BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.07.2024**

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A.(MD) Nos.614 of 2021, 89, 90, 91 of 2024,
W.P.(MD) No.25967 of 2023, CONT P(MD)No.971 of 2020,
SUB A(MD)No.260 of 2023, W.M.P.(MD)Nos.22330, 22332 of 2023,
C.M.P.(MD)Nos.5911 of 2021, 1527, 1529 and 1530 of 2024

C.M.A.(MD) No. 614 of 2021:

1. Kannan ... Appellant

Vs.

1. Aavin General Manager/Madurai,
The Competent Authority (In-charge),
Virudhunagar.

2. The Rich India Marketing Private Limited,
Represented by its Manager/ Partner,
Subburaj.

3.Subburaj
4.Selavasivalingam
5.Prabanagalingam
6.Nagalingam
7.Annapurani

8.The Branch Manager,
Tamil Nadu Mercantile Bank Limited,
Sivakasi Bank,
Virudhunagar District.

9.The Branch Manager,
Bank of Baroda,
Sivakasi Branch,
Virudhunagar District.

10.A.Manikandan
11.N.Selvam
12.S.Jeya ... Respondents

(No relief prayed against the respondents 4 to 12. Hence, notice not necessary and may be dispensed with)

PRAYER: Civil Miscellaneous Appeal is filed under Section 11 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act, 1997, against the order, dated 16.12.2020, made in O.S.11 of 2015 on the file of Special Court, Special Judge under TNPID Act Cases, Madurai.

In C.M.A.(MD)No.614 of 2021:

For Appellant : Mr.V.Ragavachari
Senior Counsel
for Mr.N.Dilip Kumar
For R1 and R2 : No Appearance
For R3 : M/s.C.R. Ponnuthai

In C.M.A.(MD)Nos.89 and 90 of 2024:

For Appellants : Mr.V.Ragavachari
Senior Counsel
for Mr.N.Dilip Kumar
For R1 : No Appearance
For R2 and R3 : M/s.C.R. Ponnuthai
For R12 and 13 : Mr.C.Baskaran
Government Advocate

In C.M.A.(MD)No.91 of 2024:

For Appellants : Mr.P.Yasmin Begum
For R1 : No appearance
For R2 : M/s.C.R. Ponnuthai
For R7 : Mr.V.Karthikeyan
For R9 : Mr.V.Sukumar
For R10 : Mr.S.Krishnakumar
For R11 and 12 : Mr.C.Baskaran
Government Advocate

In W.P.(MD)No.25967 of 2023:

For Petitioners : Mr.B.Satish Sundar
For Respondent : Mr.R.Baskaran
Additional Advocate General
assisted by Mr.C.Baskaran
Government Advocate

In Cont P(MD)No.971 of 2020:

For Petitioners : Mr.G.Prabhu Rajadurai
For R5 and R6 : Mr.S.Srinivasa Raghavan

*****

COMMON JUDGMENT

The four Civil Miscellaneous Appeals and a writ petition are arising out of same facts and same Crime No.1 of 2010 and Crime No.4 of 2010. The contempt petition is filed for wilful disobedience of the judgment passed in criminal appeal in Crl.A.(MD)No.113 of 2013. Hence all the cases were tagged and common order is passed.

FACTS OF THE CASE:

2. The brief facts as stated by the Competent Authority in O.S.No.11 of 2015 on the file of Special Court, Special Judge under TNPID Act Cases, Madurai is that one Subburaj (arrayed as 1st respondent in the suit), his son Mahendran and their working partner Kannan started a finance company in the name and style of Rich India Marketing Private Ltd., at D.No.96A, PKSA Road at Virudhunagar and they collected deposits from the public on the assurance of repayment at mentioned rate of interest and the accused had collected a sum of Rs.8,12,54,595/- from 2895 depositors. Since they failed to repay, the affected parties had preferred complaints. The EOW, Virudhunagar, the Investigating Officer seized the accused properties for making payment to depositors. On receipt of the complaint from one Arumuga Nainar, a case was registered against the accused Subburaj, Mahendran and Kannan in Virudhunagar, BOW II, Cr.No.4/2010 dated 27.10.2010 for an offence under section 409 and 420-IPC read with section 5 of TNPID Act. In the enquiry it was found the said Subburaj had executed several sale deeds in favour various purchasers. The appellants had also purchased lands from the said Subburaj and the details are stated below:

