

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.13113 of 2017 and 26579 of 2018
and W.M.P.Nos.14008 of 2017,
30948 and 37227 of 2018

C.Sumathi

.. Petitioner in both W.Ps

Vs

1. The Competent Authority
District Revenue Officer,
Coimbatore.

2. The State rep by
The Deputy Superintendent of Police,
Economic Offences Wing-II,
Coimbatore.

.. Respondents 1 & 2 in
both WPs

3. S.Thirumavalavan
4. S.Muthusamy
5. K.chinnasamy
6. K.Kalichamy
7. K.Sakthivel
8. S.Krishnasamy
9. Rajammal
10. A.Ramasamy
11. K.Kurunthachalam
12. V.lingappan
13. V.G.Varadharaj
14. S.Velusamy
15. S.Arunachalam
16. K.Ranagasamy
17. A.Chenniappan
18. R.Kannaki
19. S.Ragasamy
20. K.Sarojini
21. M.Natarajan
22. U.R.rangaamy
23. S.Natarajan
24. T.M.Velusamy
25. R.Mani
26. K.V.Kandasamy

27. K.Saraswathi
28. K.Kuppusamy
29. A.Parvathi
30. V.S.Vellingiri
31. K.Duraisamy
32. V.M.Jegadesan
33. B.Kumar
34. S.Ramasamy
35. M.Nandhakumar
36. Kurunthachalam
37. K.Ravichandrn
38. K.Kaliammal
39. A.Sengaliappan
40. A.Jayaprakash
41. S.Kuppusamy
42. R.Shanmugam
43. V.P.Ramasamy

R3 to R43 pleaded as per
order dt 25.7.2017 in
WMP.No.17497/17
in WP.No.13113/17.

..Respondents 3-43 in W.P.No.13113/2017

Prayer in W.P.No.13113 of 2017: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to disburse the amount lying in the credit of 1st respondent to distribute the amount to the depositors in C.C. No.8 of 2008 on the file of the Honourable Special Judge (TNPID Act) Coimbatore.

Prayer in W.P.No.26579 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to quash the order passed by the first Respondent in Na.Ka.47149/2001/II dated 2.11.2017 and consequentially to direct the 1st Respondent to settle the remaining depositors in C.C.No. 8 of 2008 on the file of the learned Special Judge (TNPID Act), Coimbatore, with the amount of Rs.2,42,22, 900/- lying in the account of the 1st Respondent.

For Petitioner
in both W.Ps

:Mr.M.Velmurugan

For Respondent-1 & 2
in both W.Ps

: Mr.V.Shanmuga Sundar
Special Government Pleader

For Respondents 3 to 43

in W.P.No.13113 of 2017 :Mr.P.P.Shanmugasundaram

COMMON ORDER

These Writ Petitions are heard through Video Conference on account of COVID-19 pandemic situation.

2. The petitioner filed W.P.No.13113 of 2017 seeking a direction to the first respondent to disburse the amount lying in its credit and distribute the amount to the depositors in C.C.No.8 of 2008 on the file of the Special Court, TNPID Act, Coimbatore.

2.1. In W.P.No.26579 of 2018, seeking the above relief, in particular, with respect to a sum of Rs.2,42,22,900/-, the petitioner laid challenge to the order dated 2.11.2017 passed by the first respondent in Na.Ka.47149/2001/II.

3. The petitioner was one of the partners in the financial institutions, namely, M/s.Suba Swathy Auto Finance and Investments and M/s.Abilash Auto Finance. The firms were engaged in the business of collecting deposits from the public for a fixed period, assuring payment interest at the particular rate fixed.

4. In the year 2000, there was a complaint against the petitioner alleging that 128 depositors were not paid the deposits and the petitioner had defaulted in her payments by siphoning off the funds for some other purposes. The complaint was also registered under Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (in short, "the TNPID Act") read with Sections 120(b), 406 and 420 of I.P.C. Originally, the said complaint was taken on file as C.C.No.31 of 2001 on the file of the TNPID Court, Chennai. Subsequently, it was transferred to Coimbatore and re-numbered as C.C.No.8 of 2008. The Government also issued a G.O. (Ms).No.746, Home (Courts A) Department, dated 07.08.2001 attaching 19 properties belonging to the firms, which were challenged upto the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide order dated 30.09.2015 in Criminal Appeal No.94 of 2010, directed to carry out a public auction by the first respondent, so far as the properties mentioned in item Nos.1,2 and 6 in the Schedule to the Government Order are concerned. Pursuant to the same, the properties were brought to public auction and a sum of Rs.2,42,45,000/- was brought and sale proceeds of which is lying in the deposit.

