



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2016

CORAM :

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.1107 of 2016

and

C.M.P (MD) No.6789 of 2016

- 1.The Secretary to Government,
Home Department,
Fort St., George, Chennai 9.
 - 2.The Competent Authority and
the Additional Commissioner
(Cinema and Irrigation) of
Land Administration,
Chepauk, Chennai 5.
 - 3.The Deputy Superintendent of Police,
Economic Offences Wing II,
Nagercoil, Kanyakumari District.
 - 4.The District Collector,
Kanyakumari District, Nagercoil.
 - 5.The District Revenue Officer,
Kanyakumari District.
 - 6.The Tahsildar,
Agastheeswaram Taluk,
Nagercoil,
Kanyakumari District.
- ... Appellants/Respondents.
- Vs.
- S.Radhakrishnan ... Respondent/Petitioner.

Appeal filed under Clause 15 of the Letters Patent against the Order dated 22.04.2013 made in W.P.(MD).No.3621 of 2009 on the file of this Court.

Prayer in WP(MD). 3621/ 2009 :

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records comprised in G.O.Ms.No.1055 Home (Courts-II A) Department dated 27.8.2004 on the file of the Secretary to



Government, Home Department, First Respondent herein and to quash the same as illegal.

For Appellants : Mr.M.Alagathevan,
Special Government Pleader.
For Respondent : Mr.M.Suri

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JUDGMENT

(Judgment of the Court was delivered by NOOTY.RAMAMOHANA RAO,J)

This writ appeal is preferred by the State calling in question the correctness of the judgment rendered by the learned single Judge in W.P.(MD)No.3621 of 2009 allowing the same.

2.The writ petitioner called in question the order passed by the State Government contained in G.O.Ms.No.1055, Home (Courts-II A) Department, dated 27.08.2004 ordering for interim attachment of certain properties belonged to the writ petitioner in terms and in accordance with Section 3 of the Tamil Nadu Protection of Interests of Depositors Act, 1997 (henceforth, for brevity referred to as 'the Act').

3.The essential reason that weighed with the learned single Judge for allowing the writ petition and for quashing the order of interim attachment passed by the State Government, referred to supra, was that, the writ petitioner was arrayed as Accused No.5, in C.C.No.77 of 2004, on the file of the Special Court under TNPID Act, Chennai. The trial Court convicted A-1 and A-2 and acquitted the A-3, A-4, A-5 and A-6. The State then carried the matter in appeal, against the said judgment, dated 27.04.2006 by preferring Crl.A.No.105 of 2010. That Crl.A.No.105 of 2010 was dismissed by this Court on 16.03.2011. During the course of the said judgment, it was clearly noticed that the Accused No.1-firm was in fact registered on 22.12.1989 with the Registrar of Firms, Kanniyakumari District and that the writ petitioner in the writ petition who was Accused No.5 has never collected any deposits on behalf of the first accused-firm nor was he associated in any manner with the management and affairs of the Accused No.1-firm. Though his wife, A-3 was the partner of A-1 but it was brought about that she retired from the said firm on 21.02.1990, that is, within the first three months period of the establishment of A-1-firm itself. Thus it is clearly brought out that the writ petitioner and for that matter, even his wife A-3 are not liable to be prosecuted under the Act. In that view of the matter, the acquittal granted to them by the trial Court has been upheld by this Court by dismissing Crl.A.No.105 of 2010 by judgment, dated 16.03.2011.

<https://hcservices.ecourts.gov.in/hcservices/> 4. When once, the prosecution launched against the writ petitioner including his wife has failed, now the only question which is to be examined is whether there is still a possibility of



sustaining the order of interim attachment passed under Section 3 of the Act.

5.Clause 2 of Section 3 of the Act, empowers the Government where it has reason to believe that the Financial Establishment is not likely to return the deposits, or make payment of interest, the Government may, in order to protect the interests of the depositors of such Financial Establishment, pass an ad-interim order of attachment of money or other property alleged to have been procured either in the name of the Financial Establishment or in the name of any other person from and out of the deposits collected by the Financial Establishment.

6.Therefore, the most important ingredient for the State Government to record its satisfaction before attaching the properties is that there must be reasonable material to come to a conclusion that the financial establishment may have procured the property in the name of any other person from and out of the deposits collected by it from others.

7.In the instant case, the properties which are sought to be attached as an interim measure are all procured long prior to 22.12.1989, the date on which A-1-firm has been registered as such. Therefore, there could not be any reasonable basis for one to assume that the properties which are now sought to be attached are the ones which have been procured from and out of the deposits collected on behalf of A-1-firm which has been registered on 22.12.1989. The properties procured by the writ petitioner in the years 1970, 1975 and 1981 could never have been reasonably construed as the ones which have been procured from and out of the deposits raised by the firm.

8.In such view of the matter, the view taken by the learned single Judge is not erroneous warranting any interference at our hands and hence, writ appeal fails and the same is dismissed accordingly. No costs. Consequently, C.M.P(MD)No.6789 of 2016 is closed.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

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6.The Tahsildar,
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+2CC to M/S.M.Suri, Advocate, SR.No. 43173

+1CC to the Special Government Pleader, SR.No. 43252

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