S. No.	Name of the Seller	Name of the Purchaser	Details of the properties
1	Subburaj	M. Selvasivalingam son of Manivel (3rd respondent in the suit) Doc No.6387 / 2010 dated 11.08.2010	T.S.No.11/4A, Ward G, Block No.17, presently T.S.No.80, Ward G, Block No.20, S.No. 21/2A extent 3463.5625 square feet (or) 321.78 square meter
2	Subburaj	Annapurani wife of M. Selvasivalingam (6th respondent in the suit) Doc. No.6386 of 2010 dated 11.08.2010	T.S.No.11/4A, Ward G, Block No.17, presently T.S.No.80, Ward G, Block No.20, S.No. 21/2A extent 3331.4375 square feet (or) 309.50 square meter
3	Subburaj	Prabnagalingam wife of M.Nagalingam (4th respondent in the suit) Doc. No.6388 of 2010 dated 11.08.2010	T.S.No.11/4A, Ward G, Block No.17, presently T.S.No.80, Ward G, Block No.20, S.No. 21/2A extent 3067.1875 square feet (or) 284.95 square meter
4	Subburaj	M.Nagalingam son of Manivel (5th respondent in the suit) Doc. No.6389 of 2010 dated 11.08.2010	T.S.No.11/4A, Ward G, Block No.17, presently T.S.No.80, Ward G, Block No.20, S.No. 21/2A extent 3199.3125 square feet (or) 297.23 square meter
5	K.Muniyasamy son of Kandasamy. He executed as power agent of *Subburaj through power deed dated 20.09.2010 in Doc. No.861 of 2010.	V.Kannan son of Vanniya Nadar (8th respondent in the suit) Doc No.8550 of 2010 dated 06.10.2010	T.S.No.11/4A, Ward G, Block No.17, presently T.S.No.80, Ward G, Block No.20, S.No. 21/2A extent 4095 square feet (or) 380.44 square meter

6	A.Manikandan. (10th respondent in the suit) He had purchased the property from Subburaj on 02.07.2013 in Doc. No.5550 of 2013	N.Selvam son of S. Narayanasamy and S.Jaya wife of Selvam (11th and 12th respondent in the suit) Doc. No.6579 of 2013 dated 19.08.2013	S.No.310/4C, 310/4C1 extent 4248 square feet (or) 394.73 square meter

* - And Subburaj got this property through sale deed registered as Document No.7675 / 2009 and settlement deed registered as Document No.2846 of 2010.

The respondents 3 to 6 (Selvasivalingam, Prabanagalingam, Nagalingam, Annapurani) and the respondents 11 and 12 (N.Selvam and S.Jaya) had executed mortgage by deposit of title deeds in favour of 7th respondent bank namely Tamilnadu Mercantile Bank Ltd, Sivakasi Branch, Virudhunagar District. The said 8th respondent (V.Kannan) had executed mortgage by deposit of title deeds in favour of 9th respondent namely Bank of Baroda, Sivakasi Branch, Virudhunagar District. The G.O.Ms.No.139 dated 24.02.2014 was issued under Section 3 of TNPID Act only in respect of 6 immovable properties worth about Rs.1,45,82,218/- only and the value of the properties mentioned in the G.O. are not sufficient to meet out the disbursement to the depositors, hence the aforesaid properties which were purchased by the financial establishment from the depositors' money ought to be attached. The above sales were executed by the respondents 1 to 12 with an intention to cheat the depositors and to escape from the process of attachment of properties and made encumbrance with the dishonest to evade the clutches of law. Hence the properties have to be attached under the Section 8 of TANPID Act and prayed to attach the said properties to protect the interest of depositors.

3.(i) The C.M.A.(MD)No.614 of 2021 is filed by V.Kannan (8th respondent in the suit) against the order dated 16.12.2020, passed in O.S.No.11 of 2015 on the file of Special Court, Special Judge under TNPID Act Cases, Madurai. In the said suit the said Kannan was set exparte. However, he had prepared a draft counter and the same could not be filed due to Covid-19. In the said draft counter, he has denied the allegations levelled against him and specifically denied that the schedule property was purchased by the financial establishment from the depositors' money and such statement is bald without any supporting document. And denied that he colluded with the 1st and 2nd respondents to escape from the process of attachment and also denied the allegation that with dishonest intention to evade the process of law the property was sold to him as false and incorrect. It is not the case of the prosecution that he had purchased the property with the knowledge and he had acted in collusion with the financial establishment. Further stated that there cannot be any in-charge "Competent Authority" and hence the same ought to be proved by the person who had sworn the affidavit. Further the appellant is not aware of the criminal case registered on 27.10.2010 in Crime No.4 of 2010 against the 2nd respondent and others and the allegations levelled against the accused. Further submitted that he had purchased the property on 06.10.2010 after making necessary due diligence upon the property under a sale deed registered in Document No.8550 of 2010 on the file of the Sub Registrar Office, Sivakasi for a valuable sale consideration of Rupees 9.9 lakhs which is paid out of his hard-earned money and hence he is a bona fide purchaser. And he is totally unaware and unrelated to the criminal case registered against the 1st respondent and its management. The "Competent Authority" is bound to explain about the efforts taken against the 1st and 2nd respondents to attach their properties and also efforts taken to bring those properties for public auction, the details of default / defraud committed by the financial establishment and also the amount of money or value of other property believed to have been procured by means of deposits 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. But the affidavit filed in support of the application is bereft of any such details and in the absence of those material particulars the deponent of the affidavit filed in support of the original application is disentitled to seek for attachment of the bonafide purchaser's property. Further submitted that subsequently he had borrowed loan from the Bank of Baroda by furnishing this property as security by executing a registered memorandum of deposit of title deeds on 27.12.2010 in Document No.11347 of 2010 and the same was discharged under redemption receipt dated 17.12.2013 registered in Document No.9641 of 2013. Again, borrowed loan from the Bank of Baroda furnishing this property as security by executing a registered memorandum of deposit of title deeds on 09.03.2015 in Document No. 1774 of 2015 and the said mortgage is still subsisting. He had made valuable improvements in the schedule property after the purchase. Hence stated the prayer seeking an order of attachment to his property which he had purchased through his hard-earned money is devoid of any merits and prayed to dismiss the suit.

