BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.03.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.858 of 2023
and
C.M.P.(MD).No.12163 of 2023

R.J.Ilango ... Appellant

Vs.

1.Blessing Agro Farm India Limited Company,
Represented through its Managing Director,
I.L.Joseph Jeyaraj,
No.1K & 1K, Kajiyar Complex, North Gate,
S.S.Colony, Madurai.

2.I.L.Joseph Jeyaraj

3.The Competent Authority/
District Revenue Officer, Madurai.

4.The Superintendent of Police,
E.O.W.-II, Madurai.

5.K.Vijayaraman ... Respondents

(5th Respondent is impleaded as per the order of this court dated 30.01.2024 made in CMP(MD)No. 16355 of 2023 in CMA(MD)No.858 of 2023)

PRAYER: Civil Miscellaneous Appeal is filed under Section 11 of Tamil Nadu Protection of Interest of Depositors Act, (Act No.44 of 1997) against the Fair and

Decreetal order dated 31.01.2023 passed in O.A.No.7 of 2022 on the file of the Special Court under TNPID Act Cases, Madurai.

For Appellant : Mr.G.Prabhu Rajadurai

For R1 & R2 : Mr.B.Saravanan
Senior Counsel
for Mr.R.Manickaraj

For R3 & R4 : Mr.R.Baskaran
Additional Advocate General
assisted by M/s.S.Jeyapriya
Government Advocate

For R5 : Mr.C.M.Marichellaiah Prabhu

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JUDGMENT

This appeal is filed by one R.J.Ilango, who is not a party in the original application in O.A.No.7 of 2022 on the file of Special Court under the Tamil Nadu Protection of Interest of Depositors (In Financial Establishment) Act 1997, Madurai (in short referred as TNPID Court), but subsequently impleaded himself in the said O.A. The present Civil Miscellaneous Appeal is filed by the said third party.

2. The two accused namely Blessing Agro Farm India Ltd., and its Managing Director I.L.Joseph Jeyaraj are the petitioners in the said O.A.No.7 of

2022 inter alia praying to release the property stated in the petition and in lieu of the same and had stated that he is ready and willing to deposit the security amount. Accepting the contention of the accused, the TNPID Court has fixed the value of the property as Rs.1,80,60,000/- (Rupees One Crore Eighty Lakh and Sixty Thousand only) as security. One Vijayaraman, who is the 5th respondent herein had deposited the said amount and sale deed is executed in his name. Aggrieved over the said order, the present Civil Miscellaneous Appeal is filed by the 3rd party, R.J.Illango.

3. The brief facts of the case as stated in the affidavit filed by the appellant is that the 1st respondent Company approached the appellant in the year 2011 for constructing of Corporate Office at S.S.Colony, Madurai and the appellant had completed the construction in the same year. Thereafter the appellant had renovated a building by name "Uma Catering" in Kanmaikarai Road at Arapalayam. In the year 2012, the appellant had constructed 1st floor of a house belonging to 1st Respondent in property situated at D.No.16, Loordhu Nagar Main Road, Pudur, Madurai. In 2013, the appellant entered into agreement to construct buildings in a property situated at Ramarajapuram, Nilakkottai Taluk, Dindigul District at a cost of Rs.1,55,47,075/-. In the year 2014 an agreement was entered

