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Writ Petition (MD)No.2932 of 2

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.08.2023

CORAM:

**THE HONOURABLE MR. JUSTICE P. DHANABAL**

Writ Petition (MD)No.2932 of 2014

and

M.P.(MD)No.1 of 2014

Jeyakumar

... Petitioner

Vs.

1.The Secretary to the Government,  
Of Tamil Nadu, Home  
(Police XIX) Department,  
Fort St. George,  
Chennai.

2.The District Collector,  
Kanyakumari District.

3.The District Revenue Officer,  
Kanyakumari District.

4.The Tahsildar,  
Kallkulam Taluk,  
Kanyakumari District.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents 1 to 4 their men or agents herein from sealing the property of the petitioner situated in Survey R.S.No.171/25-A-1 admeasuring 1 cents and 250 sq links along with the building in Door No.1-177, 1-177/1 to 4 of Kulasekaram



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Writ Petition (MD)No.2932 of 2

Town Panchayat, Kanyakumari District on the guise of G.O.Ms.No.392 dated 04.06.2012.

For Petitioner : Mr.F.Deepak  
For Respondents : Mr.R.M.Anbunithi  
Additional Public Prosecutor

### **ORDER**

The petitioner has filed this writ petition in a nature of Writ of Certiorarified Mandamus, forbearing the respondents 1 to 4 their men or agents herein from sealing the property of the petitioner situated in Survey R.S.No.171/25-A-1 admeasuring 1 cents and 250 sq links along with the building in Door No.1-177, 1-177/1 to 4 of Kulasekaram Town Panchayat, Kanyakumari District on the guise of G.O.Ms.No.392 dated 04.06.2012.

2.Prior to the sale, he verified the entries with regard to encumbrance and found that there is no encumbrance, he purchased the above said property from Saroja Thirumal, Unni Sankar and Susi Priya. Thereafter, he is in possession and enjoyment of the property. While so, a criminal case has been foisted in Crime No.8 of 2005 under Section 409 and 420 of IPC and Section 5 of TNPID Act against erstwhile owner namely, one Saroja Thirumal, Unnisankar alleging that he has collected deposits from various depositors and he has not returned the same amounts. Based on the complaint, FIR has been registered and chargesheet has been filed in



C.C.No.25 of 2010 and the same is pending before the Special Court for TNPID Cases, Madurai. A summon was also issued to him for the attachment of the properties in I.A.No.47 of 2012 in C.C.No.25 of 2012 on the file of the TNPID Court and the same is pending. The petitioner is a bonafide purchaser and at the time of purchase, no encumbrance revealed in the record of RDO.

3.Now on the strength of the order passed by the Home Department, the respondents herein without issuing any notice to the petitioner, passed the above said G.O. Thereafter, the respondents 2 to 4 under the guise of the above G.O.Ms.No.392 came to the premises of the petitioner and attempted to lock and seal the aforesaid property on 18.02.2014. The petitioner explained about his purchase and has no knowledge about the aforesaid G.O. The competent Authority has to apply before the Special Court for making the interim order of attachment to make it absolute. But without following the aforesaid procedure, they attempted to lock and seal the property and hence, the petition was filed for forbearing the respondents from sealing the property.

4.No counter was filed on the side of the respondents.



5.The learned counsel appearing for the petitioner would contend that the petitioner has purchased the property from Saroja Thirumal, Unni Sankar and Susi Priya through sale deed dated 03.03.2011 for valuable consideration. On and from the date of sale deed, he has been in possession and enjoyment of the property. In the meantime, the first respondent without any notice, passed G.O.Ms.No.392 dated 04.06.2012. The petitioner has no knowledge about the G.O and the G.O. was not served to the petitioner. The petitioner is a bonafide purchaser. At the time of purchase, there was no encumbrance of the property. After proper enquiry only, the petitioner has purchased the property. While so, the respondents 2 to 4 attempted to lock and seal the property based on G.O.Ms.No.392. Since the property on the date of passing attachment order belong to the petitioner without his knowledge, the G.O. has been passed. Therefore, the respondents have no right to lock and seal the property and therefore, he filed this writ petition.