3.(ii) The C.M.A.(MD)No.89 of 2024 is filed by Prabanagalingam and Nagalingam against the order dated 16.12.2020, passed in O.S.No.11 of 2015 on the file of Special Court, Special Judge under TNPID Act Cases, Madurai. The C.M.A.(MD)No.90 of 2024 is filed by Selvasivalingam and Annapurani against the order dated 16.12.2020, passed in O.S.No.11 of 2015 on the file of Special Court, Special Judge under TNPID Act Cases, Madurai. The said Selvasivalingam and Nagalingam are brothers. The said Nagalingam and Prabhanagalingam are husband and wife. And the said Selvasivalingam and Annapurani are husband and wife. All the four were set exparte in the said suit. However, they had prepared a draft counter and the same could not be filed due to Covid-19. In the said draft counter, the allegations levelled against them were denied and specifically denied that the schedule property was purchased by the financial establishment from the depositors' money and such statement is bald and made without any supporting material document. And denied that they colluded with the 1st and 2nd respondents to escape from the process of attachment and also dishonest intention to evade the process of law the property was sold to them was denied as false and incorrect. And stated that it is not the case of the prosecution that they had purchased the property with knowledge and they had acted in collusion with the financial establishment. Further stated that there cannot be any in-charge "Competent Authority" and hence the same ought to be proved by the person who had sworn the affidavit. And submitted they are not aware of the criminal case registered in Crime No.4 of 2010 against the 2nd respondent and others on 27.10.2010 and the allegations levelled against the accused. They had purchased the property after making necessary due diligence upon the property registered under various sale deeds in Document Nos.6386, 6387, 6388 and 6389 of 2010 on the file of the Sub

Registrar Office, Sivakasi for a valuable sale consideration of Rupees 10 lakhs each (totally 40 lakhs) which is paid out of their hard-earned money and hence they are bona fide purchasers. And they are totally unaware and unrelated to the criminal case registered against the 1st respondent and its management. The "Competent Authority" is bound to explain about the efforts taken against the 1st and 2nd respondent to attach their properties and also efforts taken to bring those properties for public auction, the details of default / defraud committed by the financial establishment and also the amount of money or value of other property believed to have been procured by means of deposits 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. But the affidavit filed in support of the application is bereft of any such details and in the absence of those material particulars the deponent of the affidavit filed in support of the original application is disentitled to seek for attachment of the bonafide purchaser's property. Also, submitted that subsequently they had borrowed loan from the Tamilnadu Mercantile Bank Ltd. by furnishing this property as security by executing a registered memorandum of deposit of title deeds on 05.07.2011 in Document No.6364 of 2011 and the said mortgage is still subsisting. They had developed the property by investing huge amount to run their business. Hence stated the prayer seeking an order of attachment of their property which they had purchased through their hard-earned money is devoid of any merits and prayed to dismiss the suit.

