IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.7396 of 2021
and
W.M.P.Nos. 7911 & 7912 of 2021

M/s.Omkara Asset Reconstruction Company
Private Limited,
represented by its authorised signatory
Sudhan Srikanth .... Petitioner

Vs

1. The District Collector,
Karuppa Gaundanpalayam,
Tiruppur, Tamil Nadu – 641 604.

2. The Deputy Commissioner of Labour
DMS Campus DMS Subway, Teynampet,
Chennai, Tamil Nadu 600 006.

3. The Tashildar,
Tiruppur South,
Kallangadu, Tiruppur, Tamil Nadu 641 605.

4. The Revenue Tashildar,
Jaivabhai School Road,
Susaiyapuram, Rayapuram, Tiruppur,
Tamil Nadu 641 687

5. Radhambigai
Director of M/s.Tiruppur Surya Hi Tech
Apparel Private Limited. .... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, quashing the Form 5 Notice issued under Section 27 of Tamil Nadu Revenue Recovery Act 1864 issued by the third respondent Tashildar in Na.Ka.2679/D32 dated 11.01.2021 issued in lieu of the communications of the first respondent order dated 11.09.2020, second respondent communication 24.07.2020, and third respondent communication 07.12.2020 and direct the respondents as not to take any coercive steps by attempting to recover or attach any properties based the third respondent notice dated 11.01.2021 as it would be prejudicial to the petitioner holding first charge over the properties of the fifth respondent and respondent's company.

For Petitioner	:	M/s.S.Yogalakshmi
For R1 to R4	:	Mr.E.Vijay Anand Additional Government Pleader
For R5	:	No appearance

ORDER

This Writ Petition has been filed challenging the attachment notice issued by the third respondent dated 11.01.2021 as against the one of the Director of the fifth respondent's property.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The fifth respondent had obtained loan from the State Bank of India, Tiruppur, and to secure the repayment of the same, it had mortgaged the properties of the fifth respondent by depositing of title deed dated 21.12.2012. Thereafter, in the year 2020, the entire outstanding loan, along with underlying securities including the said mortgage, has been assigned in favour of the petitioner, i.e., the Asset Reconstruction Company, by State Bank of India by the Assignment Agreement dated 30.03.2020, by which, the petitioner had stepped into the shoes of State Bank of India. Thereafter, the petitioner becomes the secured creditor and entitled for recovery of outstanding dues and enforcement of securities. Now, the third respondent issued Form 5 notice of attachment issued under Section 27 of the Tamil Nadu Revenue Recovery Act 1864, thereby proposing to attach the properties of the fifth respondent for settling the gratuity dues.

4. The learned counsel appearing for the petitioner submitted that the personal properties of the fifth respondent have been specifically assigned in favour of the petitioner and it is having first charge over the properties of the fifth respondent. Therefore, the third

respondent cannot proceed to execute Form 5 notice of attachment issued under Section 27 of the Revenue Recovery Act 1864 for pending gratuity payment.

5. The learned Additional Government Pleader appearing for the respondents 1 to 4 relied upon the order passed by this Court in W.P.(MD) No.19938 of 2020, in which, the President of Tamil Nadu Textiles and Common Labour Union filed for a direction directing the first respondent to recover an amount of Rs.24,45,404/- with interest at the rate of 15% p.a. from 11.01.2018 from the fifth respondent herein. While hearing, it was brought to the notice of this Court that the fifth respondent herein is subjected to liquidation proceedings before the National Company Law Tribunal and the liquidator is already appointed for liquidation of said Company. Accordingly, the fifth respondent Company was already sold out by the creditor Bank and the surplus sale proceedings are lying with the erstwhile Management and the amounts can be recovered from the first respondent by implementing the order dated 24.07.2020. Therefore, the first respondent is directed to take all necessary steps for complying with the said requirements. Further, it is recorded that the first respondent had already initiated the proceedings

under the Revenue Recovery Act and an order of attachment under Section 27 of the Revenue Recovery Act, was effected and directed the first respondent to conclude the proceedings.

6. However, the learned counsel appearing for the petitioner submitted that the petitioner is being an Asset Reconstruction Company. So far no property has been brought for sale of the fifth respondent.

7. However, in view of the claim made by the Labourers Union, the first respondent issued attachment notice, as recorded by this Court, to the Company viz., the fifth respondent was already sold out the property and after adjusting the loan and the remaining amount is lying with the fifth respondent. If at all the property was not brought for sale so far, the petitioner is at liberty to proceed with the recovery dues. If already the property was already sold out and the remaining amount is lying with the firth respondent, the petitioner can also approach the first respondent to recover the dues under the Revenue Recovery Act as against the fifth respondent.

8. With the above direction, this writ petition stands

disposed of. Consequently, connected miscellaneous petitions are closed.

No costs.

25.06.2024

Internet : Yes
Speaking/Non-speaking order
Neutral Citation : Yes/No
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To

1. The District Collector,
Karuppa Gaundanpalayam,
Tiruppur, Tamil Nadu – 641 604.

2. The Deputy Commissioner of Labour
DMS Campus DMS Subway, Teynampet,
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3. The Tashildar,
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G.K.ILANTHIRAIYAN, J.

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