IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.11.2024

Pronounced on : 21.12.2024

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.419 of 2013 with M.P.1/2013
&
Review Application No.33 of 2013 with M.P.1/2013
in
CRP.No.1652 of 2005

Mukundan .. Appellant in CMA No.419 of 2013 / Review Petitioner in Rev.Appl.No.33 of 2013

Vs

1.Ravichand (Deceased)

2.Indira Kavar

3.The Deputy Superintendent of Police
E.O.W.II, Chennai - 2.

4.The Competent Authority & Special Commissioner
and Commissioner of Land Administration
Chepauk, Chennai - 5.

5.Sakthi Maruthi Chits Finance Co. Pvt. Ltd.,
Maruthi Finance Madras Periamet - Benefit Fund Ltd.,
Investor's Welfare Association
Represented by its President S.Prathap

Having its registered office at :
No.30, Baker Street, Vepery
Choolai, Chennai - 112. ... Respondents 1 to 5 in both cases

6.Vishal

7.S.Vijayasree
(R1 died, R6 & R7 brought on record as LRs of the of the deceased first respondent vide order dated 23.12.2022 made in CMP.No.6447 of 2022 in Rev.Appl.33/2013)
... Respondents 6 & 7 in Rev.Appln

PRAYER in CMA.No.419 of 2013: Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interest of Depositors Act, 1997, praying to set aside the order dated 30.01.2013 passed in I.A.No.33/2012 in O.A.No.10 of 2001 on the file of the Special Judge under TNPID Act, 1997, Chennai - 104.

PRAYER in Rev.Appln. No.33 of 2013: Review Petition filed under Order 47 Rule 1 & 2 r/w. Section 114 of CPC, praying to review the order dated 22.10.2009 in CRP.No.1652 of 2005 on the file of this Court.

For Appellant / Review Petitioner	: Mr.A.Palaniappan
For Respondents (in both cases)	: Mr.Edwin Prabakar, State Government Pleader Assisted by Mr.R.Siddharth Govt. Advocate for R3 & R4 Mr.T.Gowthaman, Senior Counsel for M/s.Harshit Sharma for R2 Mr.P.Sunil for R6 & R7

COMMON JUDGMENT

Introduction

1.1(a) This twin cases though apparently seem to be from different genre – a CMA, and a Review of an Order dated 22.10.2009 passed in CRP(NPD) 1652 of 2005, they share a common theme: whether the purchase of a property by a certain Ravichand and Indira Kavar, both of whom as between them are spouses (and of whom Ravichand is now dead), during the subsistence of an order of attachment under the provisions of TNPID Act was tenable in law?

1.1(b) As stated above Ravichanpd is now no more, and his children have been impleaded as respondents 6 and 7. However, for narrative convenience Ravichand will be retained. And, again for narrative convenience Ravichand and Indira Kavar would be referred to as Ravi and Indira.

1.2(a) Before delving deep on the specifics, a broad overview of the dispute may be made: A property measuring 3,650 sq,ft in door No.12 (previously door No.7) at Barnaby Road, Kilpauk was attached along with 29 other properties of Mukundan, (the appellant in CMA 419 of 2013 and the petitioner in Rev.P.33 of 2013) in terms of the provision of the TNPID Act, and it was later made absolute. Notwithstanding the Order of attachment, Mukundan sold the aforesaid property to the aforesaid Ravi and Indira. They moved the TNPID Court for lifting the attachment as regards this property, but the TNPID Court did not even entertain the petition and returned it. It became the subject matter of CRP(NPD) 1652 of 2005. There was an early drama when the CRP itself was withdrawn but it was later revived at the instance of the purchasers (which will be soon discussed) and came to be restored and allowed vide the Order of the learned Single Judge of this Court, dated 22.10.2009. Alleging that the revision was restored without notice to him, Mukundan, the very vendor who sold the property pending attachment, has now come forward with a petition to review the Order dated 22.10.2009 passed in CRP 1652 of 2005.

