



W.P.(MD)Nos.14205 and 19930 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.09.2024

Pronounced on : 06.11.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)Nos.14205 and 19930 of 2024

and

W.M.P.(MD)Nos.12463, 16886 and 16887 of 2024

W.P.(MD)No.19930 of 2024

Sugantha Devi

... Petitioner

Vs.

1. The Deputy Superintendent of Police,
Economic Offence Wing,
Thanjavur.

2. The Joint Sub Registrar No.1,
Joint Sub Registrar's Office,
Thanjavur.

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.348/Thu.KaKa/Po.Ku.Pi/Thanjavur/2023, dated 26.07.2023 and consequent direction may be issued



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to the respondents to permit the petitioner to encumber the property mentioned in the impugned order in petitioner's name.

For Petitioner : M/s.T.A.Ebenezer
For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
For R2 : Mr.M.Muthumanikkam
Government Advocate (Civil Side)

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Parthiban

... Petitioner

Vs.

1. The Joint Sub Registrar No.1,
Joint Sub Registrar's Office,
Thanjavur.
2. The Deputy Superintendent of Police,
Economic Offences Wing,
Thanjavur

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.No.31/Thu.Kaa Ka./Po.Ku.Pe./Thanjavur/2024, dated 05.02.2024 quash the same and consequent direction may be issued to the second respondent to provide the particulars of debt and victim to settle the alleged pending amount to the petitioner



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and direct first respondent to register the documents by the petitioner and his family members.

For Petitioner : M/s.T.A.Ebenezer

For R1 : Mr.M.Muthumanikkam
Government Advocate (Civil Side)

For R2 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

COMMON ORDER

The Writ Petition in W.P.(MD)No.19930 of 2024 is directed against the order dated 26.07.2023 passed by the first respondent and consequent direction to the respondents to permit the writ petitioner to encumber the property mentioned in the impugned order.

2. The Writ Petition in W.P.(MD)No.14205 of 2024 is directed against the order dated 05.02.2024 passed by the second respondent and consequent direction to the second respondent to provide the particulars of debt and victim to settle the alleged pending amount to the writ petitioner and to the first respondent to register the documents by the writ petitioner and his family members.



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3. For the sake of convenience and brevity, the respondents in both the writ petitions will be referred to as per their status/ranking in W.P. (MD)No.19930 of 2024.

4. The case of the writ petitioners is that the writ petitioner in W.P. (MD)No.14205 of 2024 and others are conducting three companies, namely, Sangamam Chit Funds, Sangamam Benefit Funds and Sangamam Trading Finance, that Sangamam Chit Funds has become bankrupt and Bankruptcy proceedings are going on before the National Company Law Tribunal (NCLT) in IBA/211/2019 and Interim Resolution Professional (IRP) was appointed to settle the debts, that most of the investors were settled and even after settling the debts, there are more enough amount of money to settle all the customers in the case available with the Interim Resolution Professional (IRP) appointed by the National Company Law Tribunal (NCLT), that one of the investors in Sangamam Chit Funds, namely, Josephsamy filed a complaint with the Kumbakonam West Police Station demanding Rs.55,000/- from the Chit company, that the said Josephsamy has claimed his money through Interim Resolution Professional (IRP) and also obtained money, that the Kumbakonam West



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Police instead of registering FIR against Sangamam Chit Funds, registered a case against Sangamam Benefit Funds, which was running successfully, wrongly in Crime No.211 of 2019 for the alleged offence under Section 420 IPC on 10.08.2019, that the first respondent with an ulterior motive proceeded against Sangamam Benefit Funds and arrested the Directors, their family members and even shareholders of Sangamam Benefit Funds wrongly and ruined their business, that the Directors had made submission to the first respondent to give the list of alleged victims with the amount but the police are not willing to give the list, that the police, without giving any list, has been harassing the writ petitioners and their families, that in the meanwhile, the first respondent has sent two proceedings dated 26.07.2023 and 05.02.2024 to the second respondent prohibiting the registration of their properties, that the second respondent, based on the above proceedings, entered the same in the encumbrance register and that therefore, the writ petitioners are constrained to approach this Court invoking Article 226 of the Constitution of India.

5. The main contention of the writ petitioners is that the police has absolutely no jurisdiction to issue such proceedings, that the Government



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has not attached any property of the company or the Directors and hence, the first respondent has no authority to attach the property by prohibiting the registration, that the Government is the competent authority to take action against the properties of the offenders, that the properties were not purchased from the crime proceeds and they are the ancestral properties of the Directors, that immovable property cannot be seized under Section 102 Cr.P.C. by the police authorities and that Section 10 of TNPID Act cannot also be invoked and the same deals with the administration of the properties attached either by the order of the Government or by the order of the Special Court.

