

A STATE REPRESENTED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, HOME (POLICE XIX) DEPARTMENT AND
OTHERS

v.

B K. S. PALANICHAMY AND ORS.
(Criminal Appeal No. 933 of 2017)

MAY 09, 2017

[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

C *Tamil Nadu Protection of Interests of Depositors (In Financial
Establishments) Act, 1997:*

D *ss. 3 and 4 – Ad-interim order u/s. 3 – Attaching the immovable
properties of the partners of a financial institution (respondents) –
Passed by State Government – On the basis of complaint against
the financial establishment filed by the depositors – Petition u/s. 482
Cr.P.C. by the respondents – High Court set aside the order u/s. 3
holding that before passing order u/s. 3, the Government is required
to take steps u/s. 4 by identifying the properties – On appeal, held:
As per the procedure u/ss. 3 and 4, the State Government has power
to set the process into motion by passing ad-interim attachment and
thereafter appoint competent authority u/s. 4(1) to take further
recourse u/s. 4(3) and (4) – Therefore, the order of the State
Government is in consonance with the provisions of the Act.*

Words and Phrases:

F *'Financial establishments' – Meaning of, in the context of
Tamil Nadu Protection of Interests of Depositors (In Financial
Establishments) Act, 1997.*

Allowing the appeal, the Court

G **HELD:** 1. The Statement of Objects as well as the relevant
provisions of the Tamil Nadu Protection of Interests of Depositors
(In Financial Establishments) Act, 1997 shows that its object was
to ameliorate the situation of thousands of depositors from the
clutches of Financial Establishments which deceives the investors
by offering high rates of interest on deposits and committed
deliberate fraud in repayment of the principal and interest after

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maturity of such deposits. Sub-section (3) of Section 2 defines the Financial Establishments. It is an undisputed fact that the present respondents very much fall within the ambit of financial establishment as defined under the Act. [Para 10] [39-B-C]

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2. It is clear from the reading of Section 3(i) of the Act, that whenever complaints are received from a number of depositors against a Financial Establishment, which defaults or fails to return the deposits or fails to provide services for which the deposits have been made by the depositors, then the State Government is empowered to initiate proceedings by passing *ad-interim* order for attachment of the properties of the Financial Establishment or any other persons as mentioned there under. The present case falls under Section 3(i) of the Act. Thereafter the Government is at liberty to transfer the control of the aforesaid money or property to the competent authority. [Para 12] [40-E-F]

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3. As per the procedure envisaged under Section 3 and 4 of the Act, unequivocally the power to set the process into motion vests with the State Government by passing an *ad-interim* attachment order and thereafter the Act mandates appointment of competent authority under Sub-section (1) of Section 4 of the Act, to take further recourse as per the procedures laid down under Section 4 of the Act. [Para 14] [41-C-D]

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4. It is not correct to say that before passing an order under Section 3 of the Act, Government has to take steps under Section 4 of the Act by identifying the properties. The language employed under Sections 3 and 4 of the Act is plain, unambiguous. While enacting the provisions, the legislature has consciously given the discretion for passing an *ad-interim* order. It is evident from the language used in the section by inserting "Government may". In the present case, even before the other provisions are complied with, the High Court erroneously interfered with the *ad-interim* order which defeats the very purpose of the provision which is incorporated to safeguard the interest of the investors. [Para 15] [41-E-F]

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5. The order passed by the State Government under Section 3 of the Act attaching the immovable properties standing in the name of respondents, basing on the complaint of investors and

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A directing the competent authority to take recourse as per the procedures contemplated under Sub-section (3) and (4) of Section 4 of the Act is valid and is very much in consonance with the provisions of the Act. [Para 16] [41-G-H; 42-A]

B CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 933 of 2017.

From the Judgment and Order dated 19.03.2014 of the High Court of Judicature at Madras in Crl. O. P. (MD) No. 6607 of 2013.

C Subramonium Prasad, AAG, M. Yogesh Kanna, Ms. Nithya, Ms. Maha Lakshmi, Partha Sarathi, Advs. for the Appellant.

G. Sivabalamurugan, L. K. Pandey, Ms. Theepa, Advs. for the Respondents.

The Judgment of the Court was delivered by

N. V. RAMANA, J. 1. Leave granted.

D 2. Appellant is before us questioning the order passed by the High Court in Crl.O.P. (MD) No. 6607 of 2013, dated 19.03.2014, whereby the High Court has set aside an *ad-interim* order (G.O. Ms. No. 989) [hereinafter referred to as 'G.O' for brevity], dated 24.12.2012, attaching the immovable properties of the partners of Financial Establishment (Global Capital Trading Services) i.e. respondents herein under Section 3 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 [hereinafter 'Act' for brevity]?

