



WEB COPY



W.P.No.32367 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

W.P.No.32367 of 2019

and

W.M.P.Nos.32669 & 32670 of 2019

P.Suseendran

... Petitioner

-Vs.-

1.The State Rep by its
The Chief Secretary,
Secretariat,
Fort St. George,
Chennai – 600 009.

[R1 deleted from the array of respondents vide order
dt. 14.09.2022 made in W.M.P.No.13855 of 2020
in W.P.No.32367 of 2019]

2.The Home Secretary,
The Home Department,
Secretariat,
Fort St.George,
Chennai – 600 009.

3.The Competent Authority,
District Revenue Officer,
Chennai – 600 001.

4.M/s.Sree Vari Capital,
No.21, 1st Floor,



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Yes, Yes Arcade,
MTH Road, Ambattur,
Chennai – 600 053,
One of the Partner Represented by its

5.K.Thilak

6.K.R.Nagarajan

7.K.A.Vinoth Kumar

8.R.Jayanthi

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings issued by the 2nd respondent in G.O.Ms.No.242/2016 dated 26.02.2016 quash the same and consequently, directing the 3rd respondent to consider the case of the petitioner and to release the petitioner property.

For Petitioner	:	Mr.K.S.Thiyagarajan, No appearance
For R1	:	Deleted
For R2	:	Mr.M.Murali, Government Advocate
For R3	:	Mr.N.S.Suganthan, Government Advocate (Crl.Side)

ORDER

This Writ Petition is filed to quash the order passed by the second respondent under Section 3 of TNPID Act, 1997 to the effect of interim attachment of the petitioner's property.



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2.The impugned Government Order dated 26.02.2016 been issued by the Government being satisfied that the petitioner's financial establishment, namely M/s.Sree Vari Capital, Chennai is not likely to return the depositors, the money deposited by them and to protect their interest, interim attachment of the property owned by one of the partners is necessary. This Government Order is challenged on the ground that it was not issued in compliance with the provisions of the TNPID Act and the property under attachment is a joint family property and not the exclusive and absolute property of the petitioner.

3.The attachment order was passed without affording opportunity to the petitioner and the third respondent, who is the Competent Authority under the act, is not empowered to enforce the order of attachment without complying the mandatory provisions contained in Sections 4 and 7 of TNPID Act. According to the petitioner, within 30 days of the interim attachment order, the order for absolute attachment has to be passed. However, in this case, to make the interim attachment order absolute, the third respondent has taken 707 days to file an application and the said delay is unexplained. Hence, the interim attachment order has to be quashed.



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4.This Writ Petition came up for admission in the year 2019 and been pending for nearly three years and adjourned from time to time. On one such hearing, the learned counsel appearing for the petitioner submitted that, out of 55 depositors, for more than 31 depositors, money has been settled in full or in part and the petitioners are ready to deposit the balance amount.

5.In the light of the above submission, status report from the District Revenue Officer and the Competent Authority has been sought for and the status report dated 29.09.2022 was filed stating that totally a sum of Rs.71,10,000/- has been deposited by 53 depositors, out of which, the principal amount is fully refunded to 10 depositors, which runs to a sum of Rs.13,30,000/- and for 21 depositors, part of the deposited money has been refunded to the tune of Rs.8,85,750/- and a balance sum of Rs.48,94,250/- is yet to be paid, whereas, the amount which stands in the account of Competent Authority is a sum of Rs.12,79,500/-.

6.As far as the validity of the attachment is concerned, the status report indicates that the amount has been taken in accordance with the provisions of the TNPID Act. The petitioner's financial firm, namely M/s.Sree Vari Capital



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has defaulted in refunding the money collected as deposit. Being satisfied that there is no likelihood of repaying the money and to protect the interest of the depositors, the impugned Government Order was passed for ad-interim attachment in exercise of power under Section 3 of the TNPID Act.

7.Subsequently, the learned Special Public Prosecutor has taken out an application for attachment and sale of the property to be realized and disbursed to the depositors. From the status report, this Court finds that after realization of part of the money and disbursement to the depositors, still a sum of Rs.36,14,750/- is payable. Out of 53 depositors, for 10 depositors amount fully settled and for 21 depositors, partly settled and for 22 depositors, a sum of Rs.48,94,250/- is to be paid.

8.In exercise of power under Section 3 of TNPID Act, the Government, which had reason to believe that the financial establishment is acting with an intention to defraud the depositors and not likely to return the deposited money, had passed the impugned Government Order for ad-interim attachment of the property of the petitioner. Though the petitioner claims that it is his ancestral property and he is not an absolute owner, this Court is of



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the view that whatever the limited interest and right the petitioner have in the said property, it is liable to be attached and for that purpose, the order of interim attachment cannot be questioned. Under Section 4(1) of the TNPID Act, the Competent Authority is empowered to make an application for attachment. The power seeking attachment by the Court and the power of Government by interim attachment order under Section 3 are distinct. The impugned order is the executive order by the State in exercise of power under Section 3 of TNPID Act. Independent of the power conferred to the Competent Authority, the State is empowered if it has a reason to believe that there is no likelihood of repayment of the money deposited. The delay on the part of the Competent Authority seeking ad-interim order of attachment absolute is condonable delay. The failure of the Competent Authority to approach the Court to make interim order absolute within the time prescribed will not enure any undue advantage on the defaulter. The prime intention of the Act is to protect the interest of the depositors. If the delay in seeking the interim order absolute is not condoned, the very interest of the depositors will be badly affected.



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9. Therefore, this Court finds no reason to quash the interim attachment order passed by the Government, which has been subsequently carried forward by way of an application by the Competent Authority to make the interim order absolute and also been ordered accordingly by the Special Court.

10. Taking note of the fact that the settlement of the money due not been forthcoming by the defaulters, the recovery process has to be proceeded to meet the ends of the justice. For the said purpose, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

26.10.2022

Speaking/Non-speaking order

Index: Yes/No

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To

1. The Home Secretary,
Home Department,
Secretariat,
Fort St. George,
Chennai – 600 009.



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Dr.G.JAYACHANDRAN.J.,

sp

2.The Competent Authority,
District Revenue Officer,
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