

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No. 467/2021

Milind V State of Maharashtra and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.P. Dharmadhikari, Senior Advocate a/b Mr. A.M. Sudame, Advocate
for petitioner.

Mr. V.A. Thakare, APP for resp. no.1.

CORAM : Vinay Joshi & Valmiki Sa Menezes, JJ.

DATE : 07-07-2023

Heard finally by consent of both the learned
Counsels.

2. The petitioner's immovable property has been attached in terms of Section 4(1) of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 ("Act", for short), alleging that the property has been procured by use of depositors money. The said Notification dated 02-8-2019 is subject matter of challenge on account of total non application of mind. It is thus contention that there is no subjective satisfaction of the authority to contend that the property was acquired by financial establishment out of the deposits collected by the establishment. Moreover, it is submitted that there is

total non compliance of Section 5(3) of the said Act which mandates the Competent Authority to apply to the designated Court within 30 days accompanied by affidavit stating the grounds for issuing the order under Section 4(1) of the Act.

3. The State resisted the petition by contending that the Notification dated 02-08-2019 itself bears the recital about the subjective satisfaction for attachment. Moreover, it is submitted that the authority has already moved to the designated Court on 27-09-2021 under Section 5(3) of the said Act with condonation of delay application. Though the petitioner would submit that the application under Section 5(3) does not bear the ground, however, we are not inclined to go into the said aspect at this stage.

4. We have carefully examined the notification, wherein first two paras relate to the complaints received from the depositors and filing of the charge-sheet. We cannot consider the same as a subjective satisfaction connecting the ascertainment of the authority about the source for acquisition of property by financial establishment. The relevant observations made in the order read as below :

"And whereas, the properties specified in the Schedule appended hereto are alleged to have been acquired by the said persons from and out of the deposits collected by the said persons."

5. It conveyance that the authority stated that the property was alleged to have been acquired out of deposits collected by the said person. The plain reading convey that on allegation the action has been initiated. Sub-clause (1) of Section 4 mandates recording of the reasons in writing regarding the material on the basis of which the authority has believed that the property has acquired so. The order is totally bereft of reasons, therefore, it would not sustain in the eyes of law.

6. In view of that the impugned notification dated 02-08-2019 is hereby quashed and set aside qua petitioner. The authority shall pass fresh order if they desire so within 12 weeks from today.

7. We record the statement of the petitioner that he would not alienate or create third party interest for 12 weeks from today in respect of the properties which are subject matter of impugned notification qua the petitioner. Consequently, the application filed by the authority in terms of Section 5(3) before designated Court also quashed with liberty to apply fresh if occasion

arises so as regards to the applicant only.

8. Petition stands disposed in above terms.

JUDGE

JUDGE

Deshmukh