THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.8 of 2010

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

The petitioner, the Mummidivaram Branch of the District Cooperative Central Bank, and a Society registered under the A.P.Co-operative Societies Act, has invoked the jurisdiction of this Court questioning the action of respondents 3 and 4 in putting the subject property to sale. The petitioner claims that the subject property, belonging to the fifth respondent, was mortgaged to the petitioner-bank in the year 1998 by way of a registered mortgage deed; proceedings were initiated under Section 71 of the A.P.Cooperative Societies Act; a sale certificate was issued in favour of the petitioner-bank setting off the loans due to them, against the subject property, on 03.05.2003; it is only six years thereafter that the Commercial Tax Officer, Amalapuram issued a memo to the Deputy Commissioner, Kakinada on 31.12.2009, marking a copy thereof to the petitioner, stating that the Government of A.P. has first charge of the property above the DCCB, Kakinada for the arrears of tax, for the year 1996-97, amounting to Rs.2,87,011/-.

Sri N.Subba Rao, learned counsel for the petitioner, would submit that the petitioner was unaware of whether taxes were in arrears for the year 1996-97; neither the fifth respondent nor the assessing authority had furnished them copies of the assessment orders; if really tax was in arrears for the year 1996-97, there was no need for the respondents to wait till the year 2009 for recovery of the tax due; and, as the subject property had already been sold to the petitioner by the fifth respondent, the action of the Commercial Tax Department in now seeking to enforce their charge over the property is arbitrary and illegal. Learned counsel would further submit that, in any event, Section 38 of the A.P.Revenue Recovery Act confers a right on the petitioner to file objections, for the recovery officer to consider the said objections, and to pass orders thereupon; and, as the objections filed by the petitioner on 31.12.2009, have not been considered by the third respondent, their action in putting the subject property to sale is illegal and without jurisdiction.

Section 16-C of the Andhra Pradesh General Sales Tax Act, 1957 stipulated that, notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum, if any, payable by a dealer or any other person under the Act, shall be the first charge on the property of a dealer, or such other person. A statutory first charge is created by Section 16-C of the APGST Act in favour of the Government of A.P. for recovery of the sales tax arrears from a dealer.

Section 17-C of the APGST Act stipulates that the Deputy Commissioner shall have the powers of a Collector under the Andhra Pradesh Revenue Recovery Act, 1864 for the purpose of recovery of any amount due under the Act. It is not in dispute that the procedure for recovery of tax arrears is only in terms of the provisions of the said Act. Section 27 thereof prescribes the mode of attachment, and Section 36 the procedure for sale of immovable property.

Section 38 (1) of the Andhra Pradesh Revenue Recovery Act stipulates that, at any time within thirty days from the date of sale of the immovable property, an application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake or fraud, in publishing or conducting it; but, except as otherwise as hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves, to the satisfaction of the Collector, that he has sustained substantial injury by reasons thereof.

In terms of Section 17-C (1) of the APGST Act, read with Section 5 of the Andhra Pradesh Revenue Recovery Act, it is open to the Deputy Commissioner, while exercising the powers of a Collector under the Andhra Pradesh Revenue Recovery Act, to confer power, on any other officer, to discharge his powers under the said Act. It is in this context that the petitioner submitted their claim under Section 38 of the Andhra

Pradesh Revenue Recovery Act to the third respondent herein.

It is no doubt true that the Supreme Court, in ***Central Bank of India v. State of Kerala and Others***[1], held that a statutory charge created by a sales tax enactment in favour of the Government, for recovery of tax arrears, on the immovable property of a dealer has preference over the right of the bank to realise their dues on the sale of the mortgaged property. The procedure prescribed, for recovery of arrears of the tax due under the APGST Act, is in terms of the provisions of the Andhra Pradesh Revenue Recovery Act. As Section 38 thereof requires the third respondent to consider the objections put forth by the petitioner, we consider it appropriate to dispose of the Writ Petition directing the third respondent to consider the petitioner's objections in their letter dated 31.12.2009, in terms of Section 38 of the A.P.Revenue Recovery Act within four weeks from the date of receipt of a copy of this order, communicate his decision to the petitioner and, thereafter, take action in accordance with law. As the subject property has already been sold, it would suffice if respondents 2 to 4 are directed not to confirm the sale till orders are passed as aforesaid, and are communicated to the petitioner.

The Writ Petition stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

21st March, 2016.

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[1] (2009) 4 SCC 94