1.2(b) Now after securing their investment made in the property now in question vide the Order in CRP 1652 of 2005 (the subject matter of the Review Petition) Ravi and Indira had taken out I.A.33 of 2012 in O.A.10 2001 (in which the TNPID Court has made the interim order of attachment absolute) for directing the delivery of possession of the said property, and bound by the Order in the CRP, the TNPID Court had allowed the same, vide its Order dated 30.01.2013. This Order of the TNPID Court is the subject matter of appeal in CMA 419 of 2013. And, the same Mukundan, who had sold the property is challenging its delivery.

The Facts

3. Mukundan ran four different financial institutions and accepted deposits. And, his business went into rough weathers and as a result he could not pay his depositors and it invited registration of three FIRs, in (i) Crime No:8/2000, (ii) 30/2004 and (iii) 31/2000. While the details of these 98 cases are not very pertinent to the issue involved in the two cases now under consideration, for narrative-completion and for setting the context, the following facts are provided:

a) Investigating agency had filed two final reports in Crime No.8/2000, and they were separately taken on record by the trial Court in C.C.32 of 2001 and C.C.16 of 2004. Mukundan was convicted by the trial court and he preferred an appeal against it to this Court, where both the cases were compounded.

b) The case in Crime No: 30 of 2000 resulted in C.C. 5 of 2010, and it too has been compounded.

c) That leaves the last case in Crime No: 31 of 2000 and it is pending trial in C.C. 1/2015 before the TNPID Court where some 680 depositors are left high and dry in expectation of a total sum of about Rs.8.94 crores.

In all the above cases, the financial institutions whose affairs Mukundan presided are arrayed as accused persons.

4. Once the cases mentioned above were registered, all the properties of the accused Mukundan came to be attached interimly vide G.O.No. 637 Home (Court IIA) Department Dated 06.07.2001. And later vide Order dated 09.09.2002 in O.A. 10 of 2001 the TNPID Court made the interim attachment absolute. The property in Barnaby Road, the one whose sale is in defiance of Order of attachment is Item 1 in G.O.637.

Over to the Controversy:

5. The facts that are immediately necessary to understand the present controversy may now be stated:

a) After the order passed in O.A.10 of 2001, Mukundan took out I.A.No.11

of 2003 to raise the attachment of the property in Barnaby road on the ground that he proposed to sell it to mobilise necessary funds for settling his depositors and undertook to deposit the sale proceeds into the Court. The idea behind I.A.11 of 2003 must be understood in the context of the fact that Ravi and Indira were negotiating for the purchase of the Barnaby Road property with the Depositors' Association (the 5th respondent in both the cases) for the purchase of the said property in order the depositors could be paid.

b) Anxious that he was to pay the depositors and to relieve himself from the criminal liability, on 20.01.2004, Mukundan sold the Barnaby Road property to Ravi and Indira. In the said sale deed the order of attachment operating against the property sold was recited and disclosed. Subsequently, on 25.02.2004, the Depositors' Association filed a memo of full satisfaction in O.A.No.10 of 2001 before the TNPID Court.

c) It is in this backdrop, on 23.05.2005, Ravi and Indira filed an Interlocutory Application for raising the attachment concerning the property that they had purchased. As outlined earlier this petition was not even taken on record by the TNPID Court and was returned. This was challenged by Ravi and Indira in C.R.P(NPD).No.1652 of 2005.

d) Alongside the aforesaid revision petition, both Ravi and Indira had filed W.P.No.21208 of 2004, for a writ of certiorified mandamus for quashing the G.O.Ms.No.637, dated 06.07.2001.

e) On 06.08.2007, both W.P.No.21208 of 2004 and C.R.P(NPD).No.1652 of 2005 came to be disposed of by a common order of a learned single Judge of this Court. The learned single Judge took note of the memo dated 25.02.2004 which the Depositors' Association had filed before the TNPID Court, and applied the limitation period of 30 days introduced in the TNPID Act vide an Amendment Act that had come into force on 10.11.2003, and proceeded to quash the very G.O. It was recorded in that Order that Ravi and Indira had withdrawn the C.R.P, but without any leave to file a fresh C.R.P on the same cause of action.

