IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.8282 & 8283of 2013
and
M.P.No.2 & 3 of 2013

1.S.P.Subburaman

2.S.Rajalakshmi

..Petitioner in both WP.s

vs

1.The State of Tamil Nadu,
rep.by its Secretary to Government,
Home (Courts IIA) Department,
Fort St.George,
Chennai 600 009.

2.The Competent Authority and
Special Commissioner,
Commissioner Land Administration,
Chepauk, Chennai-600 005.

3.The Collector of Chennai City
Rajaji Salai, Chennai 600 001.

4.The District Revenue Officer,
Chennai District,
Chennai-600 001.

5.The Tahsildar,
Purasawakkam-Perambur Taluk,
chennai-600 006.

6.The Inspector of Police,
Economic Offences Wing,
Chennai.

.. Respondents in both WP.s

Prayer in W.P.No.8282 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in issuance of G.O.Ms.No.554 Home (Courts IIA)

Department dated 27.06.2002, and quash the same in so far as it relates to property bearing door No.19, Second Lane, Mottai Thottam, Washermenpet, Chennai-21 and forbear the respondents from in any manner interfering with our rights in respect of the property purchased by the petitioners.

Prayer in W.P.No.8283 of 2013: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 4th respondent in issuance of G.O. Order dated 19.11.2012 in RC.No.J1/43329/2009 and quash the same.

For Petitioner in both W.Ps. : Mr.S.R.Raghunathan

For Respondents in both W.Ps. :Mr.A.Srijayanthi
Special Government Pleader
for R1 to R6

C O M M O N   O R D E R

The Government order issued in G.O.Ms.No.554 Home (Courts II A) Department dated 27.06.2002, is under challenge in this writ petition. Further direction is sought for to forbear the respondents from in any manner interfering with the rights of the writ petitioners in respect of the property purchased by the petitioners.

2. The learned counsel appearing on behalf of the petitioners made a submission that the writ petitioners are the absolute owners of the property situated in Door No.19, Second Lane, Mottai Thottam, Washermanpet, Chennai-21. The said property was purchased by the writ petitioners by virtue of Sale Deed executed on 09.06.2009. The petitioners are no way connected with the transaction or any fraudulent activities of one Mr.N.M.Karunakaran, who is the accused in the matter of collecting huge deposit from the public at large and not repaid the same through his financial institution.

3. At the outset, the learned counsel appearing for the petitioners submitted that Patta was granted in favour of the writ petitioners pursuant to the Sale Deed executed in the year 2009 and the same is now cancelled by the District Revenue Officer, who has no competency to do so. Therefore, the cancellation of patta cannot be done in view of the fact that the writ petitioners are the bonafide purchaser and purchased the property by paying valuable consideration to the Vendor. In these circumstances, the order of the Government issued in

respect of attaching the property in G.O.No.554 dated 26.07.2002 is bad in law.

4. The learned counsel appearing for the petitioners urged this Court by stating that the writ petitioners are the innocent purchaser of the property described in the present writ petitions. They are no way connected with the financial institution administered by the said Mr.Karunakaran or his family members. The purchase is independent and unconnected with the affairs of the financial institution administered by Mr.Karunakaran, who is accused in the criminal case. Thus, no action can be taken against the writ petitioners.

5. The learned Special Government Pleader appearing on behalf of the respondents opposed the contention, at the outset, by stating that the huge amount of deposits were collected from the public at large by these financial institutions, however the amount of deposits were not repaid. On receipt of thousand and thousands of complaints from such depositors, cases were registered by the Central Crime Branch, Chennai and the affairs of these financial Institutions were directed to be investigated by the economic offences wing and they continued the investigation and at the time when the complaint was registered, there was no special Act in force. They registered the case under the provisions of the Indian Penal Act and proceeded the investigation. In view of the fact that there were large scale of such cheating by these financial institutions from the public, the Government thought fit to enact a special law and accordingly, the TNPIT Act was enacted to deal with such financial institutions who acquired huge amount of deposit from the public and failed to repay the same as per the commitment. Thereafter, the police officials are empowered to deal with these kind of cases by following the TNPIT Act. Accordingly, Special Court was also constituted to try all these cases.

6. The learned Special Government Pleader made a submission that one Mr.Karunakaran and 11 others were the accused in the criminal case registered against the financial company for cheating about 14,706 depositors who deposited their hard earned money to the tune of Rs.25,00,00,000/-. It is contended that the property which is described in the present writ petition was originally purchased by the grand father of Vadivelu on 18.10.1965, who inturn settled the property in favour of his grand son viz., Vadivelu on 29.05.1987. The writ petitioners had purchased the said property from Mr.Vadivelu in the year 2009 and therefore the writ petitioners are connected with the family of Mr.Karunakaran.

7. The learned Special Government Pleader opposed the contention by stating that the Vadivelu is none other than the

son of Mr.Karunakaran, who is the accused and his mother and vadivelu have joinly executed the General Power of Attorney in favour of Mr.Somaraj, son of the petitioners on 17.03.2008. Thus, it is made clear that the property originally belonged to the son of the accused Mr.Vadivelu and the accused, his mother and his son Vadivelu jointly executed the General Power of Attorney in favour of Somaraj, who in turn executed the Sale Deed in favour of the writ petitioner. It is pertinent to note that the General Power of Attorney holder, Mr.Somaraj is none other than the son of the writ petitioner. Therefore, this Court is of the opinion that there is a chain of event which creates doubt on the mind of the Court that the accused, in connivance with these persons, have transferred the property in favour of the writ petitioner, in order to escape from the clutches of law. However, the officials so far have not investigated these aspects and initiated appropriate action under the law.

