(2008) 03 MAD CK 0092

In the Madras High Court

Case No : Writ Petition No. 19093 of 2004

P. Venkatesan APPELLANT

Vs

The State of Tamilnadu and Others RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 3, 4, 4(3), 7, 7(1)

Citation : (2009) 3 LW 130 : (2008) 4 MLJ 211

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : V. Manohar, for the Appellant; Hasan Fizal, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The issue involved in this case is covered by the Judgment of Hon''ble Mr. Justice R. Balasubramanian, dated 06.08.2007, passed in W.P. No. 21208 of 2004, in Ravichand and Anr. v. The Secretary, Home Department, State of Tamil Nadu and Ors.

2. The G.O.Ms. No. 637, Home (Courts. IIA) Department, dated 06.07.02, which was impugned in the said writ petition is the same G.O. which is impugned in the present writ petition, however, in respect of the property of the petitioner viz., No. 5, Flowers Road, Kilpauk, Chennai ? 84, comprised in R.S. No. 40/22 which was attached by way of an interim order of attachment u/s 3 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (herein after referred to as the ''Act'').

3. According to the petitioner, the property absolutely belonged to him. However, the second respondent Competent Authority/Joint Commissioner of Land Administration, without any order of the Competent Court has come to the premises on 01.07.04 and tried to pull down the shutters of the hotel which is being run by the petitioner. The third respondent and fourth respondent Collector

and Tahsildar have also come to the spot and according to the petitioner they have no right under the Revenue Recovery Act unless they are empowered under the Act.

4. According to the petitioner the Special Court has got powers to pass orders which are necessary to protect the interest of the depositors. However, the second respondent has not done the same but purposely called the persons who have noting to do with the case pending on the file of the TNPID Court to attend the meeting. But none of the persons as directed by the Court were called to the said meeting at all. In the meeting held on 14.06.04, no one was allowed to speak except stating that 214 attachments have been made through G.O and the second respondent also threatened to take drastic action against the petitioner instead of taking efforts to settle the depositors on the role of the TNPID Court.

5. The attachment made through G.O.Ms. No. 637, dated 05.07.01, is questioned on various grounds including that the Chit transaction and the benefit fund transaction were not covered under the TNPID Act and the G.O. was passed mechanically, without reference to the provisions of the Act.

6. As per the Court records, the second respondent has not moved any application before the TNPID Court within the stipulated time of 30 days u/s 4(3) of the Act. Therefore, the impugned G.O. itself lapses. There is no order passed u/s 7(6) of the Act within 180 days of the alleged interim attachment of the properties. The second respondent has no powers to seize or freeze the property. Further, u/s 7(5) of the Act, attachment process is nothing but like a civil nature and therefore the issuance of the G.O. is arbitrary. The petitioner has invested huge amount and is entitled to settlement of his dues and his possession cannot be disturbed. In these circumstances, the present writ petition is filed on various legal grounds including that the original order of attachment by the Government lapsed in view of the prescription of limitation under Sections 3 & 4 of the TNPID Act.

7. It is seen in the impugned G.O. that what is issued in the G.O. is an ad interim order of attachment passed by the Special Court under the Act as per Section 3. The three companies mentioned in the impugned G.O. viz., Maruthi Finance, Madras Periamet Benefit Funds Ltd., and Sakthi Maruthi Chits and Finance are facing trial in C.C. No. 32/2001 before the Special Court at Chennai. In fact, the extract of various date of hearing in the said criminal case has been made in the above said writ petition in W.P. No. 21208 of 2004 in the order dated 06.08.07. It is seen that the Competent Authority has filed an Application before the Special Court in O.A. No. 10 of 2001, as it is found in the above said case. The application is stated to have been signed in September 2001. Since there is no date mentioned, therefore, this Court has come to a conclusion that the petition was not filed by the competent authority within 30 days from the date of receipt of the G.O. u/s 3. It is not known as to whether the final order has been passed u/s 7(6) of the Act, except stating an extract in the order dated 09.09.02, "that the interim order passed under G.O.Ms. No. 637 dated 06.07.01 is made

absolute". Therefore, it should be taken that the final order has been passed on 09.09.02, as per Section 7(6) of the Act. This Court has considered that even assuming that the Application u/s 4(3) of the Act is filed in time, yet going by the date of the final order u/s 7(6) of the Act, viz., 09.09.02, it is clearly beyond 180 days as prescribed under law.

8. As it is found in the above said case, the application u/s 4(3) is of the year 2001 and therefore even taking 31.12.01 as the date on which the application under Sub-section 3 of Section 4 of the Act was filled before the Special Court, even then, the final order u/s 7(6) should have been made before 30.06.02, however, in this case, order is stated to have been passed on 09.09.02 and in view of the same, by reading Section 4(3) and Section 7(4) of the Act, as it was found by the Learned Judge in the above writ petition there is no doubt that the interim order of attachment under the impugned G.O. has lost its legal force.

