



W.P.(MD) No.5938 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.5938 of 2016
and
W.M.P (MD) No. 5269 of 2016

A.R.Malairajan

Vs.

... Petitioner

1. The Principal Secretary To,
Government of Tamilnadu
(Home Police XIX),
Fort.St.George,
Chennai 600 009.

2. The Additional Director General of Police,
Economic Offence Wing – II,
Chennai 600 032.

3. The Superintendent of Police,,
Economic Offence Wing – II,
Chennai 600 032.

4. The Deputy Superintendent of Police,
Economic Offence Wing – II,
Virudhunagar, Virudhunagar District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorarified Mandamus, calling for the



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records relating to the impugned order passed by the 1st respondent in G.O.Ms. No.860 Home (Police-XIX) department dated 30.11.2015 and quash the same and further direct the respondents not initiate any proceedings against the petitioner reserving the property.

For Petitioner :Mr.N.T.Tamilmani
For Respondents :Mr.R.Sivakumar
Government Advocate (Criminal Side)
for R2 to R4
Ms.D.Farjana Ghoushia,
Special Government Pleader for R1

ORDER

The petitioner assails G.O.Ms.No.860 Home (Police XIX) Department dated 30.11.2015 insofar as the property described in Sl.No.2 of the schedule thereto is concerned.

2. The petitioner states that he was the owner of the property bearing Survey No.77/1B of Sattur Village, Iyan Padandhal Village, measuring about 510 kuzhi; the property in Survey No.179/1 measuring 178 kuzhi; and the property at Survey No.71/2A2 measuring about 2000 kuzhi. He had obtained a loan from the Tamilnad Mercantile Bank, Sattur branch.



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Since the petitioner's business was not performing well, the petitioner was unable to discharge dues to the bank. Therefore, the petitioner decided to sell the property. In relation thereto, the petitioner entered into an agreement with one S.Raja. Pursuant to such agreement, the petitioner agreed to sell the property for a sale consideration of Rupees Two Crore and Forty Five Lakhs and received an aggregate sum of Rs.51 lakhs as advance. According to the petitioner, Raja failed to fulfill his obligations under the agreement for sale. Therefore, the petitioner terminated the agreement for sale. Instead, the petitioner sold the property under sale deed dated 19.08.2015 to K.P.Baskaran, B.Maheswari, Paulson Prabu and P.Jeyanthimeena.

3. Learned counsel for the petitioner contended that the property belonged to the petitioner and not to S.Raja and, therefore, the impugned order is not sustainable. Learned counsel further submits that the petitioner assailed the impugned order because his name figures therein.

4. Learned counsel further submits states that a sum of Rs.55 lakhs was deposited by the petitioner at the time of admission and that



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appropriate orders be passed in relation to such deposit if the court is not inclined to interfere with the impugned order.

5. Learned Government Advocate submits that Crime No.2 of 2013 was registered in respect of offences committed by S.Raja in relation to the financial institution, M/s.R.M.Wealth Creations India Private Limited. Pursuant thereto, he states that proceedings are underway before the TNPID Court in C.C.No.8 of 2015. He submits that about 305 depositors made deposits in the financial institution and that the amount involved is in the order of Rs.11 crore. He further submits that the impugned order does not call for any interference at the instance of the petitioner.

6. In paragraph 10 of the affidavit in support of the writ petition, the petitioner has categorically asserted that he sold the property to the four individuals mentioned therein on 19.08.2015. He further asserted categorically that he is not the owner of the property as of 23.03.2016. Since the petitioner states that he was not the owner of the property on the date of institution of the writ petition, the petitioner is not a person aggrieved by the



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impugned order. Consequently, the petitioner has no *locus standi* to challenge the impugned order and any such challenge should be mounted by the current owners of the property.

7. Turning to the deposit of Rs.55 lakhs which was made by the petitioner, a sum of Rs.51 lakhs was admittedly received by the petitioner as advance from S.Raja pursuant to the sale agreement dated 28.12.2011. The petitioner has stated that the advance of Rs.51 lakhs was received in two installments. S.Raja is allegedly the person in charge of the assets and affairs of M/s.R.M.Wealth Creations India Private Limited, in his capacity as Chairman.

8. Learned Government Advocate points out that S.Raja is the second accused in the pending criminal proceedings. There is *prima facie* evidence that he mobilized deposits from members of the public in relation to the activities of the financial institution and failed to repay amounts to such depositors. Therefore, it appears *prima facie* that the amounts paid by the said S.Raja to the petitioner are likely to be from and out of amounts



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received from members of the public by way of deposits. The petitioner terminated the agreement for sale and, at best, may claim damages from S.Raja. In these facts and circumstances, the petitioner is not entitled to a refund of the said sum of Rs.51 lakhs. As regards the additional sum of Rs.4 lakhs, the sum of Rs.51 lakhs was retained by the petitioner for about four years. The said amount would therefore have earned interest exceeding Rs.4 lakhs. Consequently, the sum of Rs.4 lakhs is also not liable to be refunded to the petitioner. Since these amounts are currently lying with the competent authority under the TNPID Act, these amounts are liable to be retained by the said competent authority.

9. W.P.(MD) No.5938 of 2016 is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petition is closed.

21.03.2023

NCC :No
Internet :Yes
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SENTHILKUMAR RAMAMOORTHY, J.

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