

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1310 OF 2009
WITH
CIVIL APPLICATION NO.1453 OF 2009
IN
WRIT PETITION NO.1310 OF 2009

Sangli Aluminium Extrusions Pvt Ltd

..Petitioner/
Applicant

Versus

1.Maharashtra Industrial Development
Corporation Ltd

2.Sangli District Central Co-Operative Bank Ltd

3.Assistant Commissioner of
Sales Tax (C-864)

..Respondents

Ms. Savita Nangare, with Mr.Vinod Nagula i/b Law
Focus, Advocates for the Petitioner.

Mr. Prashant Chawan, with Ms.Shraddha Chheda i/b
Navdeep Vora & Associates, Advocates for Respondent
No.1.

Ms. Stefy Dias, Poonam Redekar i/b Umesh Mankapure,
Advocates for Respondent No.2.

Ms. S. D. Vyas with Mrs. K. B. Dighe, Addl. G. P. with
Ms. M. S. Bane, AGP, for the State/Respondent.

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE : JANUARY 22, 2024

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ORAL JUDGMENT:-

1 By the present Writ Petition filed under Article 226 of the Constitution of India, the Petitioner seeks an order and direction to Respondent No.1 [Maharashtra Industrial Development Corporation (MIDC)] to effect transfer of Plot No.H-13, admeasuring about 15,000 sq.mtrs. lying and being situated at Sangli- Miraj Industrial Area (for short “***the suit property***”) in favour of the Petitioner by accepting the transfer fee of Rs.10,57,500/- with immediate effect. This relief is sought on the basis that the Petitioner has purchased the leasehold rights in the suit property from Respondent No.2 [Sangli District Central Co-operative Bank Limited] under the provisions of *the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short “**the SARFAESI Act**”). The other relief sought is to quash and set aside the Demand Notice dated 3rd November 2006 issued by Respondent No.3 [the Assistant Commissioner of Sales Tax] to the Petitioner for payment of sales tax dues of one M/s Maha Containers Pvt Ltd, Sangli (for short “***the Defaulting Company***”).

2 Rule was issued in the above Petition on 17th November 2009, and certain directions were also passed in earlier

orders. Now it has come up for hearing and final disposal before us.

3 Before we advert to the arguments canvassed in the above Petition, it would be appropriate to set out some brief facts, which are undisputed. By an Agreement dated 3rd September 1991 entered into between MIDC and one Mr. K. Gopalkrishna Rao, the Chief Promoter of the Defaulting Company, the suit property was leased out to the Defaulting Company. After this lease was created, with the consent of Respondent No.1-MIDC, the Defaulting Company created a mortgage in favour of Respondent No.2 in relation to the suit property. This mortgage was created because the Defaulting Company had availed of certain facilities/loan from the 2nd Respondent-Bank.

4 Since the Defaulting Company failed to repay its dues, the 2nd Respondent-Bank issued a notice under Section 13 (2) of the SARFAESI Act calling upon the Defaulting Company to pay the outstanding dues within 60 days from the date of the said notice. Since the aforesaid notice was not complied with, Respondent No.2, on 16th June 2005, took possession of the suit property under Section 13 (4) of the SARFAESI Act. After taking

possession, the 2nd Respondent-Bank, on 4th November 2005, issued a public notice for auction of the suit property, fixing the date of auction on 7th December 2005. The reserve price fixed was at Rs.1,17,11,000/-.

5 In the auction conducted by the 2nd Respondent-Bank, the Petitioner participated and was declared as the highest bidder with a bid of Rs.1,18,10,000/-. On payment of the entire consideration of Rs.1,18,10,000/-, the 2nd Respondent-Bank handed over physical possession of the suit property to the Petitioner on 10th January 2006. Thereafter, on 27th January 2006, the 2nd Respondent-Bank informed Respondent No.1-MIDC about the said auction being conducted successfully. Accordingly, on 28th January 2006, the 2nd Respondent-Bank issued a Sale Certificate in favour of the Petitioner, which too was registered before the concerned Sub-Registrar Miraj, Sangli, on 31st March 2006.

6 After registration of the Sale Certificate, the Petitioner made an application to Respondent No.1-MIDC to transfer the lease of the suit property in its favour. In response thereto, on 18th May 2006, Respondent No.1-MIDC requested the 2nd Respondent-

Bank to provide certain documents and also a No-Objection from Respondent No.3 (Sales Tax Authorities). This was the first time the No-Objection from the Sales Tax Department was mentioned, and yet the quantum of the dues allegedly owed to the sales tax department was not informed to the 2nd Respondent-Bank or to the Petitioner.

