

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.96 of 2012

M.P.No.1 of 2012

A.Hafeezur Rahman

.. Appellant

vs.

1.Deputy Superintendent of Police,
Economic Offences Wing-II,
Vellore-9.

2.T.S.Kannaiyan

3.K.Vinoth Kumar

4.Dr.Lakshmi Priya

5.The Association for the protection of interest of Depositors /
Investors
In Financial Institutions, Vellore,
Rep.by its Secretary, P.K.Ravindran,
No.5/23, II Street, Phase I, TNHB
Sathuvachari,Vellore.

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 11 of
TNPID Act, against the judgment and decree dated 11.07.2011
passed in O.A.No.54 of 2008 by the learned Judge, Special Court
for TNPID Cases, Chennai.

For Appellant : Mr.D.Ferdinand

for M/s.BFS LEGAL

For Respondent : Mr.Y.T.Aravind Gosh

Additional Government Pleader (CS)
for R1

Mr.V.Manoharan for R5

No-appearance for RR2 to 4

J U D G M E N T

The Judgment and Decree dated 11.07.2011 passed in O.A.No.54
of 2008 is under challenge in the present Civil Miscellaneous
Appeal.

2. The original application in O.A.No.54 of 2008 was filed by the Deputy Superintendent of Police, Economic Offence Wing-II, Vellore to attach the properties described in the Schedule to the petition under Section 8 of the TNPID Act. The First respondent/ Deputy Superintendent of Police filed the said application on the ground that the complaints were received on 12.11.2007 against the accused/T.S.Kannaiyan and 16 others who were running the Finance Company along with other accused under the name and style of M/s.Sapthagiri Finance and two other Financial Establishments called M/s.Vellore Sapthagiri Investments and M/s.Vellore Sapthagiri Benefit Fund and the said case was registered in Crime No.03/07 for the offences under Sections 120-B, 406, 420 & 421 IPC and Section 5 of TNPID Act. The depositors have deposited their hard-earned money to the tune of Rs.1,15,55,000/- [Rupees One Crore Fifteen Lakhs and Fifty Five Thousand Only]. Subsequently, many other depositors were also filed complaints. Near about 409 depositors are aggrieved due to non-refund of their deposit amount and the accused persons allegedly cheated to the tune of Rs.12,37,51,900/- [Rupees Twelve Crores Thirty Seven Lakhs Fifty One Thousand and Nine Hundred Only].

3. During the course of investigation, it is found that the accused/ Mr.T.S.Kannaiyan, together with Mr.K.Vinothkumar, Dr.K.Lakshmi Priya sold the schedule mentioned properties to the appellant/Mr.A.Habeebur Rehman, S/o.A.Mohaman Ameen Sahib through the Registered Sale Deed dated 28.11.2005 in vide Document No.2492 for a consideration of Rs.7,73,550/- [Rupees Seven Lakhs Seventy Three Thousand Five Hundred and Fifty Only]. The Investigating Authority found that the actual value of the properties would be more than Rs.30 Lakhs. The properties were grossly undervalued in the impugned sale deed dated 28.11.2005.

4. On the date of the alleged sale transaction, the depositors were making frantic demands to receive interest or the principal from the concerned Financial Establishments. Finding that the depositors would resort to legal proceedings seeking attachment before judgment of the properties of the respondents 1, 2 & 3, the impugned sale transaction was brought about in haste to defeat the lawful claims of the depositors. Thus, the malafide intention of the accused persons in transferring the properties was obvious and the appellant is not a bona fide purchaser for valuable consideration as per the market value prevailing in that locality. The transfer of the properties was done with an intention to avoid attachment over the property. The alienation was not done in good faith for consideration, but it is a colourable transaction created by the partners/Directors in the Financial establishments in order to cheat the depositors.

5. The appellant contested the case before the Special Court by stating that the Schedule Mentioned Property was purchased by the appellant by way of registered sale deed dated 28.11.2005. It is contended that he is doing business in Beedies and Leathers for more than 25 years in that locality and got lot of properties. Thus, there is no need for him to collude with the Financial Company. The contention of the appellant before the Special Court was that he is a bona fide purchaser and purchased the property for sale consideration and therefore, the sale is to be protected. It is contended that the subject property was an ancestral property of the respondent/Partner in the Financial Company and the said Mr.T.S.Kannaiyan/second respondent herein got a share in the property through partnership deed dated 05.07.1965. In view of the fact that it is the ancestral property, the same was not purchased from and out of the money collected from the depositors. Thus, the sale is to be validated and the application filed under Section 8 by the Deputy Superintendent of Police is to be dismissed.