to construct a building in the same property at Ramarajapuram Village at a cost of Rs.93,89,572/-. In the same year the appellant constructed a building at Dairy Division, Ramarajapuram at cost Rs.81,05,810/-. Thereafter constructed 'workers quarters' in Dairy Division for a sum of Rs.49,43,400/-. In the year 2015, another construction in the said property at Rs.29,92,180/-. For the above said agreements the total cost of construction was Rs.4,09,78,037/-. The 1st respondent had issued completion certificate. The 1st respondent had paid a total sum of Rs.3,04,36,354/- through bank transaction on various dates from 16.08.2013 to 16.09.2015 and the balance payable is Rs.1,05,41,683/-. The appellant further stated that in order to carry out the said works the appellant had mortgaged the appellant's house with Tamil Nadu Mercantile Bank and obtained a loan. As the payment was delayed the 1st respondent promised to pay the cost of construction with interest, but later came forward to transfer the property in lieu of the consideration of the monies payable for the aforesaid constructions. On 26.11.2018 the 1st respondent through the 2nd respondent transferred the property situated in D.16, Loordhu Nagar Main Road, K.Pudur, Madurai -16 for a sum of Rs.45 Lakhs and that the 1st respondent promised to clear the balance amount at the earliest. After the said sale the appellant had let out the building for lease. The appellant further submitted that the appellant had suffered loss due to non-payment by the 1st respondent and could not recover the money payable for the execution of the aforesaid contracts. All the transaction was transparent and that there is no question of any collusion and malafide, since the said house was transferred only for the consideration for the money due from the 1st respondent to the appellant. Further the appellant is not aware of the financial transaction of the 5th respondent but aware of the fact that the 5th respondent is having an Agro Farm Company. Hence the appellant was shocked to receive summons from the Special Court to answer the Petition in O.A.No.2/2020, filed by the depositors of 1st respondent, wherein it is stated in the said application that the 1st respondent herein received deposits from the said persons during the year 2012 and that the deposits were not repaid. Further it is stated based on the complaint, FIR was registered in Crime No.6 of 2018 on 28.05.2018 and charge sheet was filed on 19/02/2019 and the case was pending before Special Court in C.C.No.2 of 2019. In the said complaint the depositors prayed to attach the property in D.No.16, Lourdhu Nagar Main Road, K.Pudur, Madurai under Section 8 of the TANPID Act (Act 44 of 1997). It is the specific contention of the appellant that the Special Court has no jurisdiction to attach and bring the property for sale, which was purchased by the accused even prior to the commission of the crime and transferred to the 3rd parties and before finding that the properties and monies of the accused could not be enough to satisfy the debts.

This property was purchased by the 1st respondent on 22.06.2012 out of his own money and much prior to the default.

4. As far as Item No.2 in the said application it is alleged by the depositors that the 1st respondent sold to one Palanichamy, but the said Palanichamy remained exparte. However, the appellant resisted the application, filed written statement, examined himself as witness and produced documents for the construction made by the appellant. But the TNPID Court vide order dated 31.03.2021 rejected the appellant prayer and held the sale deed dated 26.11.2018 as malafide and directed the same to be attached and directed to sell the property in public action and to realize the debts. Challenging the same the appellant had preferred an appeal in CMA(MD)No.1174 of 2022 and the same is pending. Further it came to knowledge of the appellant that the 1st respondent had filed an application in O.A. No. 7 of 2022 under Section 9 of the Act to permit him to deposit the money as a security in lieu of a property situated in Achampathu and to raise the order of objection by the 4th respondent to the registering authorities. The 1st respondent claimed that the said property totally measures to an extent of 2.5 acres and the guideline value of the property is Rs. 10,05,000/- only. But the

said property is situated in a prime locality in Madurai city and that the present market value of the property would be around Rs.10 crores. While that being so, the impugned order dated 31.01.2023 without considering any of these aspects allowed the petition with the condition that the 1st respondent should pay a sum of Rs.1,80,60,000/- within a period of one month and then the attachment over the property would be raised. Aggrieved over the same the present appeal is filed.

5. Heard Mr.G.Prabhu Rajadurai, the Learned Counsel appearing for the appellant, Mr.B.Saravanan, the Learned Senior Counsel for Mr.R.Manickaraj appearing for the respondent 1 and 2, Mr.R.Baskaran, the Learned Additional Advocate General assisted by M/s.S.Jeyapriya, Learned Government Advocate appearing for the respondents 3 and 4 and Mr.C.M.Marichellaiah Prabhu, the Learned Counsel appearing for the 5th respondent and perused the relevant records.

