

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. NO.21876 OF 2008

S. Lakshmi Bai

... Petitioner

Vs

1. The District Revenue Officer,
Chennai District,
Chennai.
- 2) Southern Enterprises,
Represented by
Respondent No.2 P. Venkatesan
- 3) P.Venkatesan
- 4) P.Mohan
- 5) Jayakumar
6. P.Manavalan
7. V.Revathi
- 8) G.Sivakumar
- 9) Ranganatha Naidu
- 10) Zakir and Nuseema Begum
- 11) Sathayendra Kumar
- 12) Vasundra Devi
- 13) Sathyanarayanan
- 14) R.Suresh
- 15) Shyam Sundar Rao
- 16) Jamuna Bai

... Respondents

* RR2 to 7, 9,10,13, 14 & 16 - Dismissed vide
Court order dated 21.12.2009

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the order dated 17.10.2003 passed in O.A. No.6 of 2001 on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors Act at Chennai and quash the same insofar as it relates to the property of the petitioner situated at Harichandrapuram Village, Tirutani Taluk, Chengai Anna District, Comprising Survey No.195 measuring 5 acres and bounded on the North by Survey No.194, South by stream

East by Survey No.2 and West by property belonging to Mrs.Periya Thayammal.

For petitioner : Mr.A.R.Karunakaran

For respondents : Mr.K.Ravikumar
Additional Govt. Pleader for R1
Mr.S.L.Sudarsanam for R11
No appearance for R15
R8 and R12 - Died - steps due

ORDER

This Writ Petition has been filed challenging the order of attachment of the petitioner's property dated 17.10.2003 passed in O.A. No.6 of 2001 on the file of the Special Court under the Tamil Nadu Protection of Interest of Depositors Act at Chennai.

2. It is the case of the petitioner that she is the absolute owner of the property at Harichandrapuram Village, Tiruttani Taluk, Chengai Anna District, comprised in Survey No.195 (part) measuring 5 acres and bounded on the North by Survey No.194; South by stream; East by Survey No.2 and West by property belonging to Mrs. Periya Thayammal, she having purchased the same under a Registered Sale deed dated 15.11.1990 registered as document No.2196 of 1990 in the office of the Sub Registrar, Thiruvallangadu from one G.Balasubramanian.

3. According to the petitioner, she is a bonafide purchaser having paid the market value of the property to G.Balasubramanian, her vendor. According to the petitioner, she came to know that the second respondent a Finance Company, which is run by respondents 3 to 16 have defaulted in the return of deposits made by the depositors and the Government received complaints against respondents 2 to 16 that they have defaulted in return of deposits after maturity. Consequently in exercise of powers under Section 3 of the Tamil Nadu Protection of Interest of Depositors Act, 1997 (hereinafter referred to as TNPID Act, 1997) the properties belonging to the said concern and its owners were attached by the Government of Tamil Nadu.

4. Further, the petitioner states that the Government of Tamil Nadu passed G.O. Ms.360 (Home) Courts, II A, Department, dated 03.04.2001 and pursuant to the said G.O., the property belonging to the respondents 2 to 16 were attached. According to the petitioner one such property shown as item No.6 in the said G.O. is a vacant land in Survey No.195 measuring 13.72 acres in Harichandrapuram Village, Tiruttani Taluk is absolutely owned by the petitioner.

5. According to the petitioner, she has no connection whatsoever with the respondents 2 to 16. She has also stated in the Writ Petition that she understands that the 15th respondent, who is also running the second respondent's Finance Company owned lands in Survey No.195, Harichandrapuram Village, Tiruttani Taluk, measuring an extent 8.71 acres out of the entire extent of 13.72 acres.

6. According to the petitioner, she has purchased the balance 5 acres in the said Survey No.195, Harichandrapuram Village, Tiruttani Taluk. According to her by oversight, the Government of Tamil Nadu have attached her property also believing that her property is also owned by the respondents 2 to 16. Therefore, in such circumstances, the petitioner has filed this writ petition seeking to quash the final order of attachment, dated 17.10.2003 passed by the Special Court under the TNPID Act, 1997 under Section 7 of the said Act.

