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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.1733 OF 2017

AND

C.M.P.NO.9367 OF 2017

S.Kanagam

.. Appellant/4th Accused Respondent

..Vs..

1. The Competent Authority and
District Revenue Officer,
Namakkal District, Namakkal.

.. 1st Respondent/Applicant

2. M/s.Chellam Emu Farms and Velavan
Garden City Developments,
9/1A & B, SKK Complex,
Mohanur Road, Namakkal rep by its,
Managing Partner K.S.Sivakumar
and Partner R.Gangadevi.

.. 1st Respondent/1st Respondent

3. K.S.Sivakumar,
S/o.Late Sabapathy,
Managing Partner,
2/77. Mullai Nagar,
Mohanur Road, Namakkal.
Now residing at
45, Kattur, Rasipuram Taluk,
Namakkal District.

.. 2nd Respondent/2nd Accused Respondent

4. R.Gangadevi
W/o.S.Raju (Partner)

.. 4th Respondent/
3rd Accused Respondent



5. S.Palaniammal

6. R.Prabavathi

.. Respondents 5 & 6/
Respondents 5 & 6

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Prayer:-

Civil Miscellaneous Appeal is filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishment Act, 1997), praying to set aside the fair and decretal order dated 03.05.2017 made in O.A.No.3 of 2015, on the file of the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore by allowing this Civil Miscellaneous Appeal.

For Appellant :Mr.N.Manokaran

For Respondents:Mr.Y.T.Aravind Gosh

Additional Government Pleader (CS) for R1

No Appearance for R4 to R6

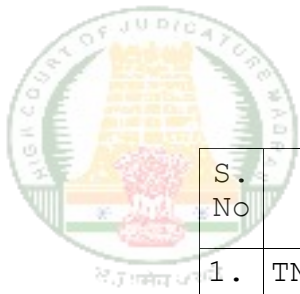
Not Ready in Notice R2 & R3

J U D G M E N T

The appellant herein is the 4th respondent in O.A.No.3 of 2015, on the file of the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore, preferred the Civil Miscellaneous Appeal, against the fair and decretal order dated 03.05.2017, filed by the first respondent herein/applicant competent authority and District Revenue Officer, Namakkal District, against this applicant along with 5 others seeking permission to make the attachment as absolute under Section 4(3) and permit the competent authority to sell the scheduled mentioned property under Section 7(6) of the TNPID Act, in order to safeguard the interest of the depositors from the persons from whom they collected deposits under the name and style of M/s.Chellam Emu Farms and Velavan Garden City Developers, Namakkal Taluk, Namakkal.

2. The respondent contested the said petition and on enquiry, the TNPID Court, allowed the application filed by the District Revenue Officer, Namakkal District, against which, one of the respondent preferred this appeal.

3. The appellant is concerned with the following four vehicles:



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S. No	Regn.No.	Engine No.	Chassis No.	Value (in Rs)
1.	TN-28H-4849 Bus	PAH637145	MBIPBEHC5	13,50,000
2.	TN-47L-5808 Bus	MWH280889	LWE535251	9,25,000
3.	TN-47AE-6162 SPARE BUS	PBE156212Z	MB1PBEYCO EBPG1383	15,75,000
4.	Without Regn.Model B376 Ford Fiesta Car Invoice No.VSLAC00056LS dated 15.05.2012, Rook City Ford,Trichy.	1205205065704	MAJMXXMRT BCR 51263	8,50,000

4. The learned counsel for the appellant submits that the first respondent has no jurisdiction to invoke the provisions of TNPID Act 1997, against the above four vehicles, because the appellant will not come under the definition of "Financial Establishment" under Section 2(3) and more so it did not receive any "deposit" as defined under Section 2(2) of the TNPID Act. She also contended that the vehicles were purchased much prior to the registration of the defaulted firm. The firm was registered on 16.11.2012, whereas, the vehicles were purchased long prior to that, hence, the 1st respondent has no jurisdiction to invoke the provisions of Sections 3 and 4 of the Act 1997. Further, she submits that the pursuant to the impugned order not only the appellant and all other agreement holders will be forced to face huge financial crunch. So she should be given an opportunity to revive her business to meet her commitments. So, she prays to raise the order of attachment by the TNPID Court, by allowing this appeal.

