

IN THE SPECIAL COURT UNDER THE TAMILNADU PROTECTION OF
INTEREST OF DEPOSITORS (In Financial Establishment) ACT 1997,
MADURAI.

Present: Tmt M. MeeraSumathi, B.A., B.L.,
Special Judge under TNPID Act Cases,
Tuesday the 10th day of March 2020.

O.S. No. 1/17

in

CC. 06/2008

The Competent Authority &
District Revenue Officer,
Dindigul District.

...Applicant /Petitioner.

/Vs/

1. Amutham Investment and Finance,
18-B/2 Aarthy Theatre Road,
Dindigul Represented by its,
Managing Partner Meenapathy
Accused No.2 in C.C.No.05/2008
EOW-II Dindigul Crime No.1/2002
2. P.Meenapathy @ Meena
W/o Pragaspathy,
18,B/2 Aarthy Theatre Road,
Dindigul Town Revenue Village
3. P.Pragaspathy,
S/o V.P.Pichai Pillai,
18,B/2 Aarthy Theatre Road,
Dindigul Town Revenue Village

4. P.Kirubakaran
S/o V.P.Pichai Pillai,
18,B/2 Aarthy Theatre Road,
Dindigul Town Revenue Village

5.P.Pitchaiplai. (Died)
S/o Ponrampillai,
18,B/2 Aarthy Theatre Road,
Dindigul Town Revenue Village

6.M. Latha,
W/o Manoharan
18,B/2 Aarthy Theatre Road,
Dindigul Town Revenue Village

7.G.Ramakrishnan
S/o M.Gnanaprakasam
15,Nagarathnam Illam
Thottanuthu road,
Backside of Industrial Estate
Adiyanuthu Village,
Dindigul Revenue Village

..... Respondents

This original petition has been coming before this court for final hearing on 06.02.2020 in the presence of Thiru N.Murugan, Government Pleader, appearing for the petitioner / complainant / competent authority and of Thiru. N. Ranjith, Advocate appearing for the Respondents R.1 to R.4 and the 5th respondent reported dead, legal heirs already available and R6, R7 are not turned up and are called absent, set exparte and upon hearing the arguments of both sides and upon perusing the records and materials produced and having stood over for consideration till this day today this court passing the following:

ORDER

Petition filed by the petitioner under section 8 of TNPID Act for attaching the petition mentioned properties.

2) The material averments in the petition:-

This petitioner is the Competent Authority and District Revenue Officer, Dindigul District. Petitioner have mentioned 6 properties in this petition. 1). Land in the name of Pitchaipillai (5th respondent) in Patta No.1475 in Survey No.1687 at Aathur Taluk 18-Ayyampalayam village, Dindigul District an extent of 0.51.0 Hectare. 2). Land in the name of Pitchaipillai (5th Respondent) in Patta No.1510 in Survey No.1688 of Aathur Taluk 18-Ayyampalayam village, Dindigul District an extent of 0.56.0 Hectares. 3). Land in the name of Pitchaipillai (5th Respondent) in Patta No.1510 in Survey No.1689/2 of Aathur Taluk 18-Ayyampalayam village , Dindigul District an extent of 0.35.0 Hectares. 4). Land in the name of Pitchaipillai (5th Respondent) in Patta No.1475 in Survey No.1690/3B of Aathur Taluk,18-Ayyampalayam village, Dindigul District an extent of 0.50.0 Hectares. 5). Land in the name of Pitchaipillai (5th Respondent) in Patta No.1380 in Survey No.1691/1 of Aathur Taluk 18-Ayyampalayam village , Dindigul District an extent of 0.28.0 Hectares. 6). Land in the name of G.Ramakrishnan (7th Respondent) in Plot No.42 in Survey No.1916 of Dindigul Town 6th Ward, Dindigul District an extent of 2187. ½ Sq.ft. A connected criminal case is pending before this court in C.C.5/2008 pertaining to Cr.No.1/2002 EOW II Dindigul. On 13.03.2012 one Rajeswari lodged complaint against R1 to R3, Rani and 2 others stating that she deposited Rs.4,00,000/- before the 1st respondent company and 201 depositors were deposited various amount before the 1st respondent

company for tune of Rs.3,26,49,670/- as principle and inclusive of interest it comes around Rs.5,47,56,977/-. The case was originally filed in Chennai TNPID Court as C.C.66/2006 and transfer to this court and taken on file as C.C.5/2008. With regard to the criminal case certain properties were interimly attached by the government in G.O.Ms.No.426 dated 02.06.2006 u/s 3 of TNPID Act worth about Rs.21,63,059/-. The value of the immovable properties worth does not meet about the defaulted amount. The company was in stated in the year 1985 and it was closed in the year 2001. During the period 1985-2001 the respondent/accused 1,2 having immovable properties with malaifide intention of deception four here in respect of petition mentioned properties. The 1 to 7 respondents having malafide intention, are not in good faith and for consideration. The facts reveals that the respondents 1 to 7 made with intention deceits the depositors. The Tamil Nadu protection of interest of depositors Act 1997 is enacted to identify and take legal action against defaulted financial Establishments, the interest of public is more important. The 5th respondent (Pitchaipillai) has got the property in survey No.1687 in patta No.1475 and in Patta No.1690/3B in survey No.1475 an area of 0.50.0 Hectare. And the 3rd respondent Prakaspathy (3rd respondent) has got property in survey No.1688 in Patta No.1510 and in survey No.1689/2 in Patta No.1380. Like so the (6th respondent) Latha has got property in Patta No.1380, in survey No.1691/1. Like so the (7th respondent) G. Ramakrishnan has got property in T.S.No.1916 a house site of 2187 sq.ft. The 5th 6th respondent have purchased the property only the collected money from the depositors. The 3rd respondent Prakaspathy stated in his statement itself that he had purchased the property in the name of 7th respondent. The properties are

with the respondents with malafide intention. Therefore property have to be attached.

3. The Material Averments in the Counter :

1st to 4th respondent made endorsement as No counter/No written statement on 06.02.2020. The 5th respondent reported died and hence no written statement or counter filed by R5. And 6th , 7th respondent were called absent and set exparte, and hence no counter available.

4) Point for consideration: The only point to be considered here is whether this case is to be allowed or not?

5) Arguments advanced by either side are heard. No written statement filed by 1 to 6 respondents. The 7th respondent who is the subsequent purchaser alone filed written statement. Available records and material are perused. No oral and documentary evidence adduced on either sides. The present petitioner being the competent authority come forward with this petition under section 8 of TNPID Act to attach the property. Sub section 1 of section 4 of the Act empowered the District Revenue Officer of the respective district to act as competent authority and the competent authority is empowered to exercise control over the properties within their revenue jurisdictional limits. Therefore the District Revenue Officer, Nagercoil District is having locostandi to file this petition as a competent authority for the petition scheduled properties.

6) The petitioner / competent authority have come forward, to attach the properties. If complaints received from more number of depositors that the financial establishment have default in returning the deposits after maturity or fails to pay interest on deposit or fails to provide the service and if there are reasons to believe that the financial establishment is acting in a calculated manner with an intention to defraud

the depositor and of the Government are satisfied that the financial establishment is not likely to return the depositors, in order to protect the interest of the depositors, can pass an ad interim order of attaching the money or other properties, if the property is not available for attachment are not sufficient for repayment of the deposits, such other property of the said financial establishment or the promoter, partner, director, manager or member of the said financial establishment to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the financial establishment, as the government may think fit, and transfer the control over the said money or property to the competent authority.

7). Here the government have not made any attachment, intermily, rather the DRO have come forward with this petition. Since the property was transferred to 3rd party namely 6th and 7th respondent, the petitioner come forward with this petition by invoking section 8 of the Act, without sending proposal to the government for interim attachment. Section 8 of TNPID Act says that " Attachment of property of malafide 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 order the attachment of so much of the said transferee's property as in the opinion of the Special Court equivalent to the proper value of the property transferred ". Therefore it is very clear that the properties so attached are less than that of the defrauded amount property can be attached under section 8 of the Act.

8). These 1, 2 , 3 petitioners are facing 3 criminal cases, 1). C.C.6/2008, 2). 5/2008, 3). 5/2012. Out of these 3 cases C.C.6/2008 and C.C.5/2012 were settled and accused were set at liberty. The remaining cases C.C.5/2008 is pending before this court for disposal. For these 3 criminal cases the Government have attached certain properties in G.O.Ms.426 Home (Court II A) department dated 02.06.2006 and G.O.Ms.No.223 Home (Court II A) department dated 16.03.2006. Those value of the properties is not sufficient to set aright the defrauded amount and hence the present petition/suit filed by the petitioner/DRO is quite acceptable.

9). Now it has to be decide 1). Whether the property in question has purchased from and out of the deposits collected from the people and, 2). Whether the owner of the property, responsible person of the defaulted financial establishment have acted with malafide intention and sold the property to the 6th , 7th respondent, 3). Whether the intention

of the accused respondent is to cheat and defraud the amount by sold the properties.

10). The respondents who are responsible for the defaulted offending company have not filed any counter or objection. Like so, the seller of the petition mentioned property have also failed to file any objection or counter. Even the subsequent purchaser of the property namely the 6th and 7th respondent have also failed to file objection. Why the 2 to 4 respondents have sold the properties to 6th and 7th respondent is not explained by the 2 to 4 respondent. Like so why the property was purchased by 6th and 7th respondent is also not explained by them. Whether the intention of the 2 to 4 respondents and 6th and 7th respondents are bonafide is also not explained by them. Under this circumstances this court infer adverse inference against the respondents.

11). On verifying the records it came to understand that the A1 financial establishment Amutham Investment and Finance had been functioning from 1985 till 2001, FIR has been registered in the year 2001, therefore the defaulted charge sheeted period would be 1985 to 2001. It is under stand from the certificate of encumbrance on property filed by the petitioner/state reveals that the 1st property survey number.1687 in patta number.1475 and extent of 0.51.0 Hectares in Ayyampalayam Village, Aathur Taluk, Dindigul District stood in the name of deceased 5th respondent Pitchaipillai, 3rd respondent Prakaspathy and others, and it found place in serial no.3 and 5 in the encumbrance certificate. Larger extent of property in survey number.1687 found in their name. Further the 2nd property survey number.1688 in patta number.1510 and extent of 0.56.0 Hectares in Ayyampalayam Village, Aathur Taluk, Dindigul District stood in the name of 3rd respondent Prakaspathy and his son Kirubakaran and

Subordinate Judge court Dindigul in EP.232/2004 in O.S.52/2004 and District Munsif court, Nilakottai in E.P.15/2008 in O.S.247/2008 and one Shanthi and deceased 5th respondent Pitchaipillai and his son Prabakaran, and Thilagamoorthy, these properties found place in serial No.1, 2, 4, 6, 8 in the enclose encumbrance certificate. As per the encumbrance certificate dated 05.08.2014 this property stood in the name of 3rd respondent Prakaspathy. Further the 3rd property survey number.1689 in patta number.1510 and extent of 0.35.0 Hectares in Ayyampalayam Village, Aathur Taluk, Dindigul District stood in the name of deceased 5th respondent Pitchaipillai, and the 4th respondent Kirubakaran. These properties found place in serial no. 2, 4, 6, 9, 10, 11, 12 in the enclosed encumbrance certificate. Larger extent of property in survey number.1689 found in their name. Further the 4th property survey number.1690/3B in patta number.1475 and extent of 0.50.0 Hectares in Ayyampalayam Village, Aathur Taluk, Dindigul District stood in the name of deceased 5th respondent Pitchaipillai, Prakaspathi, Kirubakaran and one Prabakaran. Further the encumbrance reveals the name of Dindigul Kadhar Grama Tholil E Variyam. These properties found place in serial no.4, 6, 7 in the enclosed encumbrance certificate. Further the 6th property survey number.1916 in Plot No.42 Dindigul town 6th ward, Dindigul District an extent of 2187 Sq.ft stood in the name of 2nd and 3rd respondents. While perusing the xerox copy of sale deed document and encumbrance certificate it clearly shows transaction made only for land. But they did not mentioned the building bearing door no.19/34E and its worth. The said property was attached by Learned Principle subordinate Judge court Dindigul in I.A.559/2006 in O.S.290/2006 and I.A.558/2006 in O.S.289/2006 and the attachment was raised and now it is in the name of 2nd and 3rd respondents. These facts

found place in serial no. 5, 6, 7, 8 of additional encumbrance certificate. On perusing the document of the sale deed it clearly proves the malafide transaction made by the accused to cheat the depositors ". Therefore it is clear that the properties were purchased, and all these transaction covers the charge sheeted period 1985 to 2001.

12.) Though this petition is filed under section 8 of TNPID it is need less to say that the procedure under section 7 of the Act also would applicable, and it is also to be seen because subsections of section 7 emphasis the rights of the party. As per the TNPID Act it is left open to any person claiming interest in the property can raise objection. To heal the request of the respondent he has to prove certain things which are as follows:

The sale transaction is not a malafide transaction,
The title of the property, possession of the property,
encumbrance and revenue records are with him,

The respondent must prove the interim attachment is unwarranted one, and it is invalid in law.