6. The primary contention of the appellant is that the market value of the said property is more than Rs.10,00,00,000/- (Rupees Ten Crore only) but the TNPID Court had accepted the deposit of Rs.1,80,60,000/- and lifted the attachment and released the property and sale is executed in the name of the 5th

respondent for Rs.1,80,60,000/- only. Further when the property which was purchased by the appellant, who is a bonafide purchaser, is in attachment, the TNPID Court selling the accused property to a lesser value would prejudice the rights of the appellant. In any case, the financial establishment's property cannot be sold at low value when the appellant's property is attached who is a bonafide purchaser. Hence the TNPID Court ought to allow the competent authority to sell the property only through public auction, since the property worth about Rs. 10,00,00,000/- but fixation of amount to the tune of Rs.1,80,60,000/-, which is only a token amount. The Learned Counsel appearing for appellant relied on Sections 4 and 7 and submitted that the provision states to sell through public auction and hence under section 9 also the Special Court ought to sell the property by public auction. Otherwise, it leads to arbitrary fixation of value of the property. But this contention of the appellant was vehemently opposed by the Learned Senior Counsel appearing for the respondents 1 and 2, who had submitted that the sections 4 and 7 would be applied at the time of final disposal of the properties, hence the property would be sold by public auction. But section 9 would apply at the time of passing the order to lift the interim order of attachment and the Special Court has discretionary power to fix the amount, hence property need not be sold by public action. Further Section 9 is a special provision which would come into operation only for the specific property, in order to raise the ad-interim attachment. If the interpretation canvassed by the appellant is accepted, the provision of section 9 would become redundant.

7. In order to consider the rival submissions, the relevant provisions are extracted hereunder:

> ***"4. Competent authority.*** *- (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 purposes of this Act.*
> ***(3) Upon receipt of the order 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 to sell the property so attached by public auction, and realise the sale proceeds.***
> *(4) An application under sub section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the Financial Establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposit, and the details, if any, of persons in*

whose name such property is believed to have been invested or purchased out of the deposits or any other property attached under section 3.

(5) The Competent authority shall make an application to any court having jurisdiction to try similar cases or deal with the subject matter pertaining to money or property belonging to a Financial Establishment or any person specified in section 3 situated within the territorial jurisdiction of that court for appropriate orders.

(6) For the purpose of crediting the dealing with the money realised by the Competent authority, he shall open an account in any Scheduled commercial bank.

CHAPTER -III

***5. Default in repayment of deposits and interest honouring the commitment.** –*

…

***5A.Compounding of offence.** - …*

CHAPTER -IV

***6. Special Court.** - …*

***7. Powers of Special Court regarding attachment, sale, realisation and distribution.** - (1) Upon receipt of an application under section 4, the Special Court shall issue to the Financial Establishment or to any other person whose property is attached by the Government under section 3, a notice accompanied by the application and affidavits and of the evidence, if* *any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute and property so attached be sold in public auction.*

(2) The Special Court shall also issue such notice, to all other, persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notices is issued calling upon such person to appear on the same date as that specified in the notice and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Special Court at any time before an order is passed under sub-section (4) or subjection (6).

(4) If no cause is shown and no objections are made on or before the specified date, the Special Court shall forthwith pass an order making the ad-interim order of attachment absolute and direct the Competent authority to sell the property so attached by public auction and realise the sale proceeds.

(5) If cause is shown or any objection is made as aforesaid the Special Court shall proceed to investigate the same, and in so doing, as regards the examinations of the parties and in all other respects, the Special Court shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 and any person making an objection shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Special Court shall pass an order, within a period of one hundred and eighty days from the date of receipt of an application under sub-section 3 of Section 4, either making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or cancelling the ad-interim order of attachment and then direct the Competent Authority to sell the property so attached by public auction and realise the sale proceeds:

Provided that the Special Court shall not release from attachment any interest which it is satisfied that the Financial Establishment or the person referred to in sub-section (1) has in the property unless it is also satisfied that there will remain under attachment an amount of property of value not less than the value that is required for re-payment to the depositors of such Financial Establishment.

