BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A(MD)Nos.542 & 543 of 2017
and
C.M.P.(MD) Nos.5783 and 5784 of 2017

The Competent Authority,
District Revenue Officer,
Madurai. ... Appellant in both C.M.As

Vs.

1.K.L.K and K.R.S
Small Saving Santha Chit Fund

2.K.L.Subramanian ... Respondents in both C.M.A's

<u>Prayer in CMA(MD)No.542 of 2017</u> : This Civil Miscellaneous appeal is filed under section 11 of Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 to set aside the order made in I.A.No.35 of 2016 in O.A.No.3 of 2001 on the file of the Special Judge (TNPID Act Cases,) Madurai dated 02.09.2016.

<u>Prayer in CMA(MD)No.543 of 2017</u> : This Civil Miscellaneous appeal is filed under section 11 of Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 to set aside the order made in I.A.No.44 of 2016 in I.A.No.35 of 2016 in O.A.No.3 of 2001 on the file of the Special Judge (TNPID Act Cases) Madurai dated 04.10.2016.

For Appellant : Mr.A.K.Baskarapandian, Spl.G.P.
For Respondents : Mr.P.T.S.Narendravasan for R1 in Sr.Stage
Mr.I.Saliyakhan, Caveator for R2

<u>COMMON JUDGMENT</u>

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

The competent authority constituted under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997/District Revenue Officer, Madurai, has filed these two Civil Miscellaneous Appeals. C.M.A(MD).No.542 of 2017 is directed against the order dated 02 September 2016 passed by the Special Judge (TNPID Act) Madurai allowing I.A.No.35 of 2016 in O.A.No.3 of 2001. C.M.A.(MD).No.543 of 2017 is directed against the order dated 04 October 2016 allowing I.A.No.44 of 2016 in I.A.No.35 of 2016 in O.A.No.3 of 2001.

2.Heard the learned Special Government Pleader for the appellant and Mr.P.T.S.Narendravasan, learned counsel for the first respondent.

3.K.L.K and K.R.S Small Saving Santha Chit Fund, Madurai is a financial establishment which committed default in discharging its obligations to its depositors numbering around 550. Crime No.12 of 1999 was registered on the file of the District Crime Branch, Madurai City, under section 5 of TNPID Act 1997 and 420, 406 of IPC r/w 120(b) IPC. Final report was filed against the said financial establishment and 16 others. The case was taken on file in C.C.No.36 of 2008 on the file of the Special Judge under TNPID Act Cases, Madurai. The Deputy Superintendent of Police, EOW (Financial Institutions) Madurai is the prosecuting agency.

4.The Government of Tamil Nadu issued G.O.Ms.No.130, Home (Courts IIA) Department, dated 14 February 2001 in exercise of the powers conferred by Section 3 of the said Act making an ad-interim order of attachment of as many as 10 items of immovable properties. The house situate at Door No.24, West Chithirai Street, Madurai is figuring at serial No.10 in the schedule to the said Government Order. It is said to be standing in the name of K.L.Subramanian who is shown as the fourth accused in the final report.

5.There are serious doubts as to whether the said K.L.Subramanian is the title holder of the said property. However, the order of attachment was made absolute on 21 January 2004 in O.A.No.3 of 2001 filed by the appellants herein. While so, one J.S.R.Satheeshkumar and J.S.Rajan, who are figuring as accused Nos.12 and 13 in C.C.No.36 of 2008 filed I.A.No.55 of 2008 seeking raising of the attachment of the said property. But the same was dismissed for default on 09 March 2016. They do not appear to have taken any steps for restoration of the said I.A. Thereafter, the financial establishment and the said K.L.Subramanian who describes himself as accused No.6 filed I.A.No.35 of 2016 before the Special Court, Madurai seeking permission to permit one Chandramoorthy to deposit a sum of Rs.40,00,000/- towards sale amount for the said Item No.10 covered in the aforesaid G.O.Ms.No.130, dated 14 February 2001.

