IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2022

PRONOUNCED ON : 10.10.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.23006 & 28702 of 2011
and M.P.Nos.1 & 1 of 2011

**W.P.No.23006 of 2011**

1. Utham S.Gugalia
2.R.Meethalal ... Petitioners

vs.

1. The Branch Manager,
Tamil Nadu Industrial Investment,
Corporation Ltd.,
45, Katpadi Road,
TKM Complex, Vellore – 1.

2. The Managing Director,
Tamil Nadu Industrial Investment,
Corporation Ltd.,
692, Anna Salai,
Nandanam, Chennai 35.

3. M/s.Ambur Line Industries
Represented by its Prop.Ramesh Chandra Bansali
( R3 Impleaded as per order dated 18.7.12 in
M.P.No.1 of 2011) ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to execute a fresh Sale Deed and in favour of the petitioners with respect to the property in question namely, the land and building to an extent of 2.06 acres in Survey No.240/1, 237 and 238, Vinnamangalam, Vaniyambadi Taluk, Vellore District at the cost and expenditure of the petitioners.

| | | |
|---|---|---|
| For Petitioner | : | Mr.S.Sadasharam |
| For R1 & R2 | : | Mr. M.J.Jaseem Mohamed |
| For R3 | : | Mr.J.Raja Kalifulla<br>Senior Counsel<br>for M/s.K.Sellathurai |

**W.P.No.28702 of 2011**

1.Rameschandra Bansali
2.Manjudevi R.Bansali .. Petitioner

.vs.

1. The Tamil Nadu Industrial Investment,
Corporation Ltd., Rep. by its
The Chairman & Managing Director,
Registered Office at 'Arul Manai'
No.27, Whites Road, Chennai 600 014.

2. The Tamil Nadu Industrial Investment,
Corporation Ltd., Rep.by its
No.73/A, Katpadi Main Road,
(Vasan E.N.T.Clinic-1 Floor)
Gandhi Nagar, Vellore 632 096.

3. M.Goutham Jain
4.Uttamchand R.Gugalia
5.R.Meethalal
6. The Deputy Superintendent of Police,
District Crime Branch,
Vellore.
( R6 is Suo-motu impleaded by
this order dated 10.10.2022) .. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certioarified Mandamus, calling for the records relating to the declaration made in reference TIIC/VLR/NS/LAO/2011-12 dated 1.7.2011 on the file of second respondent and quash the same any consequently direct the respondents 1 and 2 to cancel the unregistered sale deed dated 5.6.1997 executed by the second respondent in favour of the respondents 4 and 5 and direct the 2nd respondent to return the original documents and title deeds relating to the property bearing Door No.240/1 M.C.Road, (Vaniambadi Road) Vinnamangalam, Ambur 535 807 comprised in (i) S.No.237/1 admeasuring

49 cents, (ii) S.No.240/1 of an extent of 1.09 Acres and (iii) S.No.238 measuring about 48 cents totaling to 2.06 Acres situate at Vinnamangalam and issue loan Clearance Certificate and deliver symbolic possession of the entire assets of " The Ambur Lime Industries" to the petitioner.

For Petitioners : Mr.J.Raja Kalifulla
Senior Counsel
for M/s.K.Sellathurai

For R1 & R2 : Mr. M.J.Jaseem Mohamed

For R4 & R5 : Mr.S.Sadasharam

**COMMON ORDER**

Marcus Aurelius ***said " Everything we hear is an opinion, not a fact. Everything we see is a perspective, not the truth".*** This quotation aptly summarises the present case.