6.The learned Additional Public Prosecutor appearing for the respondents would contend that the FIR was registered in the year 2005 as against the vendor of the petitioner and thereafter, the G.O.Ms.No.392 was passed on 04.06.2012. In the meanwhile, in order to cheat the depositors,



the petitioner has created the aforesaid encumbrance certificate. The petitioner is not a bonafide purchaser and already the property was attached.

Therefore, without challenging the attachment orders, this petition is not maintainable and is liable to be dismissed.

7.This Court heard both sides and perused the material available on record.

8.On perusal of the records, it is seen that a case in Crime No.8 of 2005 has been registered under Sections 409 and 420 of IPC and a charge sheet has been filed in C.C.No.25 of 2010 before the TNPID Court as against the vendors of the petitioner and the same is pending. During the pendency of the aforesaid case, the petitioner has purchased the property on 03.03.2011. However the Government has passed G.O.Ms.No.392 by attaching the property of the petitioner and other properties. As rightly contended by the learned Additional Public Prosecutor, the petitioner has not challenged the aforesaid attached G.O., which is the main document. But he filed this writ petition to forbear the respondents 2 to 4 to lock and seal the property. The petitioner ought to have challenged the G.O.Ms.NO. 392 but he straight away filed this petition.



9.As per Section 4 of TNPID Act, the competent Authority has to apply before the Special Court for making an interim attachment order as absolute.

10.According to the petitioner, the respondents have failed to follow the provisions under Section 4(3) of TNPID Act to make interim order passed by the competent Authority as absolute. In this context, it is relevant to refer the Section 4(3) of TNPID Act.

11.Sections 4(1), 4(2) and 4(3) of TNPID Act reads as follows:-

*“(1)The Government may, by notification, appoint one or more authorities for such area or areas or such case or cases as may be specified in the notification hereinafter called “the competent authority” to exercise control over the properties attached by the Government under Section 3.*

*(2)The Competent authority shall have such other powers as may be necessary for carrying out the purpose of this Act.*

*(3)Upon receipt of the orders of the Government under Section 3, the Competent authority shall apply within thirty days to the Special Court constituted under this Act for making the ad interim order of attachment absolute and for a direction*



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*to sell the property so attached by public auction, and realise the sale proceeds . "*

12. Therefore, According to Section 4 of Act, the competent Authority appointed under Section 4(1) of the Act can exercise control over the attached properties under Section 3 of the Act and thereafter, as per Section 4(3) of the Act, the competent Authority shall apply within 30 days to the Special Court constituted under this Act for making ad interim order of attachment absolute and for a direction to sell the property so attached by public auction and realize the sale proceeds. Therefore, from reading of Section 4(3) of the Act, the competent Authority has to apply within 30 days to the Special Court for making interim order of attachment absolute and to sell the property. The Special Court after receipt of application under Section 4, shall issue show cause notice and the procedures have to be followed under Section 7 of the TNPID Act.

13. But in this case, it is for the respondents to decide whether the attachment has to made absolute or not. The respondents have to take possession of the property, after absolute attachment and after sale of the property. Though the petitioner without challenging the aforesaid G.O.Ms.No.392 filed this petition, the learned Government Advocate



represented that after following the legal formalities, the respondents have passed orders and no attempt was made by the respondents to lock and seal the property and the same is recorded. Since the petitioner has not challenged the attachment G.O.Ms.No.892 dated 04.06.2012, this petition is liable to be dismissed.

14.Accordingly, this Writ Petition is dismissed. No Costs.  
Consequently connected miscellaneous petition is closed.

**30.08.2023**

NCC : Yes/No  
Index: Yes/No  
Internet: Yes/No  
Mrn



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- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.



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**P.DHANABAL,J.**

Mrn

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