f) Challenging the aforesaid order of the learned single Judge, the Competent Authority constituted under the TNPID Act preferred W.A.No.524 of 2008. On 30.09.2008 this appeal came to be allowed by a Division Bench of this Court, which found that the 30 days limitation introduced vide amendment to the TNPID Act did not have any retrospective effect, and inasmuch as the interim order of attachment dated 06.07.2001 made vide G.O.637, and the subsequent order of

TNPID Court making it absolute in O.A.10 of 2001 were prior to the said amendment, they will not be affected by the point on limitation and restored the attachment.

g) Aggrieved by the same, Ravi and Indira had filed Rev.Appl.No.20 of 2009, and on 31.03.2009, it came to be dismissed.

6. Now to the next phase. Having lost their game plan in seeking to quash the G.O.637, Ravi and Indira, now began to revive CRP (NPD) 1652 of 2005 which they had withdrawn. They strategized to seek restoration of the said revision and took out C.M.P.No.520 of 2009 for condonation of delay in seeking to restore C.R.P(NPD).No.1652 of 2005. On 22.10.2009, a learned single Judge of this Court allowed both C.M.P.No.520 of 2009 as well as C.R.P(NPD).No.1652 of 2005 simultaneously. This implied the Order of attachment as was restored by the Division Bench, referred to supra in W.A. 524 of 2008, was set at naught vis-a-vis the Barnaby property. The present review petition is directed against the aforesaid Order of the learned single Judge allowing CRP (NPD)1652 of 2005.

7. The learned counsel for Mukundan, the review petitioner made the

following submissions:

a) When once C.R.P.(NPD).No.1652 of 2005 was withdrawn by respondents 1 and 2 without any leave to revive it, the order reviving it is not legal. After the disposal of W.A. No.524 of 2008 on 30.09.2008, the respondents have taken out a Review Application in Rev. Appln. No.20 of 2009. One of the grievances expressed by them before the Division Bench was that inasmuch as the present CRP was withdrawn before the learned single Judge, they were remediless. However the Division Bench refused to entertain the review as it did not find any error apparent on the face of the record. It is thereafter, they moved CMP No.520/2009 for condonation of delay of 626 days for restoring the present CRP. This came to be listed before the court on 22.10.2009 as the first item. Only the State was represented, and no notice was issued to the present petitioner who was arrayed as 4th respondent in the CRP, but was issued only on some counsel. This CMP No.520 of 2009 was allowed. On the same day C.R.P. No.1652 of 2005 was also allowed.

b) Inasmuch as the CRP is dismissed as withdrawn, it no more exists and on 22.10.2009, the Court ought to have ordered notice to the accused / review petitioner in C.M.P.No.520 of 2009.

c) The strategy of Ravi and Indira was evident that they wanted to achieve in CRP.(NPD).No.1652 of 2005, that which they could not in W.P.No.21208 of 2004.

d) So far as the order passed in the CRP (NPD).No.1652 of 2005, dated 22.10.2009 is concerned, it appears to have been made under the impression that all the depositors involved in C.C. No.1 of 2015 in relation to which Ravi and Indira, rather the Depositors' Association required the trial court to lift the order of attachment have been paid, whereas it is not. In all, there are 680 depositors in C.C. No.1 of 2015 of whom only a few were paid, but only few office bearers were benefited. The same itself is bad in law, since the order of attachment was in force. Secondly, the order in this CRP dated 22.10.2009 goes to ratify the sale so made in violation of the order of attachment, but the court appears to be under an impression that the entire liability of the review petitioner herein had been discharged.

Summing up his argument, the learned counsel submitted that by an illegal process Mukundan had been duped, and so is the Court. Now Ravi and Indira had taken a valuable property without settling the dues of all the depositors and Mukundan continues to reel under the burden of criminal liability.