6.In the said affidavit, the respondents herein pointed out that permission under section 7(7) of the TNPID Act, 1997 was granted for selling the attached properties and that one Chandramoorthy wanted to purchase Item No.10 covered in the said Government Order and that he wanted to deposit Rs.70,00,000/- before the Special Court and that to enable him to do so, permission was being sought by the respondents herein.

7.The competent authority/District Revenue Officer, Madurai filed a counter affidavit opposing the said prayer. The respondent in I.A.No.35 of 2016/appellant herein instead of questioning the very maintainability of the said I.A, rather chose to raise doubts regarding the valuation of the property. The Special Judge under TNPID Act cases allowed the said I.A.No.35 of 2016 in O.A.No.3 of 2001 in C.C.No.36 of 2008 by order dated 02 September 2016. Though the competent authority had formally opposed the prayer made by the respondents herein, the said I.A was not effectively contested before the Special Court. A reading of the order dated 02 September 2016 allowing the I.A indicates that the Government Pleader had made submissions only with reference to the guideline value of the property. Since the Government Pleader pointed out that the guideline value of the property is Rs.4,000/- per sq. ft., the Court fixed the property value at Rs.4,150/- per sq.ft. The sale price was quantified at Rs.91,30,000/-. The proposed purchaser was permitted to deposit the sale price within 10 days. Thereafter, the respondents herein took out I.A.No.44 of 2016. In the affidavit filed in support of the said I.A.No.44 of 2016, it was stated that the sale price fixed by the Special Court had been remitted in full by the proposed purchaser and that therefore, the attachment effected in respect of the said item No.10 ought to be raised. In the said I.A., a counter for the sake of counter was filed. The pleadings in I.A.No.44 of 2016 are similar to the pleadings in I.A.No.35 of 2016. The Special Judge by order dated 04 October 2016 allowed I.A.No.44 of 2016 and raised the attachment made in respect of the said property. In para 8 of the said order, it has been mentioned that the Government Pleader did not raise any serious objection to raise the attachment. The learned Government Pleader went one step ahead and stated that the accused/petitioners had paid the deposit amount to some of the depositors and that therefore he has no objections to sell the property to the proposed purchaser / third party and invited the Court to pass appropriate orders. It is specifically mentioned in the order dated 04 October 2016 that the accused withdrew the amount deposited by the proposed purchaser Chandramoorthy and settled the amount with the depositors/ witnesses in the criminal case. In view of the same, the Special Judge allowed the second I.A filed by the respondents herein. Questioning both the orders, these two Civil Miscellaneous Appeals have been filed.

8.The State of Tamil Nadu enacted Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (Tamil Nadu Act 44 of 1997). This Statute was enacted to protect the deposits made by the public in the financial establishments. The constitutional validity of the said Act was questioned. But, the challenge was repelled by the Full Bench of the Madras High Court in the decision reported in ***(2007) 2 CTC 207 – S.Bagavathy***

Vs. State of Tamil Nadu. The said Full Bench decision upholding the constitutional validity of the Act was sustained by the Hon'ble Supreme Court of India in the decision reported in ***(2011) 3 SCC 793 - K.K.Baskaran Vs. State.*** Section 3 of the said Act provides for attachment of the properties of the financial establishments or properties alleged to have been procured in the name of any other person from and out of the deposits collected by the financial establishment. After the Government made an ad-interim order of attachment, the competent authority shall apply to the Special Court constituted under the Act for making the ad-interim order of attachment absolute and for a direction to sell the property so attached by public auction and realize the sale proceeds. Section 7 of the said Act set outs the powers of the Special Court with regard to attachment, sale, realisation and distribution. Any person claiming an interest in the attached property is entitled to make an objection to the Special Court and seek raising of the order of attachment. The Special Court is empowered to investigate the said objection and take a decision. If the ad-interim order of attachment is made absolute, it shall direct the competent authority to sell the property so attached by public auction and realise the sale proceeds. Section 14 of the Act contains the overriding clause. It states that save as otherwise provided in the Act, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