6. The Special Court adjudicated the issues with reference to the documents and evidences produced by the respective parties. The Special Court categorically made a finding that Section 8(2) of the TNPID Act would not prevent the property of the partners of the Financial Company against whom a criminal case was registered and attached the same. Even in the absence of the fact that the said property was not purchased from and out of the money collected from the depositors, the very purpose and object of the Act is to ensure that the interest of the depositors are protected and by attaching the property, the money collected by the accused persons through Financial Companies are to be settled in favour of the depositors. With these findings, the Special Court proceeded on the ground that the Financial Establishment was collecting funds from the public in the year 1992. Some properties were purchased in the year 1995 and other properties were purchased in the year 1998. The Trial Court formed an opinion that when the third respondent and the family members says that during the year 2005, they are financially sound and they have not clarified for what purpose they have sold the said property in favour of the 4th respondent. Therefore, it is made clear that in order to escape from the clutches of attachment, the first respondent sold the property in favour of the 4th respondent and even the sale consideration fixed was lesser than that of the actual market value prevailing in that area at that time of presentation of the document before the Sub-Registrar. Considering all these facts and circumstances, the Special Court arrived a conclusion that the first respondent/Deputy Superintendent of Police established the case for attachment in order to protect the

interest of the depositors under the provisions of the TNPID Act and allowed the original application. Challenging the said judgment and decree, the present Civil Miscellaneous Appeal is filed.

7. The learned counsel for the appellant reiterated that the appellant is an innocent person and purchased the property from the second respondent for valuable consideration. He is no way connected with the Financial Establishment which is the subject matter of criminal proceedings. Further, the property purchased is an ancestral property belongs to the second respondent and the said property was not purchased from and out of deposits collected from the public. Therefore, the subject property is totally unconnected with the criminal case and there is no irregularity in the matter of sale. Accordingly, the right of the appellant is to be protected and consequently, the attachment is to be raised. The appellant being a bonafide purchaser, cannot be penalized. There is no evidence to establish that the appellant had knowledge about the transaction of the second respondent. The criminal case is filed after a period of two years from the sale of the property and there is no occasion for the appellant to know about the allegations regrading non-repayment of interest to the depositors. Thus, for all purposes, the appellant is a bonafide purchaser and his right is to be protected.

8. In respect of the said contention, the learned counsel appearing for the appellant cited the judgment of the High Court of Madras in the case of R.Karuppusamy vs.Competent Authority/District Revenue Officer, Erode and others reported in 2012-2-L.W.678, wherein this Court held that "under Section 7 (5) of the TNPID Act, the Special Court shall exercise all the powers of the Court in hearing a suit under the Code of Civil Procedure, 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".

9. In the case of C.Chellamuthu vs. The Deputy Director reported in 2016-1-L.W.132, the Court held as follows:

"Once a person proves that his purchase is genuine and the property in his hand is untainted property, the only course open to the respondent is to attach sale proceeds in the hands of vendor of the appellants and not the property in the hands of genuine legitimate bonafide purchaser without knowledge."

10. In the case of Mrs.Lynette Fernandes vs. Mrs.Gertie Mathias reported in 2017 SCC Online SC 1296, the Hon'ble Supreme Court held as follows:

12. The appellant further contended that the probate was granted to Mrs. Gertie Mathias in 'common form' and not in 'solemn form' and thus, it is open to challenge such a grant of probate. Such argument may not arise in this matter. In England, common form of grant of probate is a matter of right in the absence of all other interested parties, but there is no such right for any applicant who seeks a grant of probate in India. A party seeking the revocation of grant of probate cannot later resort to English law and contend as mentioned supra. The Calcutta High Court in Southern Bank Ltd. v. Kesardeo Ganeriwalla, AIR 1958 Cal 377 observed that there is no system in India like the English common form procedure, as the system of grant of probate in India does not contain 'the reason which fortifies the existence of the English rule', namely that in England there is no judicial determination of the right to probate. In India, judicial determination is a matter of course. Thus, we agree that there cannot be a common form of probate in India. Be that as it may, since the evidence of Mrs. Mathias was recorded at the time of grant of probate by the competent Court of law, it is clear that the probate was granted in favour of Mrs. Mathias after publishing Citation at Mangalore and after due application of mind by the Court. Hence it was solemn form only. Since the provisions of Section 263 of the Indian Succession Act state that a probate can be revoked on grounds of just cause, it was open for the appellant to approach the Court of law by filing an application under Section 263 of the Indian Succession Act, seeking revocation. As the appellant has approached the Court of law, and her application is being dealt with by a rigorous process of adjudication upto this Court, there is no question of common form being an obstacle to her ability to challenge the probate. The question raised by the appellant on the distinction between common form and solemn form is academic.

