

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.23505 of 2021

M.Chandrasekaran

... Petitioner

Versus

1.Competent Authority,
District Revenue Officer,
Erode District.

2.Competent Authority and
District Revenue Officer,
Namakkal District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus or direction or order in the nature of Writ, directing the 1st respondent to bring the auction sale in SF No.18/2B, 18/3B, 18/4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18/14, 15, 16, 17, 18 and S.F.No.19, bearing Document No.3632/2012, dated 22.08.2012, situated at Pattakkaranpalayam Village, Perundurai Taluk, Erode District.

For Petitioner	:	Mr.Murugendran for Mr.K.Nagendra Prasad
For Respondents	:	Mr.E.Raj Thilak, Additional Public Prosecutor

ORDER

This Writ Petition has been filed to direct the 1st respondent to bring the auction sale in S.F.No.18/2B, 18/3B, 18/4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18/14, 15, 16, 17, 18 and S.F.No.19, bearing document No.3632/2012, dated 22.08.2012, situated at Pattakkaranpalayam Village, Perundurai Taluk, Erode District.

2.The case of the petitioner is that the petitioner is the one of the depositor and invested a sum of Rs.1,00,000/- (Rupees one lakh only) in the name of M/s.Kondunaadu Emu Poultry Farms Private Limited, Mohanur Main Road, Karuppanar Kovil Street Thottam, Chinnu Nagar, Paramathivelur, dated 14.07.2012. Thereafter, either the principle amount nor interest was repaid to the petitioner. Like the petitioner, other persons were also cheated and hence, a case in Crime No.2 of 2012 was registered

by the Inspector of Police, EOW II, Namakkal, for offence under Sections 406, 420, 120(b) of IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors Act, 1997. During the course of investigation, G.O(Ms).No.119, Home (Police XIX) Department, dated 08.02.2016 was passed for ad-interim attachment of a movable property of the accused company viz., TATA Safari Car bearing registration No.TN 32 Q 0333. After the attachment, the 2nd respondent has filed O.A.No.16 of 2016, on the file of the Special Court for Tamil Nadu Protection of Interests of Depositors Act, 1997, Coimbatore and the same was allowed on 10.06.2016. Hence, the said car was auctioned on 04.11.2016 and it was confirmed for Rs.2,10,500/- (Rupees two lakhs, ten thousand and five hundred only). Thereafter, G.O (Ms).No.157, Home (Police XIX) Department, dated 12.03.2013 was passed for the ad-interim attachment of the immovable property of five acres of land situated at Pattakkaranpalayam Village, Perundurai Taluk, Erode District. The 2nd respondent has filed O.A.No.22 of 2013 before the learned Special Judge, Special Court for the Tamil Nadu Protection of Interests of Depositors Act, 1997 and the same was allowed, vide order, dated 25.02.2014. Despite the same, till date, the auction for the immovable property could not be successfully held. Due to which, the petitioner and other depositors have been denied their deposited/invested amount. Hence, this Writ Petition has been filed to bring the auction of the above said immovable property.

3.The learned counsel for the petitioner submitted that the petitioner is the one of the depositor and, is invested Rs.1,00,000/- on the scheme introduced by A1 company. After depositing the amount, the petitioner was paid a sum of Rs.5,600/- and thereafter, neither principal amount, nor interest amount repaid. Like the petitioner, other persons were cheated by the accused. Hence, the case in Crime No.2 of 2012, came to be registered by the Inspector of Police, EOW II, Namakkal. During the course of investigation, movable and immovable properties of the accused were attached. Thereafter, the G.O(Ms).No.157, Home (Police XIX) Department, dated 12.03.2013 was passed for the ad-interim attachment of the immovable property of five acres of land situated at Pattakkaranpalayam Village, Perundurai Taluk, Erode District. After the attachment, the 2nd respondent has filed O.A.No.22 of 2013 before the learned Special Judge, Special Court for the Tamil Nadu Protection of Interests of Depositors Act, 1997, Coimbatore and the same was allowed, vide order, dated 25.02.2014. Thereafter, the said property was brought for sale by auction in the year 2014, but which was not taken place and thereafter, the 1st respondent brought the property for auction sale under Na.Ka.No.10374/2013/C5, dated 28.08.2019, but no auction conducted. Hence, the petitioner had sent a

representation to the respondents on 11.10.2021. Despite receiving the same, no action has been taken and no auction held.

4. In support of his submission, the learned counsel for the petitioner filed typed set containing cash receipt for depositing Rs.1,00,000/- (Rupees one lakh only) in the name of accused company; agreement of the petitioner with the accused company, dated 14.07.2012; final report filed in Crime No.2 of 2012; complaint of the petitioner, dated 22.02.2013; proceedings of the 2nd respondent in Na.Ka.No.10374/2013/C5, dated 03.12.2013 and paper publication for the auction, dated 17.09.2019. Hence, he prayed for appropriate direction of this Court.

5. The learned Additional Public Prosecutor appearing for the respondents filed counters on behalf of the respondents 1 and 2. The 1st respondent in his counter submitted that in O.A.No.21 of 2013, the learned Special Judge, Special Court for Tamil Nadu Protection of Interests of Depositors Act, 1997, Coimbatore had ordered public auction of the property on 24.08.2013. Following the same, the public auctions were conducted on three occasions (05.02.2015, 19.03.2015 and 17.09.2015). During the first auction on 05.02.2015, nine persons participated and only offered highest bid of Rs.81,20,000/-, which was not acceptable, since the market value of the property at that point of time around four crores. The second auction was held on 19.03.2015, 15 persons were participated and offered highest bid of Rs.1,01,15,000/-. Since the auction amount was not acceptable, again it was postponed and the third auction was held on 17.09.2019, no one had come forward to offer and thereafter, due to COVID-19 pandemic, steps to conduct auction could not be taken. Once normalcy is returned, auction would be held. Further, the attached property would fetch much more amount than the amount bidden. The property is situated in a prominent locality in Perundurai Taluk, where the value of the property increased manifold.

