.454 of 2013, challenging the order dated 08.02.2013 passed in W.P.M.P. No.12 of 2013, by which extension of time was granted to Rajasri Developers.

4 Sri.AR.L. Sundaresan, learned Senior Counsel appearing for the appellants would submit that the question of sale would arise only in the event of conviction and order to the effect of attaching the properties under the provisions of Criminal Law Amendment Ordinance 38 of 1944. In the instant case, such a stage has not arisen at all. It was further argued that in order to secure the amount deposited in favour of the investors, there are certain other statutes like the Recovery of Debts due to Banks and Financial Institutions Act, 1993, (for short "the RDDBFI Act") or the Companies Act, 1956 or the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The sale could have been made only by following the well settled procedure as enshrined in the aforesaid statutes. It was also urged by the learned Senior Counsel that The Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (for short "Act, 1997") provides for attaching the property and recovering the amount in public auction for equitable distribution of sale proceeds to the depositors, which have been fully ignored. Thus, this Court, exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India, could not have ordered sale of the property in question. In such view of the matter, the impugned orders are bad in law and unjust and accordingly, deserve to be set aside.

5 On the other hand, Mr. R. Krishnamurthy, learned Senior Counsel appearing for the first respondent would submit that the appellants have raised a similar argument in W.A. No.633 of 2006, while questioning the legality and validity of the order dated 17.02.2006, rendered by the learned Single Judge in W.P.M.P. No.2722 of 2005 filed in the instant writ petition. A Division Bench of this

Court has negatived the contention holding that learned Single Judge was justified in granting indulgence by appointing a retired Judge of this Court as Commissioner to deal with the property in question and mobilise funds for payment to the poor investors and as such, the appellants cannot raise an identical issue in the instant appeals, which arise from the interim orders passed in the pending writ petition, viz., W.P. No.14577 of 1999. The learned Single Judge has considered all aspects of the matter while passing the orders sought to be impugned in the instant appeals. The property in issue at present which is a coffee estate board, is a part of Annexure "A", which was attached by order dated 29.03.2001. Thereafter, the possession of the said property was secured by the Corporation Bank under provisions of the RDDBFI Act and the Corporation Bank had duly consented to the learned Commissioner for dealing with the property as per the direction of this Court passed earlier.

6 Mr. G. Masilamani, learned Senior Counsel appearing for respondent no.34, viz., the auction purchaser, would submit, in succinctness, that the auction had taken place pursuant to the orders passed by this Court and the orders passed earlier have also attained finality. Thus, at this stage, no interference is warranted.

7 We have given our careful consideration to the rival submissions advanced by the respective learned counsel and have also perused carefully, the pleadings and documents appended thereto.

8 It is pertinent to note that the main writ petition is still pending consideration. The entire property of the first respondent was attached by order dated 29.03.2001, wherein the present property in question was included in the memo of immovable properties. The learned Single Judge, by order dated 17.02.2006, allowed disposal of five properties by way of auction, which was confirmed in the writ appeal vide order dated 1.9.2006. Thereagainst, a Special Leave Petition filed by the present appellants was dismissed summarily on 17.8.2007. As such, the sale of five items from the schedule of attached properties attained finality.

9 So far as the present property in dispute, namely, Coffee Estate comprising 151.55 acres situated at Madikeri, Coorg District, is concerned, the same was the subject matter of O.A.Nos.379 to 383 of 2002 initiated by the 26th respondent Corporation Bank. Thus, the said property was secured by the Corporation Bank through proper procedure under the provisions of RDDBFI Act. Proper sale certificate was issued. The said property was ordered to be auctioned by the Commissioner in the instant case to distribute the proceeds to the depositors and also to satisfy the Bank. The Corporation Bank has given consent to deal with the property in such manner and as such the exception of the learned Senior Counsel for the appellants to the effect that the same cannot be dealt with by the High Court in

exercise of its jurisdiction under Article 226 of the Constitution of India is rejected.

10 The Act, 1997 initially did not provide for attaching the properties of persons, who borrowed money and also for the sale of attached properties in public auction for equitable distribution of sale proceeds to the depositors. The said provision was incorporated in the Act by the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Amendment Act, 2003 (for short "TN Act 30 of 2003") in 2003, much after the instant writ petition was filed in this Court, seeking indulgence of this court by the hapless depositors to get their hard earned money deposited on misrepresentation of the Managing Directors. On this ground also, the contention of the learned Senior Counsel for the appellants merits rejection.