13. Coming to the second ground for just cause, re-allegation that the grant of probate was obtained by the appellant in fraudulent manner, as mentioned supra, the appellant has not come forward to adduce any evidence to prove the so called allegation of fraud. The signature of Mr. Richard P. Mathias on the Will has not been challenged. The Trial Court as well as the High Court has recorded the finding that the genuineness of the Will was not challenged by the appellant. Moreover, the particulars of fraud are

neither pleaded nor proved by the party alleging fraud before the District Court. The party alleging fraud must set forth full particulars of fraud and the case can be decided only on the particulars laid out. There can be no departure from them. General allegations are insufficient. Merely because the appellant has made bald allegations in the revocation application that the Will executed by the deceased is void because the same has been brought out by Mrs. Mathias and the same is constituted by fraud and undue influence, it will not absolve her from providing specifically the particulars of fraud and undue influence. Mere bald pleading will not help her in the absence of proof.

11. In the case of Saheb Khan vs. Mohammed Yousufuddin and others reported in 2006 4SCC 476, the Hon'ble Apex Court held as follows:

13. Therefore before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the Court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale. (See: Dhirendra Nath Gorai and Suibal Chandra Shaw and Ors. Vs. Sudhir Chandra Ghosh; Jaswantlal Natvarlal Thakkar Vs. Sushilaben Manilal Dangarwala and Kadiyala Rama Rao Vs. Gutala Kahna Rao.

14. A charge of fraud or material irregularity under Order XXI Rule 90 must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge. In the case before us, no such particulars have been given by the respondent of the alleged collusion between the other respondents and the auction purchaser. There is also no material irregularity in publishing or conducting the sale. There was sufficient compliance with the orders of Order XXI Rule 67(1) read with Order XXI Rule 54(2). No doubt, the Trial Court has said that the sale should be given wide publicity but that does not necessarily mean by publication in the newspapers. The provisions of Order XXI Rule 67 clearly provide if the sale is to be advertised in the local newspaper, there must be

specific direction of Court to that effect. In the absence of such direction, the proclamation of sale has to be made under Order XXI Rule 67(1) "as nearly as may be in the manner prescribed by Rule 54, sub-rule(2)". Rule 54 sub-rule (2) provides for the method of publication of notice and reads as follows:-

"(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate (and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village)".

12. In the case of C.Sukumaran and S.Manikandan vs. The Competent Authority and District Revenue Officer reported in 2013 (1)CTC 326, this Court held as follows:

8. Section 8 deals with attachment of property of mala fide transferees and when the Special Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that the financial establishment has transferred any of the property otherwise than in good faith and for consideration, the Special Court may, by notice, require any transferee of such property to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached. As per section 8(2), if the transferee does not appear and show cause within a specified date, or where the Special Court is satisfied after investigation that the transfer of property was not in good faith and for consideration, the Special Court shall order the attachment of so much of the transferee's property as in the opinion of the Special Court equivalent to the proper value of the property transferred.

9. Therefore, a reading of sections 3, 7 and 8 makes it clear that the Government has to form an opinion for attaching the property alleged to have been procured either in the name of the financial establishment or in the name of any other persons from and out of the deposits collected by the financial establishment and pass an order of ad interim attachment. Thereafter, the competent authority shall apply to the Special Court

within 30 days for making the order of attachment absolute and under section 7, the order can be made absolute after giving opportunity to the persons whose property is attached by the Government under section 6 (3).

