



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.P. [MD].No.7111 of 2017 and
W.M.P. (MD) .Nos.5626 and 5627 of 2017

Assistant Commissioner,
Commercial Tax Department,
Thirumangalam Assessment Circle,
Thirumangalam, Madurai District.

: Petitioner

Vs.

1.The Regional Manager,
Central Bank of India,
Raja Muthaiah Mandram,
First Floor, Dr.Ambedkar Road,
Madurai - 625 020

2.Authorised Officer,
Central Bank of India,
Raja Muthaiah Mandram,
First Floor, Dr.Ambedkar Road,
Madurai - 625 020.

3.M/s. Goodwill Team Paper (P) Ltd.,
rep. by its Managing Director P. Rajendran,
Uthappanayakkanur,
Usilai Taluk,
Madurai District-625537.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the file of 2nd respondent Public E-Auction Notice for sale of immovable properties of the third respondent dated 18.01.2017 and quash the same and consequently, forbearing the first and second respondent or his servant or his subordinate or anybody to conduct auction of the properties of the companies property in survey No.SF89/1A, 1.70.0 Hectares (4 Acre 20 Cents) and Survey No.89/1B, 1.33.0 Hectare of Uthappanayakkanur, Usilai Taluk, Madurai District, on the strength of the possession taken by the respondent bank under SARFEASI Act.



For Petitioner : Mr.V.R. Shanmuganathan
Special Government Pleader

For R1 and R2 : Mr. S. Rengasamy

For R3 : No appearance

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ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

This Writ Petition has been filed to call for the records from the file of 2nd respondent Public E-Auction Notice for sale of immovable properties of the third respondent, dated 18.01.2017 and quash the same and consequently, forbear the first and second respondent or his servant or his subordinate or anybody to conduct auction of the properties of the companies' property in survey No.SF89/1A, 1.70.0 Hectares (4 Acre 20 Cents) and Survey No.89/1B, 1.33.0 Hectare of Uthappanayakkanur, Usilai Taluk, Madurai District, on the strength of the possession taken by the respondent bank under SARFAESI Act.

2. The legal issue, which is involved in this Writ Petition is as to whether the Commercial Tax Department would have precedence over the secured asset over and above from the respondent Bank, who is the secured creditor. The assets have been offered as collateral security to the Bank by the third respondent to secure a loan obtained by them. This legal issue has been answered by the Hon'ble Full Bench in the case of **Assistant Commissioner (CT) Anna Salai, III, Assessment Circle, Chennai Vs. Indian Overseas Bank, Chennai and another** reported in **AIR 2017 Madras 67**. For better appreciation, the entire order of this Court is quoted hereunder:

The Writ petitions have been listed before the Full Bench in pursuant to the reference order in W.P.No.6267 of 2006 and W.P.No.253 of 2011 in respect of the following issues:

"a)As to whether the Financial Institution, which is a secured creditor, or the department of the Government concerned, would have the 'Priority of Charge' over the mortgaged property in question, with regard to the tax and other dues.

b) As to the status and the rights of a third party purchaser of the mortgaged property in question"



"secured debts due and payable to them by sale of assets over which security interest is created"

7. We, thus, answer the aforesaid reference accordingly.

8. The matters be placed before the roster Division Bench for dealing with the individual cases.

3. In the light of the law laid down by the Hon'ble Full Bench of this Court, we hold that the auction sale notice issued by the respondent Bank is well within the jurisdiction of the respondent Bank and cannot be interfered with on the grounds raised by the petitioner and accordingly, this Writ Petition is dismissed. However, this will not prevent the petitioner / Assistant Commissioner, Commercial Tax Department, Thirumangalam Assessment Circle, Thirumangalam, Madurai District, to proceed independently for recovery of the sales tax arrears from the third respondent. Liberty is also given to the respondent Bank for raising attachment and removal of the attachment by approaching the office of the Sub-Registrar concerned. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Regional Manager,
Central Bank of India,
Raja Muthaiah Mandram,
First Floor, Dr. Ambedkar Road,
Madurai - 625 020

2. Authorised Officer,
Central Bank of India,
Raja Muthaiah Mandram,
First Floor, Dr. Ambedkar Road,
Madurai - 625 020.

+2cc's to Mr. S. Rengasamy, Advocate in SR.No.58445

trp/msa

AE/MR/SAR3/19.06.2017/4P/5C