8. Arguing for Indira, the second respondent, Mr.T.Gowthaman, the learned Senior Counsel made the following submissions :

a) On 06.10.2003, Ravi, now dead, had entered into a sale agreement with Mukundan for purchase of the property in question for a total consideration of Rs.1.15 crores. However, it needs to be underscored that on that date, other than the G.O. 637, dated 06.07.2001 under which the properties of Mukundan were attached, there was another order of interim attachment passed by this court in C.S.No.712 of 2000, which had been laid for realisation of Rs.15.0 lakhs with interest from Mukundan. This apart, the Income Tax Department had also attached the property for realising the income tax dues of Rs.30.0 lakhs. Thus, out of this Rs.1.15 crores, the first respondent had paid Rs.15.0 lakhs to the plaintiff in C.S.No.712 of 2000, and had the attachment raised. He had also paid another Rs.30.0 lakhs to the income tax department to raise the attachment it had made. This leaves the balance of Rs.70.0 lakhs. Out of which, he had paid Rs.40.0 lakhs to the Depositor's Association, the 5th respondent and what now remained was Rs.30 lakhs.

b) The sale deed was executed on 20.01.2004, and the sale consideration shown was Rs.85.0 lakhs. Apparently this Rs.85.0 lakhs should have been the guideline value of the property. Hence, the balance Rs.30 lakhs which is required to be paid in terms of sale agreement, was not disclosed in the sale deed, which Ravi had paid to Mukundan on the date of sale. Mukundan however, did not bring this Rs.30.0 lakhs to light.

c) And, when this Court restored C.R.P. (NPD) No.1652 of 2005 vide its order dated 22.10.2009, it did not allow it without any application of mind. Instead it directed Ravi and Indira to deposit another Rs.30.0 lakhs within about six weeks time. Though nothing was required to be paid, yet the direction to deposit Rs.30.0 lakhs came to be passed essentially because, on paper there is nothing to indicate the difference between the sale consideration as indicated in the sale agreement and the one indicated in the sale deed was paid to anyone. Accordingly, on 10.12.2009, this Rs.30.0 lakhs was deposited before the TNPID Court.

d) It may be that Ravi and Indira in whose name the sale deed was registered, did not obtain the permission of the TNPID Court for transacting the said property, but still they did not attempt to make any gain for themselves by outmanoeuvring the procedure. Instead, they had deposited Rs.30.0 more than the agreed sale consideration.

e) One of the cases registered against Mukundan was in Crime No.8/2000. This culminated in C.C.No.32 of 2001 on the file of Special Court under TNPID Act, Chennai, where he suffered a conviction for five years besides Rs.50,000/- as fine. Pursuant to the said conviction, he was in jail from 05.10.2004. And Mukundan challenged this in Crl.A.No.401 of 2006 before this Court. In this appeal, the accused had taken out Crl.M.P.Nos.2921 and 2922 of 2006, seeking suspension of sentence. These petitions were disposed of by a learned single Judge of this Court on 15.03.2007. The learned Single Judge has recorded the submissions of the counsel for the accused in paragraph No.2 of the order, which reads as below :

" The learned senior counsel for the petitioners further submits that there are arguable points involved in this appeal. It is brought to the notice of this court by the learned senior counsel that the second petitioner has been undergoing incarceration right from the date of his arrest i.e., 05.10.2004. The learned senior counsel appearing for the petitioners also submits that

even in the counter filed by the respondent police that the petitioners have settled 25% of the deposited amount to the depositors even during the pendency of the trial. The learned senior counsel further contends that even now the petitioners having concrete proposal for settlement of amount to the depositors and in view of their continuous incarceration, the petitioners are not able to pursue their efforts to settle the matter amicably. The learned senior counsel further contends that though it is alleged in the counter affidavit that some of the attached properties also have been sold out in contravention of the attachment by the petitioners, the fact is such properties were sold only at the instance of the depositors and the sale proceeds utilized only to settle the amount to the depositors and that there are other properties also under attachment and the properties are worth about Rs.50 crores. The learned senior counsel further contends that the continuous imprisonment of the second petitioner is not at all justified and out of five years sentence of imprisonment awarded to the petitioners, already a period of two and half years was over. It is is also brought to the notice of this Court by the learned senior counsel appearing for the petitioners that a sum of Rs.19 lakhs belonging to the petitioners were already available with the investigating agency."