2. By this common order, both these writ petitions are being disposed.

3. These writ petitions have been filed for the following reliefs:-

| W.P.No.23006 of 2011 | W.P.No.28702 of 2011 |
|---|---|
| Writ petition filed under Article 226 of the Constitution of India, for a Writ of Mandamus, directing the respondents to execute a fresh sale deed to and in favour of the petitioners with respect to the property in question namely, the land and building to an extent of 2.06 acres in survey No.240/1,237 and 238 Vinnamangalam, Vaniyambadi Taluk, Vellore District at the cost and expenditures of the petitioners. | Writ petition filed under Article 226 of the Constitution of India, for a Writ of direction, calling for the records relating to the declaration made in reference TIIC/VLR/NS/LAO/2011-12, dated 1-7-2011 on the file of 2 nd respondent and quash the same and consequently direct the respondents 1 and 2 to cancel the unregistered sale deed dated 05.06.1997 executed by the 2nd respondent favour of the respondents 4 and 5 and direct the 2nd respondent to return the original documents and title deed relating to the property bearing No.240/1 M.C.Road, (Vaniambadi Road) Vinnamangalam, Ambur – 535 807 comprised in (i) S.No.237/1 admeasuring 49 cents, (ii) S.No.240/1 of an extent of 1.09 acres and (iii) S.No.238 measuring about 48 cents totaling to 2.06 Acres situate at Vinnamangalam and issue loan clearance certificate and deliver symbolic possession of the entire assets of “The Ambur Lime Industries” to the petitioner. |

4. **W.P.No.23006 of 2011** has been filed by Mr.Utham S.Gugalia and Mr.R.Methalal. For the sake of convenience, they shall be referred to as auction purchasers. **W.P.No.28702 of 2011** has been filed by Mr.Ramachandra Bansali and his wife Mrs.Ramachandra Bansali shall be referred to as the borrower.

5. The petitioners in W.P.No.23006 of 2011 are also the private respondents in W.P.No.28702 of 2011 along with one Mr.Goutham Jain who has been arrayed as the 3rd respondent in W.P.No.28702 of 2011. The Tamil Nadu Industrial Investment Corporation Limited represented by its Managing Director and its Branch Manager are the 1st and 2nd respondents in the respective writ petition. They shall be jointly referred to as the "lenders" for the sake of convenience.

6. Earlier, W.P.No.23006 of 2011 was filed by the auction purchaser only against the lenders. Thereafter, the borrower was impleaded as a 3rd respondent vide order dated 18.07.2012 in M.P.No.1 of 2012 in W.P.No.23006 of 2011.

7. The borrower is the proprietor of a defunct manufacturing concern named M/s.Ambur Lime Industries. In connection with the business, the borrower had loan transactions with the lenders.

8. The borrower offered land and plant and machinery as a security to the lenders by way of hypothecation and created an English Mortgage. In this connection, two term loans were sanctioned by the official respondents as detailed below:-

| Sl.No. | Date | Term Loan | Period of Repayment | Security Offered |
|---|---|---|---|---|
| 1 | 12.5.1994 | Rs.3,40,000/- | 20 months | Land measuring 2.06 acres as S.No.237/1, 288 and 240/1 in Vinnamangalam Village, North Arcot District. |
| 2 | 31.1.1986 | Rs.1,35,000/- | 12 months | Machinery |

9. The borrower defaulted in repayment of these two term loans. Thus, the lenders appear to have taken symbolic and later physical

possession of the secured assets of the borrower on 16.12.1990 and 24.11.1993 respectively and is stated to have brought the immoveable property for sale in a public auction on 05.08.1996. The details of such auction are however not available. However, there is no dispute about the same.

10. It appears that the auction purchasers had also earlier filed two writ petition in W.P.No.23616 of 1990 and W.P.No.15106 of 1990. An interim order is said to have been passed after the lenders took physical possession of the secured asset under section 29 of the State Finance Corporation Act, 1951.

11. However, copies of the order passed in these two writ petitions are not available for perusal. The borrower has not disputed the same. It appears that the borrower was directed to deposit a sum of Rs.1,00,000/- which apparently was observed in breach. However, there are no records to substantiate the same.

12. An auction is said to have been held on 05.08.1996 to auction the above assets. The auction purchasers are said to have paid a sum of Rs.4,10,000/- to the lender on the following days pursuant to a auction held on 05.08.1996:-

| ***Sl.No.*** | ***Date*** | ***Amounts (Rs.)*** | ***Mode of Payment**** |
|---|---|---|---|
| 1 | 27.12.1996 | 41,100/- | Demand Draft |
| 2 | 29.01.1997 | 1,00,000/- | Pay Order No.472898 |
| 3 | 11.02.1997 | 69,000/- | Pay Order No.472936 |
| 4 | 11.02.1997 | 2,00,000/- | Pay Order No.472940 |
| Total | | 4,10,000/- | |

*As per the sale deed dated 5.6.1997 photo copy of which has been filed by the auction purchasers.

