



C.M.A. (MD)No.1099 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1099 of 2022

and

C.M.P.(MD) No.11217 of 2022

D.Jyothi

...Appellant/7th Respondent

Vs.

1.The Competent Authority/
Special District Revenue Officer,
Virudhunagar.

..1st Respondent/Applicant

2.Rich India Marketing Company,
Sivakasi, Rep thro,
Thiru.Subbaraj (R2).

..2nd Respondent/Defaulted Financial
Establishment

3.Subburaj
4.S.Muthukumar
5.K.Santhana Marimuthu
6.P.Shankar
7.S.Ravichandiran

...Respondents 3 to 7/ Respondents
purchasers

8.P.Sivamurugan

...8th Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 11 of the TNPID Act, 1997, to set aside the order dated 05.02.2021 made in O.A.No.04 of



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2017 on the file of the Special Court under TANPID Act, 1997 Cases, Madurai and allow the above Civil Miscellaneous Appeal.

For Appellant : Mr. M.Raja Ravivarma
For R1 : Mr.D.Sasikumar
Additional Government Pleader
For R2 & R3 : Mr.A.Balaji
For R8 : Mr.K.Sivabalan
For RR4, 5, 6 & 7 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the order passed by the Special Court attaching the property of the appellant, who is stated to be a subsequent purchaser in good faith and for valuable consideration.

2.The brief facts, leading to the filing of the claim petition, are as follows:-

(i)For the sake of convenience, the parties herein are referred to as per their rank before the Trial Court.

(ii)Originally, Crime No.4 of 2010 in Economic Offences Wing-II was registered for the offence under Sections 409, 420, 120(B) IPC and Section 5 of



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the Tamil Nadu Protection of Interests of Depositors Act (In Financial Establishments), 1997 (hereinafter referred to as 'TNPID Act' for the sake of brevity) against the second respondent in O.A.No.4 of 2017 and its financial establishment for the alleged receipt of the deposits to the tune of Rs.9,59,37,793/- from 3304 depositors.

(iii) During the process of investigation, the competent authority by G.O.Ms.No.844 of 2011 dated 12.12.2011, G.O.Ms.No.31 of 2013 dated 11.01.2013, G.O.Ms.No.139 of 2014 dated 24.02.2014 and G.O.Ms.No.136 of 2016 dated 09.02.2016 attached the properties of the financial establishment which resulted final attachment proceedings by the competent Court.

(iv) Though the subject property was not covered under those Government Orders, an application has been moved before the Special Court by the competent authority/Special District Revenue Officer on the ground that the subject property was sold by the second respondent, namely the financial establishment, just prior to the registration of the FIR to the third respondent before the trial Court in the year 2010. The third respondent in turn transferred the said property in favour of the fourth respondent in the year 2011 and the fourth



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respondent sold the property to the fifth respondent. The fifth respondent through his power agent namely, the sixth respondent, has sold the property to the seventh respondent. According to the competent authority, the subject property was purchased out of the amount collected from the depositors in the financial establishment.

2.1.The appellant before this Court is the purchaser in the year 2015. In the application moved before the Special Court for attachment of those property, the Special Court passed an order of attachment. Challenging the same, the appellant filed this present appeal.

3.The learned counsel appearing for the appellant mainly contended that she is a *bona fide* purchaser for valuable consideration. She has paid the entire consideration. All the payments were made only through bank transactions i.e., by way of Demand Draft. While so, no notice has been served on the appellant before the attachment order is passed by the Special Court. Hence, challenging that order, she has filed the present appeal.



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4.The learned Counsel appearing for the competent authority would submit that much water has been flown in this matter. Consequent upon the attachment order, the property was sold out in an public auction and the third party, who had purchased the property was also put in possession. Further, he submitted that even during the pendency of the application, several notices have been sent to the appellant from the year 2017 to 2020. Since the same were not served, publication has also been issued by the Special Court and then the orders have been passed. The proceedings before the trial Court clearly shows that the appellant was just watching the proceedings and did not take any effort to appear before the Court. Hence, he opposes this appeal.

5.In the light of the above submission, now the point arises for consideration in this appeal is:

(a) Whether the attachment order passed by the Special Court is vitiated and not under the Court of law?

6.I have heard the learned counsel appearing on either side and perused the entire materials placed on record.



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7.It is seen from the records that the application has been moved by the competent authority for attachment under Section 8 of the TNPID Act. Originally the matter came before the Special Court on 17.05.2017. From that day onwards, the matter has been repeatedly adjourned for non-appearance of the several parties, some or the other and one by one did not receive their notices till 2020. Finally, the Special Court issued paper publication as against the present appellant and thereafter, passed an order of attachment. It is relevant to note that in the trial Court proceedings the vendors of the appellant and the second respondent, who were arrayed as accused, were all very much appeared before the trial Court. Therefore, it cannot be stated that the appellant has no knowledge about the proceedings before the trial Court and no notice has been served on her. When the appellant has derived the benefit from the previous owners and when the said previous owners are appearing before the Special Court with regard to the property transferred to the appellant, the lack of knowledge as contended by the learned counsel for the appellant cannot be accepted.

8. Though it is a stand of the appellant that she is the *bona fide* purchaser in good faith and for valuable consideration, it is relevant to note that even in the affidavit filed in support of this appeal, the appellant has clearly pleaded that the



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third respondent has transferred the property to the fourth respondent, who in turn transferred the same to the fifth respondent; that thereafter, the fifth respondent through his power agent, viz., the sixth respondent transferred the same to the seventh respondent; that the transfer of properties were made with an intention to deceive the depositors, even without proper consideration; hence, the transfer made by the third respondent is the *mala fide* transfer.

9. When the appellant herself pleaded that there was a *mala fide* intention in transferring the property on the part of the other predecessors in title, the appellant now cannot show ignorance by contending that she is a *bona fide* purchaser. She ought to have made a reasonable enquiry before purchase. The very affidavit itself clearly shows that she was also aware of the nature of transaction as it has been made only in order to deceive the depositors. Having known the above said facts, the appellant herself has invited the risk by entering into such transaction with her vendor.

10. Such view of the matter, this Court is of the view that the order passed by the Special Court cannot be found faulted. At this juncture, yet another aspect also cannot be ignored. Consequent upon the attachment order passed by



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the Special Court, the subject property was already sold in a public auction and the purchaser of the said property was also put in possession. This fact is not disputed by any of the parties.

11.In fine, as much water has already been flown, the present appeal deserves to be dismissed. Accordingly, this Civil Miscellaneous Appeal is dismissed. It is needless to mention here that this judgment will not debar the appellant from proceeding against her vendor, if she so desires, in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

10.03.2023

NCC : Yes / No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Special Court under TANPID Act, 1997 Cases,
Madurai.
- 2.The Competent Authority/
Special District Revenue Officer,
Virudhunagar.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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