Now if the dates are correlated, the accused went to jail pursuant to his conviction on 05.10.2004, whereas the sale deed was executed on 21.01.2004, and the statement as recorded by the Court indicates that at least 25% of the creditors of Mukundan had been settled. Now unless the money paid to the Depositor's Association and Mukundan was utilized for settling the depositors, there could not have been any other sources for making payments, since the other properties of Mukundan were under attachment. Indeed, Crl.A.No.401 of 2006 was later compounded and allowed on 25.06.2007. Thus the sale consideration had been used to settle contractual and statutory liability of Mukundan

f) If the sale deed dated 20.01.2004 is bad in law, then Mukundan does not have any *locus standi* to challenge the very sale, at this distant point of time for two reasons :

- that he, as a party to what he now claims as an illegal transaction, cannot take advantage of its own illegality. Reliance was placed on the ratio in ***Jitendra Kumar Khan and others Vs Peerless General Finance and Investment Company Ltd. and others*** [(2013) 8 SCC 769];
- he having acquired an advantage to himself under the transaction, is estopped from challenging it, more so when he had utilised the same for paying his creditors off and to

have the offence discharged.

At any rate Ravi and Indira never attempted to defraud the judicial process. If depositors are victims of Mukundan, so were Ravi and Indira.

9. Supplementing the arguments of the counsel for Indira, The learned counsel for the respondent 6 and 7, the children of Ravi, submitted:

a) It is not that the review applicant is an innocent victim of judicial action that was improperly conducted. His accusation or rather the allegation is that when CRP (NPD) No.1652 of 2005 was revived after the dismissal of the writ appeal in W.A.No.524 of 2008, he was not served with a notice restoring it. The larger issue is what is his grievance. To state it differently, how has he been aggrieved by the revival of CRP.No.1652 of 2005. As per the scheme of the TNPID Act, only the Competent Authority alone can challenge the sale. But he has not raised any objections, but strangely it is the review petitioner who now cries foul of the very sale that he had opted to execute in violation of the statute. This may have to be understood in the contextual background of both the revival of CRP.No.1652 of 2005, and the order passed by the learned Single Judge of this Court on 22.10.2009.

b) It is an indisputable fact that the review petitioner was arrayed as an accused in at least three cases instituted *inter alia* against him under the provisions of TNPID Act. It is also not in dispute that the Government had passed G.O.(Ms)No.637 Home (Courts IIA) Department, dated 06.07.2001 for attaching all the properties of the review petitioner. It is in this background, the very review petitioner had approached the TNPID Court with his I.A.No.11/2003 in O.A.No.10/2001. In his affidavit filed in support of his application, he has stated that he had found certain buyer for the property in question, and that he was keen to sell the said property with the leave of the Court with an intention to deposit the sale consideration into the Court, and prayed that the Court may direct an Investigating Agency to keep open the said property to enable sale to a potential purchaser. What is significant here is that the very idea to sell the property which is admittedly attached, and whose keys are only with the Investigating Agency, was mooted by the very review petitioner.

c) On receipt of Rs.40.0 lakhs, the Depositors Association had filed a Full Satisfaction Memo (FS memo) dated 25.02.2004 in O.A.No.10

of 2001. As has already been noted, this request of the Depositors Association to record the FS memo was not recorded by the TNPID Court.

d) It is not that this Court was not taken into confidence. The order in Crl.Appeal No.401/2006 and Crl.R.C.No.986/2006 makes a pointed reference to the sale transaction vis-a-vis the property in question entered into between the review petitioner and the respondents 1 and 2, as well the application of the sale proceeds thereof.

e) The respondents 1 and 2 are not parties to any fraud, but are poor victims to fraud.