13. The case of the borrower is that the aforesaid sum of Rs.4,10,000/- was arranged and paid by the borrower through a business associates/ family friend in terms of the decision of the Hon'ble Supreme Court in **Magesh Chandra vs. Regional Manager, U.P.Financial**

**Corporation and Others**, (1993) 2 Supreme Court Cases 279 and thus the dues were settled.

14. However, sale deed has been executed in favour of the auction purchaser by the lender in collusion with the auction purchaser and Gautham Jain, the 3rd respondent in W.P.No.28702 of 2011.

15. It is the further case of the borrower that he suffered from depression on account of untimely death of his first wife on 23.09.1986 and his only son aged about 21 years due to kidney ailment on 07.05.1996 and thus could not take care of the business after arranging for paying the amount to the official respondents at the time of the auction to retain the owenership.

16. On the other hand, it is the case of the auction purchasers that they are the successful bidders in the auction held on 05.08.1996 by the lenders and that they had offered to pay the aforesaid amounts to the lenders in terms of the decision of the Hon'ble Supreme Court **Magesh Chandra vs. Regional Manager, U.P.Financial Corporation and**

**Others**, (1993) 2 Supreme Court Cases 279 and it is pursuant to the above that the sale deed came to be executed in their favour on 05.06.1997.

17. It is the further case of the auction purchasers that the Sale Deed executed on 05.06.1997 could not be registered as the Sub Registrar had demanded a huge amount towards stamp fee at the time of presentation of document for registration and therefore they could not arrange for the same.

18. It is the further case of the auction purchaser that the original sale deed dated 05.06.1997 was lost in time and therefore the auction purchaser has filed the present writ petition in W.P.No.23006 of 2011 for a Mandamus to direct the lenders to execute a fresh sale deed and to register the same.

19. During the pendency of the proceedings, the borrower is said to have settled the property in favour of his 2$^{nd}$ wife, the second petitioner in W.P.No.28702 of 2011 vide document No.4818 of 2010 in

the year 2010 who in turn further appears to have mortgaged the property by depositing the title deed in favour of Corporation Bank in connection to a loan.

20. The learned Senior counsel for the petitioners/ borrower has relied on the following decisions:-

i) ***Appineni Vidyasagar vs. State of A.P. and Others***, (2004) 11 SCC 186

ii) ***L.K.Trust vs. EDC Limited and Others***, (2011) 6 SCC 780

iii) ***Narandas Karsondas vs. S.A.Kamtam and Another***, (1977) 3 SCC 247

21. On behalf of the auction purchaser, the learned counsel for the petitioners submits that once the property has been auctioned and sold in favour of the petitioners therein, the lender is duty bound to execute a fresh sale deed and register the same as it was lost. It is submitted that the borrower can have no say over the property which was auctioned and later sold.

22. Mr.Jaseen Mohamed, learned counsel for the lenders has relied on the following decisions:-

i) ***Deepak Bhandari vs. Himachal Pradesh State Industrial Development Corporation, AIR*** 2014 SCC 961

ii) ***A.P.State Financial Corporation vs. M/s.Garre-Rolling Mills and Another,*** (1994) 2 SCC 647

23. I have considered the arguments advanced by the learned counsel for the borrower, the learned counsel for auction purchaser and the learned counsel for the lenders.

24. An interim order came to be passed by this Court on 27.08.2019 in the light of the conflicting stand of the borrower, the auction purchaser and the lender in these writ petitions. The relevant portion of the said order which is self explanatory is reproduced below:-

> "2. *In view of the above, I am inclined to grant liberty to the Tamil Nadu Industrial Investment Corporation Ltd, to file an appropriate complaint before the Deputy Superintendent of Police, District Crime Branch, Vellore District, within a period of two weeks. On receipt of this complaint, the Deputy Superintendent of Police, District Crime Branch, Vellore District, shall conduct the*

*investigation in the manner known to law and file a report before this Court, within a period of eight weeks, thereafter.*

*3. During the course of investigation, if any cognizable offense is made out against the person who committed the offence, it is left open to the Deputy Superintendent of Police, District Crime Branch, Vellore District, to register a criminal case against the person who committed such offence and proceed in accordance with law. The Deputy Superintendent of Police, District Crime Branch, Vellore District, is directed to file his investigation report before this Court on 14.10.2019.*

*Post the matter on 14.10.2019, for reporting compliance".*

25. I shall first deal with W.P.No.23006 of 2011 filed by the auction purchasers. This writ petition filed in 2011 is hopelessly time barred and is therefore liable to be dismissed on account of latches.