11 The last contention of Thiru AR.L.Sundaresan, learned Senior Counsel that any order passed without following the well established procedure under the statutory provisions cannot create res judicata as earlier orders, directing the sale of properties by auction, was not in accordance with the statutory provisions and thus, the same would not come in the way of contention of the appellants, cannot be countenanced on the simple reason that all orders have been passed in accordance with law in exercise of the constitutional power. The contentions of the learned Senior counsel for the appellants advanced earlier were negatived and the orders passed earlier clearly create constructive res judicata in the case on hand also.

12 This Court has passed orders, time and again, to ensure that after mobilisation of funds, the poor investors are paid back the amount which they had invested and which was swindled by the Managing Director of the first respondent, who had created his own personal property. We do not find any infirmity, illegality or irregularity in the orders sought to be impugned in the instant appeals.

13 As a sequel, the writ appeals are dismissed with costs quantified to be a sum of Rs.25,000/- payable to the Tamil Nadu Mediation and Conciliation Centre, within a period of four weeks from the date of receipt of a copy of this order. In default, the costs shall be recovered by way of Land Revenue. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Reserve Bank of India
Regional Office
Rajaji Salai, Chennai - 1
- 2 The Secretary
Ministry of Law and Company Affairs
Government of India
Shastri Bhavan, New Delhi
- 3 The Regional Director
Southern Region
Department of Company Affairs
Ministry of Finance
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- 8 The Chief Manager & Authorised Officer
Allahabad Bank, Adyar Branch
19, I Street, Padmanaba Nagar
Adyar, Chennai 600 020
9. Standard Chartered Grindlays bank
Haddows Road, Chennai-6.
10. The Recovery Officer-II, Debt Recovery Tribunal,
Krishi Bhavan, Hudson Circle, Nrupthunga Road,
Bangalore-1.

11. The Assistant Registrar, Tamil Nadu,
Mediation and conciliation Centre,
High Court, Madras.

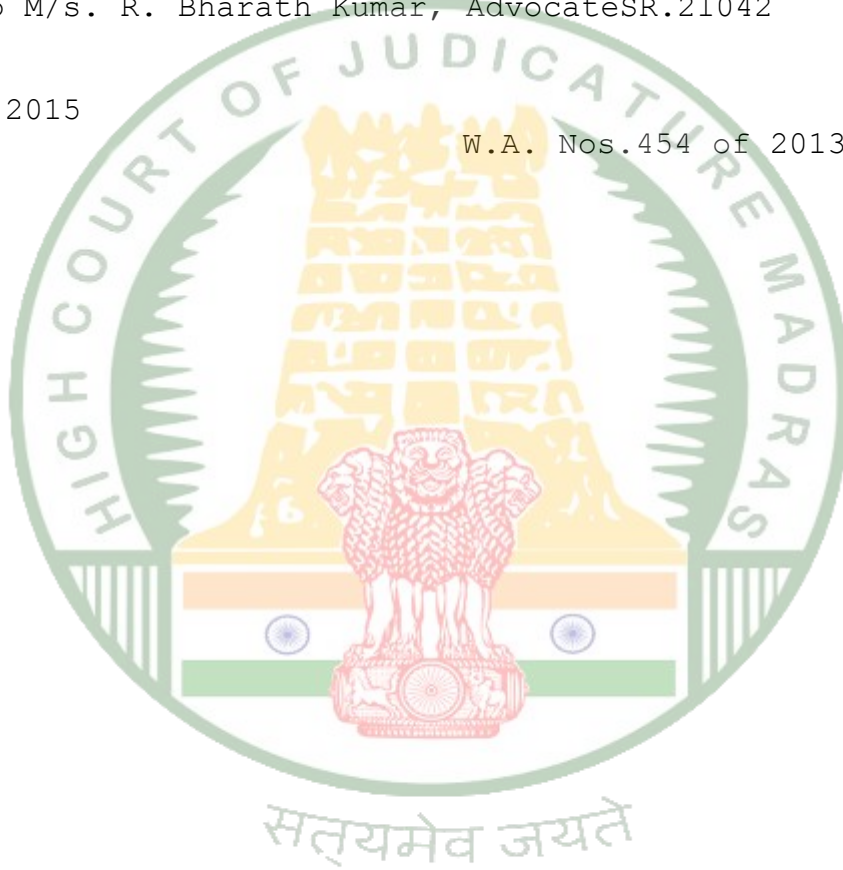
+ 2 ccs to M/s.A.L. Ganthimathi, Advocate SR.20929, 20931

+ 2 ccs to Mr.S. Sethuraman, Advocate SR.21176, 21177

+ 1 cc to M/s. R. Bharath Kumar, AdvocateSR.21042

SAI (CO)
EU 30.04.2015

W.A. Nos.454 of 2013 and 362 of 2015



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