10. Appearing for the Competent Authority Mr.Edwin Prabhakar, the learned Government Pleader, had made the following submissions :

a) the sale in favour of Ravi and Indira cannot be sustained. Of the three FIRs registered, only the depositors in C.C. 1 of 2015 (arising from Crime No:31 of 2000), substantial number among the 680 depositors are yet to be paid. And their combined total claim on the date of the FIR was Rs.8.94 crores. And, Ravi and Indira were not bonafide purchasers for value without notice, since the sale deed itself recites about the order of attachment.

b) Once the investigating agency commenced its investigation, and Mukundan's properties were attached, its statutory consequence is that it had frozen Mukundan's power of alienation. This order was not challenged by Mukundan or by any third party who might claim interest in the property attached through an appeal under Section 11 of the Act.

c) Now, when on 20.01.2004, Mukundan proposed to sell the property in question to Ravi and Indira without the leave of the Court, for a total consideration of Rs.1.15 crores, it instantly carrried the potential to flout Rule 7 of the TNPID Rules,1997.

d) It is in this circumstances, the purchasers adopted a novel method of approaching the TNPID Court with an application under Sec. 7(2) and Sec.7(5) of the Act. And this was promptly returned by the trial Court vide its order dated 23.05.2005 on the ground that Ravi and Indira had not acquired any right or interest over the property under the scheme of the Act.

e) This order was challenged by the purchasers in CRP.No.1652 of 2005. Indeed, the scope of CRP is to ascertain the correctness of the

TNPID Court in returning the unnumbered I.A. But the learned Single Judge vide his order dated 22.10.2009, has taken note of the sale and regularised it. This Order in effect is bad in law, since it tantamounts to the accused and the purchasers joining hands to make a list of their preferred creditors when in law every creditor deserves to be treated alike.

Reliance was placed on the judgement of Madurai Bench of this Court in ***The Competent Authority Vs K.L.K and K.R.S. Small Saving Santha Chit Fund*** in C.M.A.(MD) Nos.542 & 543 of 2017 dated 19.07.2017 [See: Para 9 & 12].

Discussion & Decision

11.1 What a combination of litigants! All unhappy mutually. To start with Ravi and India are unhappy because despite they paying an additional Rs.30.0 lakhs for the property (whose purchase through the aid of judicial process has now triggered the controversy), they are not assured of the safety of their investment. Mukundan, the one who had sold the property to Ravi and Indira is unhappy because despite the sale to Ravi and Indira, he is not relieved of his criminal liability; And, the depositors of Mukundan, about 680 of them, are unhappy because they are not paid a penny by Mukundan in the last 25 years.

And, the investigator is also unhappy because despite he doing what he is required to do, Mukundan is yet to be convicted in C.C.31 of 2000.

11.2 Interestingly all these unhappy litigants do not have company among or within them. Mukundan, despite selling the property to Ravi and Indira does not share company with them, for his sale has not saved him from the impending criminal liability. His review petition is his strategy to upset the very sale that he had executed. Obviously Ravi and Indira will be in no mood to share company with him. And the prosecution by its very nature cannot share company with Mukundan, the accused. And the Competent Authority cannot share company either with Mukundan or his purchasers, because he needs the property which he had initially attached for the benefit of the depositors.

11.3 This case is now about finding a near- happy solution in law that may eventually leave none going disappointed entirely.

