THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No. 16098 of 2017

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

The Telangana State Civil Supplies Corporation, Mahabubnagar District, filed this writ petition through its District Manager assailing the order dated 18.02.2017 passed by the learned Chief Judicial First Class Magistrate-cum-Senior Civil Judge, Mahabubnagar, in Crl.M.P.No.12 of 2017, appointing an Advocate Commissioner in exercise of power under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act') to deliver possession of the secured asset to the State Bank of Hyderabad, the secured creditor.

Sri A. Jagan, learned counsel for the petitioner–Corporation, would rely upon the order dated 21.09.2016 passed by the Tahsildar, Farooqnagar, under Section 25 of the Revenue Recovery Act, 1864 (for short 'the Act of 1864') distraining the properties detailed thereunder in connection with arrears of revenue, being the dues of the petitioner-Corporation. Reliance is also placed by Sri A. Jagan, learned counsel, upon the common order dated 10.08.2016 of a Division Bench of this Court in W.P.No.39476 of 2015 and W.P.No.5008 of 2016. By the said common order, the Division Bench held that the arrears of revenue determined under the Act of 1864 would take priority over the dues of the secured creditor under the SARFAESI Act.

It is however relevant to note that Section 26E was inserted in the SARFAESI Act under Act 44 of 2016. This provision was brought into effect by the Government of India under Notification dated 01.09.2016 whereby the Central Government appointed 01.09.2016 as the date on which the provision came into force. In that view of the matter, Section 26E was in operation by the time the Tahsildar, Farooqnagar, issued the demand prior to attachment of land on 21.09.2016 under the provisions of the Act of 1864.

Under Section 26E of the SARFAESI Act, the debts due to any secured creditor under the said Act 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.

That being so, the charge under the Act of 1864 would necessarily have to concede to the priority conferred upon the secured creditor under the newly included Section 26E of the SARFAESI Act.

This being the legal position as on date, it would not be open to the petitioner Corporation to assert any priority over the respondent Bank insofar as its dues are concerned, as the Bank's dues now stand on a higher footing when compared to the petitioner Corporation's dues under the Act of 1864.

The writ petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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JUSTICE SANJAY KUMAR

Date: 25.07.2017

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JUSTICE Dr. SHAMEEM AKTHER,

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