3.(iii) The C.M.A.(MD)No.91 of 2024 is filed by N.Selvam and S.Jaya against the order dated 16.12.2020, passed in O.S.No.No.11 of 2015 on the file of Special Court, Special Judge under TNPID Act Cases, Madurai. They had also filed W.P.(MD) No.25967 of 2023 for writ of Mandamus forbearing the respondent from conducting auction sale regarding Plot No.4, S.No.310/4C1, Viswanatham Village, Sivakasi Sub Division and Circle and await the disposal of C.M.A.(MD)SR.No.77541/2023 challenging the order dated 16.12.2020, passed in O.S.No.11 of 2015 on the file of Special Court, Special Judge under TNPID Act Cases, Madurai. The brief facts as stated in the affidavit is that the appellant Selvam are doing the business of manufacturing packaging boxes for sweets, cakes etc. and running a proprietary firm namely M/s.Sri Kalaivani Printings and his wife is a Proprietrix of the firm M/s.Sri Kalaivani Laminations doing the same business. Their business is assessed to GST and they are Income Tax assesses and they are filing returns without any default. They had purchased a property from one A. Manikandan of their village on 19.8.2013 in Doc. No. 6579 of 2013 to an extent of 4248 square feet in Plot No.4 in S. No.310/4C1 for sale consideration of Rs.8,50,000/-. The property was purchased after appropriate verification of the title of the said Manikandan, wherein he had purchased the property on 02.07.2013 for a sum of Rs.7,00,000/- under Doc. No.5550/2013 from one K. Subburaj. Further the said Subburaj had in turn purchased the property under Doc. No.6757 of 2009 dated 18.9.2009 from one P. Sakkarai. Further verification revealed that the larger property in the same survey number was conveyed by one Vijayakumar and his son Narayanan in favour of Sakkarai under Doc. No. 4420 of 2009 dated 11.6.2009. The larger extent of the property in the survey number was a subject matter of partition between one V.R. Brahma, V.R. Vijayakumar and V.R. Dhanapalan under a partition deed dated 5.11.1990 in Doc. No.2784 of 1990. All these transactions are reflected in the encumbrance certificate which had been furnished to them at the time of purchase of the property. After purchase they had put up pucca construction wherein their offices are functioning. They availed term loan from Tamilnadu Mercantile Bank by mortgaging through deposit of title deeds under Registered Doc. No.1269 of 2015 dated 19.2.2015. Further, overdraft loan to an extent of Rs.10 lakhs was also obtained by deposit of title deeds for running of the entity M/s. Sri Kalaivani Printing under Doc. No. 1849 of 2015 dated 11.3.2015. The appellants are repaying the loan without any default and supplemental agreement also entered in the year 2018 relating to deposit of title deeds. The said Subburaj had sold Plot No.4 to the said A.Manikandan, who intern had sold the property to the appellants. The said Subburaj was allegedly involved in the running of a financial establishment under the name and style 'Rich India Marketing' and had collected deposits from a number of people promising to repay the said sums with attractive rates of interest, but defaulted repayment, thereby based on complaints Crime No. 1 of 2010 was registered under section 5 of TNPID Act read with sections 409 and 420 IPC and numbered as C.C.No.8 of 2011, after Trial the said Subburaj was acquitted under a judgment and order dated 3.9.2012 by the Special Judge TNPID Court, Madurai. During the pendency of the said case, an order of interim attachment dated 12.12.2011 was made against several properties of the said K. Subburaj. However, the said attachment was not reflected in the encumbrance certificates and the appellants believed the property is free from all encumbrances. Further stated against the order of acquittal of K. Subburaj, two victims namely one N.Sivasubramaniyan and one A.Vijaya Sahaya Selvi filed Criminal Appeal before this Hon'ble Court under Section 378 of Cr.P.C. in Crl.A.(MD)No.113 of 2013 and vide judgment dated 08.08.2019 the order of acquittal was set aside and directed the Inspector of Police, EOW to file a petition under Section 173(8) of

Cr.P.C. for conducting further investigation and file supplementary final report and directed the Special Judge to pass appropriate orders and ensure to conduct fair Trial. Thereafter O.S.No.11 of 2015 was filed by the Competent Authority against Subburaj and 10 others including the appellants herein and to attach their properties. Even though the appellants had filed a counter dated 19.7.2016 in the said O.S., but they were set exparte and the impugned order dated 16.12.2020 was passed and allowed the O.A. and directed the competent authority to attach the properties of the appellants in Survey No. 310/14 (Old No. 310/4C1) and bring it for sale under public auction. The appellant had preferred C.M.A.SR(MD)No. 77541 of 2023, but in the meanwhile the Competent Authority had initiated auction in Na.Ka.C4/3187/2010 dated 05.10.2023 and published in the District Gazette, but undervalued the property by fixing Rs.37,15,245/- for the building and Rs.71,13,670/- for the land, totally the building and land was valued under the auction notice at Rs. 1,08,28,915/- and the EMD and reserve price fixed is Rs. 27,07,229/-. The auction has been fixed for 25.10.2023 at 11.00 a.m. in the office of the District Revenue Officer, Virudhunagar and the appellants submitted objections in person and also by registered post on 16.10.2023 and the respondents had received the same, but the respondents are proceeding with the auction on 25.10.2023 without hearing the objections of the appellants, hence the writ petition.

3.(iv) The Cont.P.(MD)No.971 of 2020 was filed alleging willful disobedience of the judgment dated 08.08.2019 passed in Crl.A.(MD)No.113 of 2013. The first FIR in Crime No.1 of 2010 was numbered as C.C.No.8 of 2011 and the accused Subburaj and others were acquitted. Aggrieved over two depositors namely N.Sivasubramaniyan and A.Vijaya Sahaya Selvi had filed criminal appeal in Crl.A.(MD)No.113 of 2013 before High Court and the Hon'ble Court vide judgment dated 08.08.2019 had set aside the acquittal and remanded the case back to the Special Court with certain directions. In the said direction the Inspector of Police was directed to file an application under section 173(8) of Cr.P.C. for further investigation. In the investigation the depositors were issued summons and they had appeared for enquiry for more than three times and they were made to wait for long hours. But the accused never appeared before the authorities. Hence there is willful disobedience of the judgment of this Court. In the said contempt petition the accused had filed sub application in Sub-Application (MD)No.260 of 2023 seeking permission to release the property in S.No.21/2A (T.S.No.11/4A) and S.No.310/4C1 Viswanatham Village.