5. While so, it is stated that the husband of the petitioner had arranged to settle 74 of the depositors out of the total 128 depositors and settled the amounts due to them to the tune of Rs.1,69,34,000/-, which has been recorded by the Special Court (TNPID) on various dates, by recording the

affidavits filed by the respective depositors. The above settlement happened between the years 2004 and 2008. Now, the balance of the 54 depositors have to be settled. The settlement to the 74 of the depositors were made out of their personal funds by the petitioner and her relatives.

6. According to the petitioner, the amount that was realised by way of selling the properties is lying in the deposit, which would be more than sufficient for settling the remaining 54 depositors. Be that as it may, as the case before the TNPID Court was progressing, the petitioner had filed the Writ Petition in W.P.No.13113 of 2017 seeking for disbursal of the amount lying in the credit of the first respondent to the depositors in C.C.No.8 of 2008 on the file of the Special Court, TNPID Act, Coimbatore, and also obtained an order of status-quo not to proceed further with C.C.No.8 of 2008.

7. While so, the petitioner had also made an application before the District Collector for the same relief permitting her to disburse the amount for the balance of the 54 depositors. The Competent Authority, namely, the District Revenue Officer, had considered the same and passed an order on 02.11.2017, rejecting the request of the petitioner. The said order is now challenged in W.P.No.26579 of 2018.

8. The competent authority was directed to file a common status report for both the Writ Petitions. Accordingly, the competent authority, namely, the District Revenue Officer, Coimbatore, has filed the common status report dated 29.01.2019. As per the said report, the total sale amount to the tune of Rs.2,42,45,000/- is lying in the deposit. The report further has given the list of depositors, who have received the amount and the list of depositors, who are yet to be settled. The 13 of the depositors were settled through Court in C.C.No.31 of 2001. Another 15 depositors were settled with their amounts in I.A.No.2 of 2004 and 46 more depositors were settled in O.A.No.15 of 2011. The total amount settled for the 74 depositors is Rs.1,67,34,000/-. The status report further gives the list of 54 depositors, who are yet to be settled the amount along with interest and the principal amount to be settled alone would come to Rs.2,19,90,500/-. The interest payable is Rs.7,48,77,655/-. Thus, the total amount of Rs.9,68,68,155/- is required for the settlement in full. It is also admitted that there are 19 other properties attached by the competent authority, the value of which would be more than Rs.30 crores. Therefore, the amount as of now lying in the deposit would be sufficient to, at least, discharge the principal amount due to the above 54 depositors.

9. Admittedly, out of the 19 properties attached, three properties were sold, pursuant to the direction of the Hon'ble Supreme Court and 16 other properties are intact and they have to be brought to sale, subject to the outcome of C.M.A.No.333 of 2013 pending on the file of this Court. Though there is an order of stay obtained by the petitioner, as per the status report only Rs.2,19,90,500/-, is required for disposal of the principal amount, against the deposit now lying, which is Rs.2,90,32,229/-.

10. So far as the other matter, namely, C.M.A.No.333 of 2013 is concerned, it is open to the parties to work out their remedies in that case. As the monies are available and it is only intended for disbursement to the creditors, this Court is of the opinion that the remaining 54 depositors may be given their principal sum, that was deposited with the petitioner's financial institutions.

11. An affidavit is also filed by S.Muthusamy, S/o.P.V.Subbaiyan and S.Thirumavalavan, S/o.K.R.Sundaram, the private respondents in W.P.No.13113 of 2017, expressing their willingness to receive the principal amount as of now along with the interest accrued on the deposit of Rs.2,90,32,229/- proportionately, as an interim settlement. The said affidavit is also taken on record.

