IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.7225 of 2023
and
W.M.P.No. 7272 and 7274 of 2023

Standard Charted Bank,
Represented by its Authorised Signatory,
No. 509, D D Road, R.S.Puram,
Coimbatore – 641 002. ... Petitioner

Vs.

1.The Tax Recovery Officer-3 (Income Tax Department)
The Office of Tax Recovery Officer,
Tirupur Range & Range -5, Coimbatore,
No. 661/4, Rayapuram Road, Annex Building,
E 10 b BSNL main exchange compound,
Tirupur 641 601.

2. The Tax Recovery Officer-2,
Income Tax Department,
Government of India,
No.63, Race Course Road,
Coimbatore 641018.

3. The Tax Recovery Officer -1
Income Tax Department,
Government of India,
No. 63, Race Course Road,
Coimbatore – 641018.

4. The Sub Registrar,
   3/35A, RK Complex,
   Marudhamalai Main Road,
   Vadavalli, Coimbatore – 641 046.

5. Srinivasan Mahesh

6. C.G.Sripriya
   (Impleaded as per order 28.11.2023
   in WMP No. 18925/2023
   in WP. 7225 of 2023 by KRJ) ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in the Tax Recovery Proceedings TRC: 586/TRP/2019-20 and to quash the orders of attachment dated 28.06.2019 passed by the 1st respondent and consequently direct the 4th respondent to raise the order of attachments in the revenue records on the file of the 4th respondent, which were made pursuant to such unlawful orders of attachment passed by the 1st respondent with respect to the subject properties.

For Petitioner : Mr.M.S.Murali
for R and P Partners

For Respondents : Mr.R.S.Balaji,
Senior Standing Counsel
assisted by Ms. S.Premalatha
Junior Standing Counsel [for R1 & R3]

: Mr.S. Ravikumar
Special Government Pleader [for R4]

R5- left

Mr.V.P.Sengottuvel
Senior Counsel
for Mr. M.Sivavarthanan [for R6]

ORDER

This Writ Petition has been filed challenging the order passed by the 1st respondent dated 28.06.2019, seeking a direction to the 4th respondent to raise the order of attachment in the revenue records on the file of the 4th respondent.

2. When this matter was taken up for hearing on 08.12.2023, this Court passed the following order:

> "...............
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> *6. Considering the submissions made by learned counsel appearing on either side, in order to give quietus to the matter, this Court directs the Petitioner-Bank to consider the request of the 6th respondent, with regard to waiver of interest and to accept the amount mentioned in the demand*

notice dated 29.04.2023. The 6th respondent shall make the payment mentioned in the aforesaid notice, to the petitioner-bank, on or before 20.12.2023.”

3. Today, learned Senior Counsel for the 6th respondent would submit that the amount has been quantified and the entire amount has been settled and the petitioner-bank is also inclined to issue ‘No Due Certificate’ and also ready to handover the documents.

4. However, it is pertinent to note that the 5th and the 6th respondents are husband and wife and the properties are in the name of both the 5th and the 6th respondent. This Court issued a notice to the 5th respondent but it was returned with an endorsement as 'left'. Therefore, learned Senior Counsel for the 6th respondent submitted that the 5th respondent may be directed to file an indemnity to the bank, in the event, if the 5th respondent not make claim with regard to the return of the documents to the 6th respondent.

5. The 6th respondent/wife purchased the property in the auction conducted by the Income Tax Department. Initially, the bank has questioned about the conduct of the auction by the 2nd and 3rd respondent stating that the first charge holder is only the petitioner and if at all, there is anything over and above available than to the petitioner, then the Income Tax Department will have the rights to recover their dues from and out of the balance amount. In the present case, initially, without settling the dues of the bank, the property was auctioned and the 6th respondent/wife purchased it. However, he would submit that the petitioner's claim has also been settled. Thus, all the title deeds requires to be handed over only to the 6th respondent by the petitioner-bank.

6. Accordingly, this Court is inclined to direct the petitioner-bank to handover all the title deeds to the 6th respondent which were mortgaged by the 5th respondent, who failed to settle the Income Tax dues and therefore,

the property was sold by way of auction sale by the Income Tax Department to recover the dues of the 5th respondent.

7. Now, the claim of the petitioner-bank has been settled. There is no dispute on the aspect that the petitioner is the first charge holder and the contesting respondent/Income Tax Department is the second charge holder. As on date, the dues of the petitioner-bank have been settled and the property has been sold in public auction conducted by the Income Tax Department in order to recover the dues of income tax payable by the 5th respondent. Since, the dues of the petitioner-bank have been settled, now the petitioner-bank will have no right over the propery as on date of passing of this order. Certainly, the Income Tax Department can recover its dues by virtue of bringing the property for sale.

7.1 But what was happened in the present case was that before settling the dues of the petitioner-bank, the property was auctioned by the Income Tax Department as a second charge holder. No doubt, the petitioner-bank is the first charge holder. However, the Income Tax Department as a second charge holder can bring the property for sale in order to recover their dues. In the event, if at all, if there is a challenge to of bringing the property for sale by the second charge holder, ignoring the right of the first charge holder, the first charge holder can very well challenge the auction sale.

7.2 In the present case, there is no challenge made by the petitioner-bank, since the dues of the first charge holder have already been settled. Hence, as there is no challenge made by the petitioner-bank, the auction conducted by the respondent/Income Tax Department cannot be invalidated. At any cost, the 5th respondent cannot challenge the auction conducted by the respondent/Income Tax Deartment on the ground of deprival of right to the first charge holder.

In as much as the petitioner's claim has been settled, no further orders are necessary in the present Writ Petition. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

22.12.2023
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Internet:Yes
Index : Yes / No
Speaking order/Non-Speaking order
Neutral Citation : Yes / No

To

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KRISHNAN RAMASAMY, J.

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