

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. No.13990 of 2015

and

M.P.Nos. 1 & 2 of 2015

and

W.M.P.No.760 of 2018

Kanchana .. Petitioner

Vs.

The Inspector of Police
Economic Offences Wing II
Vellore, Vellore District.

.. Respondent

Prayer Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to notice of the respondent in Namuna dated 21.01.2015 and quash the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mrs.A.Sri Jayanthi
Special Govt. Pleader

O R D E R

The notice issued by the respondent in Namuna dated 21.01.2015 is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner is the wife of late Sri.Elumalai, who was the owner of the land and commercial building comprised in Survey No.159 part, 160 part, Door No.205, Sathuvachary, Vellore District, admeasuring 1719 sq ft. The husband of the writ petitioner purchased the said property on 08.11.2004 vide document No.7767 of 2004 registered before the Joint Sub-Registrar, Vellore. The husband of the writ petitioner was running a finance company cum chit funds in the name and style of M/s.Sri Subhasri Finance and Chit Funds.

3.The husband of the writ petitioner was unable to re-pay the deposited amount collected from the members of the chit funds and the members of the chit funds have lodged complaints before various authorities to recover the Fixed Deposits and

Chit Subscription from the company and to repay the same to them.

4.It is an admitted fact that the husband of the writ petitioner was unable to repay his debts. The husband of the writ petitioner was unable to settle the chit amounts and the fixed deposit amounts collected from the public at large.

5.The learned Special Government Pleader appearing on behalf of the respondent states that nearly about 427 depositors are awaiting for the repayment and near about Rs.6,04,38,758/- is to be settled to these members.

6.The learned counsel appearing on behalf of the writ petitioner mainly contended that the respondent has no jurisdiction to issue the show cause notice. The respondent is the Inspector of Police, Economic Offences Wing II, Vellore, Vellore District and he has no authority to issue any such notice against the writ petitioner under the provisions of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (Tamil Nadu Act 44 of 1997) [herein after called as "the Act"].

7.Relying on Sections 3 and 4 of the said Act, the learned counsel for the petitioner states that the competent authority has to approach the Special Court constituted for the purpose of dealing with these cases and the respondent suo motu cannot issue any notice for evicting the premises belonging to the writ petitioner.

8.It is urged before this Court that now a tenant is in occupation of the premises, which belongs to the writ petitioner and the respondent cannot issue any such notice to the writ petitioner for eviction of the tenant and if at all, the respondent is at liberty to approach the Civil Court or the Special Court constituted for the purpose of evicting the tenant.

9.At the outset, the learned counsel for the petitioner is of an opinion that the competent authority has to approach the Rent Control Court or the Special Court for the purpose of evicting the tenant, who is in occupation of the premises belongs to the writ petitioner.

10.The learned Special Government Pleader is of an opinion that the husband of the writ petitioner was a defaulter and committed an offence under the provisions of the said Act. The writ petitioner is none other than the wife of the owner of the financial company and in that capacity, she is liable to repay on behalf of her husband. The property in question was

originally purchased by the husband of the writ petitioner and therefore, the same is liable to be attached.

11. This Court has to go into the provisions of the Act itself. The very object and purpose of the said Act is to protect the deposits made by the public in the financial establishments and the matters relating thereto. The Act 44 of 1997 came into effect, in order to protect the interests of the innocent depositors, who are investing their hard earned money with such financial institutions. There were offences committed by these financial institutions and the legislatures thought fit of enacting such law to control these financial institutions.

12. Section 2 provides definition. Section 2(1) defines 'Competent Authority' means "the authority appointed under Section 4 of the Act." Section 2(3) defines "Financial Establishment" and Section 2(4) defines "Government".

13. Section 3 defines "Attachment of properties on default of return of deposits" and the same reads as under:-

"Notwithstanding anything contained in any other law for the time being in force---

(i) where upon complaints received from a number of depositors, that any Financial Establishment defaults the return of deposits after maturity, fails to pay interest on deposit or fails to provide the service for which deposit has been made or

(ii) where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors,

and if the Government are 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 interests 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 Establishment or in the name of any other person from and out of the deposits collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, partner, director, manager or member of the said Financial Establishment or a person who was borrowed money from the Financial Establishment to the extent of his default or such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishment,

as the Government may think fit, and transfer the control over the said money or property to the Competent Authority."

