

(2012) 03 MAD CK 0057

In the Madras High Court

Case No : C.M.A. No.2563 of 2009 and M.P. No's. 1 and 2 of 2009

R. Karuppusamy

APPELLANT

Vs

Competent Authority/District Revenue Officer, Erode and
others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

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

Citation : (2012) 4 CTC 201 : (2012) 2 LW 678

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : R. Nalliyappan, for the Appellant; M. Venugopal, Special Government
Pleader for R1., for the Respondent

Final Decision : Allowed

Judgement

S. Vimala, J.—This Civil Miscellaneous Appeal has been filed praying to set aside the order passed by the Special Judge under TNPID

Act, Chennai, in O.A.No.59 of 2005, dated 23.01.2006. The impugned order was passed by the Special Judge under TNPID Act in O.A.No.59

of 2005, dated 23.01.2006, where-under, the order of ""ad-interim attachment"" passed by the Government of Tamil Nadu in G.O.(MS) No. 1056,

Home (Courts-IIA), dated 27.08.2004, has been made absolute and the petitioner (Competent Authority and District Revenue Officer, Erode

District, Erode) has been permitted to sell the properties in public auction and to realise the sale proceeds. This order is under challenge under the

following grounds:-

a) The property under attachment was purchased by the Appellant in the year 2000 from the fourth Respondent herein. For the default committed

by the fourth Respondent in not repaying the deposits in the year 2004, the property purchased long prior to the default cannot be attached.

b) The sale transaction is not a malafide transaction and therefore, the property is not liable for attachment.

c) Even assuming that the transaction is a malafide transaction, an order of attachment passed without notice is non-est in law and is in violation of principles of natural justice.

d) The order of attachment passed without verifying the title, possession, encumbrance and revenue records and thereby, leading to unwarranted attachment, without even notice to the affected party is invalid in law.

e) The order of the Special Judge making the attachment permanent without following the mandatory requirement under Sections 3 and 7(6) of TNPID Act is illegal.

2. In view of grounds raised in this appeal the issue to be decided is whether the order of the special court making the order of ad-interim

attachment absolute and permitting the competent authority to sell the property is legal and valid.

3. Before going into the contentions raised by the Appellant it is relevant to point out the order passed by this High Court in W.A. No. 1099 of

2009 and M.P. No. 1 of 2009, holding that the appeal filed within 30 days from 12.08.2009 would be considered as appeal presented within time.

4. In the Government Order, it has been mentioned that the Government has considered the following factors before passing the order of attachment:

a) Complaints have been received from a number of depositors against A.S. Finance and Investments.

b) Government is satisfied that the said financial establishment is not likely to return the deposits to the depositors.

c) The properties already attached is not sufficient for repayment to the depositors.

d) The properties specified in the schedule are alleged to have been procured by the proprietor from and out of the deposits collected from the

depositors.

A perusal of the records reveals the following facts:

d-i) The property attached is situate at Gobichetripalyam Taluk, Nambiyur Village, in an extent of 2 Acres in R.S.No.33/2.

d-ii) This property has been sold to the Appellant for a sum of Rs. 20,000/- on 11.09.2000 (as per the sale deed dated 11.09.2000)

d-iii) The complaint has been lodged by one Rajamani alleging that the deposit made by her which got matured on 17.11.2002 has not been repaid

to her. The complaint is dated 15.01.2003. The amount said to have been deposited is Rs. 19,500/-.

d-iv) In the order passed by the Government the property has been shown as property belonging to P. Arumugam (son of Pongali 132/1 Main Road, Nambiyur).

From the facts discussed and the order passed by the Government, it is evident that there is not even an averment that the properties specified in

the schedule are alleged to have been purchased by the proprietor from and out of the deposits collected from the depositors or that the Proprietor

purchased the property malafide in the name of the appellant or the Proprietor transferred the property malafide in the name of the appellant or that

the financial establishment has transferred any of the property otherwise than in good faith and for consideration.

5. In view of powers of the Special Judge as contemplated u/s 7(1) of TNPID Act, the special judge has to issue notice to the financial

establishment or to any other person whose property is attached, calling upon them to show cause why the ad-interim order of attachment should

not be made absolute and the property so attached be sold in public auction.