26. Even otherwise, the auction purchasers have no right to ask the lender to execute a fresh sale deed long after a lapse of 14 years in 2011. Even if a suit was filed in a civil court, the court would have dismissed the suit as time barred. Therefore, Jurisdiction of this Court

under Article 226 of the Constitution of India cannot be allowed to be used to get a relief as the auction purchaser would not have obtained the same relief in a civil suit.

27. That apart, the question of executing a fresh sale deed to register the aforesaid sale deed in favour of the auction purchaser at this distant point of time cannot be countenanced as the sale deed was executed by the branch manager of the lenders in favour of the auction purchaser on 05.06.1997 pursuant to an auction purportedly held on 05.08.1996.

28. The sale deed dated 05.06.1997 executed ought to have been presented for registration within the period of limitation prescribed under Sections 23 & 25 of the Registration Act, 1980.

29. For the sake of convenience, the respective provisions are reproduced below:-

| Section 23 of the Registration Act, 1908 | Section 25 of the Registration Act, 1908 |
|---|---|
| Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution.<br><br>Provided that a copy a of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.<br><br>[23A. Re-registration of certain documents.—Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months form his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the | Provision where delay in presentation is unavoidable.—<br><br>(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in 2 [India] is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration.<br><br>(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate. |

| Section 23 of the Registration Act, 1908 | Section 25 of the Registration Act, 1908 |
|---|---|
| Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefore under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:<br><br>Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid. | |

30. Therefore, the rights to have the sale deed registered expired at the end of February, 1998. Therefore, the question of issuing a direction to the lender to execute a fresh document of sale deed pursuant to the auction held purportedly on 5.8.1996 cannot be ordered.

31. Presentation of the original Sale Deed dated 5.6.1997 for registration beyond the period of limitation prescribed under these provisions is impermissible, even if the auction purchasers were in possession of original Sale Deed dated 5.6.1997.

32. Therefore, the question of directing the lenders to execute a fresh document after the period of limitation cannot be countenanced. To allow such a relief would not be in harmony with the general law of limitation under the Limitation Act,1963 and the limitation prescribed under Sections 23 & 25 of the Registration Act, 1908.

33. That apart, it is noticed that there are several doubts and contradictions surrounding the execution of the alleged Sale Deed dated 5.6.1997 in favour of the auction purchasers by the lenders.

34. In the documents filed before this Court, the stand of the lender is that the auction purchasers were the nominees identified by the borrower whereas in the representation given to the lenders, TIIC, the auction purchasers have claimed that they are the highest bidders in the auction held on 05.08.1996.

35. The second petitioner in W.P.No.23006 of 2011 (one of the auction purchaser) in his communication dated 28.10.2009 to the lender has clearly stated that the auction purchasers were the highest bidder in the auction held on 05.08.1996, whereas, in the official communications of lender and in the impugned communication dated 01.07.2011, it has been stated that after the auction was conducted on 05.08.1996, the auction bidders offered to pay 10% above the auction amount as nominees of the borrower in terms of the decision of the Court in Hon'ble

Supreme Court **Magesh Chandra vs. Regional Manager, U.P.Financial Corporation and Others**, (1993) 2 Supreme Court Cases 279.

36. In 22.6.2010, the lender has further stated that by letter dated 16.12.1996 the borrower was asked to deposit 10% of the bid amount i.e. Rs.40,500/- within a period of ten days from the date of receipt of the aforesaid letter and that the borrower, i.e. the proprietor of M/s.Ambur Lime Industries had brought the auction purchasers, (the petitioners in W.P.No.23006 of 2011) as the business associate of the borrower offered to a sum of Rs.4.10,000/- and deposited a sum of Rs.41,000/- by way of Demand Draft on 27.12.1996 and the balance amount as detailed in para 11 of this order.

37. Thus, there are contradictions in the version given by the petitioners in W.P.No.23006 of 2011 and the communications of the lenders including the impugned communication dated 01.07.2011 of the lenders addressed to the borrower, the first petitioner in W.P.No.28702 of 2011.

38. That apart, the facts on record indicate that the borrower (the first petitioner in W.P.No.28702 of 2011) had created an English Mortgage in favour of the lenders at the time of securing the term loan for Rs.3,40,000/-. Section 58 (e) of the Transfer of Property Act, 1882, defines the expression " English Mortgage" as under:-

> "(e)—Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage".

