IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.10746 of 2024

M.Sudharsan ..Petitioner

vs

1.The Sub Registrar,
Office of Sub Registrar,
Ayothiya Pattanam, Salem.

2.The Assistant Central Tax Officer,
Salem Bazzar Road,
Salem.

3.The General Manager,
Karnataka Bank,
Asset Recovery Management Branch,
No.3, Thampuchetty Street,
Chennai – 600 001. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the 1st respondent to delete the entry in Serial No.20 in EC/Online/106165845/2023 dated 30.11.2023 on the 1st respondent in S.No.105/1B2 and 105/2 situated at Mettupatti Thathanur Village, Salem Harur Main Road, Salem District.

For Petitioner	:	Mr.B.Rajarajan
For Respondents	:	Mr.B.Vijay Additional Government Pleader for R1 Mr.M.Venkateswaran Special Government Pleader (Tax) for R2

ORDER

This writ petition has been filed seeking a writ in the nature of mandamus directing the 1st respondent to delete the entry in Serial No.20 in EC/Online/106165845/2023 dated 30.11.2023 on the 1st respondent in S.No.105/1B2 and 105/2 situated at Mettupatti Thathanur Village, Salem Harur Main Road, Salem District.

2. It is the case of the petitioner that the property admeasuring 4.74 Acres comprised in S.No.105/1B2 and 105/2 situated at Mettupatti Thathanur Village in Salem District was originally belonged to mortgagor – Chitrakala who created an equitable mortgage by way of deposit of title deeds towards term loan credit facilities availed by the principal debtor M/s.Bass Industries and M/s.Bass and Co. As the principal debtor committed default in repayment of loan amount, a proceeding under the provisions of The Securitisation and Reconstruction of Financial Assets

and Enforcement of Securities Interest Act, 2002 (also known as the SARFAESI Act) was initiated and the property was brought for auction.

3. It is the further case of the petitioner that he emerged as successful bidder in the auction conducted by the secured creditor in respect of the subject property. He paid the sale price. He was issued with a sale certificate which was registered on 27.11.2023. In the mean while the 2nd respondent has passed an order on 10.09.2022 attaching the subject property for the commercial tax dues. Since an order of attachment is reflected in the encumbrance certificate, the same is sought to be removed.

4. Heard both sides.

5. The learned counsel for the 2nd respondent would submit that in view of the well-settled law on the subject, now, the secured creditor will have priority over dues and thus secured creditor is entitled to claim priority of charge as against the commercial tax dues.

6. A Full Bench of this Court in the case of Assistant Commissioner (CT) Anna Salai-III Assessment Circle v. Indian Overseas Bank and another [AIR 2017 Mad 67 (FB)] has held that rights of the secured creditors to realise secured debts, due and payable to them, by sale of assets over which security interest is created, shall have priority

and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or Local Authority.

7. In the light of the law settled by the Full Bench of this Court, there shall be a direction to the 1st respondent to remove the endorsement with regard to attachment of the subject property from all the records. Such exercise shall be completed within a period of one month from the date of receipt of a copy of this order.

In the result, the writ petition is disposed of with the above directions. No costs.

25.04.2024

Index:Yes/No
Neutral Citation:Yes/No
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To

1.The Sub Registrar, Office of Sub Registrar, Ayothiya Pattanam, Salem.

2.The Assistant Central Tax Officer, Salem Bazzar Road, Salem.

N.SATHISH KUMAR,J.

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