* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ <u>Writ Petition Nos.4077 of 2016 and 1040 of 2017</u>

% 27-4-2017

# Union Bank of India, Industrial Finance Branch,
Somajiguda, Hyderabad, Rep. by its Chief Manager,
Sri PL. Percy Joseph
… Petitioner in W.P.No.4077 of 2016

M/s Kandakatla Estates Pvt. Ltd., Rep. by its MD
Sri K.Surender Reddy, Hyderabad
… Petitioner in W.P.No.1040 of 2017

Vs.

$ 1. State of Telangana, Rep. by its Prl. Secretary,
Revenue Dept., Secretariat, Hyderabad;
and 4 others
… Respondents in W.P.No.4077 of 2016

1. The State of Telangana, Rep. by its Prl. Secretary,
Revenue Dept., Secretariat, Hyderabad;
and 5 others
… Respondents in W.P.No.1040 of 2017

! Counsel for the petitioner: Mr. Seshadri Goalla
(in W.P.No.4077 of 2016 &
for R.3 in WP.1040/2017)

Counsel for the petitioner: Mr. S.Lakshma Reddy,
(in W.P.No.1040 of 2017 & Senior Counsel,
for R.6 in WP.4077/16) Representing
Mr. G.Shashidhar Reddy

Counsel for R.1 in : GP for Revenue (TG)
(in both the WPs)

Counsel for R.2 in WP.4077/16: Ms K.Mamata,
& for R.4 & R.6 in WP.1040/17 Standing Counsel

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition Nos.4077 of 2016 and 1040 of 2017

Common Order: (per V.Ramasubramanian, J.)

While the 1st writ petition is filed by the Union Bank of India seeking a *mandamus* to declare the action of the Sub-Registrar in refusing to register a Sale Certificate issued to an auction purchaser in terms of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the 2nd writ petition is filed by the auction purchaser seeking a similar direction to the Registering Authorities and also challenging an order of attachment passed by the Tax Recovery Officer (Range-II), Hyderabad.

2. Heard Mr. S.Lakshma Reddy, learned Senior Counsel appearing for the petitioner in the 2nd writ petition and for the 6th respondent in the 1st writ petition, Mr. Goalla Seshadri, learned counsel appearing for the Bank, Ms. K.Mamata, learned Standing Counsel appearing for the Income Tax Department and the learned Government Pleader for Revenue.

3. From the Additional Affidavit filed by the Chief Manager of Union Bank of India, it appears that the Bank, along with a consortium of banks, advanced loans to a company called Totem Infrastructure Limited. The Directors of the said company, which is the 4th respondent in the

1st writ petition, offered as security a land measuring an extent of Ac.7.00 in Survey Nos.203 and 204 of Narsingi Village, Rajendranagar Mandal, Ranga Reddy District, in the year 2006. Subsequently, the company itself purchased the land of an extent of Ac.0.04 guntas in the same Survey number under a sale deed dated 16-10-2007. Therefore, the said property was also mortgaged in favour of the Bank as evidenced by Memorandum of Deposit of Title Deeds, dated 09-3-2009. The mortgage was also registered as Document No.1309/2011, dated 09-5-2011.

4. It appears that the borrower company failed to repay the loans forcing the banks to classify it as a non-performing asset. The demand notice dated 16-8-2013 was issued under Section 13(2) of the SARFAESI Act, 2002, by the banks demanding payment of a sum of Rs.731,77,38,415=81 ps. It was followed by a possession notice dated 12-12-2013 under Section 13(4).

5. Thereafter, a sale notice was issued on 04-11-2015 and an E-Auction conducted on 11-11-2015. The petitioner in the 2nd writ petition became the highest bidder and they appear to have paid the entire bid amount and also obtained a sale certificate dated 30-5-2016.

6. But in the meantime, the Tax Recovery Officer-II in the office of the Principal Commissioner of Income Tax, Hyderabad, initiated proceedings in terms of Section 222 of the Income Tax Act, 1961 read with the Second Schedule to

the Act. This was on the ground that the 4th respondent in the 1st writ petition had become an assessee in default to the tune of Rs.398,69,38,495/-. As a first step, the Tax Recovery Officer issued an order of attachment of Ac.0.24 guntas of land in the aforesaid Survey number which the company purchased in 2007 and mortgaged with the Bank in 2011. The order of attachment is dated 19-12-2012.