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F 3. Brief facts of the case which are necessary for adjudication of dispute before us are, on 01.11.2010, a complaint was registered with Deputy Superintendent of Police against the respondents herein alleging that, respondents were conjointly running a Financial Establishment in the name of Global Capital Trading Services at Madurai, offering high rate of returns on investments in their Financial Establishment. Basing on the assurance given by the respondents herein, the complainant along with his relatives deposited huge sums of money with the Financial Establishment, administered by the respondents herein. Furthermore it is alleged that respondent no. 1 has returned back only a part of the deposited amount to the complainant and thereafter absconded. In light of the above averred facts, complaint was registered as (FIR No. 06/2010) was registered on 02.11.2010 under Section 406, 420

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of Indian Penal Code, 1860 read with Section 5 of the Act. Based on the
aforesaid complaint, G.O, dated 24.12.2012, was issued attaching the
immovable properties of the respondents herein who are the partners of
the financial institution under Section 3 of the Act. A

4. Challenging the aforesaid G.O, respondents herein filed Criminal
Original Petition under Section 482 of the Code of Criminal procedure,
1973 before the Madurai bench of The High Court of Madras in Crl.O.P.
(MD) No. 6607 of 2013. The High Court has allowed the Criminal Original
Petition, by setting aside the Government Order dated 24.12.2012 and
directed the competent authority to initiate fresh proceedings in terms of
Section 3 and 4 of the Act. B

5. Aggrieved by the impugned Judgment of the High Court, State
represented by its Principal Secretary to Government, Home (Police
XIX) Department and others are before us. C

6. The contention of the learned counsel appearing on behalf of
the State is that, under Section 3 of the Act, the State Government is
empowered to attach the properties belonging to a Financial Establishment
which defaults in returning the deposits after maturity or fails to pay
interest on deposit or fails to provide any service for which the deposit
has been made. Sub-section (ii) of Section 3 of the Act confers the
power on the Government to take up *suo moto* complaint in order to
prevent fraud against the depositors. Further it empowers the State
Government to pass ad-interim attachment orders subject to its
satisfaction. In the present case, according to the learned senior counsel,
on receiving the complaints from the depositors, Government being
satisfied with the same, appointed the Revenue District Officer of Madurai
as the competent authority in exercise of its power under sub-section
(1) of Section 4 of the Act. D
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7. Furthermore he states that Sub-section (3) of Section 4 provides
that, after passing an ad-interim attachment order, the competent authority,
designated by the Government, has to approach the Special Court
constituted under the Act, within stipulated period, for making the ad-
interim order of attachment absolute and for further directions to sell the
attached property by way of public auction and realize the sale proceeds.
According to him, in the present case, the High Court even before
reaching such a stage has set aside the proceedings on a wrong
interpretation of law. Moreover he contends that the High Court has
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A erroneously relied upon the order, dated 29.6.2011, in Criminal Revision Case (MD) No. 242 of 2011 passed by the Madurai Bench of Madras High Court, which has been extracted in *para 6* of the impugned judgment, *which reads thus :-*

B “6. The only grievance of the petitioners is that under Section 3 of the Act, the competent authority has to recommend for attachment and the Government has to pass an order of attachment by way of passing Government Order. After passing such Government Order, the provision of Section 4 and 7 of the Act, will come into play. However, the competent authority is a person appointed under Section 4 of the Act, who is presently the District Revenue Officer, Madurai. By an order dated 29.06.2011, while disposing of the connected Criminal Revision in Crl.R.C.(MD) No. 242 of 2011 this Court has passed an order and the relevant portion reads as follows :-

D “22. The Investigating Agency is also at liberty to proceed further to find out as to whether the petitioner and his relatives own any other properties also and in that event, the Investigating Agency shall take effective steps to attach the properties in terms of the provisions of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997.”

E 8. He summoned up his arguments by stating that such a procedure was never contemplated under the Act. At this stage it is important to note that the High Court allowed the Criminal Original Petition and set aside the impugned G.O., issued by the Government, even before initiation of the proceedings under Section 4 of the Act.

F 9. *Per contra* learned counsel for the respondents submitted that Section 3 of the Act is ambiguous as it does not indicate any procedure to be followed while passing an ad-interim order. He further states that before taking any action under Section 3 of the Act, the competent authority has to initiate proceedings and identify the properties in terms of Section 4 of the Act. Furthermore he contends that the power of the Government to pass ad-interim attachment order is contingent upon identification of property by the competent authority. In view of that, he submits that the High Court has rightly quashed the Government Order.