14. Section 4 stipulates 'Competent Authority' and the same reads as under:-

"(1) The Government may, by notification, appoint [one or more authorities for such area or areas or such case or cases as may be specified in the notification] hereinafter called "The Competent Authority" to exercise control over the properties attached by the Government under Section 3.

(2) The Competent Authority shall have such other powers as may be necessary for carrying out the purposes of this Act.

(3) Upon receipt of the orders of the Government under Section 3, the Competent Authority shall apply within [thirty days] to the Special Court constituted under this Act for making the ad-interim order of attachment absolute.

(4) An application under sub-section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposit, and the details, if any of persons in whose name such property is believed to have been invested or purchased out of the deposits or any other property attached under Section 3.

15. To deal with the grounds raised on behalf of the writ petitioner, this Court has to look into the ingredients stipulated under Section 4 of the said Act. The Government may by notification appoint one or more authorities for such area or areas or such case or cases as may be specified in the notification hereinafter called the Competent Authority to exercise control over the properties attached to the Government under Section 3 of the Act.

16. Thus, even as per the learned counsel for the petitioner, the property must be attached to the Government at the first instance, then the competent authority appointed under the provisions of section 4 of the said Act can act upon accordingly. There is no dispute in respect of this proposition and the provisions of law.

16. The learned Special Government Pleader submitted an order passed by the Government in G.O.Ms.No.78 Home (Police XIX) Department dated 01.02.2016. The Government order is a notification, issued in respect of the financial company belongs

to the husband of the writ petitioner. The said G.O., Government Order has categorically enumerated that "now, therefore in exercise of the powers conferred by Section 3 of the Tamilnadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (Tamil Nadu 44 of 1997), the Governor of Tamil Nadu hereby makes an ad-interim order attaching the immovable properties standing in the name of the proprietors of Messers Sri Subasri Finance and Chit Funds, Vellore District as specified in the Schedule to this order and transfers, the control over the said immovable properties to the Competent Authority, namely, the Competent Authority and District Revenue Officer, Vellore District appointed under the said Act.'

17. In para no.2 of the said G.O., the Competent Authority and the District Revenue Officer, Vellore District are requested to pursue further action in accordance with the procedures laid down in Sub-Sections 3 and 4 of Section 4 of the said Act and also the formalities prescribed under the provisions of the Act. The Special Public Prosecutors, Special Court for the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (Tamil Nadu Act 44 of 1997), Chennai District, is requested to render necessary assistance to the Competent Authority for filing the application before the said Special Court.

18. Now, the question in respect of jurisdiction is to be considered.

19. Section 3 of the Act provides that the Government has to attach the property and a competent authority also to be appointed under Section 4. On a perusal of the Government Order issued vide G.O.Ms.No.78 dated 01.02.2016, the property was already attached by the Government under Section 3 of the Act and more specifically, by the order of the Governor of the Tamilnadu. Thus, the procedures as contemplated under Section 3 of the Act in respect of attachment of the property has been complied with. In respect of Section 4, para 2 of the Government order states that the District Revenue Officer and another Officer are appointed as Competent Authorities for the purpose of continuing of further action under the provisions of the Act. Thus, the very contention made on behalf of the writ petitioner is that the Government has to attach the property under Section 3 of the Act has been complied with by the respondent vide G.O.Ms.No.78 dated 01.02.2016.

20. Under these circumstances, the contention made in this regard is only presumption and on a perusal of the Government

order, it is made clear that by invoking Section 3 of the Act, the Governor of Tamil Nadu makes an ad-interim order stands in the name of the M/s.Sri Subasri Finance and Chit Funds, Vellore, Vellore District. This Court is convinced in respect of the procedures followed by the Government and the competent authority for the purpose of attaching the properties and pursuing the matter for settling the depositors/members.