7 Be that as it may, on 24th May 2006, the 2nd Respondent-Bank replied to the aforesaid letter of Respondent No.1-MIDC and provided the necessary documents and intimated Respondent No.1-MIDC that the suit property had been mortgaged to the 2nd Respondent-Bank after taking consent from Respondent No.1-MIDC. It was stated that now, the 2nd Respondent-Bank has sold the suit property for recovering its dues, and it was not necessary for it to obtain a No-Objection from Respondent No.3 or any other department.

8 We must mention here that all the aforesaid correspondence took place between the 2nd Respondent-Bank and Respondent No.1-MIDC, because the suit property was mortgaged with the 2nd Respondent-Bank only after obtaining the Consent of Respondent No.1-MIDC.

9 Thereafter, on 3rd November 2006, Respondent No.3-Sales Tax Authorities issued a notice to the Petitioner claiming the outstanding sales tax dues of Rs.8,57,772/-. It was further informed to the Petitioner that Respondent No.1-MIDC cannot transfer the lease of the suit property in the Petitioner's name unless and until a clearance certificate is obtained from Respondent No.3-Sales Tax Authorities.

10 Be that as it may, on 16th May 2007, Respondent No.1-MIDC informed the Petitioner that the transfer of the lease of the suit property could be effected in favour of the Petitioner, subject to the Petitioner paying Respondent No.1-MIDC a Differential Premium of Rs.10,57,514/-. The Petitioner, on the same day, replied to Respondent No.1-MIDC stating that the Petitioner is not liable to pay any Differential Premium, and instead is liable to pay only the Standard Transfer Fee which was then amounting to Rs.1,05,000/-. Since Respondent No.1 did not respond to the letter of the Petitioner (regarding the Differential Premium), on 9th January 2008, the 2nd Respondent-Bank issued a letter to Respondent No.1-MIDC stating therein that the Petitioner was ready to pay the Differential Premium as demanded by Respondent No.1, under protest, and therefore, the suit property

ought to be transferred in the name of the Petitioner. A Demand Draft of Rs.10,57,514/- dated 5th January 2008 was also enclosed with the said letter.

11 On 15th January 2008, Respondent No.1-MIDC stated that they had received a notice under the Bombay Sales Tax Act, 1959 about the outstanding dues of the sales tax payable by the Defaulting Company and that Respondent No.3 had priority over the suit property. In these circumstances, Respondent No.1-MIDC informed the 2nd Respondent-Bank that the Demand Draft sent by the Petitioner under protest could not be accepted and that the 2nd Respondent-Bank and the Petitioner should obtain the NOC from Respondent No.3 for effecting transfer of the suit property. In light of this correspondence, on 8th September 2008, the Petitioner requested the 2nd Respondent-Bank to take the necessary action as Respondent No.1-MIDC had refused to transfer the suit property without obtaining the NOC from Respondent No.3-Sales Tax Authorities. Since the 2nd Respondent-Bank refused to take any steps or responsibility, the present Petition was filed on 2nd February 2009.

12 In this Writ Petition, the Petitioner was allowed to amend the Petition by order dated 10th January 2009. Thereafter, by an order dated 27th April 2009, this Court passed an order directing Respondent No.1-MIDC to transfer the suit property in the name of the Petitioner [on payment of the Differential Premium] without insisting on the NOC from Respondent No.3-Sales Tax Authorities. The Petitioner was also directed to give an undertaking to Respondent No.1-MIDC that in the future, in the event the Petitioner is held responsible for paying the sales tax dues of the Defaulting Company, it would pay the same.

13 Thereafter, on 29th June, 2009, this Court passed the following order:-

“1. After this Court passed an order on 27.4.2009, the Petitioner approached Respondent no.1 for effecting the transfer of property. After the auction, he had applied for transfer in the year 2007 and the demand of Rs.10,57,000/- was made which he paid by a Demand Draft but Demand Draft was returned by Respondent No.1 on the ground that Sales Tax authorities had not given No Objection Certificate. After the order of this Court dated 27.4.2009, a fresh demand has been created by Respondent No.1 amounting to Rs. 27,67,000/-. Counsel for Respondents submitted that this demand has been created because the rates have now been revised. We direct the transfer certificate be granted by accepting the amounts which were due from the petitioner in the year 2007. However, the question will remain open as to whether the petitioner is bound to pay the rates which were prevailing in the year 2007 or he is bound to pay the present rates.