DISCUSSION:

4. The primary contention of the appellants herein is that due to COVID-19, they were not able to contest the case properly before the TNPID Court. And the TNPID Court had passed the impugned order during COVID period and the appellants were set exparte. Hence an opportunity ought to be granted to them to contest the case, since they are bonafide purchasers. This Court is of the considered opinion since there is a violation of principles of natural justice and the appellants ought to be granted one more opportunity to contest the case and the impugned order is liable to be set aside.

5. The next contention of the appellants Selvasivalingam, Annapurani, Prabanagalingam and Nagalingam (hereinafter referred to as Selvasivalingam and others) are that they had purchased the property on 11.08.2010 which is prior to the FIR dated 27.10.2010. But the Competent Authority had submitted that there are two FIRs, first FIR registered against the said Subburaj was filed in Crime No. 1 of 2010 on **17.03.2010** and the second FIR was filed in Crime No.4 of 2010 on **27.10.2010**. The said Selvasivalingam and others had purchased on **11.08.2010**, which is after the first FIR but prior to second FIR. As far as the purchase of

V.Kannan is concerned it is on **06.10.2010**, which is also after the first FIR but prior to second FIR. As far as the purchase of N.Selvam and Jaya is concerned it is on 19.08.2013, which is after both FIRs. Hence the competent authority submitted the said contention cannot be considered. It is seen the first FIR in Crime No.1 of 2010 was numbered as C.C.No.8 of 2011 and the judgement was passed on 03.09.2012, thereby acquitting the accused. Then it ought to be considered there is no such FIR dated **17.03.2010** when the appellants had purchased the properties. In such circumstances, the purchase by the said Selvasivalingam and three others and Kannan are after the first FIR but the same ended in acquittal, hence the said sale cannot come within the purview of the TNPID Act. Even the purchase by N.Selvam and Jaya would not be affected by the first FIR for the same reasons stated above. Now the acquittal of the accused can be seen in another angle. After acquittal the accused was permitted to deal with the properties and had executed the sale deed dated 19.08.2013. Therefore, there is no illegality is all the sale deed dated **11.08.2010**, **06.10.2010 and 19.08.2013** which are covered under the O.S.No.11 of 2015.

6. Further, it is seen that the first FIR (Crime No.1 of 2010 dated **17.03.2010** numbered as C.C.No.8 of 2011) was filed based on complaint of 9

depositors, since the amount to the said 9 depositors was repaid and settled by the accused, the accused were acquitted. But the TNPID Court failed to take note of the second FIR in Crime No.4 of 2010 dated **27.10.2010** and also failed to consider that the other depositors were not repaid. But hurriedly released Rs. 56,00,000/- of the accused money which was deposited by the accused during the criminal proceedings and also released the vehicles of the accused. This has caused a serious prejudice to the subsequent purchasers. The only mistake the purchasers had committed is that they had purchased the property from the accused Subburaj. Now a situation had arisen that the accused money Rs. 56,00,000/- has been refunded to the accused but the bonafide purchaser properties would be attached and sold to repay the depositors. And the accused would be scot-free. The TNPID Act was enacted with the purpose to recover the money from the accused and repay to the depositors. But now the accused is unjustly enriched by the order of the TNPID Court and the same is total injustice against the bonafide purchaser.

7. The contention of the accused that the said sale deeds to the appellants are under-valued and the sale consideration is not adequate. The question arises whether based on the bare statement of the accused can the sale be considered as

insufficient sale consideration and / or whether the sale was executed to defraud the depositors. Then the answer would be big "NO". The said contention ought to have been pleaded by the accused before the FIR and independent of FIR, that too at the earliest. But the accused had never raised such plea from the date of the sale till the filing of O.S.No.11 of 2015 and it is for the first time the said plea is raised in the suit. And the same is raised to circumvent the criminal proceedings and to protect from the selling the accused properties, hence the said plea cannot be entertained. In other words, the accused cannot be allowed to put the bonafide purchasers in precarious position and consequently protect his own properties. Further the said contention ought to be pleaded and proved with evidence like accounts, guideline value / market value etc. When the said plea was not pleaded, no evidence submitted and not proved as per law then the said contention of the accused cannot be entertained at all. Even if the plea of the accused is entertained, then at least the alleged sale consideration amount paid by the bonafide purchasers ought to be repaid with interest. In short, the said bonafide purchasers ought to be treated as one of the depositors and repay their amount. Otherwise, serious injustice would be inflicted on the bonafide purchasers. Simultaneously the accused would be allowed to unjustly enrich themselves at the cost of the bonafide purchasers. Therefore, to declare the sale is without adequate sale consideration based on the bare statement of the accused is atrocious and injustice. Consequently, there cannot be any order to attach the properties purchased by the bonafide purchasers. The Investigation Officer and the Competent Authority ought to produce evidence to prove the same and in the present case no such evidence is produced.

