IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

W.P.No.19352 of 2020

Nathalla Sampathu Chetty Victimised Depositors Welfare Association, Represented by its Secretary Mr.P.Rajakumar,
(Registration No.303 of 2017)
No.33, Bye-Pass Road Denkanikottai Post,
Krishnagiri District - 635107. ...Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Home Department, Fort St George,
Chennai - 600009.

2.Deputy Superintend of Police,
Economic Offence Wing - II,
Head Quarters, Guindy,
Chennai - 600032.

3.The Deputy Director,
Directorate of Enforcement,
Government of India,
3rd Floor, C- Block, Murugesa Naicker Complex,
No.84, Greams Road, Thousand Lights,
Chennai - 600006.

4.The Superintendent (Bank Security & Fraud)
Central Bureau of Investigation,
No.36, Bellari Road, 2nd Floor,
CBI Complex, Bangalore - 560032.

5.Nathalla Sampathu Chetty Jewelry Private Limited,
Under Liquidation Represented by the Liquidator,
S.Palaniappan,
No.54, Nathalla Plaza, South Usman,
T Nagar, Chennai- 00017. ...Respondents

Prayer :- Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the 1st respondent to pass an order of provisional attachment under Section 3 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act 1997 in respect of the properties that were purchased by the 5th respondent and the promoters through the deposit received from the petitioner and other persons including the other property belonging to the 5th respondent and its promoters and pass such further or other orders as this Court deems fit.

For Petitioner : Mr.M..Devaraj
For Respondents: 1)Mr.E.Raj Thilak (For R1 and R2)
Additional Public Prosecutor,
High Court of Madras.
2)Mr.P.Siddharth,
Special Public Prosecutor (for R3).
3)Mr.K.Srinivasan (for R4)
Special Public Prosecutor for CBI cases.
4)Mr.S.Ravi for M/s.S.Indumathi Ravi,
(For R5).

ORDER

This petition is filed to issue a Writ of Mandamus directing the 1st respondent to pass an order of provisional attachment under Section 3 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act 1997 in respect of the properties that were purchased by the 5th respondent and the promoters through the deposit received from the petitioner and other persons including the other property belonging to the 5th respondent and its promoters and pass such or other orders as this Court deems fit.

2.Learned counsel for the petitioner submitted that petitioner is an association formed by Victimized Depositors Welfare Association. The members have invested their lifetime savings under various schemes offered by the 5th respondent on the promise that the members would be paid by gold jewelery and the amount would be repaid with interest on maturity. Since that was not happened, a complaint was given and first information report in Crime No.11 of 2017 was registered against 5th respondent and others for various offences. It is brought to the notice of the petitioner' Association by Deputy Superintendent of Police, Economic Offences, dated 26.03.2018, that proposal has been sent to the first respondent for attachment of the property. Though, action is being taken on the basis of the complaint given by the petitioner's association, steps to be taken for attaching the properties of 5th respondent for disbursing the money to the investors.

3.It is also submitted by the learned counsel for petitioner that in a counter filed by Government of Tamil Nadu in W.P.No.10430 of 2018, Government of Tamil Nadu informed the Court that properties worth Rs.30,00,000/- was not attached by the Enforcement Directorate and ad-interim attachment process under Section 3 of TNPID Act, 1997 is under progress. He further submitted that as per the list of properties attached by the Deputy Director of the Directorate of Enforcement, Chennai Zonal Office – I, it is submitted by the learned counsel for the petitioner, some of the properties would be released from attachment. In such circumstances, he filed this petition.

4.Learned counsel appearing for the respondents 1 and 2 submitted that on the basis of the complaint given, first information report in Crime No.11 of 2017 was registered for the offences under Section 409, 420 I.P.C and Section 5 of TNPID Act, 1997. There are totally 3613 complaints and the amount of Rs.46,08,71,444/- said to have been cheated and transferred.

5.Learned Special Public Prosecutor submitted that case was registered in RC 08/E/2018-BS & FC/BLR for offences under Section 120 B of Indian Penal Code r/w. Section 409, 420, 467, 468 & 471 of Indian Penal Code, 1860 and Section 13 (2) r/w. Section 13 (1) (d) of the Prevention of Corruption Act, 1988.

6.Learned counsel for third respondent submitted that proceeding File No.ECIR/CEZO-I/09/2018 dated 22.01.2019 under sub Section (4) of Section (8) of the Prevention of Money Laundering Act, 2002 r/w rule 5 of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties confirmed by Adjudicating Authority) Rules, 2013 is pending. Thus, it is seen from the submissions made by learned counsel appearing for respondents 1 to 4 that atleast there are three police agencies registered cases and prosecuting the defaulting company.

7.Learned counsel appearing for the 5th respondent submitted that proceedings had been initiated under Insolvency and Bankruptcy Code, 2016, and National Company Law Tribunal, Chennai has appointed liquidator in the order passed in M.A.No.1147 of 2019 and M.A.No.547 of 2018 dated 03.01.2020. The Liquidator as per Section 35, 36 and 53 of the Insolvency and

Bankruptcy Code, 2016, is the authority to take care of the interest of secured as well as unsecured creditors. Petitioner cannot file a petition like this seeking prayer made in the petition.

8.Learned counsel for the third respondent also submitted that if the petitioner has genuine claim, it can under Section 8 of Prevention of Money Laundering Act, 2002, approach the Special Court appropriately.

9.Considered the submissions of the counsel appearing for parties.

10.It is seen from the submissions made that against the 5th respondent, three cases by State Police, Central Bureau of Investigation and Enforcement Directorate have been filed. Enforcement Directorate had attached almost all the properties of 5th respondent. It is claimed by the learned counsel for the 5th respondent that steps have been taken for removing the attachment and proceed further under Insolvency and Bankruptcy Code, 2016. It is also seen from the letter and counter of respondents 1 and 2 they are taking steps to attach the remaining properties left unattached by the Enforcement Directorate. Proceedings is pending under Insolvency and Bankruptcy Code in connection with the properties. Therefore, this Court finds that prayer by the petitioner in this petition cannot be entertained and in this view of the matter, Writ Petition in W.P.No.19352 of 2020 is dismissed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

1.The Secretary to Government,
State of Tamil Nadu,
Home Department, Fort St George,
Chennai - 600009 and 4 others.

2.The Deputy Superintend of Police,
Economic Offence Wing - II,
Head Quarters, Guindy,
Chennai - 600032.

3.The Deputy Director,
Directorate of Enforcement,
Government of India,
3rd Floor, C- Block, Murugesa Naicker Complex,
No.84, Greams Road, Thousand Lights,
Chennai - 600006.

4.The Superintendent (Bank Security & Fraud)
Central Bureau of Investigation,
No.36, Bellari Road, 2nd Floor,
CBI Complex, Bangalore - 560032.

+1cc to the Special Public Prosecutor, Advocate Sr.29218
+1cc to Mr.M.Devaraj, Advocate Sr.29214

W.P.No.19352 of 2020

jp[co]
srg 10/06/2022