2. List the matter on 27.7.2009.”

14 As can be seen from this order, after the Court passed its order on 27th April 2009 a fresh demand was made by Respondent No.1-MIDC increasing its Differential Premium from Rs.10,57,514/- to Rs.27,67,500/-. This increase was made because, according to Respondent No.1-MIDC, the rates payable towards Differential Premium had since been revised. It was in these circumstances that the Court directed that the Transfer Certificate be issued to the Petitioner by accepting the amounts which were due from the Petitioner in the year 2007. Whether the Petitioner was bound to pay the rates which were prevailing in the year 2007 or the increased rates pursuant to subsequent revisions, was an issue kept upon to be decided in the Writ Petition.

15 Thereafter, by order dated 17th November 2009, Rule was issued in the above Writ Petition. A statement on behalf of Respondent No.1 – MIDC was also recorded that the suit property is transferred in favour of the Petitioner subject to the result of this Petition. As far as the sales tax dues were concerned, the Petitioner was directed to deposit the same [Rs.8,57,772/-] in this Court with liberty to the State to withdraw the said amount subject

to them filing an undertaking to bring it back, if so directed by this Court. Now, the above Petition has come up for hearing and final disposal before us.

16 In this factual backdrop, Ms. Nangare, the learned counsel appearing on behalf of the Petitioner, submitted that as on date, the suit property has been transferred in the name of the Petitioner on the payment of the Differential Premium amounting to Rs.10,57,514/-. Over and above this, the Petitioner has also deposited in this Court a sum of Rs.8,57,772/-being the alleged dues of the Sales Tax Department. This deposit was made pursuant to the order dated 17th November 2009 when Rule was issued in the above Writ Petition. She submitted that now only two issues survive to be decided in the above Writ Petition which are: (i) whether the Petitioner is at all liable to pay any sales tax dues which were the liability of the Defaulting Company; and (ii) whether the Petitioner was liable to pay the increased Differential Premium [namely, the difference between the sum of Rs.10,57,514/- paid and the sum of Rs.27,67,500/- as claimed] to Respondent No.1-MIDC.

17 As far as the dues of the Sales Tax are concerned, Ms. Nangare, the learned counsel appearing on behalf of the Petitioner submitted that though no dues are payable by the Petitioner to the Sales Tax Department (for the liability of the Defaulting Company), she has instructions to state that the amount of Rs.8,57,772/- deposited in this Court may be withdrawn by the Sales Tax Department together with any accrued interest thereon and appropriated towards the dues payable by the Defaulting Company. She submitted that this is without prejudice to her argument that no dues are payable by the Petitioner to the Sales Tax Department. The Sales Tax dues had never been brought to the notice of the Petitioner prior to purchasing the property from the 2nd Respondent-Bank. She submitted that if the Sales Tax Department has any priority for repayments of its dues, the same would have to be enforced against the sales proceeds [of the suit property] in the hands of the 2nd Respondent-Bank. In other words, it was the argument of the Petitioner that the Sales Tax Authorities can always seek to recover their dues, if at all, from the 2nd Respondent-Bank by claiming priority as set out in Section 38C of the Bombay Sales Tax Act, 1959. It was her submission that under no circumstances, and that too when no notice of its dues was informed to the Petitioner prior to the Petitioner's purchase of

the suit property, can they be recovered from the Petitioner. In support of this submission, Ms. Nangare relied upon a Division Bench decision of this Court in the case of ***M/s Sonoma Management Partners Pvt Ltd & Ors v/s Bank of Maharashtra & Ors.*** [2016 SCC OnLine Bom 9649].

18 As far as the argument regarding the increase in Differential Premium is concerned, Ms. Nangare submitted that the Differential Premium that would be payable to Respondent No.1-MIDC is the amount that is calculated on the date of the application made by the Petitioner to Respondent No.1-MIDC for transfer of the suit property. She submitted that if Respondent No.1-MIDC failed to transfer the suit property and delayed the same for reasons which cannot be attributed to the Petitioner, Respondent No.1-MIDC cannot then apply revised rates of Differential Premium and demand an increased amount from the Petitioner. In this regard, she relied upon the Circular issued by MIDC dated 12th May 1998 regarding Transfer Guidelines for Industrial plots/sheds/ Residential plots, Galas etc. She submitted that as per these Guidelines, the Differential Premium chargeable would be at the rate when the Petitioner made its transfer application on 10th May 2006. Respondent No.1-MIDC

could not increase the Differential Premium by charging the rates which were revised on 8th August 2008, and which was much after the application dated 10th May 2006 filed by the Petitioner. For all these reasons, she submitted that this Court ought to declare that no further amount is due and payable by the Petitioner to Respondent No.1-MIDC for transfer of the suit property, over and above the amount of Rs.10,57,514/- already paid towards the Differential Premium.