9. In the above case, in addition to the passage of time, as per the provisions of the Act and even on factual issues, this Court has found that the petitioner is entitled for the relief based on the contents of the sale deed dated 21.01.04, by Mrs. Indira Mukundan in favour of the petitioner and his wife Mrs. V. Indira. The property shown in the said sale deed is also shown in the Schedule No. 1 as Serial No.2 in the impugned G.O. stating that the registration number is 2217/83, which makes it clear that the property forming subject matter of the sale deed in favour of the writ petitioner which remains attached under the G.O. should have been purchased by the vendors of the petitioner in the year 1983. The recitals in the sale deed also shows that the vendor therein stands indebted to the Investors Welfare Association of the three companies which are treated as "Financial Establishment" under the impugned G.O. and the recitals also contain O.A. No. 10/01, apart from the criminal case.

10. On the basis of Full Satisfaction Memo filed in O.A. No. 10/01, Special Court has also passed an order on 25.02.04, which has been extracted in the previous case as follows:

O.A. No. 10 of 2001 was filed against Maruthi Finance on the allegations that it has committed default in returning the deposit amounts. The properties of the said Financial Establishment and its members were attached by the Government in G.O.Ms. No. 637 Home dated 06.07.2001. The said order of attachment in G.O.Ms. No. 637 dated 06.07.2001 was made absolute in O.A. No. 10/2001 on the file of this court.

2. This memo has been filed by Sakthi Maruthi Chits Finance Company Private Limited, Maruthi Finance, Madras Periamet Benefit Fund Ltd., Investors'' Welfare Association to record the compromise sworn statement of the office bearers recorded (seven members). It appears from their statement that they entered into the compromise with Maruthi Finance and received Rs. 40.00 lacs in full settlement of their claims.

3. Since the aforesaid Association and the Financial Establishment claimed

settlement and pray for the raising of attachment made in O.A. No. 10/2001, I deem it fit to give an opportunity to the Competent Authority appointed under the TNPID Act to verify the claim of the Association and the Financial Establishment before recording the compromise. The Competent Authority is directed to verify and report by 27.02.2004.

11. In the above said case after extracting various dates of hearings as stated above, this Court has held that u/s 7(1) of the Act, the Special Court has to issue Show Cause notice as to why the order of attachment should not be made absolute. While holding that no valid final order has been passed by the Special Court, this Court has held in para 5 as follows:

5. u/s 7(1) of the Act, the Special Court is called upon to issue notice to show cause as to why the order of attachment should not be made absolute and such notice also is directed to be issued 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". In this case, the petitioners'' sale deed is dated 21.01.2004 and by that time, the final order ? the legality of which had already been gone into by this court, was passed. Under Sub-section (3) of Section 7 of the Act, opportunity is provided to any of the person having an interest in the property, before a final order is passed under Sub-section (4) or Sub-section (6) of the Act. Therefore it is clear that u/s 7 of the Act, the writ petitioners, being the subsequent purchasers, have no legal right to raise any objection before the Special Court. Section 8 of the Act enables attachment of property transferred by the Financial Establishment otherwise than in good faith. u/s 9 of the Act, 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. That stage had also passed as far as the writ petitioners are concerned. Under Rule 7 of the Rules framed under the Act, any transfer made, when an order of ad-interim attachment is in force, is declared to be null and void. The Rule must be read, according to this court, to mean that any transfer made during the currency of the interim order of attachment till it reaches a finality by the Special Court passing an order under Sub-section (4) or Sub-section (6) or (7) of the Act must be treated as null and void. In this case, this court had already found that the final order passed beyond the period prescribed under Sub-section (6) of Section 7 of the Act has no legal force. The transfer in this case is only after the so-called final order passed after the expiry of the outer limit of the period prescribed under Sub-section (6) of Section 7 of the Act. Therefore going by Rule 7 as it stands today, any transfer made, only during the period referred to above namely, after the passing of the interim order and before the final order is passed, it should be declared as null and void and Rule 7 would not cover a transfer made after the final order was passed. Under Sub-section (7) of Section 7 of the Act, once the interim order is made absolute, then, if an application is taken out by the competent authority, the Special Court shall direct the competent authority to sell the properties attached in the manner prescribed

therein and for distribution as provided for under Sub-section (8) of Section 7 of the Act. In this case, since no valid final order had been passed, even the power available under Sub-section (7) and (8) of Section 7 of the Act cannot be resorted to. In paragraph No.16 of the counter affidavit filed by R1 and R3, it is admitted that, despite the intimation of attachment passed on to the 4th respondent in the writ petition, yet, he allowed the sale deed to be registered and they are kept pending.

12. In view of the above said decision in W.P. No. 21208 of 2004, and following the same, this writ petition stands allowed, by quashing the impugned order, in so far as it relates to the petitioner and the Authorities under the Act have no right to interfere with any lawful rights of the writ petitioner in respect of the property purchased by him. No costs.