6. The 2nd respondent filed his counter and submitted that the 2nd respondent filed O.A.No.22 of 2013 before the learned Special Judge for Tamil Nadu Protection of Interests of Depositors Act, 1997, Coimbatore, seeking permission to sell the property under Section 4(3) and 7(7) of the Tamil Nadu Protection of Interests of Depositors Act, 1997. The immovable property in survey Nos.18/2B, 18/3B, 18/4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18/14, 15, 16, 17, 18 and S.F.No.19, bearing Document No.3632/2012, dated 22.08.2012 is situated at Pattakkaranpalayam Village, Perundurai Taluk, Erode District and it was attached vide G.O(Ms).No.157, Home (Police XIX) Department, dated 12.03.2013. After the attachment, the Special Judge, Special Court for the Tamil Nadu Protection of Interests

of Depositors Act, 1997, Coimbatore in O.A.No.22 of 2013 permitted the respondents to auction the property for the benefit of the depositors. So far three auctions held and the bid amount was below the market value of the property. Hence, the auction was not concluded. The last auction was held on 17.09.2019, no one was participated in the same. Due to the pandemic situation, now the auction could not be held and after returning of normalcy, again auction would be conducted. The property is worth of several crores and hence, with wide advertisements and paper publications, the auction shall be held in a transparent manner.

7.The learned Additional Public Prosecutor apart from filing of two counters, he submitted that in this case, A1 is the company viz., M/s.Kondunaadu Emu Poultry Farms Private Limited, Mohanur Main Road, Karuppanar Kovil Street Thottam, Chinnu Nagar, Paramathivelur, A2-Devaraj, A3-Sathiyaraj, A4-Natarajan are Director of A1 company and A5-Arivazhagan is its Manager. They were promoting Emu birds and country chicks in the names of the depositors by projecting various schemes giving attractive monthly returns and yearly bonus for the deposits made. A2 to A5 canvassed the depositors and collected huge sums of money and executed agreements. The petitioner is the one of the person, who had joined the scheme of the accused company and lost money. Like the petitioner, several persons have been cheated and hence, a case in Crime No.2 of 2012, for offence under Sections 406, 420, 120(b) of IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors Act, 1997 was registered on 02.10.2012. During investigating, the active role and day to day affairs of accused A2 to A5 was found. A6 had joined with the other accused and made arrangements to trade the cheated amount in Forex company. Totally, 529 depositors have been cheated and the cheated amount is to the tune of Rs.7,50,07,922/-. G.O(Ms).No.119, Home (Police XIX) Department, dated 08.02.2016 was passed for attachment of a movable property viz., Tata Safari vehicle bearing registration No.TN 34 Q 0333. The learned Special Judge, Special Court for the Tamil Nadu Protection of Interests of Depositors Act, 1997, Coimbatore allowed O.A.No.16 of 2016, by order, dated 10.06.2016 and thereby, TATA safari car was auctioned on 04.11.2016 and the auction amount of Rs.2,10,500/- deposited in the account maintaining by the 2nd respondent/competent authority.

8.He further submitted that the total amount of Rs.6,63,662/- is only available in the savings bank account No.33359233080 maintained by the 2nd respondent as on 25.09.2021. The immovable property in survey No.18/2B, 18/3B, 18/4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 18/14, 15, 16, 17, 18 and S.F.No.19, bearing Document No.3632/2012, dated 22.08.2012, situated at Pattakkaranpalayam Village, Perundurai Taluk, Erode District was

attached vide G.O(Ms).No.157, Home (Police XIX) Department, dated 12.03.2013. In O.A.No.22 of 2013, the trial Court, by order, dated 25.02.2014 had allowed the attachment and directed the property to be auctioned and depositors money to be reclaimed. So far three auctions were held, but the bidden amount could not be real and actual. Hence, the auction was postponed and now, due to the pandemic, auction could not be held. As and when normalcy returns, giving wide publicity, in a transparent manner, the auction would be held. He further submitted that the land is situated in a prominent place and the competent authority/respondents are hopeful that substantial amount can be retrieved by way of auction.

9.This Court considering the rival submissions and perused the materials available on record.

10.It is seen that the land is situated at Pattakkaranpalayam Village, Perundurai Taluk, Erode District, which is an prominent place, adjacent to the headquarters of the Erode District. The value of the property in that locality have increased manifold.

11.This Court accepts the reason given by the respondents/competent authority. Due to the pandemic situation, the real value of the property could not be realized. Since there are 529 depositors and the cheated amount is to the tune of Rs.7,50,07,922/-, maximum to be retrieved from the property attached, so that the depositors can be repaid with the deposited/invested amount.

12.This Court is of the view that the attached property of five acres of land available enblock in Perundurai Taluk can be used for Government purpose. The competent authority/respondents can approach the Government through the concerned District Collector to find out whether Government needs such property. On exploring such possibility if lands are required, necessary steps shall be taken and proper value shall be fixed and the amount to be deposited to the credit of the bank account of the 2nd respondent and thereafter, the amount shall be paid to the depositors.

13.With the above directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Competent Authority,
District Revenue Officer,
Erode District.
2. The Competent Authority and
District Revenue Officer,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Nagendra Prasad, Advocate, S.R.No.1809

W.P.No.23505 of 2021

AD(CO)
CT 21/01/2022