19 On the other hand, Ms. Vyas, the learned AGP appearing on behalf of Respondent No.3-Sales Tax Authorities, feebly sought to contend that Section 38C creates first charge on all the properties of the Defaulting Company. Once this is the case, then, the Sales Tax Authorities can certainly claim the money from the Petitioner and in whose hands the suit property has been transferred. She fairly submitted that it is true that at the time when the transfer of the suit property took place [from the 2nd Respondent-Bank to the Petitioner], the dues of the Sales Tax Department were to the tune of Rs.8,57,772/-. However, now the same has increased to Rs.1,64,26,170/-. She therefore sought to contend that these amounts also ought to be paid and /or secured

before the suit property can be said to be validly transferred to the Petitioner.

20 As far as the issue of payment of Differential Premium is concerned, Mr. Chawan, the learned counsel appearing on behalf of Respondent No.1-MIDC, submitted that vide letter dated 7th May 2007 MIDC had intimated the Authorized Officer of the 2nd Respondent-Bank that the amount of Differential Premium will be charged by MIDC for transfer of the said plot in favour of the Petitioner. He submitted that initially, the premium for transfer of the suit property (as per the Transfer Guidelines of MIDC for the year 2007) was to the tune of Rs.10,57,500/- plus an amount of Rs.14/- towards annual rent for the period from 1994 to 2007. The same was calculated on the basis of the prevailing rate Rs.250/- per sq.mtr. in the Sangli-Miraj Industrial Area. However, the rate for payment of Differential Premium [for the Sangli-Miraj Industrial Area] was revised to Rs.600/- per sq.mtr. w.e.f. 8th August 2008. Thus, the Differential Premium amount of Rs.26,32,516/- [in total] would have to be paid by the Petitioner. Since the Petitioner has already paid a sum of Rs.10,57,514/-, the Petitioner would now be liable to pay a further sum of Rs.15,75,002/- [i.e. Rs.26,32,516/- minus Rs.10,57,514/-]. He,

therefore, submitted that the Petitioner be directed to pay this amount of Rs.15,75,002/- to Respondent No.1-MIDC in order to perfect its title and get a valid transfer of the suit property under its name.

21 We have heard the learned counsel for the parties at length. We have also perused the papers and proceedings in the above Writ Petition. We shall first deal with the issue of the Sales Tax Department. As mentioned earlier, the amount of Rs. 8,57,772/- deposited by the Petitioner in this Court towards the dues of the sales tax, can be paid over to the Sales Tax Department as per the statement made by the learned counsel for the Petitioner. Since this is the statement, we direct that the Registry shall allow the Sales Tax Department to withdraw the sum of Rs.8,57,772/- together with interest accrued thereon, if any, within a period of three weeks from today. This now leaves us to deal with the argument of Ms. Vyas whether the Petitioner is liable to pay any further amounts towards the dues of the sales tax. In this regard, we find that the argument of Ms. Vyas that the Petitioner is liable to pay the additional sales tax which now comes to approximately Rs.1,64,26,170/- is wholly without merit. We say this because we find that the arguments canvassed by Ms. Vyas are

squarely covered by a decision of the Division Bench of this Court in the case of **M/s. Sonoma Management (supra) [2016 SCC OnLine Bom 9649]**. The facts of this case would reveal that the Petitioner Company therein had purchased the property from Bank of Baroda under the provisions of the SARFAESI Act, 2002 and which belonged to one M/s. Weiler International Electronics Pvt Ltd (for short “**M/s. Weiler**”). After purchasing the property under the SARFAESI Act, 2002, a conveyance was also duly registered at the office of the Sub-Registrar, Khandala on 10th March 2011. It is, at the time of this registration, that the Petitioner Company for the very first time perused the 7/12 extract of the property which was purchased, and learnt that there was an encumbrance of the Sales Tax to the extent of Rs. 18,38,709/-. Though this encumbrance was not disclosed to the Petitioner Company, and for which it contemplated taking legal steps against Bank of Baroda, the Petitioners finally decided, keeping in mind the magnitude of the investment already made, that they would accept the conveyance with the encumbrance of the Sales Tax to the extent of Rs. 18,38,709/-. After execution of the conveyance, the Petitioners expected their names to be mutated in the property and revenue records. It is at this time that the Petitioners learnt of certain property tax dues amounting to Rs. 10.05 Lacs. To avoid