9.In the present case on hand, though it is not sure as to who is the actual title holder, it is admitted that the subject item No.10 was purchased out of the deposits collected by the financial establishment. There was objection only from two of the accused in the first instance who filed I.A.No.55 of 2008. Their application was dismissed for default on 09 March 2016. Thereafter, it is only the respondents herein, who are figuring as the prime accused, who moved the Special Court seeking permission to enable a third party purchaser identified by them to deposit the sale price. No provision of law has been mentioned in the application seeking such a permission. In fact, such an application was patently not maintainable. It could not even have been numbered. It is strange that such an interlocutory application was numbered, taken on file and allowed. The Special Court under Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 is a creature of Statute. Its powers are therefore circumscribed by what is laid down in Section 7 of the Act. The competent authority alone can sell the attached properties in a public auction, realise the sale proceeds and equitably distribute among the depositors the sale proceeds after obtaining direction from the Special Court. The Statute does not contemplate any private negotiation between the accused and a third party purchaser. The orders allowing I.A.Nos.35 of 2016 and 44 of 2016 are manifestly illegal and without jurisdiction.

10.Faced with the legal position outlined above, Shri.P.T.S.Narendravasan, learned counsel for the first respondent contended that this Court ought not to interfere in view of the peculiar circumstances obtaining in this case. He pointed out that even though the competent authority obtained orders in the year 2005 to sell the properties in public auction, it could sell only three items viz., item Nos.5,7 and 9 and that too only for Rs.47,27,500/-. The sale consideration realised by public action was not disbursed till 2006. In other words, the said amount had been lying idle in the bank deposit and the depositors were not benefited. Further, no steps were taken after 2007 to sell the attached properties. Even though the proposed purchaser was willing to pay only Rs.70,00,000/- for the said Item No.10, when the Special Court enhanced the amount to Rs.91,30,000/-, the proposed purchaser promptly remitted the same and thus he proved his bonafides. Following such deposit by the proposed purchaser, attachment was raised on 04 October 2016 and sale deed was also registered in his favour on 20 October 2016. The said amount of Rs.91,30,000/- was withdrawn and the claims of a number of depositors were settled. Thiru.P.T.S.Narendravasan, learned counsel for the first respondent contended that the appellants are estopped from invoking section 7(4) of the TNPID Act. On earlier occasions, similar course of action i.e. sale through private negotiation was allowed by the Special Court and the same were not challenged. Only in the case of Item No.10, the appellants are raising objections. In any event, the money raised by such a sale went only towards settling the claims of depositors, which is the intent and object of the Statute and therefore no interference was called for in this case.

11.None of the contentions raised by the learned counsel for the respondents appeals to us. There is no estoppel against Statute. This is too well settled a proposition. Merely because the illegal orders passed by the Special Court on earlier occasions were not questioned by the competent authority by filing Civil Miscellaneous Appeals, it does not mean that subsequently passed illegal orders should also remain immune from the challenge. Its gratifying to note that atleast, now the competent authority has woken from deep slumber. In ***Nazir Ahamed Vs. King Emperor reported in AIR 1936 Privy Council 253***, it was laid down that the Rule that where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all is applicable to Courts also.

12.In the present case, there is a validly enacted law, which laid down the procedure for attachment of the properties of the financial establishments, their sale and disbursement of the sale proceeds. It is the competent authority who and who alone can sell the attached property and that too only by public auction and realise the sale proceeds. Private negotiation for selling the attached property at the instance of the accused is not at all contemplated. An application for selling the property thorough private negotiation at the instance of the accused is on the very face of it not maintainable. Therefore, the Special Court could not have granted the permission sought for by the respondents/accused.

13.Merely because permission was granted by the Special Court and that there was deposit by the purchaser pursuant thereto and that the same had been withdrawn and that some of the depositors were settled are no grounds for this Court to remain quiet. What is void in the beginning does not became valid either by passage of time or by subsequent acts.

14.The scheme of the Act contemplates equitable distribution of the sale proceeds among the depositors. In this case, there are as many as 550 depositors. It is not open to the accused to choose his favourites among the victims. Every provision of the Statute has been contravened in this case. We find the conduct of the respondents herein to be utterly fraudulent. It is unfortunate that the Government Pleader representing the appellant / competent authority before the Special Court did not contest the matter. I.A.No.35 of 2016 filed by the respondents herein was allowed on 02 September 2016. But the copy application was made only on 04 March 2017. The certified copy was made ready and delivered on 06 March 2017. Thereafter, the present civil miscellaneous appeal was filed on 21 March 2017. Similarly, I.A.No.44 of 2016 was allowed on 04 October 2016. In the said I.A. also, copy application was filed only on 04 March 2017.

