BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.11094 of 2022
and
W.M.P(MD)No.7949 of 2022

Punjab National Bank,
Represented by its chief Manager,
Circle Office, 2 & 3 Bypass Road,
Aparna Towers,
Madurai – 625 010. ... Petitioner

Vs

1.The Tax Recovery Officer – 2,
Income Tax Department,
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

2.The Sub Registrar,
Office of teh Sub Registrar,
Aruppukottai,
Virudhunagar District.

3.R.Thirumavalavan ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his proceedings in RFL/அருப்புக்கோட்டை/2-2022 dated

01.04.2022 and quash the same as non application of mind and consequently, direct the second respondent to register the certificate of sale dated 01.03.2022 in favour of the third respondent and his family members without insisting the No Objection Certificate from the first respondent without due process of law.

For Petitioner	:	Mr.Ananth C.Rajesh
For Respondent	:	Mr.N.Dhilipkumar Standing Counsel for R.1 Mr.K.S.Selvaganesan Additional Government Pleader for R.2

ORDER

Heard the learned counsel for the writ petitioner, the learned Standing Counsel appearing for the first respondent and the learned Additional Government Pleader appearing for the second respondent.

2. Considering the nature of relief to be granted, issuance of notice to the third respondent is dispensed with.

3. The petitioner brought the properties of the borrower to public auction. The third respondent was the highest bidder. Sale Certificate was also issued. The petitioner presented the Sale Certificate before the second respondent for registration. Citing the attachment made by the Income Tax Department, the second respondent refused to register the same. Questioning the stand of the second respondent, this writ petition came to be filed.

4. It is well settled that the rights of the secured creditor will prevail over crown debt. The legal position has been clarified in more than one decision.

5. The learned counsel for the petitioner referred to the decision rendered by a learned Judge of this Court in ***Corporation Bank Vs The Commissioner of Income Tax Department in W.P.Nos.27409 & 27411 of 2019 and 1251 of 2018 dated 21.04.2021*** wherein it was held as follows:

> *"24. I thus, find no merit in the submissions of the respondent to the effect that Section 281 constitutes a declaration of charge much less, one which ispreferential to the revenue. The thrust of Section 281 is only a protection to a bonafide purchaser in cases where an errant assessee may seek to alienate property to circumvent anticipated recovery of outstanding arrears payable by him to the Income Tax Department. Nothing in Section 281 would support the submission that it, by itself creates a positive charge of property. The charge in this case was created by the Income Tax Department only after 27.03.2017 when the property was attached in terms of Rule 48 of the 2nd Schedule and duly communicated to the SRO.*
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> *25. Moreover, the aforesaid cases however do not take note of Section 26E of the SARFAESI that has been*

notified on 24.01.2020. Section 26E commences with a non-obstante clause and states that priority shall be accorded to the debts payable to secured creditors, notwithstanding anything in any other law for the time being in force, including the Income tax Act. The only exception, is as per the Explanation to Section 26E, cases pending under the Insolvency and Bankruptcy Code 2016. In the case of a secured creditor where a prior valid charge exists, as in the present case where the mortgage has been created on 10.02.2014, the provisions of Section 281 would not serve to disturb the same.

26. A matter similar to the present one came up for consideration before the Andhra Pradesh and Telangana High Court (prior to bifurcation) in the case of ICICI Bank Ltd (supra). Conflicting claims to the same property were set up by the ICICI Bank and the Tax Recovery Officer. After considering the interpretation of Section 281 and the power of recovery under the 2nd Schedule to the Income Tax Act, the Bench states that the attachment in that case was prior to the attachment by the Income Tax Department and thus, held priority over the subsequent attachment."

6. In this case, the mortgage was created in favour of the Bank on 07.12.2015. Attachment by Income Tax Department was on 14.12.2018. Since the mortgage was created earlier, the attachment made by the Income Tax

Department subsequently will have to give way. The impugned proceeding is quashed. The writ petition is allowed. The second respondent is directed to register the petition mentioned Sale Certificate subject to fulfilment of the usual formalities. Consequently, connected miscellaneous petition is closed. No costs.

24.06.2022

Index : Yes / No
Internet : Yes/ No
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To

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No.2, V.P.Rathinasamy Nadar Road,
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2.The Sub Registrar,
Office of teh Sub Registrar,
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G.R.SWAMINATHAN, J.

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W.P(MD)No.11094 of 2022

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