39. The borrower was thereafter sanctioned another fresh loan on 31.01.1986 for a sum of Rs.1,35,000/- repayable in 13 months which period would have been expired in February 1987.

40. The facts on record indicate that there were some defaults committed by the borrower. However, detail are not forthcoming in the pleadings. Though, the loan was foreclosed on 16.02.1990 and a

symbolic possession of the mortgaged property was taken on 19.09.1990, the borrower appears to have filed W.P.No.23616 of 1990 and W.P.No. 15106 of 1990 wherein a conditional order was passed by this Court asking the borrower to deposit Rs.1,00,000/- . This was apparently not complied with.

41. After the sanction of the second term loan, the borrower's first wife died on 23.09.1986. He appears to have been struggling to take care of his son who was a minor and later died on 07.05.1986 as a young man aged 21 years due to kidney failure.

42. It also appears that the borrower was also dealing with personal tragedy and depression and had moved to Nagpur and later married the second petitioner in W.P.No.28702 of 2011 and has settled the property in favour of the second petitioner without actually redeeming the English Mortgage created in favour of the lenders.

43. Further, the amount due from the borrower towards interest and other dues under the respective term loans, was calculated as

Rs.82.86 lakhs, as against a meagre outstanding towards principal of Rs.0.54+Rs.0.54 lakhs after adjustment of the amount which is said to have been paid.

44. Whether the amount was paid by the borrower or the auction purchasers is to be decided in the criminal proceeding. There are several contradictions surrounding the alleged transfer /sale in favour of the auction purchasers on 5.6.1996. Letter dated 22.06.2010 issued by the lender( second respondent in W.P.No.28702 of 2011) to the borrower brings out the same. Relevant portion of the letter, reads as under:

> On intimation our confirmation letter the Highest Bidder remitted the entire bid amount of Rs.4,10,000/- on 11.02.1997 and the same was adjusted towards your loan account in principal account and we had executed the sale deed in favour of Thiru.r.Meethalal and Thiru.UttamS.Gugalia on 05.06.1997.
>
> Regarding the Land acquisition by Highways Authority, it is understood that the above acquisition work was done by the concerned authorities during the year 2004. i.e. after the execution of sale deed. Hence, it is informed that either no communication or compensation amount received by us from the concerned Land acquisition authorities. We also inform you that your loan account has not been settled

so far and we furnish here the loan account position as detailed below:

| *Type of Loan* | *Date of sanc-tioned* | *Amount sanc-tioned* | *Amount Dis-bursed* | *Principal outstand-ing* | *Princi-pal overdues* | *Interest-ed over-dues* | *Other dues* | *Total* |
|---|---|---|---|---|---|---|---|---|
| TL I | 12/05/84 | 3.40 | 3.40 | -- | -- | 54.99 | 0.40 | 55.39 |
| TL II | 31/01/86 | 1.35 | 1.24 | 0.54 | 0.54 | 26.93 | -- | 27.47 |
| TOTAL | | 4.75 | 4.64 | 0.54 | 0.54 | 81.92 | 0.40 | 82.86 |

Total Overdues – Rs.82.86 Lakhs ( Interest charged upto : 31/03/2010)

Moreover we had informed our OTS Scheme in many times but there was no response from you. Under these circumstances we advise you to settle the account under OTS Scheme at an early date. It is also informed that the tentative OTS amount under the present OTS Scheme is Rs.35,000/-.

45. However, there is no loss to the lenders as the borrower was asked to pay a sum of Rs.35,000/- for closing the loan amount under One Time Settlement Scheme and the said amount has been paid by the borrower after adjusting the amount.

46. The case of the borrower is that the amount paid to settle the loan outstanding to the lenders to the third respondent in W.P.No.28702 of 2011 was wrongly misused and fraud was played in creating the Sale

Deed in favour of the auction purchasers to make it seem as if there was a auction sale in favour of the auction purchasers.

47. None of the documents pertaining to auction notice and the auction held on 05.08.1996 are also available. Both the lenders and the auction purchasers have not produced any documents to establish either the auction or an attempt has been made to show that the auction purchasers attempted to register register the sale deed earlier. The transactions are suspicious and do not inspire confidence.

48. Therefore, in my view, since the Sale Deed dated 05.06.1997 was not registered, the borrower is entitled for redemption of mortgage.