H 10. Having heard learned counsel for the parties and after perusing the impugned G.O., it would be appropriate to bestow our attention to

the relevant statutory provisions under the Act. A perusal of the Statement of Objects as well as the relevant provisions of the Tamil Nadu Act shows that its object was to ameliorate the situation of thousands of depositors from the clutches of Financial Establishments which deceives the investors by offering high rates of interest on deposits and committed deliberate fraud in repayment of the principal and interest after maturity of such deposits. Sub-section (3) of Section 2 defines the Financial Establishments. It is an undisputed fact that the present respondents very much fall within the ambit of financial establishment as defined under the act. A B

11. It would be appropriate to extract section 3 and 4 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 which reads as under C

3) Notwithstanding anything contained in any other law for the time being in force:-

- (i). Where, upon complaints received from a number of depositors, that any financial establishment defaults the written of deposits after maturity, are D
- (ii). Where the government have reason to believe that any financial establishment is acting in a calculated manner with an intention to defraud the depositors. E

and if the government are satisfied that such financial establishments is not likely to return the deposits, the government may, in order to protect the interests of the depositors of such financial establishment pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person from and out of the deposits collected by the financial establishment, or if it transpires that such money or other properties is not available for attachment are not sufficient for repayment of the deposits, such other property of the said financial establishment or the promoter, manager or member of the said financial establishment, as the government may think fit and transfer the control over the said money or property to the competent authority. F G

A 4)(1) The government may, by notification appoint an authority herein after called “the competent authority” to exercise control over the properties attached by the government under section 3

(2) The competent authority shall have such other powers as may be necessary for carrying out the purposes of this act.

B (3) Upon receipt of the orders of the government under section 3, the competent authority shall apply within 15 days to the special court constituted under this act for making the ad-interim order of attachment absolute.

C (4) An application under sub section(3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the financial establishment has committed any default or is likely to defraud, is founded, the amount of money or value of their property believed to have been procured by means of the deposit, and the details, if any, of persons in whose name such property is believed to have been invested or purchased out of the deposits or any other property attached under section 3.

D 12. It is clear from the reading of Section 3(i) of the Act, that whenever complaints are received from a number of depositors against a Financial Establishment, which defaults or fails to return the deposits or fails to provide services for which the deposits have been made by the depositors, then the State Government is empowered to initiate proceedings by passing ad-interim order for attachment of the properties of the Financial Establishment or any other persons as mentioned there under. It is not in dispute that the present case falls under Section 3(i) of the Act. Whereas under Section 3(ii) of the Act, Government has the *suo motto* power to initiate proceedings and pass an order of ad-interim injunction. Thereafter the Government is at liberty to transfer the control of the aforesaid money or property to the competent authority.

E 13. Sub-section (1) of Section 4 of the Act empowers the Government to appoint competent authority. Whereas Sub-section (2) of Section 4 confers necessary power on the competent authority for carrying out the purposes of the Act. Sub-section (3) of Section 4 mandates the competent authority to apply before the Special Court within a stipulated period for making the ad-interim order of attachment absolute and for further directions pertaining to the selling of the attached property by public auction and realization of the sale proceeds.

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Sub-section (4) of Section 4 of the Act clarifies that an application under sub-section (3), before the Special Court, has to be accompanied with affidavits stating the grounds or reasons on which the belief that the Financial Establishment is going to commit a default or defraud the depositors are founded. The application should also contain other particulars and details as to the persons in whose name the properties vest.

14. It is clear from the relevant statutory scheme that in order to curb the malady of financial swindlers and to deal with such problems effectively, The State of Tamil Nadu enacted this statute to protect the interest of innocent investors. Therefore as per the procedure envisaged under Section 3 and 4 of the Act unequivocally the power to set the process into motion vests with the State Government by passing an ad-interim attachment order and thereafter act mandates appointment of competent authority under Sub-section (1) of Section 4 of the Act, to take further recourse as per the procedures laid down under Section 4 of the Act.

15. We are not able to appreciate the reasoning recorded by the High Court and the contention put forth by the learned counsel appearing for the respondents that before passing an order under section 3 of the act government has to take steps under section 4 of the act by identifying the properties. The language employed under section 3 and 4 of the act is plain, unambiguous and it does not call for any interpretation as sought to be placed by the learned counsel appearing for the respondents. While enacting the provisions the legislature has consciously given the discretion for passing an ad-interim order. it is evident from the language used in the section by inserting "Government may". In the case on hand even before the other provisions are complied with the High Court erroneously interfered with the ad-interim order which defeats the very purpose of the provision which is incorporated to safeguard the interest of the investors.

16. In light of the above discussion, we are of the considered opinion that the order passed by the State Government under Section 3 of the Act attaching the immovable properties standing in the name of respondents, basing on the complaint of investors and directing the competent authority (District Revenue Officer, Madurai District) to take recourse as per the procedures contemplated under Sub-section (3) and (4) of Section 4 of the Act is valid and is very much in consonance with

A the provisions of the Act. In view of the above the impugned order deserves to be set aside and accordingly we set aside the Judgment passed by the Madurai Bench of the Madras High Court.

17. The appeal is, accordingly, allowed.

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Kalpana K. Tripathy

Appeal allowed.