further complications, the Petitioners also cleared these property tax dues, without prejudice to their rights and contentions. Despite this, the Petitioners' name was still not mutated in the 7/12 extracts or revenue records of the suit property. Therefore, the Petitioners on making enquiries, were informed that they would have to obtain a No Claim Certificate from the Sales Tax Department. Accordingly, the Petitioners addressed a letter to the Sales Tax Department seeking a No Claim Certificate. It is at this stage that the Petitioner Company was shocked to learn that the claim of Respondent No. 4 – Sales Tax Department, was amounting to Rs.28 Crores. It is in this backdrop that the Petition came to be filed, *inter alia* seeking a direction to Respondent Nos.3 and 4 (Sales Tax Department) to forbear and refrain from, in any manner, asserting any charge on the property purchased by the Petitioner Company from Bank of Baroda under the provisions of the SARFAESI Act, 2002. In these facts, this Court, after hearing the parties, *inter alia* held that since the Petitioner had no notice of any claim and/or charge of the Sales Tax Department other than the claim of Rs.18,38,709/-, the same could not be recovered from the Petitioner. The relevant portion of this decision reads thus:-

“11. What is important to note is that this entire purchase was done by the Petitioners before the alleged dues of the

Sales Tax Authorities was brought to their notice. The chronology of events set out above clearly indicates that the Petitioners placed their bid for purchasing the said property on 1 September, 2010 along with their earnest money deposit. Thereafter, the sale was confirmed in favour of the Petitioners on 15 September, 2010, once the sale was confirmed the Petitioners on 22 September, 2010 paid the balance purchase price and thereafter a Sale Certificate was also issued in favour of the Petitioners on 23 September, 2010. Thereafter, a Deed of Conveyance was executed by Respondent No. 1 in favour of the Petitioners in respect of the suit property and which was registered with the Registrar of Assurances on 10 March, 2011. It is, at the time of execution and registration of this Deed of Conveyance, that the Petitioners for the first time perused the 7/12 extract relating to the suit property and learnt that there was an encumbrance of the Sales Tax Department to the extent of Rs. 18,38,709/-. As mentioned earlier, these dues of the Sales Tax, the Petitioners would have to pay/liquidate, if not already done so. As far as the dues of the Sales Tax to the extent of Rs. 28 Crores are concerned, the same was brought to the notice of the Petitioners much thereafter. It is not even the case of the Sales Tax Department that the Petitioners had either informed or had constructive knowledge of their dues, save and except to the extent of Rs. 18,38,709/-. This being the factual position, we find considerable force in the argument of Mr. Dada that the Sales Tax dues (save and except to the extent of Rs. 18,38,709/-) cannot be recovered by enforcing their alleged charge under Section 38C of the BST Act against the said property, legitimately purchased by the Petitioners and without having any notice of the alleged dues of the Sales Tax Authorities.

12. What is also important to note is that, it is not even the case of Sales Tax Authorities that the Petitioners are a dealer within the meaning of provisions of the BST Act or that the Petitioners have taken over the business of the dealer who is the defaulter of the Sales Tax Authorities. In fact, on a careful perusal of Section 19(4) of the BST Act, it is clear that where a dealer who is liable to pay tax under the BST Act, transfers or otherwise disposes of his business in whole or in part or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or part thereof by any other person, the dealer and the person succeeding, shall jointly and severally be liable to pay the tax including any penalty and interest due from the dealer. This is

admittedly not the case before us. The Petitioners are not the successor in business of the Defaulter Company. It has, in fact, merely purchased the said property which originally belonging to the Defaulter Company and which was mortgaged with Respondent Nos. 1 and 2. Since, the Defaulter Company did not pay its dues to Respondent Nos. 1 and 2, they, exercising their rights under the provisions of the SARFAESI Act, sought to enforce their security interest and sell the secured asset (the said property) to the Petitioners. It is in these circumstances that the Petitioners have purchased the said property. They can by no stretch of the imagination be termed as a successor of the business of the Defaulter Company to enable the Sales Tax Authorities to recover their dues from the Petitioners by enforcing their alleged charge against the said property purchased by the Petitioners under the provisions of the SARFAESI Act.

