IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2251 of 2018
and
C.M.P.No.17230 of 2018

1.Mr.Syed Yakub Ali
2.Mrs.Saj Banoo ..Appellants

Vs.

1.The District Revenue Officer,
Chennai District,
Chennai - 600 001.
2.New India Finance and Investments
Rep.by its Partner, Mr.G.Subramanian
3.G.Subramanian
Kamala Subramanian (Died) ..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments Act), 1997, to set aside the order dated 31.08.2018 passed in O.A.No.18 of 2011 by the Hon'ble Special Judge under TNPID Act, Chennai an consequently allow the O.A.No.18 of 2011 as prayed for.

For Appellants : Mr.A.R.Karunakaran

For Respondents: R1 - Mr.Y.T.Aravind Gosh
Additional Government Pleader(CS)
R2 & R3 - Mr.R.Baskar

J U D G M E N T

The Judgment and Decree dated 31.08.2018 passed in O.A.No.18 of 2011 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellants filed an application in O.A.No.18 of 2011 under Section 7(6) of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments Act) ['TNPID Act'], to raise the order of attachment passed in G.O.M.S.No.1415, Home (Courts II A) Department dated 12.02.1998, which was made absolute by the Special Court in its order dated 25.05.2000 in O.A.No.15 of 1999 as against the property described in the Schedule to that petition.

3. The appellants filed an application mainly on the ground that the appellants claim that they are bonafide purchasers of the property bearing Plot No.18, New No.28, Nagendra Nagar, Velachery Main Road, II Segment, Velachery, Chennai - 600 052, comprised in T.S.No.21 Part of Old S.No.44/1, Block No.18, admeasuring 3980 sq.ft together with two blocks of building within a built up area of 6000 sq.ft, they are having purchased the same under the Sale deeds dated 25.11.2004 and 29.03.2006, registered as Doc.Nos.5499 of 2004 and 448 of 2006 in the office of the Sub-Registrar, Velachery. The appellants claim that they are in possession and enjoyment of the said property. They came to know that the property was attached under the provisions of the TNPID Act by the Government by issuing G.O.M..No.1415, Home (Courts II A) Department dated 12.02.1998 and the Special Court also by an order dated 25.05.2000 in O.A.No.15 of 1999, made the attachment absolute and therefore, they have filed an application under Section 7(6) of the Act to raise the attachment.

4. It is contended that the property was sold prior to the commencement of the Act and therefore, this cannot be the subject matter before the Special Court. In fact, the accused persons sold the property by way of Power of Attorney and thereafter, the appellants purchased from the power holders in the year 2004. Citing these facts, the appellants made a submission that they are the bonafide purchasers and therefore, the property owned by them cannot be the subject matter of the TNPID Act. The procedures as contemplated under Section 8 of the Act also has not been followed. The principles of 'buyer beware' would not be applicable in the present case. Adverse inference drawn by the Special Court is also unsustainable. Citing these grounds, the order passed by the Special Court is sought to be set aside.

5. The learned Additional Government Pleader appearing on behalf of the 1st respondent objected the contentions of the appellants by stating that under Section 3, if any transaction made in a calculated manner, the Government is empowered to attach the property. Therefore, the powers conferred under the Act cannot be construed as if the transaction took place prior to the commencement of the Act. Sub Clause 2 to Section 3 of the Act contemplates that where there is a reason to believe that any financial establishment is acting in a calculated manner with an intention to defraud the depositors, then attachment can be made. Even if the transaction occurred prior to the commencement of the Act and the complaints were filed after the commencement of the Act and based on the informations, if found that the transactions were done in a calculated manner in order to cheat the depositors, then attachment can be made in public interest and to protect the interests of the depositors. Therefore, the very ground raised that the sale deed was executed prior to the commencement of the Act is of no avail to the appellants to escape from the

clutches of the provisions of the TNPID Act.

6. In the present case, the case was registered in Crime No.845 of 1996 dated 11.10.1996 by the City Police Crime Branch as well as Crime No.1 of 2004 in Economic Offences Wing. All the cases pending before the District Police and Commissioner of Police, Chennai were transferred to the Special Team constituted under TNPID Act. In the course of such passage of time, the respondent / Finance company in the present case had cleverly manipulated the records in such a manner as to defeat the purpose of the TNPID Act. That also may be a reason to remain exparte during the proceedings in O.A-15/1999 filed by competent authority. After attachment of the said properties, neither the respondents 2 and 3 in the O.A or their successors, who were in possession of the properties had challenged the order of attachment effected by the Special Court.

7. Thus, the findings of the Special Court is crystal clear regarding the manner, in which, the financiers acted in order to frustrate the provisions of the TNPID Act. It is observed that cleverly manipulated the records to defeat the purpose of legislation. Adding to this, none of them had been appeared before the Special Court to defend the case. Even the purchasers had not appeared before the Court. Thus, the Special Court has drawn an adverse inference that the intention of the Finance company as well as the appellants herein were to defeat the provisions of the Act and cheat the poor depositors, who all are the complainants. Even before the Special Court, the appellants herein had not given any evidence. They have not subjected themselves for cross-examination. Contrarily, their Power of Attorney holders were examined. All such facts and circumstances were considered by the Special Court and the Special Court arrived a conclusion that the attachment already made cannot be raised.

8. Unfortunately, the criminal case was registered in the year 1996 and the attachment was made in the year 1996 and till today, the depositors have not received their hard-earned money deposited. Such a poor state of affairs can never be allowed. The competent authorities must strive hard to complete the trial as expeditiously as possible.

9. Contrarily, they should not give any long rope to the accused persons, so as to escape from the clutches of law on account of efflux of time.

10. As far as the present appeal is concerned, the Special Court made a categorical finding that the attachment was made in the year 1996 and the property was transferred in a calculated manner, so as to defeat the provisions of the Act. Further, the criminal cases are yet to be adjudicated. Under these circumstances, in order to protect the public interest and more specifically, the interest of the

depositors, it is not preferable to raise the attachment and the appellants are at liberty to approach the Special Court under Section 9 of the TNPID Act in order to raise the attachment by providing security in lieu of attachment to the satisfaction of the Special Court.

11. This being the factum established, this Court do not find any perversity or infirmity as such in respect of the findings of the Special Court and all other grounds raised are to be adjudicated on merits and in accordance with law.

12. Accordingly, the Judgment and Decree dated 31.08.2018 passed in O.A.No.18 of 2011 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.2251 of 2018 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Hon'ble Special Judge under TNPID Act,
Chennai.

2.The District Revenue Officer,
Chennai District, Chennai-1.

+1cc to Mr.R.Baskar, Advocate SR.13353
+1cc to M/s.A.R.Karunakaran, Advocate SR.13548
+1cc to Spl.Govt.Pleader(CS)SR.12952, 13350
+1cc to Mr.R.Baskar, Advocate SR.13353(20/04/2021)

C.M.A.No.2251 of 2018

SR II(CO)
CB(24/03/2021)