BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.23338 of 2023

M/s.Boss Enterprises,
Rep. by its Partner,
E.Kandasamy,
No.316, F21, Bangalamedu,
2nd Street, Sadayal Temple Opp.
Theni-625 531. ... Petitioner

Vs.

1.The Sub Registrar,
Theni Sub Registrar Office,
Theni District.

2.The Assistant Commissioner,
Commercial Taxes Department,
Theni-1.

3.The State Bank of India,
The Assistant General Manager,
Authorized Officer,
No.1113, Raja Plaza, Avinash Road,
Coimbatore-641 037. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to remove the entries of attachment vide Document No.14 of 2018, dated 10.07.2018 in respect of the properties purchased by the petitioner vide sale certificate issued by the 3rd respondent.

For Petitioner	: Mr.R.Murali
For R1 & R2	: Mr.S.Shanmugavel, Additional Government Pleader
For R3	: Mr.N.Dilip Kumar

ORDER

(Order of the Court was made by ***V.LAKSHMINARAYANAN, J.***)

There is no dispute in the relationship between the parties. The 3rd respondent before us is the secured creditor. The 2nd respondent, namely, Assistant Commissioner of Commercial Tax Office, Theni for the tax arrears of debtor, namely, M/s.Shri Renuga Textiles Ltd., had attached the property. The 3rd respondent invoked SARFAESI and brought the property for sale. The writ petitioner is the successful purchaser in such sale.

2.The 2nd respondent had attached the property for arrears of tax revenue. Arrears of tax revenue is subject to the rights of the 3rd respondent, a mortgagor / secured creditor, while invoking SARFAESI Act. It transpires that the 2nd respondent had registered an encumbrance with the 1st respondent, reflecting the arrears of tax revenue. After the purchase of the property on 10.10.2018, the writ petitioner sought to remove the encumbrance.

3.The case of the writ petitioner is that as he purchased the property in SARFAESI sale from the secured creditor, his right is higher than that of the 2nd respondent. This position has been settled by a judgment of this Court in the case of ***M.Karpagam Vs. Assistant Commissioner of Commercial Taxes, Gandhipuram Circle, Gandhipuram, Coimbatore and another 2023*** reported in ***(5) CTC 470,*** where one of us (Mr.Justice.S.M.SUBRAMANIAM) after analyzing the entire law relating to this aspect, held that a purchaser gets a superior right than that of the arrears of tax revenue.

4.The learned Additional Government Pleader appearing for the respondents 1 and 2 brought to our attention to Rule 143 of Registration Rules.

According to him, there is no way that the encumbrance that has been registered by the 2nd respondent can be removed on account of the fact that Rule 143 declares that every encumbrance had been reflected in the certificate of encumbrance.

5.Though this argument is very attractive, a careful reading of Rule 143 shows that a certificate of encumbrance should contain complete list of all encumbrances 'affecting the property in question'. Once the right of the secured creditor is placed higher than that of the 2nd respondent, who claims arrears of tax revenue and when the 3rd respondent, while bringing the property for SARFAESI sale, if there is an excess, should also settle other statutory creditors by following the procedures contemplated under Rule 9 of SARFAESI Rules, then the question of arrears of revenue affecting the title of the property does not arise. Consequently, once the property is sold under SARFAESI, prior encumbrances, which are lesser in priority than that of the Bank, will have to be removed.

6.On the sale of the property in SARFAESI, title transfers from debtor in favour of the auction purchaser. Therefore, if there are any arrears of the tax revenue, the authorities cannot proceed against only this property. It is always open to proceed against the debtor in case they come across against any other properties of the debtor or otherwise and recover the dues.

7.In the light of the above, this Writ Petition is allowed and the 1st respondent is directed to remove the encumbrance, reflecting the attachment made by the 2nd respondent. No costs.

(S.M.S., J.) & (V.L.N., J.)
05.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva

To

1.The Sub Registrar,
Theni Sub Registrar Office,
Theni District.

2.The Assistant Commissioner,
Commercial Taxes Department,
Theni-1.

S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

Yuva

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