13. In the view that we have taken, we are supported by a decision of the Supreme Court in the case of *State of Karnataka v. Shreyas Papers Pvt. Ltd* [(2006) 1 SCC 215; AIR 2006 SC 865]. On the issue of enforcement of charge, the Supreme Court at paragraphs 18 to 21 thereof (of the SCC report) opined thus:

"18. The next limb of Mr. Hegde's arguments was that since Section 13(2)(i) of the KST Act creates a charge on the property of the defaulting company, the charge would continue on the properties, even if it changes hands by transfer.

19. While the expression "charge" is not defined by the KST Act, this concept is well known in property law and has been defined by Section 100 of the Transfer of Property Act, 1882 (hereinafter "the TP Act"). Here "charge" is defined as:

"100. Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, ***save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.***

(emphasis supplied)

20. As the section itself unambiguously indicates, a charge may not be enforced against a transferee if she/he has had no notice of the same, unless by law, the requirement of such notice has been waived. This position has long been accepted by this Court in Dattatreya Shanker Mote v. Anand Chintaman Datar [(1974) 2 SCC 799, 811 (para 18)] and in Ahmedabad Municipal Corpn. of the City of Ahmedabad v. Haji Abdulgafur Haji Hussienbhai [(1971) 1 SCC 757, 759-61 (paras 3 & 4): AIR 1971 SC 1201, 1202-04 (para 3)] (hereinafter "Ahmedabad Municipal Corpn."). In this connection, we may refer to the latter judgment, which is particularly relevant for the present case.

21. Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4): AIR 1971 SC 1201, 1202-04 (para 3)] was a case where a person was in arrears of property tax, due under the Bombay Provincial Municipal Corporation Act, 1949. Consequently, the Municipal Corporation created a charge over the property of the defaulter. However, the property was sold in execution of a mortgage decree. When the Municipal Corporation purported to exercise their charge over the property, the purchaser in court-auction filed a suit for a declaration that he was the owner of the property and that the arrears of municipal taxes due by the transferor were not recoverable from him by proceeding against the property purchased in the auction. In the appeal before this Court, the Municipal Corporation's main argument was that where the local law provided for

the creation of a charge against a property for which municipal taxes were due, transferees of such properties were imputed with constructive knowledge of any charge created against the properties that they had purchased. This argument was, however, rejected. This Court held that while constructive notice was sufficient to satisfy the requirement of notice in the proviso to Section 100 of the TP Act, whether the transferee had constructive notice of the charge had to be determined on the facts and circumstances of the case. [Ibid., at SCC pp. 765-66 (para 12) : AIR pp. 1207-08 (para 8)] In other words, this Court held that there could be no fixed presumption as to the transferee having constructive notice of the charge against the property. In fact, the principle laid down in Ahmedabad Municipal Corpn. [(1971) 1 SCC 757, 759-61 (paras 3 & 4) : AIR 1971 SC 1201, 1202-04 (para 3)] has been correctly applied in a sales tax case similar to the present case. [CTO v. R.K. Steels, (1998) 108 STC 161(Mad)]

(emphasis supplied)

14. In the facts of the present case and considering this authoritative pronouncement of the Supreme Court, we have no hesitation in holding that the Petitioners, having no knowledge (either actual or constructive) of the dues of the Sales Tax Authorities before they purchased the said property, the Sale Tax Authorities cannot recover their dues from the Petitioners by enforcing their charge against the said property.

15. Faced with this situation, Mr. Kontagale submitted that the ratio of the aforesaid Supreme Court decision cannot be applied to the facts of the present case as the provisions under consideration before the Supreme Court were that of the Karnataka Sales Tax Act, 1957 and not of the Bombay Sales Tax Act, 1959. On this ground, he sought to distinguish the judgment of the Supreme Court in the case of *Shreyas Papers Pvt. Ltd.* [(2006) 1 SCC 215: AIR 2006 SC 865]. We find absolutely no merit in this contention. Firstly, the expression “charge”, just like in the Karnataka Sales Tax Act, 1957 is also not defined in the Bombay Sales Tax Act, 1959. Thus, on the issue of enforcement of the charge, the Supreme Court, while considering the provisions of Section 100 of the Transfer of Property Act, 1882, gave its findings in paragraph

