

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10642 OF 2017
WITH
COURT RECEIVER'S REPORT NO.28 OF 2019
IN
WRIT PETITION NO.10642 OF 2017

Tata Capital Financial Services .. Petitioner
Versus
The State of Maharashtra, through
Dy.Commissioner of Sales (E-004) & ors .. Respondents

...

Mr. R.L. Motwani for the petitioner.
Mr. V.A. Sonpal, Spl. Counsel with Mr.Y.S. Khochare, AGP for
respondent nos.1 and 2.
Mr.Farhan Khan with Mr.Mittal Munoth i/b Kookada &
Associates for respondent nos.5 to 8.
Ms.Minal Jadhav I/b Mr.Rajesh Datar for respondent no.9.
Mr.D.N. Kher, Court Receiver, High Court, Bombay present.

CORAM: PRADEEP NANDRAJOG, C.J.
AND BHARATI DANGRE, J.
DATED : 9th JANUARY, 2020.

P.C:-

1 Issue raised in the instant Writ Petition concerns
priority of interest over property mortgaged to the petitioner qua
claim of the tax authorities pertaining to sales tax recovery.
Notwithstanding Section 26E of the SARFAESI Act, 2002 not
being enforced i.e. a notification not being issued to bring into
effect said section, *para materia* provision being Section 31B of
RDDBI Act, 1993 being enforced, in the decision dated 13th

December 2019 in Writ Petition No. 1039/2017, ASREC India Vs. State of Maharashtra, this Bench has held that a secured creditor would have priority of interest over the secured asset vis-a-vis government dues.

2 Thus, the instant Writ Petition is disposed of quashing the attachment notice and sale notice issued by the State of Maharashtra to enforce the sales tax dues qua the mortgaged property. The petitioner having priority of interest would be entitled to proceed under SARFAESI Act, 2002.

3 Receiver of the mortgaged property has been appointed in another proceedings. The petitioner would be entitled to move necessary application in said proceedings seeking discharge of the Receiver.

4 For record, we note that pursuant to an order dated 4th September 2018, the said Court Receiver was permitted to put the secured property to sale.

5 Report has been received. No buyer responded.

6 The report received from the Receiver is disposed of.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE