

(2008) 09 MAD CK 0089

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 2691 of 2005 and W.P.M.P. No's. 2736 and 2737 of 2005

Tamil Nadu Mercantile
Bank

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision: Sept. 12, 2008

Acts Referred:

Constitution of India, 1950 – Article 254(2) Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 – Section 3, 7, 8

Citation: (2008) 09 MAD CK 0089

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: M. Ramesh, for the Appellant; K.A. Thirumalaiappan, AGP, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The writ petitioner is a Scheduled Bank licensed by the Reserve Bank of India for doing banking business. In the present

case, they are seeking to challenge the order of the District Revenue Officer and the Competent Authority, Kanyakumari District dated

07.03.2005 informing the petitioner/Bank that they cannot proceed with the auctioning of the property of Elvin Bankers, Asaripallam Junction,

Kanyakumari, in view of the order of the Government in G.O.Ms. 1028 Home (Courts-IIA) Department, dated 27.10.2003 attaching the said

property u/s 3 of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997. The Bank was also informed by the

Deputy Superintendent of Police (EOW-II), Nagercoil, on 23.02.2005 to stop further proceedings. It is this letter of information which is under challenge.

2. The petitioner/Bank also filed a copy of the attachment notice issued by the State Government in G.O.Ms. No. 1028 Home (Courts-IIA)

Department, dated 27.10.2003. It is seen from the said order, the properties of the Elvin Bankers, Kanyakumari District, were attached because

of their default in return of deposits and the attachment order came to be passed. In the schedule of property enclosed along with the Government

Order, the land and building bearing D. No. 12-81A at Vembanoor Village, Kanyakumari District, in Resurvey No. 666/1 (Old Survey No. 862)

within the registration Sub-District, Rajakkamanagalam, to an extent of 2.005 cents is also mentioned as item No. 1.

3. The writ petition was admitted on 01.04.2005 and no interim order was granted in W.P.M.P. No. 2737 of 2005. In W.P.M.P. No. 2736 of

2005 an interim injunction was granted on 01.04.2005.

4. Heard Mr. M. Ramesh, learned Counsel for the petitioner and Mr. K.A. Thirumalaiappan, learned Additional Government Pleader for the State

Government and perused the records.

5. The contention raised by the petitioner was that they are a Scheduled Bank and they are having an equitable redemption of mortgage by title

deeds for the loan advanced by them. The mortgage was made to them in the year 1989 and whereas the Government Order came to be passed

in 2003. Therefore, they have a preemptive right of foreclosing the mortgage and bring the property to sale and the Government cannot be interfere

with the sale of the property. It is also stated that as a secured creditors they have a strong footing than any unsecured creditors or depositors.

6. In this context it is necessary to refer the Full Bench Judgment of this Court to which this Court is a party (K. Chandru, J.) in Mrs. S. Bagavathy

Vs. State of Tamil Nadu, . The Full Bench of this Court dealt with various aspects of the Tamil Nadu Act, 44 of 1997 including the contention as

to whether the Act is ultra vires of the provisions of the Banking Companies Act and the Reserve Bank of India Act. In this context the Full Bench

judgment in Bagavathy"s case (cited supra) held that the State legislation is an intra vires of the powers of the State vested under list II and list III

of Schedule VII of the Constitution and it is protected by Article 254(2) of the Constitution.

7. In paragraph 142 to 145 it is stated as follows:

142. In the instant case, the noxious net caused by the financial establishments was large and the State moved to stop this menace. Small sums

collected from the subscribers accumulated into huge resource like many a little makes a mickle, and then these financial establishments disappear

and evade payments, after siphoning of the amounts collected or diverting them by mala fide transfers. As referred to above, about 19 lakhs of

people reported to be suffering by this menace in the State of Tamil Nadu.

143. Reserve Bank of India being a body corporate, constituted under the Reserve Bank of India Act, 1943 can only transact its business which is

authorised by the Act to transact. Under the existing provisions of either Reserve Bank of India Act, 1934 or Companies Act, 1956, there is no

provision to deal with the financial establishments, particularly for the recovery of amounts due to the depositors, viz., to attach, sell, realise and

distribute equitably.

144. In the impugned enactment, the Government has rightly provided special machinery and judicious mechanism to attach the properties of the

financial establishment or the persons mentioned u/s 3 of the Act as well as that of the mala fide transferees and to bring them for sale and

thereafter to distribute the sale proceeds equitably among the depositors, of course, in compliance of the Principles of Natural Justice, as discussed

above in detail, while considering the issue(i).

145. Therefore, the State Government rightly in order to protect the interest of the public and to regulate the activities of the financial

establishments, enacted the impugned Act to meet the urgent need. The State Government has, thus, rightly, in order to plug certain loopholes in

the existing system and in the public interest, tracing the field of legislation under Entries 1 and 32 of the State List, enacted the impugned Act.

8. Therefore, the petitioner/Bank being a Scheduled Bank cannot find fault with the attachment made by the State Government until the attachment

is raised in the manner known to law. By filing a writ petition, the petitioner/Bank cannot achieve what it cannot achieve otherwise.

9. In any event, the learned Counsel for the petitioner/Bank stated that the petitioner/Bank did not have any notice on the attachment. Section 3 of

the said enactment does not contemplate any such notice and the only opportunity that is contemplated is a post decisional hearing u/s 7 of the said

enactment. The Special Court before finalizing the attachment can be moved by the aggrieved parties. In paragraph 23 of the judgment this position

has been set out. Therefore, the only forum open to the petitioner/Bank is to move the Special Court for raising the attachment by setting forth the

circumstances under which the petitioner/Bank has exclusive control over the particular property. It is only when the Special Court is satisfied such

an attachment can be removed.

10. Thereafter, the learned Counsel for the petitioner submitted that their transaction was prior to the Government attachment and therefore, this

Act cannot have any impact on past transactions. This argument overlooks Section 8 of the Tamil Nadu Protection of Interests of Depositors (in

Financial Establishments) Act, 1997, where mala fide transfers can also be questioned under this enactment. If it is found by the State that moneys

were ciphoned off and stashed elsewhere or transformed into different properties even those moneys converted into different properties can be

brought for the purpose of satisfying the depositor's claims. Therefore, whether the particular property was purchased through mala fide transfer, is

yet to be determined by a competent forum under the Act.

11. Under these circumstances, the writ petition is misconceived, devoid of merits and accordingly it stands dismissed.

12. If the petitioner/Bank is so advised, it is open to them to move the Special Court and seek for raising the attachment of the property which are

mortgaged with them and which is covered by the Government's order in G.O.Ms. No. 1028 Home Department, dated 27.10.2003.

13. The learned Counsel expresses apprehension that since the time limit for raising attachment in terms of Section 7 is already over and their

application may not be entertained. Since in the present case the petitioner/Bank has moved this Court and also were not aware of the earlier

attachment, if any such application is filed, the concerned Special Court will consider the same on merits without reference to limitation prescribed

u/s 7. No costs. Consequently, connected M.Ps. are closed.