Nos. 18 to 21 thereof. These findings are binding on us and we cannot distinguish the aforesaid decision on the specious ground that the same is rendered in the context of the provisions of the Karnataka Sales Tax Act, 1957. Secondly, even otherwise we find that this very judgment of the Supreme Court (*Shreyas Papers Pvt. Ltd* [(2006) 1 SCC 215: AIR 2006 SC 865]) has been relied upon by a Division Bench of this Court in the case of *National Steel and Agro Industries Ltd. v. The State of Maharashtra* [Writ Petition No. 2608 of 2014 decided on 12 February, 2015] to which one of us (S.C. Dharmadhikari, J) was a party. This decision was rendered in the context of the Bombay Sales Tax Act, 1959. We find that this exact argument was canvassed before the Division Bench in the case of *National Steel and Agro. Industries Ltd.* and after relying upon the very same paragraphs of the Supreme Court reproduced by us above, the same was repelled by this Court in paragraphs 35 and 36 of its decision.

16. In fact, the decision of the Supreme Court in the case of *Shreyas Papers Pvt. Ltd.* [(2006) 1 SCC 215: AIR 2006 SC 865] has been followed by another Division Bench judgment of this Court in the case of *Sherwood Resorts Pvt. Ltd. v. The State of Maharashtra* [Writ Petition No. 2086 of 2015 decided on 16 October, 2015] to which both of us were parties. Over there also, exactly the same argument was canvassed on behalf of the Sales Tax Authorities and was repelled by this Court in paragraph 30 of the aforesaid decision. We, therefore, have no hesitation in holding that the Sales Tax Authorities (Respondent No. 4) cannot recover the Sales Tax dues (except to the extent of Rs. 18,38,709/-) from the Petitioners by enforcing their charge on the said property.”

22 We find that the aforesaid decision squarely applies to the facts of this case. In the facts of the present case also, no notice whatsoever was given of any claim and/or charge of the Sales Tax Department prior to the purchase of the property. Once this is the case, we find that the argument of the Sales Tax Department that the Petitioner is liable to pay any amount (other

than Rs.8,57,772/-) to the Sales Tax department before the suit property could be transferred in its name is wholly without merit.

23 We also seriously doubt whether by merely having a claim, the Sales Tax Department can say that they have a first charge on all the properties of the Defaulting Company. A charge attaches itself to a particular property, and that happens when that particular property is attached as per the provisions of law. This has been clearly laid down in a Full Bench decision of this Court in the case of ***Jalgaon Janta Sahakari Bank Ltd. v. Jt. CST, [2022 SCC OnLine Bom 1767 : (2022) 5 Mah LJ 691]***. The relevant portion of this decision reads thus:-

“151. However, there could be attachments orders which might have been issued much prior to giving effect to the 2011 Rules, as amended. In respect of such orders of attachment, we consider it appropriate to express our views.

152. The procedure to be followed in terms of the CPC when an immovable property is put up for auction sale to satisfy a decree of the court is to be found in Order 21, rules 54 and 66 of the CPC. It is mandatory for the court executing the decree, to comply with the following stages before such property is sold in execution of a particular decree :

- (a) attachment of the immovable property ;
- (b) proclamation of sale by public auction ;
- (c) sale by public auction.

At each stage of the execution of the decree, when a property is sold, it is mandatory that notice shall be served upon the person whose property is being sold in

execution of the decree, and any property which is sold, without notice to the person whose property is being sold, is a nullity and all actions pursuant thereto are liable to be struck down/quashed. However, the proceedings before us do not concern execution of any decree.

153. In these proceedings we are as much concerned with proclamation itself as much with attachment. Insofar as recovery pursuant to the MLR Code is concerned, not only the provisions contained therein but also the provisions contained in the 1967 Rules are to be complied with. Simply ordering an attachment is not enough ; a proclamation has to be issued in the prescribed form and such proclamation must be made public by beating of drum and such other mode as specified in section 192 of the MLR Code and rule 11(2) of the 1967 Rules before the property attached is sold.

154. We are of the considered opinion, on facts and in the circumstances, that unless attachment of the defaulter's immovable property is ordered in the manner ordained by the MLR Code and as prescribed by the MRLR Rules and due proclamation thereof is made, even the creation of charge on such immovable property may not be of any real significance, not to speak of demonstrating with reference to evidence that the transferee had actual or constructive notice of such charge. If there has been an attachment and a proclamation thereof has been made according to law prior to January 24, 2020 or September 1, 2016, i. e., the dates on which Chapter IV-A of the SARFAESI Act and section 31B of the RDDB Act, respectively, were enforced, the Department may claim that its dues be paid first notwithstanding the secured dues of the secured creditors ; but in the absence of an order of attachment being made public in a manner known to law, i. e., by a proclamation, once Chapter IVA of the SARFAESI Act or section 31B, as the case may be, has been enforced, the dues of the secured creditor surely would have "priority". In other words, if the immovable property of the defaulter is shown to have been attached in accordance with law prior to Chapter IVA of the SARFAESI Act, or for that matter section 31B of the RDDB Act, being enforced, and such attachment is followed by a

proclamation according to law, the "priority" accorded by section 26E of the former and section 31B of the latter would not get attracted."

