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

Writ Petition No.8667 of 2017

Order:

The petitioners who claim to be the owners of a property brought to sale by the Tax Recovery Officer under the Second Schedule to the Income Tax Act, 1961, have come up with the present writ petition challenging the auction.

2. Heard Mr. C.Vikram Chandra, learned counsel for the petitioners. Mr. T.Vinod Kumar, learned Standing Counsel, takes notice for the respondents.

3. A company, by name Radha Realty Corporation (India) Private Limited, Hyderabad, committed default in payment of income tax to the tune of about Rs.60 Crores. Therefore, the properties standing in the name of the company were brought to sale. Several attempts were made by the defaulting assessee to stall the proceedings. As a matter of fact, this Court granted some reprieve to the defaulting assessee, but the assessee could not pay even the amount as undertaken by them in an Affidavit of Undertaking filed before this Court.

4. After the Tax Recovery Officer issued advertisement for the sale of the property, a last minute effort was made by the defaulting assessee, by moving W.P.No.7964 of 2017. Facing a turbulent weather from this Court, the writ petition

was withdrawn and the defaulting assessee landed back to the place where they started.

5. Thereafter, persons claiming to be the original owners of the property have now come up with a fresh attempt. The petitioners made an application under Rule 11(5) of the Second Schedule objecting to the sale on the ground that they are the owners of the property and that their application before the Collector for mutation, is pending enquiry. But in the light of registered sale deeds of the years 2007 and 2008 standing in the name of the defaulting assessee, the Tax Recovery Officer rejected the claim made by the petitioners. Hence, the petitioners are before us.

6. It is contended by the learned counsel for the petitioners that the application of the petitioners for effecting mutation in the Revenue records is pending enquiry before the Mandal Revenue Officer, Kandukur. Therefore, it is claimed that when there is a title dispute, the property cannot be brought to sale.

7. But the law is that only when there is a *bona fide* and genuine title dispute, the respondents should keep their hands off. But when a property stands in the name of the defaulting assessee, conveyed to them under registered sale deeds, no person can dispute the title by merely going before the Collector and seeking mutation in the Revenue records. Therefore, the Tax Recovery Officer was right in rejecting the

objections' application of the petitioners, in the light of the registered sale deeds.

8. The learned counsel for the petitioners placed reliance upon a decision of the Patna High Court in *State Bank of India v. Tax Recovery Officer*[1]. But in the said decision, the State Bank of India was holding a mortgage. The mortgage was subsisting at the time when the property was brought to sale by the Tax Recovery Officer. In the case on hand, the original owners themselves, had lost title to the property, by executing registered sale deeds in favour of the defaulting assessee way back in the years 2007 and 2008. Therefore, no one can claim under the original owners.

9. Hence, the writ petition is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

13th March, 2017.
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[1] [1999] 238 ITR 312 Patna

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