BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.04.2021
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P.(MD)No.7870 of 2021 and
WMP(MD) No.5999 of 2021

The Branch Manager,
The Tamilnadu Industrial Investment,
Corporation Ltd., 1A, East Cross Street,
1st Floor, Anna Nagar, Madurai District. Petitioner

Vs.

1.The State Tax Officer,
3/103, Thiru Nagar, Thelichatha Nallur,
Emanaeswaram Via, Paramakudi - 623 701.

2.T.A.Kannan,
Prop.S.B.Industries,
No.4-558, Ulaganathapuram,
Venthoni Post, Paramakudi Taluk,
Ramanathapuram District. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the impugned order passed by the 1st respondent dated 05.03.2021, bearing Na.Ka.A3/817/2003 and quash the same and direct the 1st respondent to remove the encumbrance made in the Registration Office, Paramakudi, with regard to the property in S.F.Nos.141-1A1 and 141/1B, Plot No.11, 13 and 14 situated at Venthoni Village, Paramakudi.

For Petitioner : Mr.R.Saravanan
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner to quash the impugned order of the 1st respondent in Na.Ka.A3/817/2003 dated 05.03.2021, and to direct the 1st respondent to remove the encumbrance made in the Registration Office, Paramakudi, with regard to the property in S.F.Nos.141-1A1 and 141/1B, Plot No.11, 13 and 14 situated at Venthoni Village, Paramakudi.

2.According to the petitioner, the petitioner Corporation is a Government Company incorporated under the Indian Companies Act, 1913 and 1956, having registered office at No.692, Anna Salai, Chennai, established with the object of extending financial assistance to various entrepreneurs in the State of Tamilnadu for development of industries. As such, the second respondent herein had obtained various loans from the petitioner herein and did not honour the dues, thereby the second respondent account was closed as Non Performing Account. Subsequently, as per the right conferred under Section 29 of SFC Act, certain properties of the second respondent have been auctioned. According to the petitioner, when recovery of dues from the second respondent is under progress, the first respondent had issued the impugned order dated 05.03.2021 stating that the first respondent is the first charge holder and had right over the properties of the second respondent. It is further stated in the impugned order that since the properties of the second respondent are let in auction by the petitioner, the petitioner is liable to pay the tax due and after getting no objection from the first respondent, the petitioner shall proceed with auction, failing which, necessary action will be taken against the petitioner. Aggrieved by the impugned order, the petitioner is before this Court with this present Writ Petition.

3.The learned counsel for the petitioner relied on a judgment stating that the issue involved in this Writ Petition is covered by the order of this Court in Principal Seat at Madras in batch of Writ Petitions in W.P.Nos.2675 of 2011 etc., and the relevant portion is extracted as under:-

> *"2.We are of the view that if there was at all any doubt, the same stands resolved by view of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, Section 41 of the same seeking to introduce Section 31B in the Principal Act, which reads as under:-*
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> *'31B. Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.*
>
> *Explanation. - For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016, in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that code'*
>
> *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.*
>
> *4.The law having now come into force, naturally it*

would govern the rights of the parties in respect of even a lis pending.

5.The aforesaid would, thus, answer question (a) in favour of the financial institution, which is a secured creditor having the benefit of the mortgaged property.

6.In so far as question (b) is concerned, the same is stated to relate only to auction sales, which may be carried out in pursuance to the rights exercised by the secured creditor having a mortgage of the property. This aspect is also covered by the introduction of Section 31B, as it includes 'secured debts due and payable to them by sale of assets over which security interest is created'."

4.In the light of the above, the impugned order dated 05.03.2021, in Na.Ka.A3/817/2003 is hereby quashed and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

1.The State Tax Officer,
3/103, Thiru Nagar, Thelichatha Nallur,
Emanaeswaram Via, Paramakudi - 623 701.

+1 CC to M/s.R.SARAVANAN, Advocate (SR-16187[F] dated 17/04/2021)

Order made in
W.P.(MD)No.7870 of 2021 and
WMP(MD) No.5999 of 2021
17.04.2021

GS (27.04.2021) 3P 3C