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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26749 of 2016

The Authorised Officer,
Tamil Nadu Mercantile Bank Limited,
Mount Road Branch,
No.738, Anna Salai,
Chennai - 600 002.

...Petitioner

Vs

The Assistant Commissioner (CT)
Pondybazhar Assessment Circle,
No.49, Greenways Road,
Chennai - 600 028.

... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the respondent to dispose of the representation dated 11.05.2016 made for raising the attachment pertaining to the property bearing S.No.73/10, Patta No.3, Keelaiyur Village, Thirukoviloor Taluk, Cuddalore District.

For Petitioner : Mr.G.Senthil Kumar

For Respondent : Mr.V.Nanmaran
Government Advocate

O R D E R

The relief sought for in the present writ petition is for a direction to direct respondent to dispose of the representation dated 11.05.2016 made for raising the attachment pertaining to the property bearing S.No.73/10, Patta No.3, Keelaiyur Village, Thirukoviloor Taluk, Cuddalore District.

2. The petitioner is the Authorised Officer, Tamil Nadu Mercantile Bank Limited. The learned counsel for the petitioner



made a submission that the property under attachment by the respondent for recovery of Sales Tax arrears was mortgaged with the petitioner Bank and the actions were also initiated under the provisions of the Debt Recovery Tribunals Act.

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3. This Court is of the considered opinion that regarding the charge in the priority, the issues between the Bank and the Statutory authorities with reference to the different Statutes are subjudice before the Hon'ble Apex Court of India. However, mere directing the authorities to consider the representation would not provide any relief to either of the parties. The issues are to be decided and the priority as per the provisions are to be settled. Under the SARFAESI Act and Debt Recovery Tribunals Act, the Banks claim priority over the charge. However, with reference to the statutory arrears of Revenue, the priority is provided under various other Act. In view of the conflicting provisions, the issues are to be decided and mere direction to consider the representation would do no service to the cause of justice.

4. This apart, to issue an order of direction to consider the representation, the petitioner has to establish a legal right. In the present case, the petitioner claims that the subject property was already mortgaged with the petitioner Bank and they are entitled to auction the property and realise the loan amount from the defaulter. Similar claim is made by the respondent for recovery of arrears of tax.

5. This being the factum, the petitioner is at liberty to workout their remedy in the manner known to law and by issuing a direction to consider the representation, either the issues or the rights can be crystallized and therefore, this Court is not inclined to grant the relief as such sought for in the present writ petition. However, the petitioner is at liberty to redress the grievances in the manner known to law.

6. With these observations, the writ petition stands disposed of. No costs.

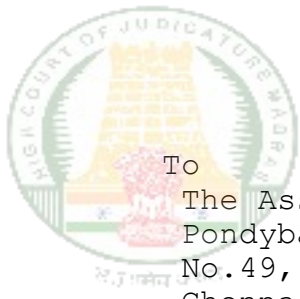
Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

Kak



To
The Assistant Commissioner (CT)
Pondybazhar Assessment Circle,
No.49, Greenways Road,
Chennai - 600 028.

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+1CC to M/s.S.Sethuraman, Advocate, Sr.No.32371

W.P.No.26749 of 2016

PCH (CO)
K.RK. (06.08.2021)