5. The first respondent/Government Pleader strongly objected the application filed by this appellant and he submits that the scheduled mentioned properties shown in the main application are moveable and immovable properties, which were all purchased from the amount collected from the depositors by this appellant along with other respondents and the defaulted firm namely M/s.Chellam Emu Farms and Velavan Garden City Developers, Namakkal Taluk, Namakkal, defaulted amount of Rs.8,04,21,940/- collected from 449 depositors. So the attachment of those properties are necessary to be made absolute in order to disburse the amount to the depositors from the sale proceeds of the property.

6. By considering the nature of the offence committed by the accused along with this appellant, the TNPID Court rightly



allowed the application. Further he also submits that the respondent has not produced any material evidence to show that these properties were purchased much prior to the registration of the defaulted Firm. So, he prays to dismiss the appeal.

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7. Point for Consideration:

"Whether the order passed by the Court below is sustainable in law:"

8. The facts of the case reveal that the accused viz., K.S.Sivakumar (Managing Partner) had registered M/s.Chellam Emu Farms with the Registrar of Firms, in the name with serial Number of Firm 376/2012 on 02.05.2013 and Velavan Garden City Developments, with Registrar of Firms, Namakkal in the name with Serial Number of Firm 1030/2012 on 16.11.2012 with intention to collect deposits from the general public by giving assurance through four schemes to return the amount received by way of deposit to the depositors as per their assurance. The funds collected from the general public was converted for the personal gain and they have purchased properties in their names and in the name of their family members and they were individually and severally liable for the payment of the deposit amount of Rs.8,04,21,940/- from 449 depositors. On receiving the complaint from the depositors, the case was registered in Crime No.133 of 2013, under Sections 129(b), 406, 420, 467 and 468 of IPC and Section 5 of TNPID Act 1997 and a charge sheet was filed against the accused along with other respondents as accused 1 to 10. The appellant is shown as 4th accused in the said charge sheet. To safeguard the interest of the depositors in exercise of powers conferred by sub-Section (1) of Section 4 of TNPID Act, 1997, the Governor of Tamil Nadu, appointed the District Revenue Officer of the concerned District as the Competent Authority to exercise control over the properties attached by the Government Under Section 3 of the Act, vide G.O.Ms.No.1049 Home (Courts IIA) Department, dated 26.08.2004. Thereafter, the Investigating Officer after finding out that the movable and immovable properties were purchased by the respondents in their names from the amount collected from the depositors, which have been collected in the name of the defaulted financial establishment and they have no intention to repay the deposit amount to the depositors and they sent the proposal to the Government of interim attachment.

9. On a careful consideration, the Government passed G.O.Ms.No.888, Home (Police-XIX) Department, dated 02.12.2014. Pursuant to the same, the competent Authority filed this Application in O.A.No.3 of 2015 to make the attachment as absolute under Section 4(3) and permit the petitioner/Competent Authority to sell the schedule mentioned properties under



Section 7(6) of TNPID Act. Thereby, the interim attachment was made absolute and permitted the Competent Authority to bring the properties for sale under Section 7(6) of the TNPID Act.

10. The appellant is said to be the owner of the four buses in the scheduled mentioned/moveable properties and approached this Court to set aside the order passed in O.A.No.3 of 2015, stating that this property is a moveable property, which was purchased much earlier.

11. To support her contention before the TNPID Court, as well as before this Court, she has not produced any documentary evidence that those properties were purchased much earlier. According to her, she entered into an agreement of purchase of those properties prior to the registration of the defaulted Firm. But, no such agreement was raised before the TNPID Court.

12. As rightly pointed out by the Government Pleader they were remained ex-parte before the TNPID Court, nor they submitted any document to support their contention, but only to prolong the case proceedings, the appellant approached this Court with vexatious claim.

13. Considering the entire facts of the case, it is just and necessary that the properties to be attached and to be sold in order to repay the amount to the depositors out of the sale proceeds. The case is pending more than five years, without any progress and the poor men money is in the hands of this accused person and utilised for their personal gain. There is no merits in this appeal.

14. Accordingly, this appeal is dismissed and the order passed in O.A.No.3 of 2015 is confirmed. Time to sell the properties three months. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Special Judge,
Special Court under TNPID Act Cases,
Coimbatore.

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+1cc to Mr.N.Manokaran, Advocate, S.R.No.11343

+1cc to the Special Government Pleader, S.R.No.11682

C.M.A.No.1733 of 2017

VD(CO)

CS/15/09/2021