6. The first respondent has filed a counter affidavit denying the averments raised in the affidavits filed in support of the writ petitions and further stated that as per Section 3 of TNPID Act, the Government is the authority to attach the properties and in order to safe guard the interest of the depositors, the first respondent through his proceedings dated 22.01.2024 requested the ADGP EOW, Chennai to get attachment orders from the Government, who in turn, through his proceedings requested the Government for necessary action, that the same is pending before the



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Government, that the writ petitioners and other accused taking advantage of the same are taking steps to sell the properties, which are all purchased by them out of the income from the deposits and if they are allowed to sell the properties, the depositors' interest will be defeated, that only in order to safe guard the interest of the depositors, the first respondent sent the impugned communications to the second respondent not to register any document till the attachment order will be made by the Government and that the proceedings sent by the first respondent to the second respondent is only a request and not an order.

7. It is evident from the impugned proceedings dated 26.07.2023 informing them not to register any document in respect of the properties listed therein which came to be owned by the accused. The first respondent has again sent a communication dated 05.02.2024 now impugned in W.P.(MD)No.14205 of 2024 referring the earlier proceedings dated 26.07.2023 informed the second respondent that the accused Parthiban, Sugantha Devi, Vedhachalam and Saratha were attempting to sell their properties and also attempting to execute general power of attorney deed in favour of their benami and that therefore directed the



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second respondent not to register any sale deeds or general power of attorney deeds executed by the accused.

8. No doubt, the first respondent in his counter has taken a stand that he has not passed any order directing the second respondent not to register the documents but it is only a letter informing them about the position. But the fact remains that in pursuance of the proceedings of the first respondent, the second respondent has entered the said proceedings in the encumbrance register. It is not the case of the respondents that the second respondent has not taken the impugned proceedings as mandatory and allowed the registration of the documents executed by the accused.

9. The learned counsel appearing for the writ petitioners would mainly rely on the judgment of this Court in ***V.Sundaram and another Vs. The Deputy Superintendent of Police, Economic Offences Wing, Kancheepuram District and another*** in ***W.P.No.11221 of 2015 dated 27.07.2015***, wherein, a learned Judge of this Court in a similar matter has quashed the communications restraining the registration of the documents and the relevant passages are extracted hereunder:-



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“6. Before advertng to the stand taken by the Deputy Superintendent of Police, it may be necessary to analyse the various legal provisions governing the subject. Though Right to property is no more a fundamental right, yet, it is a Constitutional right flowing from Article 300-A, which reads as under:

"300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.]

7. The Legislature has made provisions for tracking down proceeds of crime in various enactments like NDPS Act, SAFEMA, Prevention of Money Laundering Act, Criminal Law Amendment Ordinance, 1944, etc. The prosecution faced by the petitioners herein will fall within the ambit of Criminal Law Amendment Ordinance, as amended by the State of Tamil Nadu. Criminal Law Amendment Ordinance, 1944 was introduced to attach the ill-gotten wealth of accused involved in offences mentioned in the Schedule to the Ordinance. Initially item No.2 and Item No.4 of the Schedule to the Ordinance provided for attachment of properties, where the offence was committed in relation to the State and its instrumentalities. In other words, where the State or its instrumentalities had been cheated, the provisions of the Ordinance can be invoked



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for attaching the properties of the offender. The Schedule to the Criminal Law Amendment Ordinance, 1944 was amended by the Criminal Law (Tamil Nadu Amendment Act, 1997) with effect from 12.08.1997 on account of which, the restriction that the offences must have been committed in relation to the State or its instrumentalities was taken away and now, the State of Tamil Nadu has the power to initiate proceedings even in respect of offences against private persons. Thus, if a person is involved in an offence under Section 406 or 420 IPC and the victim is a private person, the provisions of the Criminal Law Amendment Ordinance, 1944 can be invoked in the State of Tamil Nadu for attaching the properties of the offender. The Ordinance provides for procedure to effect attachment. Under Section 3 of the Ordinance, it is only the State Government or the Central Government that can initiate action by approaching the District Judge of the area where the accused ordinarily resides or carries on business. The police officer has no role to play in this. He can, at the most, submit a report to the State Government or Central Government requesting the State Government to initiate action under the Ordinance and he cannot arrogate to himself the power to issue such veiled threats to the Sub-Registrar.

8. Mr. Abudu Kumar Rajaratnam, learned Amicus



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Curiae, rightly submitted that, such a power is not traceable even to Section 102 Cr.P.C. which reads as follows:

"102. Power of police officer to seize certain property.--(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under subsection (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of



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the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

9. He also brought to my notice a Full Bench judgment of the Bombay High Court in Sudhir Vasant Karnataki Mohideen Mohammed Sheik Dawood through its Power of Attorney Holder Mr.Rajesh Baxi Chetna Properties Pvt.Ltd. v. The State of Maharashtra [MANU/MH/1561/2010], wherein, the Full Bench went in depth into the powers of the police under Section 102 Cr.P.C. and has held as follows:

"86. To sum up, we answer the reference thus:

Q.(a) Whether the words "any property" used in Sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would mean to include "immovable property"?



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Ans. We, therefore, hold that the expression "any property" used in Sub-section (1) of Section 102 of the Code does not include immovable property. Question (a) is, therefore, answered in the negative.

Q. (b) Whether a police officer can take control of any immovable property which may be found under circumstances which create suspicion of the commission of any offence?

Ans.No."

