

(2003) 07 MAD CK 0174

In the Madras High Court

Case No : Writ Petition No. 21304 of 2003 and W.P.M.P. No. 26460 of 2003

A. Premraj Jain

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 31-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 07 MAD CK 0174

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : D. Rajagopal, for the Appellant; M.S. Palanisamy, AGP, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—Aggrieved by an order of attachment passed by the first respondent in G.O.Ms. No. 353, Home (Courts IIA) Department, dated 25.4.2003, attaching the property of the petitioner and contending that the property attached by the first respondent is the ancestral property of the petitioner, wherein the petitioner and his brothers are residing jointly, the petitioner seeks a writ of Certiorari to call for the entire records in respect of the order passed by the first respondent dated 25.4.2003 in G.O.Ms. No. 353 and to quash the same in so far as the petitioner is concerned.

2. The admitted facts of the case are that the petitioner is the partner in three firms namely, Rajaganapathy Auto Finance, Rajaganapathy Jewel Finance and Rajaganapathy Chit Funds, which are engaged in the finance business involved in the acceptance of deposits from the public and profitable investment of the same. In the course of the business, the said firms have accepted deposit from number of depositors, but, they were not able to repay the amount after maturity. As a result, penal proceedings were initiated against the said financial institutions u/s 5 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997, (hereinafter referred to as the "Act") and

Section 420, IPC in Crime No. 5 of 2000, pursuant to which G.O.Ms. No. 353 dated 25.4.2003, was passed for interim attachment of the property of the petitioner u/s 3 of the Act.

3.1. The Act is intended to protect the deposits made by the public in the financial establishments and the matters thereto.

3.2. The scheme of the Act provides for confirmation of the order of attachment by the Special Court constituted u/s 6 of the Act.

3.3. Section 7(1) of the Act provides a notice to be served on the financial establishment or to any other person whose property is attached u/s 3 of the Act to show cause why the order of attachment should not be made absolute.

3.4. Section 7(3) of the Act provides that any person claiming interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him u/s 7(1) of the Act, make an objection before the order is passed for making an order of attachment absolute u/s 7(4) of the Act.

3.5. Section 7(6) of the Act enables the Special Court, after investigation under sub-Section (5) to Section 7 of the Act, either to make interim order of attachment absolute or varying it by releasing a portion of the property from the attachment or cancelling the ad interim order of attachment, 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).

3.6. Any person aggrieved by an order of the Special Court may appeal to the High Court within thirty days from the date of the order, u/s 11 of the Act.

3.7. The scheme of the Act provides built in provisions for any interested person whose property is complained to have been attached to seek appropriate relief either before the Special Court or thereafter to prove his case during the investigation u/s 7(5) of the Act and thereafter, even to prefer an appeal as provided u/s 11 of the Act.

4. The grievance of the petitioner is that under the guise of criminal prosecution and the steps taken thereunder in Crime No. 5 of 2000 registered against the petitioner and others, for the alleged contravention of the provisions of the Act read with Section 420 IPC, the respondents are attempting to interfere with the rights of the petitioner.

5. But, I do not see any arbitrary or illegal exercise of powers by the respondents in attaching the properties of the petitioner while issuing G.O.Ms. No. 353 dated 25.04.2003 and proceeding therewith as per the provisions of the Act, inasmuch as the properties attached are owned by the petitioner.

6. In view of the above said provisions of the Act, the petitioner is at liberty to approach the Special Court u/s 7(3) of the Act and to seek either vary or to cancel the interim order of attachment. If he is still aggrieved by any order of the Special Court, an appeal would lie u/s 11 of the Act. Therefore, it may not be

proper for this Court to entertain the above writ petition and to grant the relief as prayed for. Hence, the writ petition is dismissed. No costs. Consequently, WPMP No. 26460 of 2003 is also dismissed.