Should the Court review its earlier Order

12. The moot point is should this court review the Order of the learned Single

Judge in CRP(NPD) 1652 of 2005, dated 22.10.2009. In other words, is there an error apparent on the face of the record that the said Order warrants a review? The answer is uncomplicated Yes, and it has little to do with the technical plea of reviving a dead CRP, something Mukundan's counsel canvassed in all vehemence. The reasons are:

a) In terms of the scheme of the TNPID Act, the properties of the accused are attached for the benefit of the body of his depositors. And the Act shows no preference to any set of depositors.

b) When properties are attached, the power of alienation of the owner of the properties is frozen statutorily. It is no different in the TNPID Act as well. Under Rule 7 of the TNPID Rules this is made evident. Therefore, sanctioning the sale of a property under statutory or judicial attachment, howsoever bonafide it may be, still it cannot be approved in law.

c) At any rate the entire sale consideration is neither deposited before the TNPID Court or before the Competent Authority to which the 680 odd depositors look to for remedy. In this case at least Rs.40.0 lakhs was paid by Ravi and Indira to a certain Depositors Association, but it is not a statutory entity, and any payment made to it cannot be countenanced in law.

d) Since the Order dated 22.10.2009 in CRP 1652 of 2005 outmanoeuveres the statutory scheme and its provisions and has ended up promoting the interest of select-depositors among the body of depositors, the error in law is written all over the Order.

Locus standi of the Review Petitioner:

13. This point is canvassed strongly by the counsel for Ravi's children. It must be said that he is right. Mukundan is running with the hare and hunting with the hounds:

a) Nothing prevented him from approaching the TNPID Court and to take the Court into confidence and then to sell the property with the leave of the Court. He did not do it. He was with the Depositors Association, and it is not known who all constituted it. Because those who received the money had not shared it with other depositors, he now has started to bark up the wrong tree – his own purchasers.

b) In between, it must be stated that according to his purchasers they had paid him Rs.30.0 lakhs in 2004. There are no further details available to verify it, but the possibility is that this money should have been paid to him. It is not in dipsute that as per the sale agreement which Ravi had entered into with Mukkundan on 06.10.2003, the total sale consideration fixed was Rs.1.15 crores. However, the sale deed dated 20.01.2004 discloses only Rs.85.0 lakhs as the sale consideration. The difference is Rs.30.0 lakhs, which according to the counsel for Indira had been paid in black to Mukundan. Indeed it is this difference which the learned Single Judge has directed Ravi and Indira to pay vide the Order now under review. Now, is there a possibility of Mukundan receiving Rs.30.0 lakhs which Ravi and Indira claim that they had paid? He had willingly executed the sale deed, which no reasonable man of ordinary prudence would execute if balance sale consideration, which represents nearly 25% of the total sale consideration, still remained to be paid. And, he has no case that the entire sale consideration was not paid by Ravi and Indira.

c) What does it indicate? Mukundan is not a worshipful angel that this court should let its conscience be moved by his tears. If he were honest he atleast should have settled part of the claim of his depositors.

What awaits the Purchasers:

14. Ravi and Indira surely are the imprudent victims of a dangerous deal. They took their chances with law when they ought to have been cautious:

a) They knew that the property in question was under attachment. Mukundan at least had been fair to them in disclosing it, and reciting it both in the sale agreement dated 06.10.2003 and the sale deed dated 20.01.2004. Therefore, Ravi and Indira cannot play the victim card now. Theirs is a case of *volunti non fit injuria,* as they knew it before hand that they were jumping into something which law and prudence does not appreciate.

b) Secondly, they moved the TNPID Court for lifting attachment which later became the subject matter of CRP (NPD) 1652 of 2005, but it was one stage too late. They ought to have applied for lifting the attachment before obtaining the sale of the property now caught in the controversy.

The solution the legal way:

15. The outcome of Rev.Appl.No.33 of 2013 can be anticipated. The review

application indeed has to be allowed, not because this Court considered Mukundan's plea that he was not served with notice before CRP.No.1652 of 2005 was allowed on 22.10.2009, but because whatever the order of this Court dated 22.10.2009 has enabled, cannot be sustained in law. As far as the ground on which Mukundan had filed the review application is concerned, he does not have any *locus standi* for he is a privy to the scheme by which a fraud was played on the working of TNPID Act. And his review application has only served as a notice to this Court for it to take notice of a patent illegality which this Court had unwittingly enabled vide its Order dated 22.10.2009 in CRP (NPD)1652 of 2005, and to exercise its inherent jurisdiction to correct it.

