THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.3232 of 2018

Order: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

Heard Sri G. Vasantha Rayudu, learned counsel for the petitioner, and Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, and, with their consent, the Writ Petition is disposed of at the stage of admission.

The relief sought for in this Writ Petition is to declare the impugned proceedings dated 18.12.2017, issued by the 2nd respondent under the provisions of the Revenue Recovery Act, as arbitrary and illegal. The 2nd respondent informed the petitioner, by his letter dated 18.12.2017, that Form VII was issued by the Deputy Commercial Tax Officer on 16.12.2017 for realization of the arrears of tax due from M/s. Sai Sravanthi Constructions under the Revenue Recovery Act, 1864 (hereinafter referred to as "the RR Act"); M/s. Sai Sravanthi Constructions, a registered VAT dealer on the rolls of the Commercial Tax Officer, Dwarakanagar Circle, was a chronic defaulter, and had fallen in arrears of an amount of Rs.16,47,106/-; for the said amount, action was already initiated under the RR Act by issuing Form IV on 26.9.2012, Form V on 4.2.2013 attaching its immovable property, and Form VI was issued on 25.7.2015. The 2nd respondent further stated that Form VII notice of sale was issued under the RR Act on 16.12.2017 wherein auction was proposed to be conducted on 29.1.2018.

Today, the learned Special Standing Counsel for Commercial Taxes, on instructions, states that the auction, scheduled to be held on 29.1.2018, did not elicit any participants; and the 2nd respondent would now take action to conduct an auction afresh.

Sri G. Vasantha Rayudu, learned counsel for the petitioner, would submit that the property, which is sought to be put to sale by the 2nd respondent treating the tax arrears as 'crown debt', was mortgaged in favour of the petitioner-bank; as the account of the firm was declared a non-performing asset, the petitioner had initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"); for recovery of its dues; possession of the subject property was taken under Section 13(4) of the said Act; and the petitioner could not put the property to sale in view of proceedings having already been initiated by the 2nd respondent for recovery of tax arrears.

While Sri G. Vasantha Rayudu, learned counsel for the petitioner, would refer to Section 26-E of the SARFAESI Act, to contend that, after 1.9.2016, it is the petitioner-bank which has priority over the mortgaged assets for recovery of their dues *vis-a-vis* crown debt, and the letter dated 24.6.2016 was issued before 1.9.2016 when Section 26-E was inserted conferring priority on banks to recover its debt *vis-a-vis* crown debt, Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would place before us a copy of the letter addressed by the petitioner to the Commercial Tax Officer on 24.6.2016 seeking permission to auction the subject property on condition that the amount, due to the Commercial Tax Department, would be paid first.

It is wholly unnecessary for us to examine these rival contentions, in the present Writ Petition, in as much as the auction, scheduled to be held on 29.1.2018, had no takers; and the Commercial Tax Department would now have to take action afresh for recovery of arrears of tax.

Suffice it to permit the petitioner to furnish information to the 2nd respondent regarding the date on which they took possession of the subject asset, details of when the subject property was mortgaged in their favour, when they initiated proceedings under the SARFAESI Act and when they took possession of the mortgaged property, and that they had priority, over crown debt, under Section 26-E of the SARFAESI Act. The 2nd respondent shall examine whether or not the Commercial Tax Department can proceed with the sale of the property in the light of the newly inserted Section 26-E of the SARFAESI Act. Needless to state that, in case the 2nd respondent still proceeds to put the subject property to auction, it is always open to the petitioner to question the same in appropriate legal proceedings.

Leaving it open to the petitioner to do so, the Writ Petition is closed. Miscellaneous Petitions pending, if any, shall also stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

28th February, 2018

Pnb

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.3232 of 2018

Date: 28.2.2018

pnb