IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2021

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THE HONOURABLE MR. JUSTICE ABDUL QUODDHOSE

W.P.No.26813 of 2013
&
M.P.No.1 of 2013

V.Rukmani,
W/o.Varadarajan ..Petitioner

vs.

1. The Deputy Superintendent of Police
   Economic Offence Wing II,
   Trichirapalli.

2. The Special Court,
   Tamilnadu Protection of Interest of Depositors Act 1997,
   Chennai-600 104.

3. Kanagarajan,
   S/o.Murugaiyan ..Respondents

PRAYER: writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the Special Court for Tamil Nadu Protection of Interest of Depositors Act 1997 cases at Chennai 104 in O.A.No.15 of 2011 and quash the same.

For Petitioner : Mr.Liagat Ali
For Respondents : Mr.V.Shanmuga Sundar, Spl. G.P. for R1
Mr.T.P.Senthil Kumar for R3
No appearance for R2

ORDER

This writ petition has been filed challenging O.A.No.15 of 2011 pending against the petitioner on the file of the Special Court for Tamil Nadu Protection of Interest of Depositors Act 1997 at Chennai.

2. The petitioner has challenged the impugned O.A. on the following grounds:

(a) the petitioner is a bona fide purchaser of the subject property for a valuable consideration.

(b) the petitioner has not purchased the property from the financial institution but has purchased the property from an individual.

(c) the petitioner purchased the property in the year 2006, whereas the complaint was filed by the first respondent under the Tamil Nadu Protection of Interest of Depositors Act, 1997 (hereinafter referred to as 'the TNPID Act') only in the year 2011. The petitioner has been enjoying the property for almost seven years till the date of filing of the complaint without any hindrance whatsoever.

(d) The petitioner has paid a total consideration of Rs.2,47,400/- for the purchase of the property from the third respondent which was the market value at the time of purchase.

The first respondent is not the competent authority under the TNPID Act and therefore the complaint filed by him against the petitioner in O.A.No.15 of 2011 is not maintainable.

3. A counter affidavit has been filed by the first respondent stating that the depositors' money have not been repaid by M/s.Kanagam Chit Fund where the third respondent was a partner. According to them, criminal cases have been filed against the partners of the said Chit Fund, in which, the third respondent was also one of the partners. According to them, the liabilities of the Chit Fund concerns is approximately Rs.10,64,72,523/-. Since the subject property was purchased by the third respondent from and out of the depositors' money, the property which has been attached and presently stands in the name of the petitioner cannot be released. It is also their case that the petitioner is not a bona fide purchaser. According to them, he has purchased the property knowing fully well that the third respondent has misappropriated the funds of Kanagam Chit Funds and Kanagam Chits. According to them, the transfer made by the third respondent in favour of the petitioner and the sale deed executed in the year 2006 is a mala fide transfer and therefore, Section 8 of the TNPID Act gets attracted.

4. Heard Mr.Liagat Ali, learned counsel for the petitioner and Mr. Mr.V.Shanmuga Sundar, learned Special Government Pleader for respondents 1 and 2. Insofar as the third respondent, though notice has been served and his name is also printed in the cause list, no one appears for the third respondent either in person or through his counsel.

5. Learned counsel for the petitioner drew the attention of this Court to Section 8 of the TNPID Act and would submit that the petitioner is a bona fide purchaser for a valuable consideration and hence, Section 8 of the TNPID Act does not get attracted. He drew the attention of this Court to the sale deed dated 24.08.2006, by which the petitioner purchased the property from the third respondent in his individual capacity. He would

further submit that the complaint was lodged by the first respondent against the petitioner in O.A.No.15 of 2011 only in the year 2011, after a lapse of almost six years from the date of purchase by the petitioner from the third respondent. He would further submit that the said property does not belong to either M/s.Kanagam Chit Funds or Kanagam Chits and, therefore, Section 8 of the TNPID Act does not get attracted. He also drew the attention of this Court to G.O.Ms.No.942 dated 12.12.2011 issued under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, Forms [Police XIX] Department and would submit that it is only the District Revenue Officer, Nagapattinam, who is a competent authority appointed under the TNPID Act. According to him, the competent authority is the District Revenue Officer and not the first respondent herein. Therefore, he would submit that the attachment effected by the first respondent over the petitioner's property is bad in law. Learned counsel for the petitioner further submitted that in the schedule to the list of immovable properties to be attached as listed out as per G.O.Ms.No.942, Forms (Police XIX) Department, dated 12.12.2011, the petitioner's property does not find a place. However, according to him, only in the schedule to O.A.No.15 of 2011 filed by the first respondent before the Special Court, the petitioner's property has been included. According to him, the attachment effected over the petitioner's property by the first respondent is not in accordance with law.