*(9) *** Omitted.*

(10) The special court shall on an application by the Competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money attached or realised out of the sale.

***8. Attachment of property of mala fide transferees.** - (1) Where the assets available for attachment of a Financial Establishment or other person referred to in section 3 are found to be less than the amount or value which such Financial Establishment is required to repay to the depositors and where the Special Court is satisfied by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred, (whether after the commencement of this Act or not), any of the property otherwise than in good faith and for consideration the Special*

Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date or where after investigation in the manner provided in sub-section (5) of section 7, the Special Court is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration the Special Court shall or order the attachment of so much of the said transferee's property as is in the opinion of the Special Court is equivalent to the proper value of the property transferred.

***9. Security in lieu of attachment.** - Any Financial Establishment or person whose property has been or is about to be attached under this Act may, at any time, apply to the Special Court for permission to give security in lieu of such attachment and where the security offered and given is in the opinion of the Special Court, satisfactory, and sufficient it may cancel, the ad-interim order of attachment or, as the case may be refrain from passing the order under sub-section (6) of section 7."*

It is seen section 4 deals with the powers of the Competent Authority for interim attachment, sale, distribution etc. Section 7 deals with the powers of the Special Court regarding attachment, sale, realisation and distribution etc. Section 9 deals with the power conferred on the Special Court to get security in lieu of attachment. Under Section 4(3) it is stated that the competent authority shall apply within 30 days to the Special Court for the direction to sell the property so attached **"by public auction"**. Also, under Section 7(4) it is stated that the Special Court shall make the ad-interim attachment absolute and direct the Competent authority to sell the property **"by public auction".**

8. Admittedly under section 9 the provisions is not speaking about **"public auction".** The section states to collect security in lieu to lift the interim attachment or attachment. This would not mean to fix appropriate value to the property. A strange situation arises while exercising the power under section 9. The party who is seeking to lift the ad-interim attachment would be directed to give security in lieu of attainment and the amount ought to be to the satisfaction of the Special Court. The Special Court while exercising the discretionary power mostly fixes the security amount to satisfy the claim of depositors shown in the FIR. But the FIR is not showing the entire list of depositors and only shows the amount payable to the depositors who had preferred complaints. If any depositor had not preferred any complaint then the said amount payable to that depositor would not be shown. Hence the Special Court cannot depend upon the FIR to fix the security amount.

9. Hence the Special Court depends on the value stated in the survey report. But the survey report states only “original value” and not the “market value” and in such circumstances, there is a chance of fixing lower value.

10. In the present case, the Special Court had fixed the value of the property by taking the value stated in the survey report, which states only “original value” and not market value. The claim of the appellant that the property is situated in prime locality and the same would fetch Rs.10,00,00,000/- (Ten Crores), but to lift the attachment the Special Court had fixed the security amount as Rs. 1,80,56,037/- (One Crore Eighty Lakhs Fifty Six Thousand and Thirty Seven only). Further the property was sold to the said amount of Rs.1,80,56,037/- to the 5th respondent herein, thereby there is a loss approximately to the tune of about Rs.8,20,00,000/- (about Eight Crores Twenty Lakhs). The comparative value cited by the appellant, would indicate the value fixed is extremely low. Moreover when the property is sold to the 5th respondent then the Special Court ought to have sold by taking the market value so that the property would fetch the correct value. Therefore this Court is of the considered opinion that it is always better to fix the market value of the property, while fixing security amount.

11. As far as the contention of the appellant that the Special Court ought to have directed the Competent Authority to sell the property by public auction so that the property would fetch correct value. The respondent submitted that if such plea is entertained it would amount to scuttling the scope of the discretionary power of the Special Court and section 9 would become redundant. On perusal of the section it is seen that the provision states that if any application for giving security in lieu of attachment is submitted then the Special Court may consider the offer, if the offer is satisfactory and sufficient, then the ad-interim attachment may be cancelled, or the Special Court may refrain from passing any orders under section 7(6). Under section 7(6) the Special Court may pass order,

i. either make the ad-interim attachment order absolute

ii. or by varying it by releasing some portion from attachment

iii. or cancelling ad-interim order

iv. then direct the competent authority to sell the property by public auction

` v. If security is given then the Special Court shall refrain from passing such orders.