6. u/s 7 (5) of the TNPID Act, the Special Court shall exercise all the powers of the 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.

7. The Special Court is expected to issue notice to all other persons, interested in it, as having or being likely to claim, any interest or title in the

property of Financial Establishment or the person to whom the notices is issued calling upon such person to appear and make objections to the

attachment on the ground that he has an interest on such property.

7.1. Under sub-section (3) of Section 7 of the Act, even if a person did not receive any notice and if he has any claim in the attached property he

can make an objection and the special court is expected to investigate the cause shown or objection made and after investigation, order has to be

passed within a period of 180 days from the date of order of the Government.

8. u/s 8 of the TNPID Act, the special court is empowered to issue a notice requiring a transferee of the property to appear and show cause as to

why the transferee's property as is equivalent to the proper value of the property transferred should not be attached, when the special court is

satisfied by affidavit or otherwise that there is reasonable cause for believing that the financial establishment has transferred any of the property

otherwise than in good faith and for consideration.

9. If the special court is satisfied that the transfer of property is not in good faith and for consideration the special court shall order the attachment

of so much of the transferee's property as is in the opinion of the special court equivalent to the proper value of the property transferred.

10. So far as this case is concerned, the special court has passed an order making the order of ad-interim attachment (passed by the Government)

absolute. The special court has done this without taking care to verify whether the property attached belonged to the financial institution or not.

Had it been done, probably, the special court would have ordered notice to the appellant, as a person interested in the property. The special court

could have taken the assistance of the competent authority to verify the details regarding the property under ad-interim attachment.

10.1. The competent authority has powers under Rule 3 and 4 and has every right to seek information either from the financial establishment or

from any other person to furnish such information as may be required. The competent authority has not chosen to exercise that power after the

Government passing ad-interim attachment u/s 3 of the Act. The special court before making the order of attachment absolute should have

investigated the merits of the case and the right title and possession of the property over which attachment is sought in absolute terms. Had the

verification been done, it would not have escaped the attention of the special court that the property attached did not belong to the financial

establishment and that the title stands in the name of the appellant in respect of the property described above.

11. u/s 8 of the Act, even in case of a malafide transfer, the transferee is entitled to a show cause notice. There is not even an averment that the

transfer of property in favour of the Appellant by the financial establishment is a malafide transfer. There is no plea that the transfer was not in good

faith or the transfer is without consideration. Therefore, basically the order making the attachment absolute is invalid.

12. The next contention is that the order passed by the special court is beyond the period contemplated under the Act and that the order of the

Special Judge making the attachment permanent without following the mandatory requirement under Sections 3 and 7(6) of TNPID Act is illegal.

In order to appreciate the contention, it is necessary to look into the provisions prescribing period of limitation.

e-1) As per Section 4 (3) of the Act, the competent authority shall apply to the Special Court for making the ad-interim order of attachment

absolute and for a direction to sell the property so attached by the public auction and realise the sale proceeds and that application shall be made

within 30 days upon the receipt of orders of the Government u/s 3 of the Act.

e-2) After the receipt of application under sub-section (3) of Section 4 of the Act, the special Court is expected to make investigation u/s 7(5) of

the Act and an order should be passed within a period of 180 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 cancelling the order of ad-interim attachment or varying it by realising the portion of

the property from attachment.

e-3) The total period contemplated is only initial period of 30 days and the subsequent period of 180 days. In this case, the impugned order has

been passed on 23.01.2006 i.e., after 25 months is unsustainable in law.

13. This Court for the reasons aforesaid finds that the order passed by the Special Judge under TNPID Act, dated 23.01.2006 in O.A.No.59 of

2005 has to be set aside and accordingly, the same is set aside. But, it is made clear that the order of the special judge is set aside only with regard

to the property belonging to the appellant. In the result, the civil miscellaneous appeal is allowed and the order passed by the special judge under

TNPID Act, dated 23.01.2006 in O.A.No.59 of 2005 so far as it relates to the property of the appellant, is set aside. In the circumstances of the case, there is no order as to costs. Consequently, the connected MPs. are closed.