8. It is seen against the judgment of acquittal of accused, two depositors namely N.Sivasubramaniyan and one A.Vijaya Sahaya Selvi had filed criminal appeal in Crl.A.(MD)No.113 of 2013 before High Court and the Hon'ble Court vide judgment dated 08.08.2019 had set aside the acquittal and remanded the case back to the Special Court. The Hon'ble Court had expressed shock after taking into account the way the investigation and the TNPID Court had handled the case. The relevant portion is extracted hereunder:

> *"5. Charges were framed on 11.07.2012. The first respondent pleaded not guilty and claimed to be tried. When the case was taken up for trial, as many as eight depositors were examined as P.W.1 to P.W.8. All of them turned hostile. They deposed that they had settled the matter with the accused. Some of them claimed that they have waived the interest amount and that they have received the money directly from the accused in the Court itself. The trial Judge by the impugned Judgment acquitted the first respondent on the ground that since the depositors have been settled and*

the depositors turned hostile. The trial Court came to the conclusion that the prosecution did not prove the case beyond reasonable doubt.

6. I can only express my shock and surprise over the manner in which the entire case has been conducted.

7. The appellants had placed materials before this Court indicating that they are also depositors. It is not as if the eight persons examined by the trial Court as P.W.1 to P.W.8 alone were the depositors in the financial establishment run by the first respondent herein. There are several more. In fact the investigation officer as well as the trial Judge were aware of it. Aggrieved by the deletion of Mahendran, the son of the first respondent from the array of accused, the first appellant Sivasubramaniyan filed Crl.M.P.No.1826 of 2012 seeking further investigation under Section 173(8) of Cr.P.C. In this petition, the first appellant herein had clearly stated that he had deposited a sum of Rs.20,000/- in Rich India Marketing. He had also stated that from 31.03.2010 no interest was paid to him. In his petition, the first appellant had also stated that there are other depositors who were also cheated likewise. The fairness of the investigation officer was also specifically questioned by the first appellant herein. The first appellant had also indicated in his petition that when the commission amount paid by the accused K.Subburaj alone would come to Rs. 17,38,783/-, the deposits collected by him should come to a very substantial figure. But in the final report filed by the police, it has been mentioned that the accused K.Subburaj had collected only a sum of Rs. 90,278/- from the public. The first appellant Sivasubramaniyan pointedly contended that in order to create confusion, two cases were registered in

Crime No.1 of 2010 and Crime No.4 of 2010. All the depositors ought to have been examined as witnesses in a single case. Even though such serious allegations were made, the Court below chose to dismiss the same on 03.07.2012. It appears that the order copy was not issued immediately. The first appellant Sivasubramaniyan filed Crl.R.C.(MD)No.469 of 2012, challenging the same. By the time, the criminal revision case came up for admission on 30.10.2012, C.C.No.8 of 2011 itself got disposed of. Therefore, the revision case was dismissed as infructuous.

8. The appellants' counsel would contend that in order to oblige, the accused by raising the attachment effected in Crime No.1 of 2010, the case was confined only to a few depositors.

9. When the Special Judge knew that all the depositors have not been examined, he ought to have ordered further investigation. The trial Judge ought to have appreciated the statutory frame work of the Act. It is true that Section 5(A) of the Act provides for compounding of offence. But then it can be done only by the competent authority with the permission of the Court. The procedure set out in Section 5(A) of the Act was not at all followed in this case. The First Information Report was lodged by the village administrative officer; even he was not examined. The Act was brought in to protect the interest of the gullible depositors. The trial Judge has not even kept the statutory object in mind. The learned Judge had a duty to ensure that the investigation officer had collected all the records and details and ensure that all the depositors were examined. Even before the pronouncement of the Judgment, the first appellant Sivasubramaniyan had approached the trial Court. Thus the Special Judge did have *knowledge that the investigation officer had acted in a fraudulent manner in this case and had obviously colluded with the accused. There has been a miscarriage of justice in this case. I therefore have no hesitation to set aside the impugned Judgment of acquittal and it is accordingly set aside.*

10. The Inspector of Police, Economic Offences Wing II, Virudhunagar District, is directed to file a petition under Section 173(8) of Cr.P.C. for conducting further investigation. The learned Special Judge under TNPID Act Cases, Madurai, is directed to allow the same. It is open to the learned Special Judge to pass appropriate directions as she may deem fit. The first respondent will file a supplementary final report within a period of three months from the date of receipt of a copy of this order and the learned Special Judge will ensure that the trial is also conducted speedily, thereafter.

