IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.26749 and 28070 of 2018
& WMP Nos.32698 & 32699 of 2018 in WP 28070 of 2018

State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, Monteith Road,
Rep. by its Assistant General Manager
.. Petitioner in WP 26749/18

1. K.Vengadessan
2. R.Muruga
3. M.Leo Christopher
4. P.Sivapragassame
5. E.Nirmala
6. T.Uma
7. G.Muthamizh
8. A.Shaik Mohamed Noor
9. N.Pushpalatha
10. M.Rinusisndhuja
11. M.Sakunthaladevi
12. N.Mahendravarman
13. B.Ambika
14. A.Senthilnathan
15. M.Nagarajan
16. S.Murugesan ... Petitioners in WP 28070/2018

Vs.

1. The Sub-Registrar,
Oulgaret,
Pondicherry.

2. The Additional Deputy Commercial Tax Officer,
Commercial Taxes Department,
Government Puducherry, 100 Feet Road,
Puducherry. ... Respondents in WP 26749/18
& Respondents 2 & 3 in WP 28070/18

State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, Monteith Road,
Egmore, Chennai. ... 1st Respondent in WP 28070/18

PRAYER in WP 26749 of 2018: Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records and quash the impugned order dated 24.08.2018 vide Govt. of Puducherry/133 issued by the 1st respondent and consequently direct the 1st respondent to register the sale certificate dated 16.08.2018 issued by the petitioner bank.

PRAYER in WP 28070 of 2018: Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for records pertaining to the impugned order letter dated 24.08.2018 bearing No. Govt. of Puducherry/133 issued by the second respondent and quash the same and consequently direct 2nd respondent to register the sale certificate dated 16.08.2018 issued by the 1st respondent in favour of the petitioners pertaining to petition Schedule mentioned property.

For Petitioner in WP 26749/18 & 1st Respondent in WP 28070/18	: Mr.S.Sethuraman
For Respondents in WP 26749/18 & Respondents 2 & 3 in WP 28070/18	: Mr.D.Ravichander Addl.Govt.Pleader(Pondy)

O R D E R

There are two Writ Petitions, one is filed by the Bank and another is filed by the Auction purchasers and both of them challenge the letter dated 24.08.2018.

2. The petitioner in WP No.26749 of 2018 is the Bank and it had granted loan to M/s.Sree Nivas Build Tech (India) Pvt. Ltd., and M/s.Sree Nivas Real Estate and two others. To secure the credit facilities, properties belonging to one Mr.R.Venugopal were mortgaged to the Bank and security interest was created. As there was default in payment by the borrowers, proceedings were initiated by the petitioner Bank under SARFAESI Act and RDB Act. The public auction was held for bringing the properties for sale on 29.05.2018. The petitioners in WP No.28070 of 2018 were the successful bidders, having bid for sum of Rs.5,84,00,000/-. The sale was confirmed on 27.07.2018. When the Sale Certificate was presented for Registration before the second respondent, the second respondent firstly refused the same on the ground that there is no attachment by the third respondent in WP No.28070/2018 pertaining Sales Tax and communicated the same to the first respondent on 24.08.2018, which is now under challenge.

3. The learned Additional Government Pleader (Pondicherry) has filed the counter and resisted the Writ Petition.

4. It is stated in the counter that the Commercial Tax Department will have first charge over the property brought to sale. It is not stated that there was an attachment of the property by the Commercial Tax Department. From the records available, it is seen that the attachment was made only in the year 2017. A proposal was sent for attachment for the amounts due towards commercial tax. The paper book furnished by the Additional Government Pleader (Pondicherry) reveals that the outstanding towards the Commercial Sales Tax from 2008-2009 till 2013-2014 is Rs.21,39,60,607/-.

5. Now the question that stands out to be answered is whether the Bank which is the secured creditor or the department of the Government would have the priority of charge over the mortgage property in question with regard to the tax and other dues. In the meanwhile, the right of purchasers also is in stake, as the sale is not yet complete. In this regard, a Full Bench of this Court on 10.11.2016 while deciding the Writ Petition Nos.2675 of 2011 etc. batch, has observed as follows:

> 3. There is, thus, no doubt that the rights of a secured creditor to realise secured debts due and payable by sale of assets over which security interest is created, would have priority over all debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority. This section introduced in the Central Act is with "notwithstanding" clause and has come into force from 01.09.2016.

6. The said Full Bench Court decision was taken up on Special Leave Petition, wherein it was ordered that status quo to be maintained by the parties. In the absence of any order of stay, the registration of the Sales Certificate cannot be refused. It is also stated that WP Nos.9750, 11199, 17829 of 2011 and 5382 of 2015 are pending, which are filed by the Government, where the question of the priority over the property was to be decided and the same is pending. As on date, the decision of the Full Bench is very clear that the priority right over the secured debt finds favour only with the Bank having the benefit of the mortgage properties. Therefore, the Registering Authority cannot refuse to register the sale certificate, if it is presented in the manner known to law and the same is otherwise in order. It is also stated that the sale proceeds is not appropriated and the same is with the Bank.

7. In the above circumstances,

i. the Bank is directed to keep the sale proceeds intact till the disposal of the above referred Writ Petitions,

ii. If the Sale Certificate is presented and if the same is in order, the second respondent is directed to register the same.

8. With the above directions, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petition are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv
To

1. The Sub-Registrar,
Oulgaret,
Pondicherry.

2. The Additional Deputy Commercial Tax Officer,
Commercial Taxes Department,
Government Puducherry, 100 Feet Road,
Puducherry.

3. The Assistant General Manager
State Bank of India,
Stressed Assets Management Branch,
Red Cross Building, Monteith Road,
Egmore, Chennai.

+1 CC to Mr.S.Sethuraman, Advocate sr 5216.
+1 CC to Mr.R.Krishnamoorthy, Advocate sr 5217.
+1 CC to Govt. Pleader(Pondy) sr 4834, 4833

W.P.Nos.26749 and 28070 of 2018
& WMP Nos.32698 & 32699 of 2018
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EV(CO)
SP(01/02/2019)