8. The fact remains that the Government has passed an interim order of attachment on 27.06.2002. Subsequently the interim attachment made by the Government was made absolute in the year 2004. The possession of the said property was taken over by the District Revenue Officer on 08.05.2007 itself and the Sale Deed executed in favour of the writ petitioners was on 0906.2009. Thus, it is unambiguous that the property in question was attached by the Government in the year 2002 and the possession was taken by the District Revenue Officer in the year 2007 and the Sale Deed was executed in the year 2009. Thus there is a possibility of motive on the part of the accused in connivance with all other persons who are involved in such transaction in respect of the property which was already attached by the Government under the provisions of the TNPIT Act. All these aspects ought to have been looked into by the competent authorities.

9. The very conduct of the Investigating Officials are also to be considered. When the Investigating Officials are aware that the property was already attached by the Government in the year 2002 and the possession was taken in the year 2007 and the Sale Deed was registered in favour of the writ petitioners in the year 2009, if the order of attachment was issued by the Government, then the Investigating Officials ought to have enquired into the matter and find out whether there is any offense committed by these persons. However, they are sitting as mute spectators. This Court is of an opinion that the conduct of the public officials is also deprecated. This Court is absolutely not satisfied with the manner in which the investigation was conducted. When the poor depositors, deposited their hard earned money running around 25 crores, the depositors waited with hope that they will get back their monies. Contrarily, the financial institutions cheated the poor

depositors and now dealing with their properties in a different manner so as to escape from the clutches of law. The officials who are responsible to deal with such cases, must be efficient and prompt in initiating action against all such persons, who all are dealing with such properties in different manner. Modus Operandi of these transactions are also to be scrutinized, only then, they can identify the culprits and realizing the money and repay the same to the depositors under the provisions of the Act. When the Government enacted the TNPIT Act for the purpose of redressing the grievances of the depositors, the competent officials are duty bound to ensure that the letter and spirit of the Act is implemented and the poor depositors get back their deposited money from these financial institutions.

10. In these circumstances, question of issuance of Patta does not arise at all, in view of the fact that the property was attached by the Government in G.O.Ms.No.554 dated 27.06.2002. When the property itself was attached by the Government pursuant to the Act, question of grant of Patta or cancellation of Patta would not arise at all. However, it is left open to the writ petitioners to establish their civil right, if any, before the competent forum. This apart, the present writ petition in W.P.No.8282 of 2013 is filed challenging the order of attachment issued by the Government in G.O.Ms.No.554 dated 27.06.2002. It is pertinent to note that the writ petition itself was filed on 12.03.2013 after a lapse of about 11 years from the date of passing of the order. The writ petition is liable to be rejected on the ground of latches also. There is a huge delay of about 11 years even for challenging the order passed by the Government. Sale Deed was executed in the year 2009 after an order of attachment and thereafter, the writ petition is filed, to circumvent all these issues and to see that the property belongs to the family of the accused is protected. The conspiracy and connivance of those persons are to be investigated by the competent officials. The writ petition is filed after a lapse of about 11 years from the date of attachment of the property. Therefore, the issuance of cancellation of Patta which is consequential need not be gone into.

11. For all these reasons, this Court is of an opinion that gross injustice has caused to the poor depositors who deposited their hard earned money in these private institutions/Companies. Even after a lapse of two decades, the depositors are unable to realise their deposited money and almost they have lost their hope in getting back their money. This Court is able to visualize their frustration in the legal system as well in the investigation system prevailing in this Nation. The officials and the Courts are bound to see such grievance of the poor depositors are dealt is accord with law without any further delay and the actions are prompt in all

these aspects. Therefore, it is an unfortunate case where these financial institutions / companies were closed in the year 1996 and the depositors have lost their hope even to get back their monetary benefits after a lapse of about 2 decades. This being the factum of the case, this Court is inclined to pass the following direction in the interest of justice to protect the hardship caused to these poor depositors.

[i] The relief as such sought for in this writ petition to quash the G.O.Ms.No.554 dated 27.06.2002 cannot be granted and the relief sought for in W.P.No.8283 of 2016, which is consequential also deserves to be rejected. Thus, the claim of the writ petitioners as prayed for is rejected.

[ii] All the respondents are directed to conduct proper investigation into the transaction of the properties and the modus operandi and the ingenuity of all these transactions and thereafter, initiate appropriate action against all the persons who have committed illegalities or offence.

[iii] The competent authority/respondents are bound to act strictly by continuing the proceedings before the Special Court constituted under the TNPIT Act and initiate further steps to realize the money and pay the depositors who are waiting for long years.

12. The respondents shall ensure that such action are taken promptly without causing any undue delay. The respondents / competent authorities are empowered to proceed in accordance with law to realise the amount from and out of the properties attached and disburse the same to the depositors who are longing to get back their deposited money.

13. The writ petitions stand disposed of with the above directions. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Home (Courts IIA) Department,
Fort St.George,
Chennai 600 009.

2.The Competent Authority and
Special Commissioner,
Commissioner Land Administration,
Chepauk, Chennai-600 005.

3.The Collector of Chennai City
Rajaji Salai, Chennai 600 001.

4.The District Revenue Officer,
Chennai District,
Chennai-600 001.

5.The Tahsildar,
Purasawakkam-Perambur Taluk,
chennai-600 006.

6.The Inspector of Police,
Economic Offences Wing,
Chennai.

+1cc to Mr.S.R.Raghunathan, Advocate, S.R.No.50460

+1cc to the Government Pleader, S.R.No.50460

W.P.Nos.8282 & 8283of 2013

MR(CO)
GSP(29/08/2018)