6. Per contra, the learned Special Government Pleader appearing for respondents 1 and 2 would submit that the petitioner has admittedly purchased the subject property from the third respondent, who is admittedly a partner of the chit fund concerns, which are the subject matter of investigation under the TNPID Act. He would also submit that there are several depositors who have not been refunded their deposits by the two chit concerns which are the subject matter of investigation. Therefore according to him, the first respondent has rightly sought for attachment of the petitioner's property before the Special Court. He drew the attention of this Court to the counter affidavit filed by the first respondent before this Court detailing the irregularities committed by Kanagam Chit Funds and Kanagam Chits. He would also state that the first respondent is the competent authority, who is empowered to effect attachment under the TNPID Act. He would highlight the fact that the liabilities of the Chit Fund concerns exceeds a sum of Rs.10,64,72,523/- and several depositors have not been repaid and he would reiterate that the petitioner is not a bona fide purchaser. He would further submit that ever since the incorporation of the chit concerns, the management has been committing several financial irregularities and therefore the property purchased by the petitioner admittedly from the third respondent who is a partner of the chit concerns cannot be

released from the attachment. He would also submit that several FIRs and charge sheets have been filed against the Chit concerns and the cases are also pending before several Courts against them.

Discussion:

7. Admittedly, the petitioner has purchased the subject property as a punjai land, measuring to an extent of 4.12 acres at South Poigainallur Village, Keelvelur Taluk, Nagapattinam District on 24.08.2006 under a registered sale deed, vide document No.1247 of 2006. As seen from the sale deed, he has paid a sum of Rs.2,47,000/- to the third respondent. The petitioner has purchased the property from the third respondent in his individual capacity and not as a partner of the said Chit concerns, which are under investigation by the respondents. There is no documentary evidence produced before this Court by the respondents to prove that the petitioner is not a bona fide purchaser. The petitioner has purchased the property on 24.08.2006, whereas admittedly, the complaint lodged by the first respondent under the TNPID Act was only in the year 2011, after a lapse of almost six years.

Section 8 of the TNPID Act reads as under:

> "8. Attachment of property of mala fide transferee:--
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> 8. (1) 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.

> (2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub- section (5) of section 7, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration the Special Court shall or order the attachment of so much of the said transferee's property as is in the opinion of the Special Court equivalent to the proper value of the property transfered. "

8. Section 8 of the TNPID Act deals with mala fide transfer by a financial establishment. Admittedly, in the case at hand, the property was sold by the third respondent who may be the partner of the subject Chit concerns which are under investigation, but, admittedly, the said property was sold by the third respondent in his individual capacity and not as a partner of the subject chit concerns. Further, the sale in favour of the petitioner took place in the year 2006 when there was no complaint pending against the management of the subject chit concerns. Therefore, as rightly contended by the learned counsel for the petitioner, that too, when there is no evidence whatsoever placed before this Court to show that the petitioner was not a bona fide purchaser, this Court cannot accept the contentions of the respondents in their counter affidavit as well as the submissions made by the learned Special Government Pleader that the petitioner is not a bona fide purchaser. The petitioner has also paid a sale consideration of Rs.2,47,000/- to the third respondent under the sale deed in the year 2006, which is also not disputed by the respondents, as seen from the counter affidavit filed by the first respondent before this Court. The subject property which is owned by the petitioner is in Poigainallur Village, Keelvelur Taluk, Nagapattinam District and no evidence has been placed before this Court that the petitioner has undervalued the subject property and purchased the same from the third respondent.

9. In the counter affidavit, the respondents have also not commented upon the contention of the petitioner that as per G.O.Ms.No.942 dated 12.12.2011 issued under TNPID Act, the first respondent is not a competent authority and it is only the District Revenue Officer, Nagapattinam, who is a competent authority. Even though, the said issue requires further consideration, this Court is of the considered view that insofar as the submissions made by the learned counsel for the petitioner that the petitioner is a bona fide purchaser for valuable consideration has to be necessarily accepted by this Court for the reasons stated above. In the counter affidavit

filed by the first respondent, the first respondent has mainly highlighted the irregularities and the fraud committed by the management of Kanagam Chit Funds and Kanagam Chits and also highlighted the liabilities of both the concerns. However, they have not given any details as to how the property of an individual, though he may be a partner of the subject chit concerns, which are under investigation can be attached under TNPID Act for a purchase made in 2006 in respect of an investigation which commenced only in the year 2011. Admittedly, even if it was a case of undervaluation of property under the sale deed dated 24.08.2006 by which, the petitioner purchased the property, admittedly no action has been taken against the petitioner or the third respondent for any undervaluation.

10. For the forgoing reasons, this Court is of the considered view that the petitioner is entitled for the relief sought for in this writ petition and this Court is of the considered view that O.A. No.15 of 2011 initiated by the first respondent against the petitioner under the TNPID Act, is bad in law and it has to be necessarily quashed. Accordingly, the proceedings in O.A.No.15 of 2011 on the file of the first respondent stands quashed and the writ petition is allowed. The attachment effected over the petitioner's property is hereby released. No costs. Consequently, M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Superintendent of Police
   Economic Offence Wing II,
   Trichirapalli.

2. The Special Court,
   Tamilnadu Protection of Interest of Depositors Act 1997,
   Chennai-600 104.

+1 cc to M/s.M.Liagat Ali ,Advocate Sr.No.16146(25/06/2021)

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SSN(CO)
KKV/01/06/2021