13.) This court would like to point out certain other things also. In 2012 (4) MLJ page 411, R. Karuppusamy vs. Competent authority / District Revenue Officer, Erode and others that our Lordship have held that the court shall issue notice under sub section 1 of section 7 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. Here notice properly served to the respondents and they have entered appearance through their respective counsel even after

sufficient length of time given, no counter of objection filed. Since they are party to the proceeding, notice under section 7(1) TNPID served.

14) Further under section (3) of section 7 of the TNPID 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 shall investigate the cause shown or objection made. Here though objection have made the same was not substantiate with the documents and evidence. Therefore this court followed the procedure contemplated under subsection (3) of section 7 of TNPID Act.

15) The procedure being civil in nature, this court shall exercise all the powers of the court in hearing a suit under Code of Civil procedure 1908 under section 7(5) of the TNPID Act and any person making an objection shall be required to adduce evidence to show that at the date of attachment he had some interest in the property attached. Here the respondents were given opportunity to make their objection and the respondents adduced no witness and filed no documents . Therefore subsection 5 of section 7 of TNPID Act followed by this court properly.

16.) The charge sheeted period or default period is between June 1985 to 2001. The property covers the charge sheeted period between 1985 and 2001. The year of purchase coupled with the averments in the petition affidavit proves that the properties were purchased by the respondents from and out of the deposits collected from the depositors.

17) When the petitioner/DRO/ State made a specific note that the immovable properties were purchased from the deposits collected from the victim/public, than the respondents ought to have rebut the same by producing relevant revenue records, and entry, encumbrance for the properties and the physical possession of the properties through documents

that the items attached are unwarranted and invalid in law, but here the respondents failed to challenge the matters by producing relevant evidence, hence the interest over the property by the respondents cannot sustainable.

18) On verifying the criminal case C.C.5/2008 there are some depositors and a tune of Rs.26,00,000/- (Rupees Twenty Six Lakhs only) is to be settled by the accused as per the arguments of the 1 to 4 respondents, whereas the petitioner argued that the accused/respondent have to settle more than Rs.1.16 crores. It is replied by the respondent that there are focus bonds for more than Rs.1 crore is in the C.C.5/2008 criminal case. On verifying C.C.5/08, it is clear that deposits were made from July 1985 to July 2001. It is pertinent to note here that the date of conveyance, sale deed, settlement as pointed out by the petitioner in their arguments and from the documents, it is very clear that it cover the period between 1985 and 2001 and hence seeking attachment is quite legal.

19). Section 8 deals with the attachment of property of mala fide transfer where the Financial Establishment transfers its property to a person with the intention to deceive the depositors and without proper consideration, and if the value of property of the Financial Establishment attached is not sufficient to repay the deposit amount to the depositors, the Special Court can attach the properties of such malafide transferee after following the procedure laid down in the said section 8. Here more value property is transfered to very meagre value, it reflect the malafide intention.

20). Further as per clause 2 of section 3, if enough money or property is not available for sufficient for repayment, than the property of promoter, partner, director, manager and member can be attached. Here the respondents are one way or other connected with the G.O mentioned

properties. Hence under this score also the seeking of attachment under section 8 is quite legal.

21). Therefore for the above discussed reasons, this court comes to conclusion that the properties are to be attached and this court inclined to allow this petition.

1). Finally this petition is allowed.

2). With regard to the properties covered in item No. 1). Patta No.1475 in Survey No.1687, in item No. 2). Patta No.1510 in Survey No.1688, in item No. 3). Patta No.1510 in Survey No.1689/2, in item No.4). Patta No.1475 in Survey No.1690/3B, in item No. 5). Patta No.1380 in Survey No.1691/1, in item No. 6). Plot No.42 in Survey No.1916, petition is allowed subject to the decree passed in O.S.52/2004 (EP.232/2004), O.S.289/2006, O.S.290/2006 on the file of principle Subordinate (Judge) Court, Dindigul and O.S.247/2008 (EP.15/2008) on the file of District Munsif Court, Nilakkottai.

3). Intimate the same to the concern sub registrars Office.

4). The petitioner is directed to bear the cost.

Dictated directly to the Typist, typed by her directly, corrected and pronounced by me in open court this the 10th day of March 2020.

Special Judge,
Special Court under TNPID Act Cases,
Madurai.

The petitioner/ Respondent side Evidence: Nil.

The petitioner/ respondent side Exhibits : Nil.

Special Judge,
Special Court under TNPID Act Cases,
Madurai.