What next?

16. The order passed in CRP.No.1652 of 2005 dated 22.10.2009 now requires to be set aside, which implies the parties would be relegated to a position that was prior to 22.10.2009. So far as Ravi and Indira are concerned, inasmuch as they have purchased the property which was under attachment, the knowledge that it was so attached cannot be recognised as valid in law. They gambled on the effect of TNPID Act and had lost it.

The solution :

17. Taking every factor into consideration, this Court now tries to arrive at as legal and equitable a solution as possible :

a) The sale of the property in Barnaby Road, Kilpauk (Item No.1 in G.O. No.637 Home (Court IIA) Department Dated 06.07.2001) to Ravi and Indira is declared non est and void, and the said property is now available for sale by the competent authority;

b) Ravi and Indira, the two worst hit in this litigation would be entitled to :

   i. withdraw Rs.30.0 lakhs which they had deposited before the TNPID Court on 10.12.2009 with all accrued interest, if any;

   ii. that out of the sale proceed of item 1, they will be entitled to first claim of Rs.85.0 lakhs (Rs.40.0 lakhs paid to the Depositors Association + Rs.30.0 lakhs paid to the Income Tax Department + Rs.15.0 lakhs paid to the plaintiff in C.S.712 of 2000) since this Court has earlier acknowledged these payments in CRP.No.1652 of 2005);

iii. by discharging the debt to the plaintiff in C.S.No.712 of 2000 and also the IT Department, Ravi & Indira had preserved the property, something that could have been easily lost. Therefore it is fair and equitable that they are paid interest @ 6% p.a. on Rs.15.0 lakhs and also on Rs.30.lakhs from the respective dates on which these debts were discharged by Ravi and Indira;

iv. despite Ravi and Indira obtaining an order in I.A.No.33/2012 in O.A.No.10 of 2001, for delivery of possession (which is the subject matter of C.M.A.No.419 of 2013) they could not enter possession. Hence they are awarded interest at the rate of 6% annually on the sum they had paid on the stated first claim.

v. they are entitled to be in possession of the property till such time the property is brought to auction sale.

18.1 This order is expected to satisfy the competent authority even though it is he who ought to have filed the review petition. It is also expected that it may bring some smiles, likely to leave Ravi and Indira less disappointed, as they would at least obtain part of the investments that they have made. The part that they may lose is but the cost that they may have to pay for their bad decision in venturing in a riskier deal. The one who however, will have all cheer but most undeservingly will be Mukundan. On his conduct, he does not deserve it but he got the result he aspired for.

18.2 This Court underscores that the outcome of these cases is not the result of merit of the case as presented by Mukundan, but are made to uphold the spirit of TNPID Act.

19. So far as the CMA.No.419 of 2013 is concerned, it is an offshoot of the order passed on 22.10.2009 in CRP.No.1652 of 2005. When CRP goes, necessarily this CMA.No.419 of 2013 should also follow it.

20. In conclusion, both the review application in Rev.Appl.No.33 of 2013 and C.M.A.No.419 of 2013 are allowed. The order passed by this Court in CRP.No.1652 of 2005 is set aside. No costs. Consequently, connected miscellaneous petition if any, stands closed.

21.12.2024

Index : Yes / No
Speaking order / Non-speaking order

Neutral Citation : Yes / No
Asr/anu/ds

To:

1.The Special Judge under TNPID Act, 1997
Chennai - 104.

2.The Deputy Superintendent of Police
E.O.W.II, Chennai - 2.

3.The Competent Authority & Special Commissioner
and Commissioner of Land Administration
Chepauk, Chennai - 5.

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
C.M.A.No.419 of 2013
and Rev.Appln.No.33 of 2013

21.12.2024