BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Writ Petition (MD). No.6317 of 2013
and
M.P.(MD).Nos.1 & 2 of 2013

V.Sathyabama ... Petitioner

Vs.

1.The State,
rep. By Principal Secretary to Government
Home (Police XIX) Department
Fort St. George, Chennai-9.

2.The Inspector General of Police,
Economic Offences Wing-II,
Chennai-40.
3.The Inspector of Police,
Economic Offences Wing,
Nagercoil,
Kanyakumari District. ... Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records pursuant to the impugned G.O.Ms.No.854 Home (Pol. XIX) Department dated 14.12.2011 passed by the 1st Respondent in so far as the petitioner's property to an extent of 10 cents purchased and registered in Document No. 3049/2011 on the file of Sub Registrar Office, Thiruvattar which comes under S1.No.7 in Schedule of properties and quash the same.

For Petitioner :Ms.S.M.Anusha for
Mr.D.Selvanayagam
For Respondents :Mr.V.Muruganandham
Addl.Govt. Pleader

O R D E R

Heard both sides.

2. According to the petitioner, he purchased the property in R.S.No.596/6A, Thiruvattar Village, Kalkulam Taluk, measuring

an extent of 10 cents, from one Sundarabai, W/o.Nelson residing at Mekkodu Village, Kalkuzhi Post, Madathuvilai for a valuable consideration of Rs.1,14,000/- by means of registered sale deed dated 10.10.2011 on the file of the Sub Registrar Office, Thiruvattar (vide document No.3049 of 2011). After purchasing the said land, her name was entered in the revenue records (including patta, chitta and revenue tax receipts) and she is in peaceful possession and enjoyment of the property.

3. The stand of the petitioner is that a case in Cr.No.3 of 2009 was registered by the third respondent/Inspector of Police, Economic Offence Wing, Nagercoil, Kanyakumari District against one Mathavan S/o.Krishna Pillai and 5 others under Section 3 of Tamil Nadu Protection of Interest of Depositors Act, 1997. At this stage, the Learned Counsel for the Petitioner submits that without adverting to documents, title of the property, the first respondent/the State rep. By Principal Secretary to Government, Home (Police XIX) Department, Chennai-9, had passed the impugned G.O.Ms.No.854, dated 14.12.2011, ad-interim order of attaching her property also as 7th and 8th items of the schedule mentioned property.

4. The primordial contention advanced on behalf of the petitioner is that even though the petitioner is a bonafide and genuine purchaser of the land, neither her property is involved in any such offence nor she is an accused in Cr.No.3 of 2009, registered by the third respondent. As such, she shall not be punished by way of the impugned Government Order passed by the first respondent.

5. The Learned Counsel for the Petitioner urges before this Court that it is the duty of the first respondent to verify the present title of the schedule mentioned properties at the time of passing of ad-interim attachment of the immovable property of the petitioner.

6. The other submission projected on the side of the petitioner is that the impugned G.O.Ms.No.854, Home (Police XIX) Department, dated 14.12.2011 is in negation of the principles of Natural Justice, Equity, Good Conscience and also not providing any opportunity to her.

7. Repelling the contentions advanced on behalf of the petitioner, it is the contention of the respondents that the writ petition filed by the petitioner is *per se* not maintainable both in Law and on facts. Further, the Learned Additional Government Pleader for the respondents projects an argument that it is the case of the prosecution that on 21.05.2009, one Rajagopalan Nair lodged a complaint against Mathavan and 5 others alleging that they canvassed deposits in the name of Krishna Bankers, having its branches at Kolvel, Thiruvattar & Punniam and collected huge

deposits from the complainant and other general public. As they failed to repay the deposits, a complaint was lodged before the third respondent/Inspector of Police, Economic Offence Wing, Nagercoil, Kanyakumari District and a case in Cr.No.3 of 2009 under Section 420 I.P.C and Section 5 of TNPID Act was registered.

8. It transpires from the investigation that A-1 Krishna Bankers at Punniam was in fact a family run institution of A-2 to A-6 and A-7 (died). A-2 and A-3 are husband and wife, A-4 is the mother of A-2, A-6 is the wife of A-5 and A-7 is the father of A-2. All of them are proprietors and partners of A-1 Bank and according to the respondents, they are responsible for the affairs of the Bank/A-1 institution. Moreover, the accused had defaulted to repay the amount together with interest. During investigation, complaints were received from 131 depositors amounting to an extent of Rs.2,02,69,832/- through 113 pass books and fixed receipts etc., Continuing further, it is the case of the respondents that from the year 1993, A-2 to A-7 started running the above said financial establishment and collected deposits in the name of A-1 Krishna Bankers at Kolvel by using money lending license No.20/93-94 and pawn broker licence No.23/93-94, 3/1999-2000. The aforesaid licences were registered in the name of Mathavan (A-2).