Under proviso the section states "not to release from attachment an interest in the property, unless it is also satisfied that an amount of property of value not less than the value that is required for re-payment to the depositors". As per proviso the Special Court ought to take the fact into consideration that the security amount deposited would satisfy to repay the depositors. Until all the depositors are paid the Special Court has power to retain the property in attachment. The word used is "depositors", which means all the depositors and not only the "depositors mentioned in FIR". Even though the section states to refrain from passing such orders under section 9, the same cannot be exercised unless the court satisfies that the entire depositors can be repaid from selling the properties. If the property is released for less amount, then the same is totally against the object of the Act. Since, repaying all the depositors from the proceeds of selling the accused property is the object of the TNPID Act. Therefore the Special Court ought to exercise the power diligently so that all the depositors are repaid. Once the attachment is lifted then the property can be sold and the said property would not be available for repaying the depositors. In such circumstances, the appropriate value of the property ought to be fixed as "security amount". Therefore, this Court is of the considered opinion that the Special Court ought to fix the appropriate value while exercising the discretionary power and the appropriate value would be "market value".

12. Further when several items are attached, if all the items ought to be

released, the entire amount ought to be deposited. If only one item ought to be released, then the value of that property ought to be taken in lieu of lifting the attachment. Normally, the value of the property cannot be taken based on "guideline value" and it should be "market value". Since "public action" would fetch more money, discretionary power cannot be exercised wherein loss would incur while selling the property. However, when the word public auction is not mentioned in section 9, then the market value ought to be fixed. If the Special Court is not able to ascertain the market value it is always better to sell the property in public auction. Therefore, this Court is of the considered opinion that the main object of the Act is to repaying all the depositors from the proceeds of selling the accused property. And to achieve this purpose the discretionary power is granted to the Special Court. While exercising such discretionary power the Special Court is empowered to ascertain the correct and appropriate value of the property. And if the property would fetch correct and appropriate value through public auction then the same is not against section 9. In the present case, the security amount is extremely less and hence the discretionary power exercised by the Special Court is erroneous and the same is liable to be set aside.

13. Further in the present case the accused is having more than eight

properties which would fetch more value. And there are other properties belonging to the accused but the same was not even identified and reported by the competent authority before the TNPID Court. But the property purchased by the appellant long before the FIR was attached by the TNPID Court and the attachment is still subsisting. In such circumstances, the security amount of Rs. 1,80,56,037/- fixed as security to lift the attachment is erroneous. Especially when the property is worth about Rs.10,00,00,000/-. Further the property was sold to the said amount of Rs.1,80,56,037/- to the 5th respondent herein and the property would never ever be available for paying the balance amount to the depositors, hence the fixation of Rs.1,80,56,037/- is erroneous and illegal.

14. Based on the above discussion the following order is passed:

a. The security amount of Rs.1,80,60,000/- fixed in lieu of lifting attachment is extremely low and impugned order is hereby quashed.

b. The sale to the 5th respondent is illegal and the same is set aside.

c. The Lower Court shall fix the market value of the property as security amount in lieu for lifting the attachment.

d. If not, the Lower Court shall direct the competent authority to go for public auction.

15. The Learned Counsel appearing for the 5th respondent submitted that he had made some improvements in the land. The 5th respondent is at liberty to submit a petition along with calculation memo and evidence and the Lower Court shall pass appropriate orders. Further the subsequent purchaser is permitted to participate in the public auction, if it is conducted.

16. With the above said directions, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.03.2024

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

Tmg

To

1. Special Court under TNPID Act Cases,
   Madurai.

2. The Section Officer,
   Vernacular Section,
   Madurai Bench of Madras High Court,
   Madurai.

S.SRIMATHY, J.

Tmg

C.M.A(MD)No.858 of 2023

05.03.2024