12. Accordingly, the impugned order dated 02.11.2017 is set aside and the competent authority is directed to disburse and distribute the principal amount, as enlisted in the status report, to the 54 depositors, who are yet to be settled, from and out of the deposited amount of Rs.2,19,90,500/-, and the remaining amount shall be continued to be kept in an interest bearing deposit, which shall be renewed periodically, till the matter attained finality.

13. Thus, it is made clear that since the request of the petitioner dated 16.10.2017 made to the competent authority itself is only for settling the dues to the depositors and for closing the issue and the principal amount of the 54 depositors are directed to be settled, there is no impediment for the competent Court to proceed with the case pending before it. However, it is also made clear that if the settlement is made, it is for the petitioner to take out appropriate application for compounding the offence, which shall be dealt with by the Special Court in accordance with law.

14. In view of the above order passed in W.P.No.26579 of 2018, no specific order needs be passed in W.P.No.13113 of 2017 and the same could be closed.

15. With the above observations and directions, these Writ Petitions are disposed of. However, there shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gg/srn
To

1 The Competent Authority
District Revenue Officer, Coimbatore.

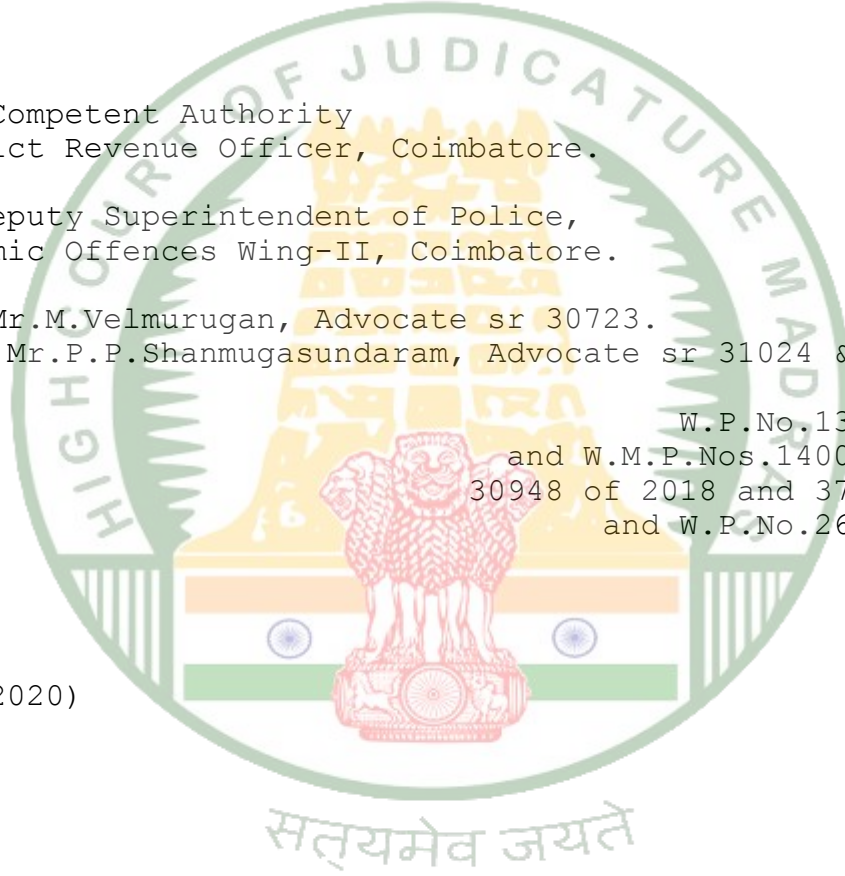
2 The Deputy Superintendent of Police,
Economic Offences Wing-II, Coimbatore.

+1 CC to Mr.M.Velmurugan, Advocate sr 30723.

+2 Ccs to Mr.P.P.Shanmugasundaram, Advocate sr 31024 & 31023.

W.P.No.13113 of 2017
and W.M.P.Nos.14008 of 2017,
30948 of 2018 and 37227 of 2018
and W.P.No.26579 of 2018

VD(CO)
SP(06/11/2020)



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