15. Further, as per section 8 of the Act, in case of mala fide transfers, when the Special Court is satisfied that there is reasonable cause for believing that the financial establishment transferred any of the property otherwise in good faith and for consideration, the Special Court may, by notice, require any transferee of the property to appear on a date to be specified in the notice and show cause why so much of the transferees property as is equivalent to the proper value of the property transferred should not be attached. Therefore, when the property has been transferred by the financial establishment or by the persons associated with the financial establishment such as Directors, Partners, etc., and when the Special Court on being satisfied that there is reasonable cause that the transfers are otherwise in good faith and for consideration, the Special Court may, by notice, require any transferee to show cause why the attachment shall not be made in respect of those properties.

16. Therefore, even in the absence of any objection raised by the persons who purchased the property before the order of attachment and before those properties are to be attached, the Special Court has to satisfy itself that the property was transferred otherwise than in good faith and for consideration and thereafter, notice has to be issued to the person to show cause why his property should not be attached and even as per section 7(5), the order of attachment shall be made absolute only after examining those parties and the Special Court has to follow the procedure contemplated as provided in the Code of Civil Procedure. Therefore, in respect of the properties owned by third parties, a duty is cast upon the Special Court to issue show cause notice to such persons after being satisfied that the transfers were not made in good faith and for consideration and only thereafter pass the order of attachment. Therefore, a reading of sections 7 and 8 of the Act would make it clear that even though the attachment order was made absolute, so far as the third parties are concerned, without hearing them, the property shall not be attached.

13. Relying on the above judgments, the learned counsel appearing for the appellant contended that the present appeal is to be allowed mainly on the ground that the appellant is a

bonafide purchaser and not aware of the financial transaction of the Financial Establishments. The sale deed was executed prior to the complaint registered by the depositors. Therefore, the sale is to be protected. Further, the subject property is an ancestral property.

14. The learned Additional Government Pleader appearing on behalf of the first respondent objected the said contention by stating that totally 409 depositors are affected and a total sum of Rs.12,37,51,900/- [Rupees Twelve Crores Thirty Seven Lakhs Fifty One Thousand and Nine Hundred Only] was collected from the said depositors and cheated. The matter is under investigation. The Government passed an order attaching certain properties and after investigation, the Competent Authority found that few other properties were also transferred in an illegal manner in order to defeat the provision of the TNPID Act. Thus, after investigation, the Competent Authority filed the original application under Section 8 of the TNPID Act to attach the properties which were transferred illegally during the pending of the investigation.

15. The learned Additional Government Pleader reiterated that the appellant as well as his father has not established that the transaction of sale was genuine. The manner, in which, the sale was executed reveals that the accused persons had an intention to defeat the provision of the TNPID Act so as to escape from the attachment proceedings. Thus, the interest of the depositors are to be protected and the Special Court also considered this aspect and accordingly, allowed the original application filed by the competent authority. Thus, the appeal is to be dismissed.

16. The very statement of objects and reasons leading to the enactment of the TNPID Act stipulates that to make the non-payment of interest and failure to render service for which deposit has been made, as offences under the Act and attach the properties of the person who has borrowed money from the Financial Establishments and failed to return the money. Therefore, the object is to ensure that the attachment of the property belongs to the person who collected money from the depositors and not refunded. Section 3 contemplates the attachment of properties on default of return of deposits. Section 8 provides attachment of property of malafide transferees. The said provision is unambiguous that "where the assets available for attachment of a Financial Establishment or other person referred to in Section 3 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Special Court is satisfied by affidavit or otherwise that there is reasonable cause for believing that the said Financial Establishment has

transferred (whether after the commencement of this Act or not) any of the property otherwise than in good faith and for consideration, the Special Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached".

17. Thus, the provision is crystal clear. If any person, who is an accused, for non-refund of collected deposits money to the depositors, is possessing properties and all such properties were transferred with a malafide intention to defeat the provision of the Act, then the Special Court, by issuing notice, can attach the properties transferred in favour of the third persons.

18. The requirement of the provision is that the property itself belong to the accused persons/Financial Company and the properties are transferred in favour of another person and due to such transfer, the Competent Authority is unable to realize the money for the purpose of refunding the depositor's money and if these factors are established, then an inference is to be drawn by the Courts that such transfers are made with a malafide intention to defeat the provision of the Act.

