THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Writ Petition No.6827 of 2016

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The relief sought for in this writ petition is to declare the action of respondents 2 and 3 in issuing Gazette Notification No.158 dated 13.12.2015 attaching the property, which is the subject matter of the notice dated 04.09.2015 issued under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act"), as arbitrary and illegal.

The 5^{th} respondent obtained a credit facility from the petitioner-bank mortgaging various properties, including the landed property of Ac.1.74 cents situated in R.S.No.350/1B of Jalipudi Village, Eluru Mandal, West Godavari District. Pursuant thereto, the 5^{th} respondent was given cash credit facilities. As the 5^{th} respondent fell in arrears of Rs.3,15,89,117-80 ps., the petitioner declared the loan as non-performing asset on 29.08.2014 and, thereafter, filed O.A.No.726 of 2014 against respondents 4 and 5 before the Debt Recovery Tribunal. They also initiated action against them under the SARFAESI Act.

While matters stood thus, a notification dated 13.12.2015 was published in West Godavari District Gazette in Form No.5 i.e, notice of attachment of land issued under Section 27 of the A.P.Revenue Recovery Act, 1864. An extent of Ac.1.69 cents of land in R.S.No.350/1B of Jalipudi Village, Eluru Mandal, West Godavari District, belonging to the 5^{th} respondent, was subjected to attachment for non payment of arrears of tax under the A.P.Value Added Tax Act, 2005 (for short "the Act") of Rs.15,17,814/- due for the years 2008-09 to 2014-15.

The action of the respondents in subjecting the property to attachment for its consequent sale is questioned by the petitioner-bank, in the present writ petition, on the ground that, since the property was mortgaged in their favour, it is they who have priority in putting the subject property to sale to realise their dues, and not the Commercial Tax Department.

This question is no longer *res integra*. The Supreme Court in ***Central Bank of India vs. State of Kerala***[1] has held that a statutory first charge created in favour of the State, under the provisions of a Sales Tax enactment, has primacy over banks in the recovery of its dues.

Section 26 of the A.P.Value Added Tax Act, 2005 relates to preferential claims to assets and thereunder, notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, including deferred tax which is treated as a loan extended by the Government to the dealer, penalty, interest or any other sum payable by a dealer shall be the first charge on the property of the VAT dealer.

In view of the law declared by the Supreme Court in ***Central Bank of India***[1], the challenge to the action of the respondents, in seeking to attach the immovable property for recovery of VAT arrears from the 5th respondent, must fail; and the Commercial Tax Department cannot be restrained from either attaching the property or proceeding further for realisation of their dues.

The writ petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 17.03.2016
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

Writ Petition No.6827 of 2016

-

-

-

Date: 17.03.2016

JSU

---

[1] (2009) 4 SCC 94