7. A counter affidavit has been filed by the 1st respondent, who is the competent authority. It is stated in the counter that the subject property belongs to the second respondent, as per the judgment and decree, dated 28.07.1993 passed by the District Munsif Court, Tiruttani in O.S. No.211 of 1993. Therefore, according to the first respondent, there is no illegality in the attachment effected on the property which is the subject matter of this writ petition.

8. Heard Mr. A.R.Karunakaran, learned counsel for the petitioner and Mr.K.Ravikumar, learned Additional Government Pleader for the 1st respondent.

Discussion :

9. Admittedly, the petitioner has purchased the aforementioned property under a Sale deed, dated 15.11.1990 registered as Document No.2196 of 1990 in the office of the Sub Registrar, Thiruvallankadu.

10. As seen from the Sale deed, the petitioner has purchased the land measuring 5 acres out of 13.72 acres in Survey No.195 at Harichandrapuram Village, Tiruttani Taluk, Chengai Anna District. The petitioner has also produced before this Court, the patta (Patta No.1009) standing in the name of G.Balasubramanian, the petitioner's vendor, who sold the property to her under a Sale deed dated 15.11.1990.

11. In the counter affidavit, the first respondent has not disputed that there is a valid sale deed standing in the name of the petitioner for the land measuring 5 acres in Survey No.195 at Harichandrapuram Village, Tiruttani Taluk, Chengai Anna

District. They have also not disputed the issuance of patta in favour of the petitioner's Vendor G.Balasubramanian.

12. Section 7 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 reads as follows :

7. Powers of Special Court regarding attachment, sale, realisation and distribution

1. Upon receipt of an application under section 4, the Special Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government under section 3, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

2. The Special Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

3. Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Special Court at any time before an order is passed under sub-section (4) or sub-section (6).

4. If no cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass an order making the ad-interim order of attachment absolute.

5. If cause is shown or any objection is made as aforesaid, the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects, the Special Court shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908, (Central Act V of 1908) and any person making an objection shall be required to

adduce evidence to show that at the date of attachment he had some interest in the property attached.

6. 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.

7. 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.

8. The Special Court shall, on an application by the Competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors, of the money attached or realised out of the sale under sub-section (7).

13. As seen from the aforesaid Section of TNIPID Act, statutory requirements have to be complied with by the competent authority before effecting the attachment. The Special Court will have to issue show Cause notice to the property owner, prior to attachment. On receipt of the show cause notice, the property owner has been given the right to raise objections regarding the said show cause notice.

14. In the case on hand, as seen from the counter affidavit filed by the first respondent / competent authority, there is no reference to the issuance of any show cause notice to the petitioner by the Special Court. The first respondent / competent authority has also not produced before this Court the show cause notice that may have been sent to the petitioner prior to attachment. Sufficient time was also given to the

respondents to produce the same, if they had sent one such show cause notice to the petitioner. Therefore, it can be inferred that the first respondent / competent authority has not issued any show cause notice to the petitioner prior to attachment of petitioner's property under the TNPID Act, 1997.

15. Further, it is the case of the petitioner that she is no way connected with the second respondent Finance Company. She has also produced the sale deed dated 15.11.1990 registered as document No.2196 of 1990 standing in her name and she has also produced patta standing in the name of her vendor. The first respondent has also not disputed the Sale deed as well as the patta.

16. From the above, it is clear that the respondents have not complied the statutory requirements as contemplated under Section 7 of the TNPID Act as the Special Court has not issued any notice prior to effecting attachment of the property owned by the petitioner.

17. It is the case of the first respondent that only based on the Civil Court decree passed in O.S. No.211 of 1993 passed by the District Munsif Court, Tiruttani, they effected attachment and only on that basis, they came to know that the second respondent is the owner of the subject property. Admittedly, the petitioner is not a party to the said proceedings. Having produced the Sale deed dated 15.11.1990 standing in her name as well as the patta standing in the name of her previous owner, the respondents cannot rely upon the Civil Court judgment which has not gone into the title of the property. Further, the said decree was obtained subsequent to the purchase of the property by the petitioner in the year 1990.