24 Though the primary question being examined by the Full Bench was the priority accorded to secured creditors *qua* the dues of the State [in light of Chapter IV-A inserted in the SARFAESI Act w.e.f. 24th January 2020], it clearly opined that even merely attaching the property would not create a charge on the property of the Defaulter Company. For the Sales Tax Authorities to assert their charge, the property had to be attached and a proclamation thereof also had to be done. Only then could the Sales Tax Authorities claim that they have a charge on the property. Merely by having a claim, would not *ipso facto* create a charge on the property.

25 Having dealt with the issue of the Sales Tax dues, we now deal with the argument of Mr. Chawan regarding the Differential Premium. As mentioned earlier, Mr. Chawan submitted that since the transfer of the suit property took place in the year 2009 (pursuant to orders of this Court), Differential Premium would have to be paid by the Petitioner as per the rates applicable in 2009 i.e. the revised rates which came into effect from 8th August 2008. This argument of Mr. Chawan need not

detain us any further because MIDC's own Transfer Guidelines state as under:-

"A "Differential Premium" in respect of land shall mean the difference between the occupancy premium amount for the plot calculated at the land rates prevalent at the time of receipt of the application of the transfer by the Corporation and the amount calculated at the land rates prevalent at the time of initial allotment in favour of the transferor

Explanation: Where any financial institution/Bank after obtaining prior permission of the Corporation, created charge and subsequently sold off the plot/shed/gala in exercise of its powers under the mortgage and in case of purchaser of such plot/shed/gala from the Financial Institution/Bank desires in due course of time to further transfer the said plot/shed/gala purchased from the Financial Institution/Bank the land rate of premium of MIDC prevalent on the date of sale deed/Agreement to sale executed by the Financial Institution/Bank shall be treated as the rate prevalent at the time of initial allotment."

(emphasis supplied)

26 The aforesaid reproduction clearly indicates that the Differential Premium payable in respect of any land shall mean the difference between the occupancy premium amount for the plot calculated at the land rates prevalent at the time of receipt of the application of the transfer by the Corporation and the amount calculated at the land rates prevalent at the time of the initial allotment in favour of the transferor. If there was any doubt, the same has also been clearly explained in the Explanation appended

thereto which clearly states that in cases where a Bank/Financial Institution has a mortgage in its favour with the prior permission of the Corporation, and subsequently the said Bank/Financial Institution, to recover its dues, sells the mortgaged asset, then, the purchaser would be liable to pay the Differential Premium at the rates prevalent on the date of the Sale Deed/Agreement for Sale executed by the Bank/Financial Institution in favour of the purchaser.

27 Once this is the case, we find that Mr. Chawan is incorrect in his submission that MIDC can charge Differential Premium at the revised rates when the transfer actually took place, ignoring the rates applicable at the time the application for the transfer was made. That is not something that is even contemplated under the Transfer Guidelines, and more particularly, the provisions of the said Guidelines reproduced above.

28 In view of the foregoing discussion, we:

- (a) hold that the Petitioner is not liable to pay any additional Differential Premium, other than what is already paid, namely, the sum of Rs.10,57,514/-; and
- (b) direct the Sales Tax Department (Respondent No.3) to withdraw the amount of Rs.8,57,772/- together with interest accrued thereon, if any, deposited in the Court and appropriate the same towards the Sales Tax Dues owed by the Defaulting Company (Maha Containers Pvt Ltd). It is further ordered that the Sales Tax Department cannot claim any further amount from the Petitioner and/or any subsequent person who may acquire any interest in the secured asset from the Petitioner, in respect of dues owed by the Defaulting Company. We may hasten to add that this does not mean that the Sales Tax Department cannot recover the balance dues, if any, from the Defaulting Company, in accordance with law.

29 Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, in the

facts and circumstances of the case, there shall be no order as to costs.

30 In light of the disposal of the Writ Petition, nothing survives in the above Interim Application and the same is disposed of accordingly.

31 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] [B. P. COLABAWALLA, J.]