11. With these directions, this criminal appeal stands allowed. Consequently, connected miscellaneous petition is closed."

It is seen the Special Court had enquired the 8 depositors as witness, they had become hostile, they had accepted for principal amount (that too 40% of the amount in the case of A.Vijaya Sahaya Selvi) and waived the interest, which would indicate the depositors are either coerced or intimidated or the depositors was vexed due to prolonged litigation. The Special Court and the Investigation Officer had knowledge about others depositors and they were not repaid the amount. Infact the second FIR in Crime No.4 of 2010 was pending. Hence there is clear collusion between the prosecution and the accused. Therefore, the acquittal of the accused can never be entertained. Based on such acquittal the amount of Rs. 56,00,000/- was released, which is illegal and unpardonable. The Special Court has totally acted against the spirit of the TNPID Act. Therefore, this Court is of the considered opinion that the prosecution had failed to prosecute the case properly and giving room to the allegation of collusion. In such circumstances, the bonafide purchaser ought to be protected and he cannot made to suffer.

9. The contention of the Competent Authority that G.O.Ms.No.139 dated 24.02.2014 was issued under Section 3 of TANPID Act attaching only 6 immovable properties worth about Rs.1,45,82,218/- only and the value of the properties mentioned in the G.O. are not sufficient to meet out the disbursement to the depositors, hence the appellants' properties which were purchased by the financial establishment from the depositors' money ought to be attached. But it is seen that the present appellants had purchased smaller extent of the property and the accused in retaining the larger extent. This is evident from the four boundaries, wherein one boundary in all the sale deed shows the accused remaining land. This is confirmed by the Government Advocate wherein he had

circulated the list of attached properties. It is seen the accused has land in S.No. 21/2A to an extent of 5 acres 62 cents. The appellants Selvasivalingam and three others and Kannan purchased approximately 17,260 square feet (approximately 40 cents) of land and the remaining land is available. The land in S.No.310/4C1 is 1 acre 40 cents and the appellants N.Selvam and Jaya had purchased land to an extent of 4248 square of land and the remaining land is available for sale. The TNPID Court shall proceed with the other available land except the lands covered under the appellants sale deeds. If the remaining lands are sold by this time several depositors amount would have been settled.

10. Already in the Criminal Appeal the Hon'ble Court had held there is collusion between the prosecution and the accused, thereby set aside the order of acquittal and remanded the case back to the Special Court with certain directions. One such direction had directed the Inspector of Police to file an application under section 173(8) of Cr.P.C. for further investigation. Infact in an earlier occasion when such application under section 173(8) of Cr.P.C. was filed by one of the depositors, the Special Court dismissed the said application and acquitted the accused, which was the reason for the Court to come to conclusion of collusion. This Court also confirms that there is element of collusion. If such

collusion and fraud are there, then the role of the judiciary is to protect the bonafide purchasers. But the TNPID Court is protecting the accused and not protecting the bonafide purchaser.

11. It is seen Cont.P.(MD)No.971 of 2020 was filed alleging willful disobedience of the directions of High Court issued in the said Criminal Appeal. As per the direction of the Court the Inspector of police had issued summons to the depositors and they had appeared for more than three times but the accused failed to appear before the police. Therefore, this Court is of the considered opinion that the accused and the Inspector of Police had committed contempt of Court.

12. It is seen that the Hon’ble Court has suo motu impleaded respondents 5 and 6 in the contempt petition namely Mari Kannan and Rajini who are representing a company. The contention of the said impleaded respondents is that they are ready and willing to purchase the entire property, which are under the attachment as per the sale agreement for a higher value. When their bonafide were questioned by this Court, a peculiar submission was put forth by the said persons,

wherein they submitted either the property may be sold to them or it may be given to the accused itself who would sell the property at present day market value to them based on the sale agreement. This submission would clearly reveal that the said persons are set up by the accused to protect the accused property. And it also indicates there is a clear collusion between the accused with the impleaded respondents. Therefore, this Court is of the considered opinion that the said impleaded respondents are acting at the behest of the accused and hence the impleaded parties' plea ought to be rejected and the same cannot be entertained at all and accordingly rejected. Further as held supra the accused had never raised his little finger alleging under value immediately after the sale. If the said allegation is true then the accused would have preferred criminal complaint against appellants immediately after the sale. At least would have stated during the enquiry of first FIR in Crime No.1 of 2010 (C.C.No.8 of 2011). The accused had not taken any action nor raised any such plea during the criminal prosecution in C.C.No.8 of 2011. The accused had never raised such plea from the date of the sale till the filing of O.S.No.11 of 2015 and it was for the first time the said plea is raised in O.S.No.11 of 2015. This would clearly indicate that the accused in order to protect his properties is trying to sell the properties of the subsequent purchasers. Crucially the accused had not stated why the sale to the present appellants are under-valued and had not submitted single evidence to prove the same. Further the said property was sold in the year 2010, 2013 as per the market valuing prevailing during the said period and the same cannot be compared to the present day market value.