10. The Full Bench of the Bombay High Court refused to extend the law laid down by the Supreme Court in State of Maharashtra v. Tapas D.Neogy [(1999) 7 SCC 685] to immovable properties in order to bring them within the purview of Section 102, Cr.P.C. In paragraph no.66 of the judgment, the Full Bench has held as follows:

"66. If it is taken for a while that Section 102 of the Code provided for seizure of immovable property for the purpose of ensuring the offenders do not derive benefits from the property which they got as a result of crime as well, then it would have been unnecessary for the Legislature to provide for attachment and, eventually, forfeiture of such property under the Criminal Law (Amendment) Ordinance, as also the provisions of Section 105-A



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to 105-L of the Code and Section 68-C to F of the Narcotic Drugs and Psychotropic Substances Act. It became necessary for the Legislature to provide for attachment and forfeiture of such property which the offenders had got as a result of crime, because Section 102 did not and could not have provided for attachment of such property."

11. Though, Right to Property is not a fundamental right, yet, it has now been declared to be a human right by the Hon'ble Supreme Court in State of Haryana v. Mukesh Kumar and other [(2011) 10 SCC 404]. A similar issue arose before the Kerala High Court in Kuriachan Chacko v. State of Kerala in W.P.(C) No.12275 of 2012 dated 26.07.2012 and it has been held as follows in para 14:

"14. Section 102, by no stretch of imagination, can apply in a situation like this. Even though the words "any property" are there in Section 102, it is clear from a reading of sub-sections (1) to (3) together, that what is involved is not the seizure of immovable property. As already noticed, Section 83 contains a provision for attachment of immovable property and the power is conferred on the court itself. Under Section 102, the power of seizure is on the police officer and it has never envisaged a situation like the one herein,



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where a police officer can direct attachment of immovable property. Therefore, in the absence of a specific conferment of power on the Police officer, the steps for attachment made by the Sub Registrar herein, relying upon the request made by the Police officer, cannot hold good. The said letter, even going by the wordings therein, cannot amount to an order of attachment also. Therefore, merely because there is a power for the Police officer to conduct investigation and collect details of properties of the accused or others involved in that process, it can never be treated as an order of attachment for enabling the Sub Registrar to put an endorsement in the registers."

12. This Court is in complete agreement with the law laid down by the Full Bench of the Bombay High Court and the Kerala High Court with regard to the power of the police officer to seize immovable properties under Section 102, Cr.P.C. The Deputy Superintendent of Police, by couching the impugned communication in a camouflaged language, is in fact, indirectly attaching the properties of the accused via the backdoor, which is not permissible. If the Deputy Superintendent of Police is desirous of safeguarding the interest of the depositors, he should have immediately taken steps to send a report to the



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Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance and not through such a subterfuge.

13. The order impugned is indeed arbitrary exercise of power and is therefore, violative of Article 14 of the Constitution of India. It is always open to the Investigating Officer to call for information from the Sub-Registrar about the property holdings of an accused. He can also ask the Sub-Registrar to inform him, if any transaction concerning the properties of the accused, is registered. He cannot prohibit the Registrar from registering a document.

14. In the result, the writ petition is allowed and the impugned communication dated 08.01.2015 is quashed. The second respondent is directed to keep the first respondent informed of all transactions concerning the properties mentioned in the impugned communication. No costs. Connected Miscellaneous Petition is closed.”

10. The above decision is squarely applicable to the case on hand.

11. No doubt, the first respondent in his counter has stated that they have already taken necessary steps to attach the properties of the accused



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and the same are pending before the Government. Even according to the police authorities, the first respondent has sent the proceedings to the ADGP EOW, Chennai only on 22.01.2024 requesting him to get attachment orders from the Government and that the ADGP EOW has sent his own proceedings requesting the Government for necessary action. In case, if the accused are taking urgent steps for selling their properties and are attempting to execute power of attorney in favour of their benami, the course available to the police authorities is to request the Government to pass attachment orders at an earlier date. But without getting any orders from the Government, as rightly observed by the learned Judge of this Court in the above decision, the police has absolutely no authority to issue such proceedings, directing the Registration Department not to register any document, indirectly attaching the properties of the accused via the backdoor which cannot be permitted. Hence, this Court has no hesitation to hold that the impugned proceedings cannot legally be sustained.

12. In the result, the Writ Petitions stand allowed and the impugned proceedings dated 26.07.2023 and 05.02.2024 are quashed. The Joint Sub Registrar No.1, Thanjavur is directed to keep the Deputy Superintendent



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of Police, Economic Offences Wing, Thanjavur, informed of all transactions concerning the properties mentioned in the impugned communications. Consequently, connected Miscellaneous Petitions are closed. No costs.

06.11.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Deputy Superintendent of Police,
Economic Offences Wing,
Thanjavur.
2. The Joint Sub Registrar No.1,
Joint Sub Registrar's Office,
Thanjavur.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Common Order made in
W.P.(MD)Nos.14205 and 19930 of 2024
and
W.M.P.(MD)Nos.12463, 16886 and 16887 of 2024

Dated : 06.11.2024