7. In view of the order of attachment passed by the Tax Recovery Officer on 19-12-2012, the Registering Authorities have refused to register the sale certificate/sale deed executed by the authorised officer of the bank in favour of the auction purchaser.

8. Therefore, the Bank itself came up with the 1st writ petition seeking a *mandamus* to direct the Registering Authorities to register the document. During the pendency of the said writ petition, the auction purchaser came up with the 2nd writ petition W.P.No.1040 of 2017.

9. The prayer made both by the Bank as well as by the auction purchaser is one and the same. It is for a direction to the Registering Authority to register the document.

10. The writ petitions are opposed by the Tax Recovery Officer, who has filed a counter affidavit in both the writ petitions, on the ground that under Section 22A of the Registration Act, 1908, the refusal of the Registering Officer to register a document relating to a property under an order of attachment, is perfectly in order. Since the dues to the

Income Tax Department are huge, the Tax Recovery Officer contends that neither the attachment can be raised nor a direction for registration could be issued.

11. We have carefully considered the above submissions.

12. Unfortunately, the Income Tax Department does not have the benefit of a statutory charge in their favour over the property in question. It is only through an order of attachment passed in terms of Section 222(1)(b) of the Income Tax Act, 1961 read with the Second Schedule to the Act that the Tax Recovery Officer effected attachment. But the date on which the attachment was effected was 19-12-2012, which was subsequent to the registered mortgage dated 09-5-2011 created by the company in favour of the Bank. Therefore, it is clear that the registered mortgage in favour of the Bank was prior in point of time to an order of attachment passed by the Tax Recovery Officer and hence the Tax Recovery Officer will necessarily have to stand in queue position No.2.

13. There is also one more difficulty for the Department. By Central Amendment Act No.44/2016, SARFAESI Act, 2002 as well as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 were amended by the Parliament. By Section 18 of the Amendment Act No.44/2016, Section 26E was inserted into the SARFAESI Act. Section 26E inserted into the SARFAESI Act, 2002, by Section 18 of the Amendment Act No.44/2016, reads as follows:

> "26E. Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.
>
> *Explanation.*—For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."

14. But it appears that Section 18 of the Amendment Act No.44/2016 has not yet been notified. Though by a Notification dated 01-9-2016 published in S.O. 2831 (E), the Ministry of Finance has notified Sections 2, 3, 4 (partly), 5 and 6, 8 to 16, 22 to 31 and 33 to 44 in entirety, Section 18 of the Amendment Act does not appear to have been notified. Therefore, it is not known whether Section 26E has now come into force. If it had comes into force, the order of attachment cannot survive.

15. Be that as it may, all that the Income Tax Department has is an attachment created on a property, on which there was a pre-existing mortgage. Hence, the Department cannot claim priority of treatment over the claim of the Bank.

16. Insofar as Section 22A of the Registration Act, 2008, is concerned, sub-section (1) of Section 22A as inserted by A.P. Act 19/2007, in its application to the State of Andhra

Pradesh, prohibits the registration of certain documents. Clause (e) of sub-section (1) of Section 22A lists out the following documents, the registration of which stands prohibited:

(i) Any document or classes of documents pertaining to the properties of the State Government, provided the registration thereof is prohibited by Notification, on the ground that the accrued interest of Central and State Governments, Local Bodies, Education, Cultural, Religious and Charitable Institutions, are affected thereby;

(ii) Any documents pertaining to properties attached on Civil, Criminal, Revenue Courts and Direct and Indirect Tax Laws;

(iii) Any documents pertaining to properties which are likely to affect the aforesaid interests.

17. Though the document in question may fall under the 2nd category of the documents listed in Clause (e) of sub-section (1) of Section 22A, it may not by itself confer a right upon the Department to take priority over a pre-existing mortgage.

18. As a matter of fact, the Bank has filed an Affidavit to the effect that from out of the sale proceeds received by them from the auction purchaser, it would keep a sum of Rs.3,30,02,143/- separately without appropriating the same in the event of any eventuality.

19. In the light of the above, the writ petitions are disposed of directing the Sub-Registrar to register the sale certificates issued by the Bank in favour of the auction purchaser. The Bank shall keep separately the amount of Rs.3,30,02,143/- for a final adjudication of the claim. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

27th April, 2017.
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AND
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(per VRS, J.)

27th April, 2017.
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