13. The Learned Counsel appearing for the said impleaded respondents submitted that one such purchaser namely D.Jyothi had challenged the attachment order passed in O.A.No.04 of 2017 in C.M.A.(MD)No.1099 of 2022 and the said litigation ended in Supreme Court against the said purchaser. And the said order would cover the issue and the same ought to be followed. This Court is of the considered opinion that the said order was passed based on ground the said purchaser D.Jyothi had admitted that the sale was with an intention to defraud the depositors. But in the present case there is no such admission. When the facts are different, the said judgment cannot be followed. However this Court is of the considered opinion that the said D.Jyothi had stated that she was also defrauded by the said Subburaj and co. and the properties had changed six hands and said D.Jyothi was the seventh purchaser. But the Court had taken the same as an admission and dismissed the case. This Court humbly differs with the said finding. Since this Court is of the view that the accused cannot be allowed to take

advantage of such sale and protect his own properties. Further when the Hon'ble Court had held that there is collusion between the prosecution and the accused in the Criminal Appeal in Crl.A.(MD)No.113 of 2013 and when this Court also had come to the same conclusion after independently analyzing the case, then Courts cannot be a mute spectator for collusion between the prosecution and the accused. Further the accused cannot be allowed to protect his own properties and allow the purchasers properties to be attached and sold first. In all the cases, the TNPID Court ought to sell the accused properties first and then only the Court can lay hand in the purchasers' properties. Otherwise, the Courts would be forced to protect the accused properties and the purchasers' properties would be sold, it would amount to giving legal sanctity to the accused wrong doing. Further in the present case, worst thing is the accused's deposit amount of Rs.56,00,000/- was released to the accused, but the purchasers' properties are attached. In such circumstances, the said cited case cannot be a precedent and the said order cannot be an impediment to deal with the accused's properties first.

14. The contention of the appellants are that they are bonafide purchasers, with their hard-earned money they had purchased the properties, obtained bank loan for running their business. The said banks are also impleaded as parties and

the said banks are admitting that the properties were mortgaged and the loan was disbursed to them in order to do their business. The appellants have purchased property, had put up construction and they are carrying on their business activities. On perusal of the documents especially the sale deeds and the mortgage executed by the appellants, this Court considers there is prima facie case for the appellants and the plea of the appellants is acceptable. If the appellants are bonafide purchasers and then their interest ought to be protected. Since the appellants remained exparte they should be granted an opportunity to prove the same. Further it is seen that the accused is taking advantage of his acquittal, now he is questioning the sale executed to the appellants and claims that the sale is bad and the sale consideration was not passed on to them. But the appellants submitted that they have purchased the property for valuable consideration and all the transactions are either through bank and in some payments through cash. In the present case the accused is not only cheating the depositors, but also cheating the bonafide purchasers and hence the accused cannot be expected to speak the truth. Therefore, in order to give opportunity to the subsequent purchasers, this Court is inclined to interfere with the order. The orders passed by the TNPID Court are quashed and the cases are remitted back to the TNPID Court. The parties are at liberty to file counter and documents before the TNPID Court and the TNPID Court shall consider the same and pass fresh orders.

15. The appeals filed in C.M.A.(MD)No.614 of 2021, C.M.A.(MD)No.89 of 2024, C.M.A.(MD)No.90 of 2024 and C.M.A.(MD)No.91 of 2024 are allowed. Since C.M.A.(MD)No.91 of 2024 is allowed, separate order is not necessary in W.P.(MD) No.25967 of 2023. As far as contempt in CONT.P.(MD)No.971 of 2020 is concerned the Court had held the contemnor had committed contempt. However rather than punishing the contemnors, in order to give an opportunity to the prosecution this Court is strictly directing the contemnor to investigate the case properly and prosecute the accused. As far as the Sub Application No.971 of 2023 in contempt filed by the accused K.Subburaj is concerned the same is dismissed. However, the accused is at liberty to file application before the TNPID Court and the same may be heard as per law. The TNPID Court is directed not to release the Rs.56,00,000/- and the vehicles of the accused. If already released, the accused shall redeposit the said amount and surrender the vehicle to the TNPID Court. The TNPID Court is directed to recover the said amount from the accused and the same may be disbursed to the depositors. Also, the TNPID Court shall recover the vehicle from the accused, sell the same and disburse the amount to the depositors.

16. With the above said observations and directions, the civil miscellaneous appeals and the writ petition is allowed and the contempt petition is closed. No costs. Consequently, connected sub application and miscellaneous petitions are closed.

11.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Tmg

To

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

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

3.The District Revenue Officer,
Virudhunagar District.

4.The Inspector of Police,
Economic Offenses Wing-II,
Virudhunagar District.

5.The District Revenue Officer,
Tirunelveli.

S.SRIMATHY, J.

Tmg

C.M.A(MD)Nos.614 of 2021 and batch

11.07.2024