19. It is not as if the Special Court is bound to go into the other ideas of the accused persons/Financial Establishment for the purpose of attaching the properties. There may be several other reasons for sale of the properties. However, if these ingredients contemplated under Section 8 are satisfied, then the Special Court is empowered to attach the properties. Parties may plead that the transaction was genuine. Parties may say that it is an ancestral property and was not purchased from and out of the money collected from the depositors. The parties may plead that the property was sold even prior to the criminal case filed by the depositors. All these factors are immaterial as far as to protect the interest of the depositors under the provision of the TNPID Act. The very purpose and object of the Act is to ensure that the interest of the depositors are protected. Thus, any sale of property belongs to the partners/individuals/Finance Company, in order to defeat the interest of the depositors, is bound to be attached in the event of establishing that the transfers are made in order to defeat the provisions of the Act.

20. In the present case, the first respondent/Deputy Superintendent of Police in his affidavit clearly stated that during the course of investigation, it is found that the accused

sold the property detailed in the Schedule to the petition in favour of the appellant through the Registered Sale deed dated 28.11.2005. It is contended that the actual market value of the subject property was more than Rs.30 lakhs and the said property was sold for a sale consideration of Rs.7,73,550/-. Therefore, the document was undervalued. Further, it reveals that on the date of alleged transaction, the depositors were making frantic demands to receive interest or the principal from the concerned Financial Establishments. Finding that the depositors would resort to legal proceedings seeking attachment before judgment of the properties of the respondents 2, 3 & 4, the sale consideration was brought about in haste to defeat the lawful claims of the depositors. Thus, the first respondent arrived a conclusion that the transaction was done with a malafide intention.

21. Section 3 of the TNPID Act speaks about the attachment of properties on default of return of deposits. Sub-clause 2 states that "where the Government have reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors". In the present case, already the Government attached few properties. The subject property was not within the knowledge of the Government during the relevant point of time. During the course of investigation, the Deputy Superintendent of Police found that the subject property was transferred in the name of the appellant with a malafide intention to defeat the interest of the depositors. Thus, the first respondent filed an application under Section 8 of the Act before the Special Court for attachment of the property. Considering Section 3 of the Act, the Government has reason to believe that any Financial Establishment is acting in a calculated manner with an intention to defraud the depositors. In a similar way, when the Investigating Authority found that certain transfer of properties were done with a malafide intention, then the application under Section 8 of the TNPID Act may be filed and the Special Court is empowered to attach those properties for the purpose of settling the depositors.

22. Therefore, it is not necessary that the property must be purchased only from and out of the money collected from the depositors. Even the properties which are already purchased and not from and out of money collected from the depositors or purchased long before starting of the Financial Establishment, those properties are also can subject to attachment either under Section 3 of the Act by the Government or under Section 8 of the Act by the Special Court. Therefore, the very contention of the appellant that the property is an ancestral property is immaterial and deserves no merit consideration. The very purpose and object of the Act is unambiguous that the attachment is to

be made in respect of the properties of the person, who borrowed money through the Financial Establishment and failed to return back the money. Thus, it is not necessary to establish that the properties, which were transferred were not purchased from and out of money collected from the depositors.

23. As far as the judgments cited by the appellant are concerned, the facts and circumstances are entirely different and each case is to be considered with reference to the facts as the provision under Section 8 contemplates that the malafide intention is to be established. The malafide intention or motive is the subjective satisfaction to be ascertained and therefore, those judgments are of no avail to the appellant for the purpose of raising the attachment.

24. In the present case, the transfer of property was done when there was a pressure on the accused persons/Financial Establishments for refund of interest amount and the principal to the depositors. The total amount to be refunded to 409 depositors is Rs.12,37,51,900/- [Rupees Twelve Crores Thirty Seven Lakhs Fifty One Thousand and Nine Hundred Only]. Under these circumstances, if the attachment made is raised, then the same would cause prejudice to the interest of the depositors, who had contributed their hard-earned money with the Financial Establishments. Thus, this Court is of the opinion that the order passed by the Special Court is in consonance with the Act and there is no infirmity. Thus, the Judgment and Decree dated 11.07.2011 passed in O.A.No.54 of 2008 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs. Connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ssb

To

The learned Judge,
Special Court for TNPID Cases,
Chennai.

Copy to:

The Section Officer
VR Section, High Court Madras.

+1 cc to The Special Government Pleader, Sr.No. 19593

C.M.A.No.96 of 2012

SSN(CO)

RMP(30/04/2021)