49. The borrower is entitled for redemption of the mortgaged property as the amount has been settled under OTS offered by the lenders if the amount of Rs.4,10,000/- was indeed paid by the borrower as there was no valid transfer/sale of the mortgaged property in favour of the auction purchasers in absence of registration of sale as held in ***Appineni Vidyasagar vs. State of A.P. and Others,*** (2014) 11 SCC 186.

50. Therefore, the borrower *prima facie* appears to be entitled for redemption of the mortgaged property in terms of the law laid down in ***A.P.State Financial Corporation vs. M/s.GAR Re-Rolling Mills and Another,*** (1994) 2 SCC 647 and in ***Deepak Bhandari vs. Himachal Pradesh State Industrial Development Corporation Ltd,*** AIR 2014 SCC 96, if indeed the amount of Rs.4,10,000/- was paid by the borrower through his nominees/business associates.

51. There is no doubt as far as proposition of the Hon'ble Supreme Court in ***A.P.State Financial Corporation vs. M/s.GAR Re-Rolling Mills and Another,*** (1994) 2 SCC 647 that jurisdiction under Article 226 of the Constitution of India should be exercised to prevent perpetration of legal fraud and to promote good faith and honesty. It cannot be exercised in favour of a defaulting party to frustrate legitimate claim of the other party as in Section 29 of the State Financial Corporations Act, 1951.

52. Though by an interim order dated 27.08.2019, the lender was asked to initiate criminal proceedings, the records indicate that the complaint has been filed only against the borrower by the lenders. The

facts on record also indicate that the concerned officer of the lenders in 1997 may have played a fraud not only on the borrower but also on the lender in collusion with the 3rd respondent in W.P.No.23072 of 2011.

53. Therefore, a thorough investigation is required to be made not only against the borrower but also against the 3rd respondent in W.P.No.28072 of 2011 and the concerned officer of the lenders. On ascertaining the actual fact as to whether the borrower along with his wife ( 2nd petitioner in W.P.No.28702 of 2011) had played a fraud on the lenders or whether the then General Manager of the lenders during 1996-1997 along with the 3rd and 4th respondents in W.P.No.28702 of 2011 and the petitioners in W.P.No.23006 of 2011( the auction purchasers) played a fraud and further the rights of the borrower for redemption of mortgaged property can be decided after a clear finding is rendered in Cr.No.9 of 2020.

54. Therefore, the complainant in Cr.No.9 of 2020, who is the present incumbent of the lenders who have filed the complaint only

against the borrower and his wife/2nd respondent in W.P.No.28702 of 2011, should also include the auction purchasers ( petitioners in W.P.No.23006 of 2011) and the third respondent in W.P.No.28702 of 2011 as co-accused along with the Branch Officer who was then in the helm of affairs of the lenders during 1996-1997 along with the borrower as accused so that truth surfaces and justice is rendered and the actual defaulter is brought to Justice. Unless, the truth is unravelled which remains hidden, the mortgaged property shall not be re-auctioned or sold or transferred by the lenders. The rights of the borrowers to redemption of the property shall be subject to further investigation in Cr.No.9 of 2020. The concerned Investigation Officer is therefore directed to perform a thorough investigation from every angle. The Deputy Superintendent of Police, who is investigating the case in Crime No.9 of 2020 is therefore *suo motu* impleaded as sixth respondent in W.P.No.28702 of 2011 to carry out the above direction.

55. In the result, the writ petition in W.P.No.23006 of 2011 filed by the auction purchasers is dismissed and W.P.No.28702 of 2011 filed

by the borrower is disposed of in terms of the above observation. No costs.

10.10.2022

Internet : Yes/No

Speaking/Non-Speaking Order

kkd

**To**

1. The Branch Manager,
   Tamil Nadu Industrial Investment,
   Corporation Ltd.,
   45, Katpadi Road,
   TKM Complex, Vellore – 1.

2. The Managing Director,
   Tamil Nadu Industrial Investment,
   Corporation Ltd.,
   692, Anna Salai,
   Nandanam, Chennai 35.

3. The Deputy Superintendent of Police,
   District Crime Branch,
   Vellore.

**C.SARAVANAN, J.**

kkd

Pre-delivery Common Order in
W.P.Nos.23006 & 28702 of 2011

10.10.2022