

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 32322 of 2009 (I)

PETITIONER :

**THE MANAGER,
STATE BANK OF TRAVANCORE,
DHANUVACHAPURAM BRANCH,
NEYYATTINKARA.**

**BY ADVS. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SRI.JENNIS STEPHEN**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR, CIVIL STATION,
KUDAPPANAKUNNU P.O., THIRUVANANTHAPURAM-695 005**
- 2. THE TAHSILDAR,(REVENUE RECOVERY),
NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT-605 121**
- 3. KSBCDC (KERALA STATE BACKWARD CLASSES
DEVELOPMENT CORPORATION LTD.), VELLAYAMBALAM,
THIRUVANANTHAPURAM -695 010.**
- 4. SMT. NABEESA BEEVI, MANIVILA SANTHINILAYAM,
PARASUVAIKKAL, NEYYATTINKARA TALUK-605 121**

**R1 & R2 BY GOVERNMENT PLEADER SMT. M.T.SHEEBA
R3 BY ADV. SRI.JAYAPRADEEP. V, SC, KSBCDC
SRI. C. U. UNNIKRISHNAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE NOTICE ISSUED BY THE BANK UNDER SECTION 13(2) OF THE SECURITIZATION ACT ON 13/8/2007**
- P2 COPY OF THE COMMUNICATION RECEIVED BY THE BANK FROM THE OFFICE OF THE 1ST RESPONDENT DATED 1/7/2009**
- P3 COPY OF THE COMMUNICATION DATED 31/8/2009 SUBMITTED BEFORE THE 1ST RESPONDENT BY THE BANK.**
- P4 COPY OF THE REPLY DATED 22/9/2009 OF THE 1ST RESPONDENT**
- P5 COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT DATED 5/10/2009**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.32322 of 2009

Dated this the 14th day of July, 2015

JUDGMENT

The petitioner is the Manager of the State Bank of Travancore. The fourth respondent herein availed a credit facility from the petitioner Bank on 5.10.1995 by mortgaging five cents of the property in old Survey No.374/1D (R.S.40/8/26) in Parasuvaikkal Village, Neyyattinkara Taluk.

2. On account of the default in repaying the loan amount, the Bank took steps under the SARFAESI Act. The Bank also taken possession of the property. Thereafter, the petitioner received Ext.P2 communication of the District Collector stating that the property is already under attachment and the petitioner cannot obstruct or interfere with the revenue recovery proceedings.

3. The revenue recovery proceedings are initiated for the dues to the Kerala State Backward Classes Development Corporation Ltd., the third respondent. The question is whether the petitioner has right to proceed against the property which was

mortgaged with them. The doctrine of priority which apply when a rival claims are made, necessarily, would indicate those have prior right has advantage in law. The petitioner has obtained right based on the execution of the mortgage executed on 21.9.1995. The property was attached by the Revenue Authority only on 18.11.2004 under the Revenue Recovery Act. The respondents have no case that the liability was in existence much before the mortgage created in favour of the petitioner. The attachment cannot create any interest or right over the immovable property.

In that view of the matter, based on the prior right of the petitioner, the petitioner is entitled to succeed. The petitioner was permitted by an interim order of this Court to proceed with sale of the property and keep the amount in a separate account. If the petitioner had conducted the sale, the petitioner is now free to appropriate the amount.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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