9. At this juncture, the Learned Additional Government Pleader for the respondents submits that A-6 (Smt.Visweswari T.K, W/o.Siva Kumar) filed W.P.No.13936 of 2012 before this Court and in paragraph No. 2 of the affidavit of the said petition, she admitted that her father Krishna Pillai was running a financial business by name M/s.Krishna Bankers at Kolvel and he expired on 31.12.2006. After his death, her brother A-2 Mathavan was running the business and as far as the Bank in Kolvel was concerned, the licence was in the name of her late father and the business licence at Thiruvattar and Arumani stood in the name of her brother Mathavan. Apart from that, A-2 (Mathavan) filed W.P.(MD). No.7419 of 2012, wherein, he had alleged that his personal properties, measuring an extent of 1 acre and 25 cents in Sy.No.90/1 and 1 acre and 3 cents in Sy.No.596/6 were leased out to Hari Sree Educational Trust, for the use of playground for the school, were also attached. Hence, there is a second claim for the same property. Furthermore, as per the lease deed dated 05.11.2003 and as per the will of the co-trustee Krishna Pillai, the above property is with the writ petitioner and she is in enjoyment and possession of the same and income from the scheduled property is enjoyed by her. The other accused A-3-Smt.K.V.Sunu, W/o.T.K.Madhavan, as trustee of the Hari Sree Educational Trust, filed O.S.No.468 of 2010 on the file of the Learned District Munsif Court, Padmanabhapuram mentioning her husband as the second defendant and the writ petitioner's husband Thiru.Narayanan Potri as first defendant and in the said suit, she prayed for the relief

of permanent injunction and included the same 1 acre 3 cents of property at Thiruvattar Village, Kalkulam Taluk as schedule of the property.

10. When that be the facts situation and when the said suit is pending, the first respondent (Thiru.Narayanan Potri) sold the property in favour of Sundarabai as per sale deed dated 25.07.2011, but within 3 months, the said property was again re-conveyed in favour of the present petitioner, who is none other than the wife of Narayanan Potri on 10.10.2011.

11. The version of the respondents is that Cr.No.3 of 2009 was registered on 21.05.2009. But the petitioner purchased the property on 10.10.2011 and once the property is ordered to be attached, till an appropriate order is passed, the same holds good and the main object of ordering attachment by invoking Section 4 (3) of the Act, 1997 is for the purpose of discharge of liability of the notified persons, who defaulted to pay the money to the depositors.

12. In substance, the crystalline case of the respondents is that in term of ingredients of Section 3(ii) of the TNPID (In Financial Establishment) Act, 1997, if the Government is satisfied that such financial establishment is not likely to return the deposits or to make payment of interest or to provide the service, the Government may in order to protect the interest of the depositors of such financial establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the financial institution or in the name of any other person etc.,

13. In this connection, one cannot remain oblivion of an essential fact that as per Section 7(6) of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997,

> "After investigation under sub-section (5), the Special Court shall pass an order (within a period of one hundred and eighty days from the date of receipt of an application under sub-section (3) of Section 4] either making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad-interim order of attachment:
>
> Provided that the Special Court shall not release from attachment any interest which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for re-payment to the depositors of such Financial

Establishment."

In fact, Section 7(7) of the Act enjoins as under:

"Where the ad-interim order of attachment is made absolute, on an application by the Competent authority, the Special Court shall direct the Competent authority to sell the properties attached, by public auction and realise the sale proceeds."

14. To put it succinctly, Section 7 of the TNPID Act specifies the procedures to be adopted by the Special Courts to make the order of ad-interim attachment of Government absolute or refuse to make absolute the order of ad-interim attachment of the Government. Besides this, sub-section (6) prescribed a time limit of 180 days to the Special Courts to pass an order under this Section to make an order of ad-interim attachment absolute or refuse to make an order of ad-interim attachment absolute. If the ad-interim order of attachment made by the Government is made absolute by the Special Court under sub-section (7) of Section 7 of the Act, the Special Court, on an application, made by the Competent authority, shall direct the said authority to sell the attached properties by public auction and realize the sale proceeds.

15. Section 8 of the TNPID Act concerns with the attachment of property of malafide transferees, where the financial establishment transfer its properties to a person with an intention to deceit the depositors and without proper consideration and if the value of the property of the financial establishment attached is not sufficient to repay the deposit amount to the depositors, the Special Court can make an attachment, after adhering to the procedures enshrined in Section 8 of the Act.

16. Be that as it may, in view of the fact that the writ petitioner claims in her writ petition that she is a bonafide purchaser of the subject property, this Court, taking note of the entire attendant facts and circumstances of the present case in an encircling manner, which floats on the surface of the case, comes to an irresistible and inescapable conclusion that the petitioner has an effective, viable and alternative remedy of approaching the Special Court/TNPID Court to assail the correctness of the G.O.Ms.No.854 Home (Pol. XIX) Department dated 14.12.2011, passed by the First respondent. Without resorting to filing of an application for raising the attachment or for such other relief, as the petitioner deems fit and proper, the filing of the writ petition by the petitioner, in the considered opinion of this Court, is only a futile one. Looking at from any angle, filing of the writ petition by the petitioner is *per se* not maintainable in the eye of Law, as opined by this Court. Viewed in that perspective, the writ petition *sans* merits.

17. In the upshot of detailed, qualitative and quantitative discussions, as mentioned supra, the writ petition is dismissed. It is abundantly made clear that the dismissal of the writ petition by this Court will not preclude the petitioner to file necessary application seeking necessary relief before the Special Court under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, in the manner known to Law and in accordance with Law. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

VS

To
1.The Principal Secretary to Government
The State of Tamil Nadu
Home (Police XIX) Department
Fort St. George, Chennai-9.

2.The Inspector General of Police,
Economic Offences Wing-II,
Chennai-40.

3.The Inspector of Police,
Economic Offences Wing,
Nagercoil,Kanyakumari District.

+1CC to Mr.D.Selvanayagam, Advocate Sr.No.32090
+1CC to Spl.Government Pleader Sr.No.32054

GJM/PEk/29.6.16-6p-6c

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