21.In view of the fact that there is no infirmity in respect of the actions taken by the Government as well as the competent authority appointed by the Government under the provisions of the Act. There is no impediment for proceeding further in respect of the actions under the provisions of the Act. Accordingly, the competent authorities appointed by the Government is empowered to proceed further by filing necessary application before the Special Court and to proceed all further actions under the provisions of the Act and Rules, in order to realize the deposit amounts and to settle the same in favour of the customers /members. If at all the petitioner has got any other grievances, it is left open to the writ petitioner to defend their case before the appropriate Special Court in the application filed by the competent authorities in this regard. It is made clear that the competent authorities should not waste time in respect of pursuing the action. The competent authorities must be vigilant and prudent in pursuing the matter without any lapse of time in view of the fact that the deposits already suffered greater mental agony and directed to pursue the matter and attach the property and take all necessary action within a short span of time.

22.With these direction, this Court is of an opinion that the writ petitioner has not made out any acceptable grounds for the purpose of considering the case. Even otherwise also it is a notice, which is under challenge in this writ petition. No writ proceedings can be entertained against a notice in a routine manner. Judicial review against a notice is certainly limited. Even if the petitioner is aggrieved from and out of such notice, it is left open to her to redress her grievances in the manner known to law before the Special Court concern.

23.In the present case, the competent authorities are prevented from filing even an application before the Special Court, which caused greater mental agony to the innocent depositors, who invested hard earned money in a financial company, which was being run by the husband of the writ petitioner. Under these circumstances, this Court cannot show any leniency and the competent authorities are bound to act without any lapse of time.

24. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

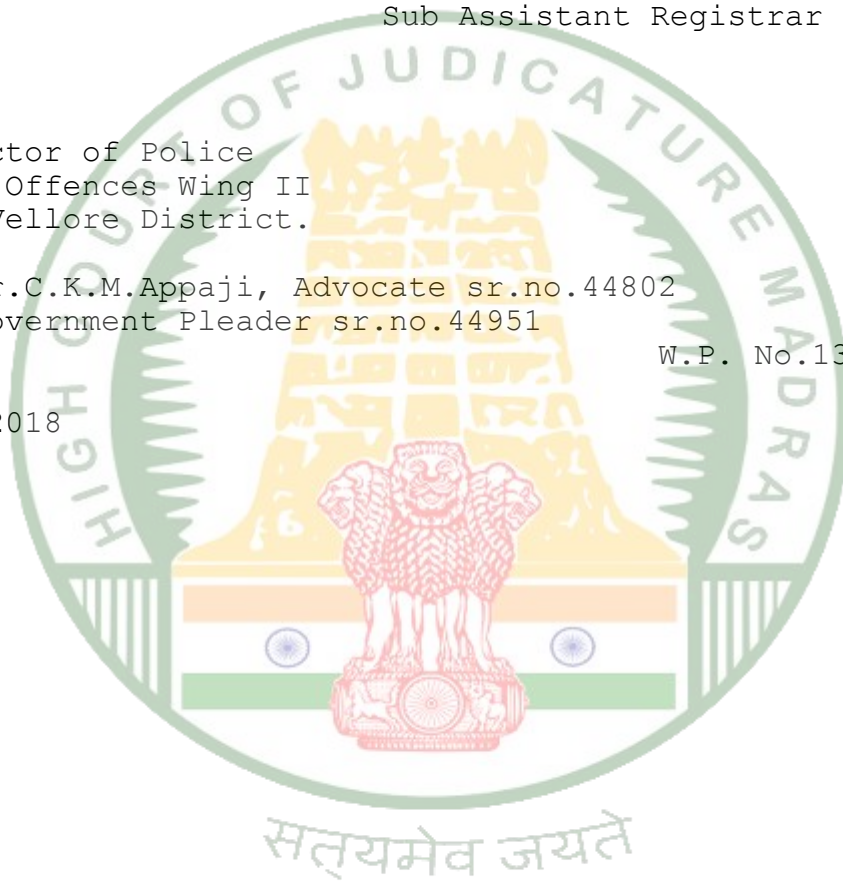
To

The Inspector of Police
Economic Offences Wing II
Vellore, Vellore District.

+1cc to Mr.C.K.M.Appaji, Advocate sr.no.44802
+1cc to Government Pleader sr.no.44951

W.P. No.13990 of 2015

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