15.We genuinely suspect that copy applications were deliberately not filed in time so as to enable the transactions mooted at the instance of the accused to get concluded. When the proposed purchaser Chandramoorthy remitted the sale price, it is not known as to how the accused was allowed to withdraw the said amount. It is also not known as to how a certain number of depositors out of total number of 550 were alone allegedly settled. In fact, Section 5A of the Act which provides for compounding of the offence states that compounding can be done with the permission of the Special Court on payment of the entire amount due to the depositors with or without interest. Settling the depositors behind back of the competent authority is totally alien to the statutory scheme set out in TNPID Act, 1997.

16.Thiru.P.T.S.Narendravasan learned counsel for the first respondent pleaded that this would cause undue hardship to Shri.Chandramoorthy, the purchaser in whose name the sale deed has already been executed. We are not moved by this plea. It is interesting to note that the said Chandramoorthy has not chosen to appear before this Court by filing any impleading application. Any buyer of an immovable property is expected to undertake a due diligence exercise. When a person purchases a property that too for a sum of Rs.91 lakhs, he would obviously have done his home work. He is aware that the competent authority had attached the property and that the attachment had since been made absolute. When the attachment had been made absolute, the only course open is to buy the property at a public auction conducted by the competent authority. We do not think the said Chandramoorthy is an innocent purchaser. There is obviously a collusion between the purchaser and the principal accused. The figure mentioned as the sale price in the deed offer does not represent the actual sale consideration. In any event, an act which is void ab-initio cannot get validated by subsequent events. We, exercising our appellate jurisdiction conferred under section 11 of the TNPID Act, hereby set aside the orders passed by the Special Court allowing the aforesaid Interlocutory Applications. Therefore, the consequences have to necessarily follow.

17.Several things in this case have deeply disturbed us. The delay in settling the claims of the depositors is scandalous. It shows the incompetency of the Competent Authority. We are shocked to note that the order permitting sale through private negotiation at the instance of the accused is not the first of its kind. There have been similar orders passed earlier by the Special Court. They have not been challenged. It is for the Home Secretary of Government of Tamil Nadu to look into this issue and take action against the erring officials. Similarly, we also call upon the Home Secretary, Government of Tamil Nadu to take note of the conduct of the Government Pleader, who appeared before the Special Court.

18.As regards of Thiru.A.Thiruneelaprasath, Special Judge under TNPID Act Cases, Madurai, we direct the Registry to place the relevant papers including a copy of this Judgment before the Honourable Chief Justice for perusal and for taking appropriate disciplinary action.

19.With these observations, the orders dated 02 September 2016 and 04 October 2016 in I.A.No.35 of 2016 in O.A.No.3 of 2001 and I.A.No.44 of 2016 in I.A.No.35 of 2016 in O.A.No.3 of 2001 are set aside and these Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Registrar General,
   Madras High Court,
   Madras.

2. The Home Secretary,
   Government of Tamil Nadu,
   St. Goerge Fort, Chennai.

3. The Competent Authority,
   District Revenue Officer,
   Madurai.

4. The Special Judge (TNPID Act Cases),
   Madurai.

Copy To:-

1. The Additional Registrar General,
   Madurai Bench of Madras High Court,
   Madurai.

2. The Section Officer,
   'B' Section,
   Madurai Bench of Madras High Court,
   Madurai. (For taking necessary action)

3. The Section Officer,
   'F' Section,
   Madurai Bench of Madras High Court,
   Madurai. (For taking necessary action)

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 66910
+ 1 CC TO Mr.P.T.S.NARENDRAVASAN, ADVOCATE IN SR No. 66462

SKM/ARUL
TE/JC/SAR-II : 07/09/2017 : 8P/10C

C.M.A(MD)Nos.542 & 543 of 2017 and
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