



WEB COPY



W.P.(MD)No.17222 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.17222 of 2020

and

W.M.P.(MD)Nos.14409 and 14411 of 2020

Indian Bank,
Stressed Assets Management,
Branch Chennai.
(Formerly Allahabad Bank
Purasawakkam Branch),
2nd Floor, No.55, Ethiraj Salai,
Egmore, Chennai-600 008,
No.100-101, East Avani Moola Street,
Madurai – 625 001,
represented by its Assistant
General Manager.

... Petitioner

vs.

1.The Assistant Commissioner (S.T.)(FAC),
Sales Tax Department,
Tiruparankundram Circle,
Madurai.



WEB COPY



W.P.(MD)No.17222 of 2020

- 2.The Assistant Commissioner,
Commissioner Tax Department,
Tiruparankundram Circle,
Madurai.
- 3.The Joint 1 Sub-Registrar,
Madurai South, Madurai.
- 4.M/s.K.S.Patel and Sons,
represented by its Managing Partner,
Nathu K.Patel,
No.1/4, Vamadam Road,
Tennur, Trichy-620 017.
- 5.M/s.Patel Enterprises,
represented by its Managing Partner,
Gopal K.Patel,
No.1/4, Vamadam Road,
Tennur, Trichy – 620 017.
- 6.M/s.Sridhar Wood Industries,
represented by its Managing Partner,
Hasmukh S.Patel,
No.1/4, Vamadam Road,
Tennur, Trichy-620 017.
- 7.Shivgan K.Patel
- 8.Dinesh S.Patel
- 9.Nathu K.Patel



WEB COPY



W.P.(MD)No.17222 of 2020

10.Gopal K.Patel

11.M/s.Anantha Poly Products Private Limited,
represented by its Managing Director,
A.Sundaralingam,
117-118, SIDCO Industrial Estate,
Kappalur, Madurai-625 008.

... Respondents

***(R11 is impleaded, vide Court order,
dated 23.12.2021 in W.M.P.(MD)No.18737
of 2021 in W.P.(MD)No.17222 of 2020)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the respondents 1 and 2 made in Roc No.664/2017/A3, dated 02.08.2018 and Na.Ka.No.664/2017/A3/, dated 30.07.2019, calling upon the 3rd respondent to notify attachment in relation to the properties subject to prior mortgage with the petitioner Bank and to quash the same and consequently, to direct the 3rd respondent to cancel/delete the encumbrance notified as Doc.No.L40 of 2018 and Doc.No.L58 of 2019 from its file.



WEB COPY



W.P.(MD)No.17222 of 2020

For Petitioner : M/s.Aiyar and Dolia
For R1 to 3 : Mr.B.Saravanan
Additional Government Pleader
For R9 : No appearance
For R11 : Mr.J.Hariharan
for M/s.KV Law Firm

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the respondents 1 and 2, dated 02.08.2018 and dated 30.07.2019, calling upon the 3rd respondent to notify attachment in relation to the properties subject to prior mortgage with the petitioner Bank and to quash the same and consequently, to direct the 3rd respondent to cancel/delete the encumbrance notified as Doc.No.L40 of 2018 and Doc.No.L58 of 2019 from its file.



W.P.(MD)No.17222 of 2020

WEB COPY

2. The respondents 4 to 10 stood as guarantors for the credit facilities availed by M/s.Prabhat International Limited from the petitioner bank. They executed agreement and created a mortgage over the immovable properties. The debtor failed to repay the loan. The petitioner Bank initiated proceedings in SARFASI for a claim of Rs. 42,01,81,972.20/- as on 31.08.2016. Thereafter, the property was brought to sale and steps were taken to conduct auction on several occasion and finally e-auction was conducted on 20.09.2021 and the 11th respondent who is impleaded in this writ petition was the successful bidder. The sale certificate was issued on 04.12.2021. In the meanwhile, the petitioner Bank approached the respondents to release the encumbrance entered in the 3rd respondent office.

3. The contention of the petitioner Bank is that the attachment by



W.P.(MD)No.17222 of 2020

WEB COPY

the Commercial Tax Department was made on 02.08.2018 which is subsequent to mortgage. The mortgage was mortgage was created on 25.04.2013 and registered on 08.07.2013 in Document No.5363 of 2013. Hence, the petitioner is having 1st charge over the property, since the mortgage is prior to attachment. The issue whether the Crown liability (payment of Tax to government) or the Bank will have the 1st charge over the property is decided by the several judgments passed by the Hon'ble Division Bench of this Court, wherein it is held if the mortgage is prior to the attachment by the Tax authorities, then the bank will have 1st charge over the property. The following judgments are relevant:

- i. Assistant Commissioner (CT) V. Indian Overseas Bank 2016 (6) CTC 769 (Full Bench)
- ii. W.P.(MD)No.12643 of 2020 dated 15.04.2021 (DB)
- iii. W.P.(MD)No.19684 of 2019 dated 21.09.2022 (DB)



W.P.(MD)No.17222 of 2020

WEB COPY

iv. W.P.(MD)No.15960 of 2020 dated 19.01.2021 (Single Judge)

Therefore, it is well settled principle of law that the Bank has a priority over all the debts and the government dues. The Hon'ble Full Bench (referred supra) has held that on conjoint reading of Section 26-E of the Sarfaesi Act and Section 31(b) of the Recovery of Debt Due to Bank and Financial Institutions Act, 1993, it is the Secured Creditor, who has a priority to realize the debt over all the other government debts and unsecured creditors.

4. Following the judgments cited supra this Court is of the considered opinion that the petitioner Bank has 1st charge over the property and not the Commercial Tax Department, i.e., respondents 1 and 2. The 3rd respondent is directed to remove the encumbrance which is



WEB COPY



W.P.(MD)No.17222 of 2020

entered against Commercial Tax Department and the petitioner is entitled to the consequential relief as well.

5. With the above said observation and directions, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No

17.07.2023

Internet : Yes

NCC : Yes / No

Tmg



WEB COPY



W.P.(MD)No.17222 of 2020

To

- 1.The Assistant Commissioner (S.T.)(FAC),
Sales Tax Department,
Tiruparankundram Circle,
Madurai.
- 2.The Assistant Commissioner,
Commissioner Tax Department,
Tiruparankundram Circle,
Madurai.
- 3.The Joint 1 Sub-Registrar,
Madurai South, Madurai.



WEB COPY



W.P.(MD)No.17222 of 2020

S.SRIMATHY, J

Tmg

W.P.(MD)No.17222 of 2020

17.07.2023