18. Considering all these factors, this Court is of the considered view that the impugned order of attachment dated 17.10.2003 passed by the Special Court, is not in accordance with law, as it has not complied with the statutory requirements as contemplated under Section 7 of the TNPID Act, 1997.

19. In an identical matter, this Court by its order dated in the case of R. Karuppusamy vs. Competent Authority / District Revenue Officer, Erode and others reported in 2012 (4) CTC 201 in the case of C.Sukumaran and another versus the Competent Authority and District Revenue Officer, Triuvallur and another reported in 2013 1 LW 416 held that when show cause notice has not been issued as per Sections 4 and 7 of the TNPID Act, 1997, the order of attachment of property is bad in law.

20. This Court is in agreement with the view taken by the learned Single Judges in the aforesaid orders. Accordingly, the impugned order dated 17.10.2003 is hereby quashed insofar as the petitioner's property viz., 5 acres in Survey No.195, Harichandrapuram Village, Tiruttani Taluk is concerned and the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

vsi2

To

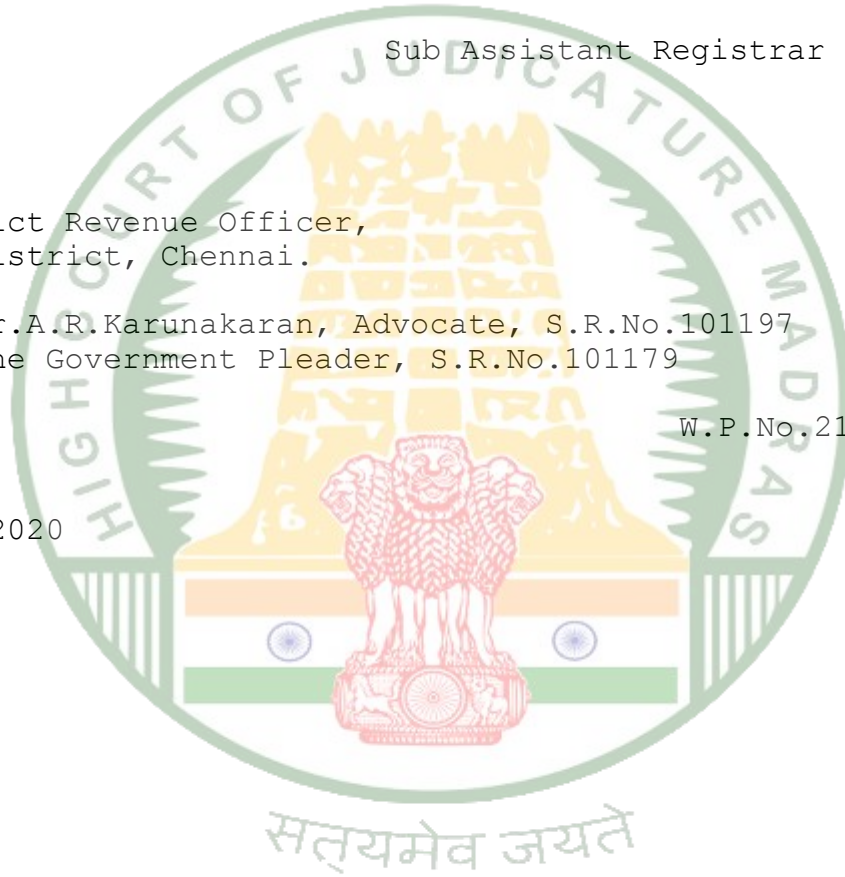
The District Revenue Officer,
Chennai District, Chennai.

+1cc to Mr.A.R.Karunakaran, Advocate, S.R.No.101197

+1cc to the Government Pleader, S.R.No.101179

W.P.No.21876 of 2008

RJI (CO)
CS/31/01/2020



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